

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

(213)

**RSA No. 624 of 2013
Date of Decision : 12.01.2023**

Roshan Lal

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Karamveer Singh Banyana, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed impugning the judgment of the trial Court dated 13.01.2009 by which civil suit filed by the appellant-plaintiff impugning the charge-sheet dated 08.03.2004, enquiry report and the order of punishment dated 25.02.2005 by which, two increments of the appellant-plaintiff were stopped as well as the orders passed by the authorities concerned in the appeal and the revision filed by the appellant-plaintiff against the order of punishment. The said suit filed by the appellant-plaintiff was dismissed by the trial Court holding that the procedure envisaged under the rules has been followed while imposing the punishment and as no infirmity could be pointed out by the appellant-plaintiff in the conduct of disciplinary proceedings, he was not entitled for any relief. Feeling aggrieved against the said judgment of the trial Court

dated 13.01.2009, the appellant-plaintiff filed an appeal, which was decided on 16.02.2011 by which, the appeal was dismissed by the lower appellate court and the judgment of the trial Court was upheld. In the present regular second appeal, the appellant-plaintiff is impugning the order passed by the trial Court dated 13.01.2009, which has been upheld by the lower appellate Court on 16.02.2011.

Learned counsel for the appellant-plaintiff argues that in the present case, the procedure envisaged under the rules was not followed while imposing the punishment and the judgment of the trial Court dated 13.01.2009, which has been upheld by the lower appellate court vide order dated 16.02.2011, is contrary to the rules governing the service. Learned counsel for the appellant-plaintiff submits that while conducting the enquiry in respect of the charge-sheet dated 08.03.2004, the enquiry officer exonerated the appellant-plaintiff and without considering the said exoneration, appellant-plaintiff was imposed the punishment of stoppage of two increments, which act of the respondents is contrary to the rules as, no dissenting note of the punishing authority was ever brought to his notice for his comments and the objection of the appellant-plaintiff qua dissenting note could not be raised before the punishing authority before passing of the impugned order of punishment, which facts have not only been ignored by the revisional authority of the department but also the trial Court as well as the lower appellate court while declining the relief claimed.

Learned counsel for the respondents submits that the argument being raised by the appellant-plaintiff is factually incorrect for the reason that after the enquiry report was presented to the punishing authority, the

same was considered and a show cause notice was issued to the appellant-plaintiff on 07.02.2005, wherein, the disagreement note was also reproduced for his comments and the appellant-plaintiff duly filed reply to the said show cause notice as well as the disagreement note of the punishing authority and it was only thereafter, the order of punishment dated 25.02.2005 was passed.

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

The show cause notice, which was issued to the appellant-plaintiff after disagreement by the punishing authority to the report submitted by the enquiry officer, is on record. A bare perusal of the said show cause notice would show that the disagreement note of the punishing authority was reproduced in the show cause notice for information of the appellant-plaintiff seeking his objection before taking any further action. In fact, the appellant-plaintiff while filing reply to the said show cause notice, has responded to the observations of the punishing authority with regard to the disagreement note recorded in the enquiry report. Once, the disagreement note of the punishing authority was brought to the notice of the appellant-plaintiff and he responded to the same before the order imposing the punishment was passed, it cannot be said that the said disagreement note was taken into account for imposing punishment without giving any opportunity of hearing to the appellant-plaintiff qua the dissenting note of the punishing authority.

Learned counsel for the appellant-plaintiff conceded before this Court that in the show cause notice, the disagreement note finds mentioned

along with the points of disagreement, which dissenting note was duly replied by the appellant-plaintiff while giving his reply to the show cause notice issued to the appellant-plaintiff before imposing the punishment in question.

That being so, the requirement of the rules have been met with and nothing has been pointed out as to in what manner, the procedure followed by the punishing authority was contrary to the rules governing the service. In the absence of any rule being pointed out, which has been violated while imposing the punishment, no benefit of the said argument raised can be extended to the appellant-plaintiff. It is rightly held by the courts below that the procedure envisaged under the rules was followed while imposing the punishment and the learned counsel for the appellant-plaintiff has not been able to show this court as to how the said finding of the courts below is perverse to the facts or the evidence on record.

Learned counsel for the appellant-plaintiff submits that even otherwise, while issuing the show cause notice dated 07.02.2005, even the proposed punishment was mentioned, which shows that there was a pre-determine mind of the punishing authority to impose the punishment. This argument cannot be accepted for the reason that though, it was mentioned in the show cause notice that tentatively the authorities concerned proposed to dismiss the appellant-plaintiff from service but it is a conceded position that after going through the reply filed by the appellant-plaintiff to the show cause notice, only the punishment of stoppage of two increments has been imposed, which clearly shows that the reply filed by the appellant-plaintiff was considered with an open mind as the proposed punishment was never

imposed upon the appellant-plaintiff and the punishment imposed upon him was much less than the tentative proposal. Therefore, the argument that the punishing authority had already made up mind to impose a punishment cannot be accepted keeping in view the facts and circumstances of the present case.

Keeping in view the above, no ground is made out for interference by this Court in the facts and circumstances of the present case as no perversity has been pointed out in the findings of the courts below in the present regular second appeal.

Dismissed.

January 12, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No