

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-828-2018 (O&M)

Date of Decision: 29.08.2023

DISTRICT AND SESSIONS JUDGE, SBS NAGAR (NAWANSHAHR)
AND ANOTHER

.....APPELLANTS

VS.

ROHIT

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Rajeev Anand, Addl. P.P., U.T., Chandigarh,
for the applicants-appellants.

Mr. Raman Sharma, Advocate, for the respondent.

HARPREET KAUR JEEWAN, J.

CM-2301-LPA-2018

By this application, the applicants-appellants seek to place on record some additional documents as Annexures A-1 to A-7 with the accompanying appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of Sh. Barinder Singh Ramana, the then O.S.D. (Vigilance) of this Court, the same is allowed and the aforesaid documents are ordered to be taken on record as Annexures A-1 to A-7 with the accompanying appeal.

CM stands disposed of.

CM-2302-LPA-2018

By this application, the applicants-appellants seek permission to condone the delay of 287 days in filing the present appeal.

Keeping in view the reasons given in the application, which is duly supported by an affidavit of Sh. Barinder Singh Ramana, the then O.S.D. (Vigilance) of this Court and also considering the reply filed by the respondent, sufficient grounds are made out to condone the delay.

Consequently, the application is allowed and the delay of 287 days in filing the accompanying appeal is hereby condoned.

CM stands disposed of.

LPA-828-2018 (O&M)

1. The present Letters Patent Appeal has been filed challenging the judgment dated 06.07.2017 passed by learned Single Judge, in CWP-21426-2016, whereby the order of dismissal of the respondent dated 07.01.2016 passed by the District & Sessions Judge, SBS Nagar (Nawanshahr)-appellant No. 1, and the order dated 04.05.2016 of dismissal of departmental appeal by the then Administrative Judge, SBS Nagar, were set aside, though the liberty was granted to the disciplinary authority to issue specific charges and proceed with the enquiry afresh, if it is warranted.

2. The facts in brief are that on 04.01.2011 the respondent (hereinafter referred to as 'the employee') joined the post of Peon in the office of District & Sessions Judge, Shaheed Bhagat Singh Nagar (Nawanshahr). Sh. Harshbir Sandhu, the then Civil Judge (Junior Division), who was an under-trainee Judicial Officer with the Chandigarh Judicial Academy, had been sent for his field training at Shaheed Bhagat Singh Nagar (Nawanshahr), w.e.f. 20.10.2014 to 28.11.2014. The employee was deputed as an additional peon in the Court of Sh. Harshbir Sandhu (hereinafter referred to as the 'Presiding Officer') during the period he was

to hold the Court as field duty. The Presiding Officer informed the District & Sessions Judge, SBS Nagar (Nawanshahr), vide letter No. 23, dated 18.11.2014, that the employee was not performing his duty and he failed to send the files to the parent Court despite being asked by the Reader many a times. When the Reader told him to mend his way, the employee said that he should not tell him about of his duties. The employee even argued with the Presiding Officer in the open Court when he was asked by the Presiding Officer to do his duty; and even he said if the Presiding Officer wants, he can get him transferred. It was further informed that the respondent is in the habit of remaining absent in the Court during the working hours and whenever called for, he makes excuses for his absence and often answers in a rough tone.

2.1 On 20.11.2014, disciplinary proceedings were initiated against the employee as per Rule 12.2 (2) of the Punjab Sub-ordinate Courts Establishment (Recruitment and General Conditions of Service) Rules 1997, (for short 'the Rules of 1997'), read with the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short 'the Rules of 1970'). The employee was issued a memo, including article of charges and statement of imputation of misbehavior and mis-conduct along with the list of witnesses. The employee filed a reply to the charge-sheet denying the allegations of disobedience but also tendered an unconditional apology for the inconvenience which could have been caused to the Presiding Officer and undertook to remain careful in future.

