

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 27806 of 2013

Reserved On: 16.03.2023
Pronounced On: 17.08.2023

Rajiv Pal

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.P.S.Bal, Advocate
for the petitioner(s).

Mr. R.K.Kapoor, Additional Advocate General,
Punjab, for the respondent No. 1 to 4 and 6.

Anil Kshetarpal, J.

1. The petitioner prays for the issuance of a writ in the nature of certiorari to quash the orders dated 09.02.2011, 20.10.2011, 15.10.2012 and 01.03.2013, respectively.
2. In substance, the petitioner herein is aggrieved of the order of penalty, which has been affirmed in appeal as well as in the proceedings when the petitioner submitted a memorial stopping his two annual increments with permanent effect.
3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book as well as the written submissions filed by both the learned counsel representing the parties.
4. The petitioner has been punished on the following charges:-

“During his having posted as Tehsildar, Bholath, he was

assigned the duty to perform as Assistant Electoral Registration Officer for Assembly Constituency 40-Bhloth as per the directions of Election Department. The amendment of electoral rolls was to be completed in November and the job of including the names, making amendment and removing the objections was to be finished by Tehsil Office between 3.11.2000 to 29.11.2001. The information regarding so received applications received for including the names, making amendment and removing the objections, was to be sent to the senior officers. According to report sent by him to E.R.O. (S.D.M.), Bholath vide letter dated 29.11.2001, 6926 forms were received. The Sub Divisional Magistrate, Bholath sent the said information to District Electoral Officer, Kapurthala, but on conducting re-counting, number of received forms No.6 was found to be 7784. Hence, actual figure was not reported by him to the senior officers and misled the senior officers by providing wrong figures.

2. *The applications of the persons resident of village Begowal and Akalan, who are either residing abroad or came to the village only once or twice in a year, were also included without any verification.. The application of some under-aged persons residents of village Akalan were also included in Electoral Roll of village Akalan on his own level. The applications from Ward No.1, Begowal were accepted without verification, whereas number of applications are not bearing*

house numbers.”

5. The Inquiry Officer, vide report dated 27.05.2004 held that the charge No.1 is not proved, whereas the charge No.2 is proved. Vide letter dated 16.12.2004, the Punjab Government directed the inquiry on certain points to be conducted again. Pursuant thereto, the Inquiry Officer, vide communication dated 06.09.2005, clarified as under:-

“Similarly, he was also required to enquire the applicants regarding their house numbers. in The conclusion submitted by me, which, charge No. 1 is found not proved, however my examination regarding charge No. 2 is correct. However, it is purely sweet will of the government to accept the same or not.”

6. After the inquiry report was supplied, the petitioner submitted a detailed reply and the Financial Commissioner Revenue, Punjab, passed the order on 09.02.2011, stopping his two annual increments with future effect.

The operative part of the order is extracted as under:-

“4. The instant case was examined on the basis of reply submitted by the said officer, enquiry report and facts available on the record and the explanation submitted by the said officer was found to be unsatisfactory due to which reason, it was decided to seize his two annual increments with future effect. Keeping in view the said order, this department letter No. 1(8) 6/87-RE-1(3)/4358 dated 5.5.2006 was issued to the Secretary, Punjab Publica Service Commission, Punjab for sanctioning approval. But Punjab Public Service Commission did not agree

with proposal of the department and recommended to terminate the said officer from government service.”

7. It shall be noted here that the petitioner, while submitting his explanation, has over and again clarified that in the villages, the house numbers have not been allocated and in the small villages, the voters are identified by their names along with their parents' names. However, without advertent to the aforesaid detailed explanation, the disciplinary authority passed the impugned order. The appeal filed by the petitioner to the government was dismissed with the following order:-

“You had vide an appeal vide letter dated 8.4.11 against this department order 9.2.2011, issued vide this office Endst. No. 1 (8) 6/97/REl (6)/2222-28 dated 1.3.11. In this connection, you were given personal hearing on 3.10.11 by the competent authority. Keeping in view all the facts of this case, it is revealed that your appeal is devoid of merits. Hence the appeal filed by you is hereby dismissed.”

Even the memorial filed by the petitioner was consigned to record as not maintainable.

8. It is important to note that before passing a punishment order, the Disciplinary Authority as well as the Appellate Authority is required to critically analyze and evaluate the explanation/reply, if any, submitted by the employee. A speaking order shall be passed after considering the explanation/reply, if any, submitted by the employee. The order passed by the appropriate authority shall reflect the application of mind while considering the explanation. Merely a mechanical approach in such kind of

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cases is dangerous. In these cases, the important rights of the employee who has been charge-sheeted are being decided. In such circumstances, it is expected from the Disciplinary Authority that before coming to any kind of conclusion, it shall evaluate the defence put-forth by the charge-sheeted officer while examining the conclusion arrived at, in the enquiry report. However, unfortunately, neither the disciplinary authority nor the appellate authority has attempted to analyze the submissions of the petitioner who has not only participated in the inquiry proceedings, but has also submitted his explanations.

9. For brevity, the orders passed by the authorities are set aside while directing the disciplinary authority to pass a fresh speaking order after granting an opportunity of hearing to the petitioner.

10. With the observations made above, the present writ petition is allowed.

(Anil Kshetarpal)
Judge

August 17, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No