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

CWP-20776-2017

Date of decision : 27.03.2023

M.M. Sayal

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Mayank Mathur, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. Sanjeev Soni, Advocate and
Mr. Sarthak Soni, Advocate
for respondent No.5.

PANKAJ JAIN, J.

Challenge is to the impugned order dated 01.06.2017 passed by respondent No.3 whereby the punishment of stoppage of one annual grade increment without future effect has been imposed upon the petitioner reviewing earlier order dated 14.08.2015, whereby the petitioner was ordered to be exonerated from charges levelled against him vide chargesheet dated 20.02.2009.

2. Petitioner who worked as Corporation Engineer with the respondent-department was chargesheeted vide memo dated 20.02.2009. Regular inquiry was conducted. Respondent No.2 exonerated the petitioner from charges levelled and dropped the chargesheet dated 20.02.2009 vide order dated 14.08.2015 placed on record as Annexure P-3. On 27.12.2016, petitioner was served with notice calling him for personal hearing on 19.01.2017. Thereafter, respondent No.3 passed order dated 01.06.2017

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saddling the petitioner with punishment of stoppage of one annual grade increment without future effect.

3. Counsel for the petitioner submits that after chargesheet issued to the petitioner vide No.1/80/2008-2SS1/484, 485 and 488 dated 20.02.2009 was ordered to be dropped. The impugned order dated 01.06.2017 amounts to review of the earlier order which is in the teeth of bare provision of law.

4. Counsel for the petitioner submits that similar controversy involving same department came up before this Court in **CWP No.24781 of 2018** titled as '**Jaswinder Singh vs. State of Punjab and others**' decided on 16.02.2023 covers the case of the petitioner.

5. Counsel for the respondent does not deny the factual averments raised in the writ petition and submits that the issue is indeed covered by the ratio of law laid down in **Jaswinder Singh's case (supra)**.

6. Having heard counsel for the parties, I found that the issue before this Court is:-

(i) Whether the authority was well within its power to review order dated 14.08.2015 while passing order dated 06.06.2017?

7. This Court in **Jaswinder Singh's case (supra)** held as under:-

"It is the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which will be applicable to the present situation. Rule 21 thereof provides for the power of review. The same reads as under:-

"Rule 21

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

(i) the Governor; or

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(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 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

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Commission where such consultation is necessary.

There is no denial that power of review is provided under the Rule, however, the same vests with the Governor or the Appellate Authority or any other authority specified in this behalf by the Governor, by a general or special order. Impugned order Annexure P-7 does not fall in in any of the aforesaid category. The same authority reviewed Annexure P-3 by way of Annexure P-7. Apart from that even if the authority passing Annexure P-7 being higher in rank his additional Chief Secretary is taken to be Appellate Authority, the same could have reviewed the order only within a period of six months. Beyond six months even the Appellate Authority becomes functus officio and was not within its power to assume the jurisdiction of review.

In view of aforesaid, this Court is of the considered opinion that Annexure P-7 cannot be sustained and is hereby ordered to be quashed. The petitioner is held entitled for all benefits including for promotion from the date, persons junior to the petitioner, have been promoted.

Respondents are directed to release the benefits of the petitioner within a period of twelve weeks from the date of receipt of certified copy of this order.”

8. In view of the aforesaid ratio of law, present writ petition is allowed. Impugned order dated 01.06.2017 (Annexure P-1) cannot be sustained and is hereby ordered to be quashed. Petitioner is held entitled to all benefits withheld on account of impugned order (P-1). Respondents are directed to release the benefits of the petitioner in accordance with law within a period of 12 weeks from the date of receipt of certified copy of this order.

9. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

27.03.2023

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Whether speaking/reasoned : Yes

Whether Reportable : No