2.2 Finding the reply unsatisfactory, an enquiry officer was appointed. The enquiry officer read over the articles of charges to the employee, to which he pleaded not guilty and claimed enquiry. Sh. Shashi

Kapoor, the then Reader of the concerned Court, was deputed as a co-employee to assist the respondent during the enquiry. After recording the statement of the departmental witnesses, the statement of the employee was recorded and he was given an opportunity to lead the evidence in defence.

2.3 After considering the evidence recorded during the enquiry, the enquiry officer submitted his report holding the employee as guilty of mis-conduct, dereliction of duties and indiscipline.

2.4 The punishing authority (appellant No. 1) giving his concurrence to the report of the enquiry officer issued a memo dated 17.07.2015 (Annexure P-9) to the employee with a show cause notice proposing the penalty of removal from service. The employee filed his reply dated 17.08.2015 (Annexure P-10) to the said show cause notice. The punishing authority (appellant No. 1) by passing the order dated 07.01.2016 (Annexure P-1), removed the employee from service with immediate effect, specifically recording that the said removal shall not be a disqualification for further employment under the Government. The suspension period was treated as leave of the kind due. The punishing authority observed that though the delinquent official had offered an apology in the initial reply but it was found that apology is not from his heart but was a brainchild of someone who had penned reply for him. He had also imputed prejudice against the enquiry officer. The punishing authority further observed that the delinquent official had gone to the extent of retorting back to a judicial officer in open Court which is all the more un-expectable and intolerable.

2.5 The departmental appeal filed by the employee was dismissed by the then Administrative Judge of Sessions Division, SBS Nagar,

(Nawanshahr), vide order dated 04.05.2016 (Annexure P-2), whereby it was observed that the appointing authority was conscious of the fact that the employee was working in the judicial department where discipline is required more than other departments. The dignity of the Court is required to be maintained by one and all and in that process dis-respect having been shown by the employee, that too in the open Court cannot be tolerated as approved behavior under any circumstances. It was further observed that the order was passed after hearing the employee and after following the due process. As such, there are no grounds to set aside the order passed by the punishing authority. The punishment was also held to be reasonable, keeping in view the fact that punishment of removal has been awarded by taking a lenient view in the matter, despite the gravity of misconduct shown by the employee.

3. The employee challenged the order of removal from service and dismissal of the departmental appeal by way of filing a Civil Writ Petition, which was allowed by the learned Single Judge by passing the impugned order. The learned Single Judge observed that the letter dated 18.11.2014 sent by the Presiding Officer to the then District & Sessions Judge, SBS Nagar, which was made basis of the charge-sheet was not proved during enquiry and in the absence of marking of the said letter, the same cannot be considered for the purpose of proving the charges leveled against the employee. It was further observed that there are no specific incidents cited in the charge memo regarding the absence of the employee and regarding his being rude. It was also observed that the charges leveled against the employee are vague and do not contain the date and events constituting the charge. The observations of the enquiry officer were held

only on presumptions and assumptions for the reason that the complaint dated 18.11.2014 was not marked but it was required for the purpose of examination and cross-examination of the author of the said letter as it was the foundation of the issuance of the charge-sheet to the employee. It was also observed that the entire enquiry proceedings are based on the vague charges and by placing the reliance upon the decisions of the Hon'ble Apex Court in Union of India and others vs. Gyan Chand Chattar (2009) 3 LLN 70, and Anant R. Kulkarni vs. Y.P.Education Society and others 2013 (3) SCT 188, it was observed that "the substance of imputation of misconduct of misbehavior into definite and distinct articles of charges" as required under Clause (i) Sub-Rule (3) of Rule 8 of the Rules of 1970 were not framed. It was also observed that the appellate authority did not deal with the appeal in view of Rule 19 of the Rules of 1970 which requires that the appellate authority should consider as to whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or resulted in failure of justice.

