

2023:PHHC:166539

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-10200-2012
DECIDED ON: 8th AUGUST, 2023

R.K. RATHEE AND OTHERS

PETITIONERS

VERSUS

HUDA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vishal Sodhi, Advocate,
for the petitioner.

Mr. Arvind Seth, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* to quash the impugned order of punishment dated 08.08.2008 (Annexure P-8) passed by the Chief Administrator, HUDA along-with order dated 11.10.2010 (Annexure P-9) passed by the Appellate Authority with further prayer to grant all consequential benefits i.e. arrears of pay, promotion etc. along-with interest @18% per annum.

2. The brief facts of the present case are that the petitioner was appointed as J.E. with the respondent department and throughout his

service career he performed his duties with outmost satisfaction to the department. He was served with a charge sheet by the Department on the ground that he removed the orders dated 29.09.05 of Administrator, HUDA, Gurgaon whereby, violations were compounded for Rs. 72,510/- from the completion file of Plot No. 625, Sector 23- 23A, Gurgaon, thereafter, he again submitted a fresh case on 15.12.05 proposing the penalty of Rs. 59,908/- for compounding the Violations without proper scrutiny/verification and concealed the facts. He submitted his defence reply and pleaded that he had been unnecessarily issued the charge sheet and he had never committed any misconduct. The survey report dated 29.09.2005 of Rs.72510/- was neither prepared by him nor it was the part of record. The basis of charge sheet was an entry made in the movement register belongs to the office of Administrator of Rs. 72510/-. The petitioner only prepared a survey report in the prescribed format where in composition fee of Rs. 59,908/- was calculated by him as per the HUDA Rules and Regulations. This report was submitted on 04.10.2005 to the Administrator, who further passed an order to the DTP to personally recheck the site. The file was later on put up on 19.12.2005 before the Administrator. Respondent no. 1 appointed Sh. J.S. Alahwat, IAS Administrator as Inquiry Officer for conducting the inquiry against the petitioner alongwith Satpal Singh Dahiya SDE. The petitioner was exonerated from the all the charges. However, the Disciplinary Authority showed his disagreement with the findings given by the Inquiry Officer and issued a show cause notice to the petitioner as to why his services should not be dismissed by arriving at a different conclusion that why he

delayed the file for 4 month and produced the same to the Administrator in December 2012 when he got conducted the inspection of the site on 22.08.2005. The petitioner submitted his reply to the said show cause notice to Respondent No.1. The Disciplinary Authority without considering the reply submitted by the petitioner imposed a punishment of 'reduction in pay at the initial pay scale of Junior Engineer'. While awarding the punishment the Disciplinary Authority based his decision on the ground that the petitioner delayed the issuance of occupation certificate or completion certificate to the allottee and put up the file for compounding the violation by 4 months. Appeal filed by the petitioner against the order of punishment was also dismissed by Respondent no. 3 without giving any reason and by passing a speaking order. Hence, the present petition.

3. Mr. Vishal Sodhi, learned counsel for the petitioner has contended that the impugned order dated 08.08.2008 (Annexure P-8) is contrary to the principle laid down under Article 311 of the Constitution of India, 1950, which is reproduced as under:-

Article 311, Constitution of India 1950

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

4. It is submitted on behalf of the petitioner that there is no provision under the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and the Haryana Development Authority Service Regulation 1989 to deviate or to change the entire nature of the inquiry. It further submitted that as per the allegations and charges dated 29.06.2006, there was no charge on the petitioner that he had delayed issuance of occupation or completion certificate to the allottee of House No. 625, Section 23/23-A by four months. Thus, the petitioner was not given any opportunity to disprove the said charge by proving any documentary evidence.

5. It is asserted that the Inquiry Officer after conducting the fact

finding inquiry exonerated the petitioner from all the charges and it was held by the Inquiry Officer there is no evidence or document which substantiate the charges made against the petitioner since the Administrator never passed any order for compounding the violations of the site. Since it was proved that the violations were never compounded, therefore the inquiry officer exonerated the petitioner from all the charges. It is further asserted that the survey report prepared by the petitioner wherein, he calculated the compounding fee of Rs.59,908/-, has not been considered by Respondent No.1. In fact, there is no finding with regard to said survey report. The charge of delay in submitting the case was neither intimated to the petitioner nor was the same part of charge sheet and inquiry. Hence the note of dissent of the disciplinary authority was illegal, arbitrary and beyond the scope of inquiry which was initiated with the intimation of charge the Delinquent Officer.

6. Learned counsel for the respondents has contended that though the charges have not been proved but the competent authority did not agree with the findings of the Inquiry Officer as there is admission of the petitioner that he checked the site on 22.08.2005 and thereafter, he submitted the case to the Administrator, HUDA, Gurugram after a gap of four months on 15.12.2005 proposing the penalty of Rs.59,908/-. It is submitted that Sh. Sat Pal Dahiya, Sub Divisional Engineer has categorically mentioned that the delay and concealment of facts is on the part of the petitioner, which is clear from the circumstances that the petitioner had checked the site on 22.08.2005 and submitted the case imposing fine of Rs.72,510/- on 29.09.2005 but later on, he removed this

proposal and against submitted the case on 15.12.2005 proposing a penalty of Rs.59,908/- on 15.12.2005, which constitutes grave misconduct on the part of the petitioner. Accordingly, a dissenting note was issued by the Competent Authority to the petitioner vide memo dated 29.10.2007 (Annexure P-7).

7. It is asserted that there is no force in the plea of the petitioner that no financial loss has been caused to HUDA as the irregularities have been detected subsequently. After taking into consideration the representation and his verbal submission during the personal hearing, the Competent Authority decided to impose a penalty of reduction in pay at initial pay scale of the Junior Engineer to the petitioner. Hence, he prays for dismissal of the present petition.

8. Heard learned counsel for the parties.

9. No other argument has been raised by either of the parties.

10. On perusal of charge sheet dated 29.06.2006 (Annexure P-1), it is crystal clear that there was no charge of misconduct of delay or keeping the file with him from 22.08.2005 to 15.12.2005 for four months. Accordingly, the charges on which the punishment had been awarded were never intimated to the petitioner and not within the scope of Departmental Inquiry conducted by the Inquiry Officer, in which the petitioner was exonerated. Moreover, once the petitioner was exonerated from all the charges by the Inquiry Officer then the punishing authority has no jurisdiction to punish the petitioner on different charges that were never conveyed or intimated to the petitioner.

11. No such report of calculation of penalty of Rs.72,510/- is available on record and the report which is available on file is the inspection report calculating the penalty of Rs.59,908/- prepared by the petitioner and the same was submitted by him on 15.12.2005 (Annexure P-10). Apart from this, the quantum of punishment awarded to the petitioner is also unsubstantiated under the Haryana Civil Services (Punishment & Appeal) Rules, 1987, as there is no provision to place the petitioner in the initial pay scale.

12. In view of the discussions made hereinabove, the present petition is allowed and the impugned order of punishment dated 08.08.2008 (Annexure P-8) along-with order dated 11.10.2010 (Annexure P-9) is hereby, quashed. The respondents are directed to release the pending dues, if any, to the petitioner to which he is entitled to within a period of one month from the date of receipt of certified copy of this order.

(SANDEEP MOUDGIL)
JUDGE

AUGUST 08, 2023
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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |