

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15155-2023

Decided on 28.07.2023

Paramjit Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RK Arora, Advocate for the petitioner

Sandeep Moudgil, J.

(1) This writ petition by the petitioner under Article 226 of the Constitution has been filed seeking a writ of certiorari for quashing the order dated 11.07.2023 (Annexure P15) passed by respondent No.3 whereby the petitioner has been directed to vacate Staff Quarter No.2883, FF, Sector 15, Panchkula within 7 days failing which 300 times more rent of normal applicable rent shall be charged and disciplinary action will be initiated. He further seeks quashing of the order dated 31.01.2022 (Annexure P3), whereby the petitioner has been continuously placed under suspension for the last 1 ½ years without reviewing/revoking the same because the said order is invalid as per proviso to Rule 5(1) of the Haryana Civil Services (P&A) Rules, 2016 and law declared by the Supreme Court in **Ajay Kumar Choudhary vs. Union of India 2015 (3) SCT 107** and fixing the headquarter of the petitioner during suspension at Sirsa as well as the disciplinary proceedings initiated vide memo dated 04.07.2023 (Annexure P14) on account of retaining the aforementioned quarter.

(2) The petitioner joined service of the Haryana Shehri Vikas Pradhikaran (HSVP erstwhile HUDA) as Technical Assistant on 14.08.2013. The petitioner was allotted residential HSVP staff quarter at Sector 15, Panchkula on 06.03.2019 wherein he started residing and paying its rent and other dues regularly. Vide order dated 31.01.2022 (Annexure P3), the petitioner was put under suspension and his headquarter was fixed at Sirsa. Since no charge-sheet was issued to the petitioner within the stipulated period of 90 days, the petitioner made a representation dated 03.06.2022 (Annexure P4) for his reinstatement on the ground that his father died due to corona and mother is a disabled person: he has two minor children and fixing his headquarter at Sirsa would be a grave hardship upon him and his family. Thereafter, on 06.06.2023 (Annexure P11) i.e. after about 1 ½ years, a charge-sheet dated 06.06.2023 was served upon the petitioner under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 2016 on the allegation that he was never authorized to use ID & password of Secretary, HSVP, but he used the same on 14.10.2021 and 02.11.2021 and created ID of the Administrator, HSVP, Hisar. The petitioner requested to inspect the record to enable him to submit his reply to the charge-sheet, however, the respondents did not allow him to inspect the record of IT Cell.

(3) Besides, the petitioner was slapped with another memo dated 04.07.2023 that despite his suspension since 31.01.2022 and having headquartered at Sirsa, he is still retaining HSVP quarter and consequently, vide order dated 11.07.2023 (Annexure P15), the petitioner was directed to vacate the said house failing which 300 times more the rent of normal

applicable rent shall be charged. Neither the rate of subsistence allowance has been increased as per rules. Hence this writ petition.

(4) Learned counsel for the petitioner contended that the petitioner was denied his right to file a valid reply which was in clear violation of principle of natural justice. The petitioner has categorically denied the charges leveled against him. He submitted that the petitioner is continuously occupying the house allotted to him and paying all the usual charges of the said house to the concerned authorities. Now instead of revoking the suspension of the petitioner, another memo dated 04.07.2023 has been issued to the petitioner with the allegations that despite his suspension since 31.01.2022, having headquarter at Sirsa, he is still retaining HSVP Staff quarter.

(5) It is further the submission of learned counsel for the petitioner that the petitioner is being paid only 50% of his salary on account of subsistence allowance and the same has not been enhanced in terms of Rules. Hence, in the absence of non-payment of proper subsistence allowance, the entire disciplinary proceedings and order dated 11.07.2023 are also liable to be vitiated/liable to be declared as invalid on this ground as well. He submits that due to non-payment of full subsistence allowance, a grave prejudice has been caused to the petitioner. He is unable to travel to his headquarter, not able to get proper defence assistance, proper legal advice and unable to look after the health of his old age handicapped mother and minor children. The relevant Rule with regard to payment of subsistence allowance during suspension reads as under:-

(83) "subsistence allowance" means an allowance admissible at prescribed rate(s) to a Government employee subject to

adjustment of income, if any, earned by way of employment during the period of suspension;

xxxx xxxx xxxx

Chapter VII:

83. Subsistence allowance during the period of first six months.-

A Government employee under suspension is entitled to subsistence allowance at an amount equal to the leave salary which he would have drawn had he been on leave on half pay.

Note. The subsistence allowance shall not be denied on any grounds unless the Government employee under suspension does not furnish the certificate that he is not engaged in any other employment, business, profession or vocation during the period of suspension.

84. Review of subsistence allowance after every six months.

Where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for the period after every six months as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government employee; or

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government employee.

Note 1.- The initial grant of subsistence allowance shall be payable at an amount equal to leave salary on half pay leave. In the event of any alteration in subsistence allowance under clause (i) or (ii) of this rule, the increase or decrease shall be calculated on the amount of subsistence allowance initially fixed and shall not be subject to any maximum limit.

Note 2. It is obligatory under this rule in sufficient time before the expiry of the six months of suspension the competent authority shall review each case in which the period of suspension is likely to exceed six months and even if it comes to the conclusion that the rate is not to be altered having regard to all the circumstances of the case. Specific orders to that effect are to be passed placing on record the circumstances under which the decision had to be taken. Such review shall be made at least on every six months and specific orders are to be passed for increasing or decreasing or not altering of the subsistence allowance.

85. Allowances during suspension.- *During the period of suspension the following compensatory allowances shall be admissible on subsistence allowance; namely:-*

- (a) Dearness allowance as per rate prescribed from time to time on the amount of subsistence allowance allowed;*
- (b) House rent allowance on the emoluments drawn before suspension at the rate in existence and prescribed for his headquarters irrespective of the fact the amount of subsistence allowance has been increased or decreased after first six months of suspension;*
- (c) Hill compensatory allowance, if admissible at the headquarters;*
- (d) Fixed medical allowance, if opted; (e) Any other compensatory allowance or relief equal to the amount admissible while on half pay leave."*

(6) Further, the argument raised is in similar circumstances, C.W.P. No. 20778 of 2021 was filed by one Sh. Babu Lal challenging his suspension order dated 25.09.2021 on the ground that charge-sheet has not been issued and consequently, the suspension would not be valid beyond the period of 90 days in terms of Rule 5(1) of the Haryana Civil Services (Punishment & Appeal) Rules, 2016 because no disciplinary proceedings have been initiated against him even expiry of period of 06 months. The charge-sheet was issued in that case after 7 months. While issuing notice of motion, this Court granted an interim order directing the respondents to reinstate the petitioner in service vide order dated 27.04.2022 (Annexure P-17).

(7) The matter came up for preliminary hearing on 19.07.2023 and while issuing notice of motion for serving the respondents through dasti process for 28.07.2023, this Court passed the following order:-

“Learned counsel for the petitioner categorically contends that in terms of Rule 5(1) of the Haryana Civil Services (Punishment and Appeal) Rules 2016, where a Government employee against whom disciplinary proceedings are contemplated is suspended, such suspension shall not be valid, if the disciplinary proceedings are not initiated against him within 90 days. After expiry of 90 days in the light of the fact that the extension and continuance of the said order was not sought from the higher authority and no disciplinary action admittedly has been initiated subsequent thereto.

The assertion on behalf of the petitioner on account of invalid suspension order is that the petitioner is entitled to retain the Government accommodation, despite the fact that his headquarters were shifted to Sirsa vide the said order suspension

order itself and even otherwise, he is paying regularly rent for the said accommodation as per rules.

Notice of motion for 28.07.2023.

Respondents be served through dasti only.”