3.1 The learned Single Judge while setting aside the order of removal of the employee and the order of dismissal of the Administrative appeal, ordered for reinstatement of the employee with all service and monetary benefits during the period w.e.f. 07.01.2016 till reinstatement. However, a liberty was granted to the disciplinary authority to issue specific charges and proceed with enquiry afresh, if it is warranted.

4. The appellants have challenged the order of learned Single Judge by way of filing the present LPA.

5. Learned counsel for the appellants submitted that the charge-

sheet served upon the employee was very specific with regard to non-performance of duty and misbehavior with the Presiding Officer in the open Court on 18.11.2014. Even the employee was informed that he can inspect the record for the purpose of filing reply, if he wanted so. The Presiding Officer himself, as well as the Reader have deposed during the enquiry proving the charges against the employee, as such, the order passed by the learned Single Judge is liable to be set aside.

6. On the other hand, learned counsel appearing for the respondent (the employee) submitted that the employee has been working with due diligence right from the beginning of his career. All his ACRs were “up-to the mark”. In pursuance to the order passed by the learned Single Judge, he has been re-instated and there are no allegations of misconduct even thereafter, and he has been promoted as a Process Server, vide order dated 27.01.2022. During the arguments, learned counsel for the respondent has submitted a copy of the order of promotion of the respondent (the employee), which is subject to the decision of the present appeal. The copy of the said order is taken on record as Annexure R-1 with the accompanying appeal. Office to tag the same at appropriate place.

7. We have considered the aforesaid submissions.

8. The learned Single Judge has dismissed the order passed by the punishing authority, as well as the order of dismissal of the administrative appeal primarily on two grounds:-

- i. Non-production of the letter, dated 18.11.2014, which was addressed by the Presiding Officer to the District & Sessions Judge, which was referred in the charge-sheet; and

- ii. The charge-sheet being vague and non-specific regarding date and places of absence from duty and being rude by the employee.

9. We have gone through the record. Non-production of the said letter during the enquiry cannot be made as a ground for setting aside the punishment order as the Presiding Officer who was the author of the said letter has himself appeared as a witness during the enquiry. He has narrated the entire incident and the employee was given an opportunity to cross-examine the Presiding Officer. He has categorically stated that on 18.11.2014, the Reader of the Court had informed him that Rohit, who was attached as a Peon, was not performing his duties and failed to send the files to the concerned Court. He did not send the files to the parent Court despite being asked by the Reader many a times.

9.1 The purpose of sending of the files to the parent Court has been clarified in the dismissal order dated 07.01.2016 (Annexure P-1) as per which the Presiding Officer who was a trainee Judicial Officer at Chandigarh Judicial Academy was deputed to undergo field training at his place of posting. It was conveyed by the Director Administration of the Academy through letter dated 09.10.2014 that the trainee Presiding Officer was required to be attached with one of the Senior Most Officers. He was to be allotted a separate Court room, adequate staff. The '*Kachchi Peshi*' of the Civil Judge with whom he was deputed was required to be dealt with by the trainee Judicial Officer in their respective Court rooms independently. After disposal of the '*Kachchi Peshi*', the trainee Judicial Officer was also required to record evidence in civil cases assigned to them by the other Judicial Officer of the District. The nature of work which the trainee

Judicial Officer was required to perform during their field duty required movement of the file from other Courts to the Court of the trainee Judicial Officer for the purpose of recording of the evidence and doing '*Kachchi Peshi*'. Hence, the Peon attached with the trainee Judicial Officer was required to bring and send back the files to the concerned Courts. In such background, the statement of the Presiding Officer explains the dereliction on the part of the employee in compliance of the directions given by the Reader with regard to movement of file (s).

