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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1877-2015 (O&M)

Date of Decision: 24.08.2023

Nachattar Singh

. . . . Petitioner

Vs.

State of Punjab and another

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. V.K. Shukla, Advocate
 for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner has preferred this Writ Petition assailing the order dt.28.05.2010 (P-5) inflicting punishment of recovery of Rs. 38,878/- upon the petitioner, and the order dt.30.05.2014 (P-7) rejecting his appeal against the punishment order.
2. Learned counsel for the petitioner submits that it is case of double jeopardy. The petitioner had been earlier issued notice under Rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing minor penalty wherein charges were leveled against the petitioner alleging causing loss to the State Government. To the said show cause notice, the petitioner submitted his detailed reply whereafter the Additional Secretary-cum-Additional Director passed an order on 09.11.2016 (P-2) holding that the petitioner is not responsible for the loss and the only persons who can be said to be responsible for the loss would be the District Controller, and further directed that action be taken for making recovery from the then District Controller/Food

Supplies Officer/Assistant Food and Supplies Officer. He further dropped the show cause notice issued against the petitioner.

3. Learned counsel submits that after having dropped the charges, after finding the same to be not made out, a fresh charge-sheet was issued to the petitioner on 28.08.2006 making the same identical allegations of having caused loss to the State Government. The charge-sheet was issued under the signatures of the same officer who had dropped the charges leveled against him earlier. The petitioner submitted his reply (P-4) to the second show cause notice and pointed out that he had already been exonerated of the charges, but an order the was passed holding him guilty of the charges on 28.05.2010 and penalty of recovery of Rs.38,878/- was imposed. The petitioner filed an appeal and also pointed out to the appellate authority that he had been honorably acquitted earlier and he cannot be made subject to the charges again. However, the appeal was also rejected without adverting to the objections raised by the petitioner.
4. Learned counsel submits that the petitioner cannot be subjected to the same charges twice. Once he has been charge-sheeted and the disciplinary authority found having no misconduct committed by the petitioner, and the charges were dropped, then second charge-sheet on the same count could not have been issued. The same would be violative of Article 20 of the Constitution of India.
5. Learned counsel appearing for the State however submits that the order passed earlier by the Additional Secretary was reviewed and thereafter a fresh charge-sheet was issued against the petitioner.

6. This Court finds that the power of review as available under Rule 21 of the Rules, 1970 reads as under:

“(21) (a) Where a punishing authority competent to impose any of the penalties specified in clauses (I) to (iv) of rule 5 but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 5 has itself inquired into or caused to be inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it , is of opinion that the penalties specified in clauses (v) to (ix) of rule 5 should be imposed on the Government employee , that authority shall forward the records of the inquiry to such punishing authority as is competent to impose the last mentioned penalties .

(b) The punishing authority to which the records are so forwarded may act on the evidence on the record or may , if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice , recall the witness and examine , cross-examine and re – examine and re – examine the witnesses and may impose on the Government employee such penalty as it may deem fit in accordance with these rules. ””

7. From the bare perusal of the aforesaid provision, it is apparent that the appellate authority has not given any notice to the petitioner before reviewing the earlier order of exonerating the petitioner from the charges. No reasons have been assigned for reviewing the earlier order. In fact, subsequent charge-sheet does not even refer to the earlier disciplinary proceedings initiated and culminating in the exoneration of the petitioner. Thus, it is not a case where the respondents have reviewed their earlier order but is a case where they have again initiated

a fresh charge-sheet on the self same charges, which cannot be allowed in terms of Article 20 of the Constitution of India.

8. The entire proceedings initiated culminating into the punishment order as well as appellate order passed in appeal, are vitiated in law.
9. In view thereof, this Writ Petition is *allowed*.
10. Order dt.28.05.2010 and appellate order dt.30.05.2014 are quashed and set aside.
11. Recovery already effected, if any, shall be refunded to the petitioner with interest @ 9% p.a., and the arrears shall be paid to the petitioner within a period of 2 months from today.
12. Pending application(s), if any, also stands disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

August 24, 2023

Mohit goyal

1. *Whether speaking/reasoned?*

Yes/No

2. *Whether reportable?*

Yes/No