

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-8603-2022

Date of decision : 25.04.2023

Rupa Handa

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rakesh Sobti, Advocate
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

PANKAJ JAIN, J. (Oral)

By way of present writ petition, the petitioner seeks writ in the nature of certiorari for quashing of the impugned order dated 29.03.2022 (Annexure P-5) and communication dated 20.04.2022 (Annexure P-6), whereby a denovo inquiry has been ordered to be conducted qua the same allegations for which the petitioner already stands punished vide order dated 07.03.2017 (Annexure P-4).

2. The petitioner who was serving in the office of an Estate Officer, Jalandhar Development Authority, Jalandhar as Senior Assistant was chargesheeted vide memo No.9489 of 22.04.2015 for being instrumental in preparing fake NOC by misusing official seals. The regular inquiry was conducted against the petitioner and initially the petitioner was exonerated. However, the Chief Administrator, Jalandhar Development Authority, Jalandhar did not concur with the findings of the inquiry report and ordered the inquiry denovo. A fresh

inquiry was conducted. This time, the petitioner was found guilty vide inquiry report dated 05.10.2016 (Annexure P-2). The inquiry report was accepted. Director Housing and Urban Development, Punjab being the appointing and punishing authority of the petitioner considered the findings of the inquiry report and saddled the petitioner with punishment of stoppage of one annual increment with future effect vide order dated 07.03.2017. After the petitioner had already borne the brunt of such punishment, order dated 29.03.2022 was passed primarily on the pretext of purported order passed by Additional Chief Secretary, Housing and Urban Development to review the order of punishment. A fresh inquiry was ordered. Vide communication dated 20.04.2022, the petitioner was called to face inquiry proceedings. It is the aforesaid order dated 29.03.2022 and consequential communication dated 20.04.2022 which have been impugned in the present writ petition.

3. Counsel for the petitioner submits that the petitioner being an employee of State of Punjab, the issues related to punishment are governed by Punjab Civil Services (Punishment and Appeal) Rules, 1970. Rule 21 provides for review, but the same has to be exercised within a period of 06 months from the date of the order proposed to be reviewed and in case the matter goes beyond 06 months, the same can be reviewed either by Governor or any other authority specified in this behalf by the Governor by general order or special order. It has been asserted that the order dated 29.03.2022 having been passed after more than 05 years of the order dated 07.03.2017, which is proposed to be reviewed, the impugned order and the proceedings subsequent thereto cannot be sustained. Counsel further contends that before passing the

order dated 29.03.2022, the petitioner was never served with any notice and the order has been reviewed at the back of the petitioner. It has been further contended that impugned order P-5 has been passed solely on the ground that former Additional Chief Secretary, Housing and Urban Development had ordered to review P-4, but even Additional Chief Secretary before passing such order to review the order P-4, never issued any notice to the petitioner.

4. Per contra, counsel appearing for respondent-State relies upon para 8 of the written statement to submit that in fact it was proposed by Chief Administrator, PUDA to the Additional Chief Secretary (Housing and Urban Development) vide noting dated 01.10.2018 that the office of the answering respondent be directed to review its order. Accordingly, after the approval of Additional Chief Secretary, it was proposed by the Superintendent, Technical for Chief Administrator, PUDA to review the punishment of stoppage of one annual increment without cumulative effect. State counsel further submits that since the petitioner has already participated in the inquiry proceedings and the same stands concluded by submission of inquiry report on 12.07.2022, the petitioner cannot now cry foul as the same being too late in the day.

5. I have heard counsel for the parties and have gone through the records of the case.

6. In order to appreciate the arguments raised by the counsel for the parties, it will be apt to peruse the following order dated 29.03.2022 endorsed on 31.03.2022 (Annexure P-5):-

2023:PHHC:062894

“PUNJAB GOVERNMENT
DIRECTORATE OF HOUSING AND URBAN DEVELOPMENT
DEPARTMENT
U.E. BRANCH (ESTABLISHMENT/ACCOUNTS)
OFFICE ORDER

Smt. Rupa Handa, Senior Assistant who is posted in the office of the J.D.A. Jalandhar was issued chargesheet vide this office memorandum No.9489 dated 22.04.2015 for the reasons of preparing fake N.O.C., using office stamp and damaging the image of the office by stealing and lowering the dignity of the Government.

Sh. Gurinder Singh, Sub Divisional Engineer (Electricity), J.D.A. Jalandhar was appointed as Inquiry Officer to enquire into this case. The former Director, Housing and Urban Development after considering the enquiry report and personally hearing Smt. Rupa Handa, Senior Assistant had awarded stoppage of one annual increment without future effect to the delinquent official under the minor punishments. The former Additional Chief Secretary, Housing and Urban Development had ordered to review these orders.

In compliance with these orders, for re-conducting the enquiry in this case, Sh. M.G. Acharya, I.A.S. (Retd.) House No. 815 Phase-4, S.A.S. Nagar, is appointed as Inquiry Officer. The Inquiry Officer after holding enquiry under rules, will submit his report within two months to the undersigned.

Sh. Chander Sekhar, Administrative Officer, J.D.A. Jalandhar is appointed as presenting Officer to present the case of the office.

Dated S.A.S. Nagar,
29.03.2022

Amanpreet Kaur, I.R.S.
Director, Housing.