9.2. The Presiding Officer has also testified during the enquiry when the employee had refused to the Reader, he had himself asked the employee to perform his duty but the employee started arguing with him in the open Court. The relevant portion of the statement of the Presiding Officer reads as under:-

“Stated that on 18.11.2014, the Reader of the Court had informed me that Rohit, i.e. the delinquent employee then attached to my Court as a peon not performing his duties and had failed to send the files to the concerned Court. He did not send the files to the parent Court despite being asked by the Reader many a times. When the Reader asked him to mend his ways, he told the Reader to mind his own business and not make him aware about his duties. Thereafter, upon being asked by me to perform his duties, Rohit started arguing in the open Court and said that if I wanted to get him transferred, I could do so. Even otherwise Rohit, i.e. the delinquent employee is in the habit of remaining absent from the Court during Court hours and when ever called for, makes excuses for his presence and often answer in a rough tone. I identify Rohit, i.e. the delinquent employee.”

9.3 The aforesaid statement of the Presiding Officer recorded during enquiry clearly indicates that the author of the complaint had himself deposed regarding the misconduct of the employee before the enquiry officer. The testimony of the Presiding Officer clarifies two facts, i.e. firstly, the employee had refused to do his duty to the Reader of the Court and secondly, had argued with the Presiding Officer in the open Court and the words used by the employee as so stated by the Presiding Officer gives an indication of “I don't care attitude.”

10. Apart from this, the “Statement of Imputation of Mis-conduct and Misbehavior”, which is a part of the paper-book at pages No. 77 to 78 clearly indicate that in addition to having a reference of the letter dated 18.11.2014, it is specifically mentioned that the employee did not perform his duties, and rather argued with the Presiding Officer in the open Court. As such, the employee was having the knowledge of the charges of mis-conduct and misbehavior against him. As per the communication No. 6327/DSJ 37, dated 20.11.2014 (Annexure P-4), issued to the employee he was specifically informed by appellant No. 1 that he can inspect the official record, if he requires for the purpose of preparing his written statement of defence. No such request was made to the District Judge for supply of the copy of the letter, dated 18.11.2014, written by the Presiding Officer, which was referred in the charge-sheet.

11. Keeping in view the aforesaid circumstances, non-production of the letter dated 18.11.2014 would not have any material bearing in this case and enquiry cannot be vitiated on this ground, as the author of the letter has been examined during the enquiry and the employee was given due opportunity to seek any record from the punishing authority.

12. In such circumstances, the charges of refusal to do work to the Reader for bringing files and charges of confrontation with the Presiding Officer in the open Court stands proved. Hence, the entire proceedings cannot be brushed aside and the order passed by the punishing authority, as well the order of dismissal of the departmental appeal, cannot be set aside on the ground of charges of absence and charges of being rude being not specific.

13. In view of the aforesaid reasons, we are of the considered opinion that the charges against the employee (respondent) were proved during the enquiry which amounts to non-performance of his official duty and above all entering into verbal altercation with the Presiding Officer in the open Court amounts to misconduct of a grave nature. The order passed by the learned Single Judge, as such, is liable to be set aside.

14. We have also considered the validity of the order of punishment. Learned counsel for the respondent (the employee), has submitted that the employee has already been provisionally promoted and he has not repeated any such mis-conduct and requested for a lenient view. He has further submitted that the matter may not be remanded to the punishing authority for reconsideration of punishment as it would prolong the litigation and would cause delay in the proceedings and he would liable to be reverted to the lower post.

15. We agree with learned counsel for the respondent on the point. Referring the matter to the punishing authority at this stage for reappraisal of the order of punishment would amount to prolonging the litigation since the employee has already been promoted though subject to the outcome of this appeal. No doubt the act committed by the employee is very grave in

nature and calls for a severe punishment but keeping in view the fact that he had been promoted and no such act has been repeated by him and that substantial period of service has now gone by as the appointment was of the year of 2011, we substitute the order of punishment of removal with punishment of stoppage of two increments with cumulative effect on his promoted post.

16. With the aforesaid observations, the present appeal is partly allowed and the order passed by the learned Single Judge is set aside. The punishment awarded to the respondent in above terms, would be enforced with prospective effect from today.

Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

August 29, 2023
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Whether Speaking	Yes
Whether Reportable	Yes