(8) On 28.07.2023, the respondents sought more time to file reply, however, in view of the short question involved, it is not deemed appropriate to keep the matter pending for calling upon the respondent to file reply and this Court proceeds to decide the case on merits.

(9) Heard learned counsel for the parties and gone through the record.

(10) It is settled law that prolonged suspension of an employee is against the public interest and also against the interest of the state because the employee is being paid subsistence allowance without discharging duties. Hence, the respondents are burdening the public exchequer without any benefit to the public. The respondents can utilize the services of the petitioner by giving him posting at any place of their choice which will be in the interest of the state as well. The Supreme Court in **Ajay Kumar Choudhary vs. UOI 2015**

(3) SCT 107 held as under:-

8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9. *Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. [Article 12](#) of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in [Article 6\(1\)](#) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law..." “..We, therefore, direct that the currency of a Suspension Order should*

not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

- (11) The issue of "malus animus" was considered by this Court in [Tara Chand Khatri v. Municipal Corporation of Delhi & Ors., AIR 1977 SC 567](#), wherein it was held that the Court would be justified in refusing to carry on an investigation into the allegation of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition and the burden of establishing mala fides lies very heavily on the person who alleges it and that there must be sufficient material to establish malus animus.

(12) Similarly, in [E.P. Royappa v. State of Tamil Nadu & Anr., AIR 1974 SC 555](#), this Court observed:

"Secondly, we must not also over-look that the burden of establishing mala fides is very heavy on the person who alleges it..... The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other, not because of any special status.... but because otherwise, functioning effectively would become difficult in a democracy."

(13) In [M. Sankaranarayanan, IAS v. State of Karnataka & Ors., AIR 1993 SC 763](#), this Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture." There has to be a very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition, as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material.

(14) In [State of Punjab v. V.K. Khanna & Ors., \(2001\) 2 SCC 330](#), this Court examined the issue of bias and mala fide and observed as under:-

"Whereas fairness is synonymous with reasonableness- bias stands included within the attributes and broader purview of the word 'malice' which in common acceptance means and implies 'spite' or 'ill will'. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere

general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice..... In almost all legal inquiries, 'intention as distinguished from motive is the all-important factor' and in common parlance a malicious act stands equated with an intentional act without just cause or excuse." (Emphasis added)

(15) With respect to the quantum of punishment, it is well settled proposition of law that the scope of interference is not a routine manner. The Supreme Court in the case of **V. Ramana v. A.P.S.R.T.C. And others AIR 2005 Supreme Court 3417** while discussing the law on the subject laid down by other various countries as well as various decisions rendered by the Apex Court held in para 12 as under:-

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not got into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

(16) In the present case, the petitioner has been issued notice for vacation of the government house in Sector 15 Panchkula on the ground that he was suspended by the HSVP. The petitioner is not vacating the government house and as such, the condition of imposition of 300 times more the rent has been included in the notice. The way the petitioner is not cooperating with the

respondent-authorities itself shows that the petitioner has been made to vacate the government house forcibly. The action of the respondent-authorities against the petitioner who is said to have been acting against the interest of the respondent cannot be said illegal and unlawful.

(17) Moreover, no fault can be found with the action of the respondents in issuing the charge-sheet as the respondents have issued the charge-sheet within the four corners of the Rule 5(1) of the Haryana Civil Services (Punishment and Appeal) Rules, 2016. So much so, it is the prerogative of the respondent-authorities to deny him permission to access the records in so far as submitting the reply is concerned.

(18) The principle of natural justice cannot be put in a straitjacket formula. Its application depends upon the facts and circumstances of each case. To sustain a complaint of non-compliance with the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance with principle of natural justice. In the instant case we have been taken through various documents and also from the representation filed by the petitioner himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such an event, plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice.

(19) For the reasons mentioned above, there is no merit in this writ petition and the same is accordingly dismissed.

28.07.2023

V.Vishal

(Sandeep Moudgil)

	Judge
1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No