

CWP No. 7972 of 2017 (O&M)

2023:PHHC:111213

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212)

CWP No. 7972 of 2017 (O&M)

Date of Decision : 24.08.2023

Zile Singh

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohan Moudgil, Advocate for
Mr. Sandeep Sharma, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed challenging the order dated 20.11.2015 (Annexure P-9) as well as order dated 28/31.03.2017 (Annexure P-23) by which, the petitioner was imposed punishment keeping in view the disciplinary proceedings issued in pursuance to the charge-sheet issued to him dated 28.05.2009 and his appeal has been rejected.

2. As per the averments made in the petition, the petitioner, who was working as Assistant in the Office of the Regional Transport Authority, Rewari, was charge-sheeted on 28.05.2009 leveling certain allegations. Prior to the issuance of the charge-sheet, the petitioner was

already under suspension in contemplation of the enquiry. After conducting of the enquiry, wherein, the petitioner was held guilty of the allegations, punishment of stoppage of two increments with cumulative effect was imposed with a further direction that petitioner will not be paid any extra remuneration for the suspension period more than allowances already paid to him. Against the order of punishment dated 20.11.2015 (Annexure P-9), the petitioner preferred an appeal, which appeal was rejected by the respondents by the impugned order dated 28/31.03.2017 (Annexure P-23). The order passed imposing the punishment dated 20.11.2015 (Annexure P-9) as well as the order passed in appeal dated 28/31.03.2017 (Annexure P-23) are under challenge in the present petition.

3. Learned counsel for the petitioner argues that in the present petition, while deciding the appeal, the appellate authority already exonerated the petitioner of the certain charges alleged against him and the rest of the charges have been proved on the basis of the assumption only, hence, imposing the punishment on the basis of proving of the allegations, on the basis of assumption is totally arbitrary and illegal, especially when, the petitioner has given due explanation qua the allegations alleged against him.

4. Learned counsel for the respondent-State submits that in the present case, the enquiry proceedings were held and the petitioner was found guilty of the allegations. Learned counsel further submits that though in the appeal, the appellate authority found that certain allegations

have not been proved against the petitioner keeping in view the evidence, which had come on record and the explanation submitted but as per the decision of the appellate authority, the involvement of the petitioner in forging/destruction of the record cannot be ruled out and on the basis of the said view of the appellate authority, the punishment imposed upon the petitioner by the punishing authority has been reduced to stoppage of one increment without cumulative effect as well as the period of suspension is to be treated as a leave of kind due, which order is perfectly valid and legal and the present writ petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. In the present case, the punishment which has been imposed upon the petitioner by the punishing authority of stoppage of two increments with cumulative effect vide order dated 20.11.2015 (Annexure P-9), which is under challenge though, the same has already been modified in appeal by the appellate authority vide order dated 28/31.03.2017 (Annexure P-23), which order is also under challenge in the present petition.

7. The argument of the learned counsel for the petitioner is that the appellate authority in the appeal has exonerated the petitioner of the allegations mentioned at 2 (ii) of the charges. Learned counsel submits that the punishment, which has been maintained by the appellate authority, is qua the allegation of involvement of forging/destruction of the record. Learned counsel argues that the said charge has been proved

by the appellate authority only on the basis of the assumption as, the appellate authority is imposing the punishment by recording the finding that the involvement of the petitioner in forging/destruction of the record cannot be ruled out. Once, the appellate authority is not sure as to whether the petitioner was actually involved in the forging/destruction of the record, the punishment should not have been imposed upon the petitioner only on the basis of the assumptions.

8. The charges have to be proved on the basis of the evidence and not on the basis of the assumption, hence, proving the charge of involvement of the petitioner in forging/destruction of the record on the basis of the assumption by the appellate authority is held to be bad.

9. Keeping in view the above, the impugned order dated 28/31.03.2017 (Annexure P-23) is set-aside qua holding the petitioner guilty of the involvement in forging/destruction of the record on the basis of assumption, which fact has been taken into account while imposing the punishment of stoppage of increment without cumulative effect. The appellate authority is directed to pass a fresh order qua the charge of forging/destruction of record as to whether the same is not proved against the petitioner or not keeping in view the evidence on record coupled with the explanation given by the petitioner. Let the fresh order in appeal as directed here-in-before, be passed by the respondents within a period of two months of the receipt of certified copy of this order.

10. Petition is disposed of in above terms.

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As the main petition is disposed of, the present application also stands disposed of.

August 24, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

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