Endorsement No.ES-1U.E./2022/(A-831)/6686 dated 31-03-22

A copy of above is forwarded for information and further necessary action to the followings:-

1. Sh. M.G. Acharya, IAS (Retd.) House No.815 Phase-4, S.A.S. Nagar (Chargesheet, copy of reply, copy of Inquiry report and copy of orders of punishment awarded.)
2. Additional Chief Administrator, J.D.A., Jalandhar.
3. Sh. Chander Sekhar, Administrative Officer, J.D.A., Jalandhar
(Employee code-2135).

2023:PHHC:062894

4. Smt. Rupa Handa, Senior Assistant, office of the J.D.A. Jalandhar.

Sd/=

Superintendent (U.E.)
For Director, Housing”

7. The specific stand taken by the respondent in their written statement on which reliance has been placed reads as under:-

“xx xx xx

8. That it is matter of record that the Chief Administrator, PUDA, after examining the fact that Smt. Rupa Handa was given a minor punishment of stoppage of one annual increment without cumulative effect by the answering respondent and the same is not at all in consonance to the serious irregularities committed by her. Therefore, it was proposed by Chief Administrator, PUDA, to Additional Chief Secretary (Housing and Urban Development) vide noting dated 01.10.2018, that the office of answering respondent be directed to review its order. Accordingly after the approval of Additional Chief Secretary (Housing and Urban Development), it was proposed by the Superintendent Technical for Chief Administrator, PUDA to review the punishment of stoppage of one annual increment without cumulative effect.”

8. The relevant provision of rules reads as under:-

"Rule 21-Review.

- (1) Notwithstanding anything contained in these Rules,
(i) The Governor, or
(ii) Or appellant authority, within 6 months of the date of the order proposed to be reviewed; or
(iii) Any other authority, specified in this behalf by the Governor by a general order special order, and within such time as may be prescribed in such general or special order;

2023:PHHC:062894

may at any time, either on his own motion or otherwise call for the records of any inquiry and review any order made under these Rules or under the Rules repealed by Rule 25 from which rule an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

- (a) Confirm, modify or set aside the order; or
- (b) Confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make further such inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such orders as it may deem fit;

providing that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been a reasonable opportunity of making a representation against the penalty imposed and where it is proposed to impose any of the specified in clauses (v) to (ix) or Rule 5 or enhanced the penalty imposed by the order to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the matter laid down in Rule and except after consultation with the Commission, where such consultation is necessary".

9. From bare reading of the impugned order Annexure P-5 in the light of stand of the respondent, it is clear that in fact even

Additional Chief Secretary, Housing and Urban Development has not applied his mind, but has only gone by the noting recorded by Chief Administrator, PUDA. The order passed by Additional Chief Secretary, Housing and Urban Development pursuant to such request made by Chief Administrator, PUDA has not seen the light of the day. This being the factual aspect, coming on to the legal provision Rule 21 already stands interpreted by this Court in **CWP No.24781 of 2018** titled as '**Jaswinder Singh vs. State of Punjab and others**', wherein this Court interpreted Rule 21 as under:-

“Rule 21

Review - (1) Notwithstanding anything contained in these rules.

(i) the Governor; or

(ii) the appellate authority, within six months of the date of the order proposed to be reviewed; or

(iii) any other authority, specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed order in such general or special order may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repeated by Rule 25 from which an appeal is allowed, but from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or imposed any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such

2023:PHHC:062894

authority to make such further inquiry as it may consider proper in the circumstances if the case; or (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed of making a representation to impose any of the specified in clauses (v) to (ix) or Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule and except after consultation with the Commission where such consultation is necessary."

11. In view of above, it cannot be denied that even if the date of the noting by the Chief Administrator, PUDA dated 01.10.2018 is taken to be date of order of review, the limitation as prescribed under Rule 21 to review the order dated 07.03.2017 already stood expired.

12. There is nothing on record to show that the punishing authority of the petitioner or the Additional Chief Secretary (Housing & Urban Development) ever applied their mind independently of the opinion expressed by Chief Administrator, PUDA who was neither the appointing authority nor the punishing authority vis-a-vis the petitioner. Moreover, the petitioner was not even given any opportunity of hearing before the authorities resolved to review the order dated 07.03.2017 and by 01.10.2018, petitioner had already undergone the punishment inflicted upon him vide order dated 07.03.2017.

13. In view of the aforesaid legal infirmities, this Court finds that the impugned order 29.03.2022 (Annexure P-5) and the proceedings subsequent thereto in the form of denovo inquiry conducted against the petitioner cannot be sustained. I will be failing in my duty in not dealing with the arguments raised by counsel for the respondent w.r.t. the participation of the petitioner in the inquiry proceedings. The said plea too sans merit. The petitioner was called to face inquiry vide communication dated 20.04.2022. Immediately, the petitioner approached this Court on 25.04.2022 and notice of the writ petition as well as notice regarding stay was issued for 31.05.2022. Thus, all proceedings carried during the pendency of the present writ petition were subject to lis. Thus, the same cannot be an impediment in allowing the present writ petition. Participation in proceedings will not operate as estoppel against the petitioner to press the present writ petition.

14. Consequently, the present writ petition is allowed. Impugned order 29.03.2022 (Annexure P-5) is hereby quashed.

15. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

25.04.2023

Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes