

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10857 of 2021 (O&M)
Date of decision: 30.01.2024

Harinder Singh Chahal
.....Petitioner
Versus
State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Dhiraj Chawla, Advocate
for the petitioner.

Mr. Arun William AAG, Punjab.

NAMIT KUMAR J.

1. The petitioner has approached this Court by way of filing the instant petition under Article 226 of the Constitution of India, for issuance of a writ in the nature of ceritiorari, for quashing the order dated 11.03.2021 (Annexure P-7) whereby the suspension period w.e.f. 04.05.2017 to 12.06.2018, has been ordered to be treated as leave of the kind due and thereby disallowing the pay and allowances to the petitioner by treating the said period as not having been spent on duty.
2. The brief facts, as have been pleaded in the petition, are that the petitioner was appointed as an Executive Officer in December, 2010. Thereafter, the petitioner was placed under suspension vide order dated 04.05.2017 alongwith 11 other officers on the allegations of being negligent in performance of their duties while they remained posted at Town Improvement Trust, Bathinda, which was followed by issuance of

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charge-sheet dated 06.07.2017 under Rule 8 of “The Punjab Civil Services (Punishment & Appeals) Rules, 1970”. The petitioner submitted reply dated 27.07.2017 denying the allegations levelled in the charge-sheet and after considering the said reply, Sh. Ajay Kanwar, Engineer-in-Chief, Local Government, Punjab was appointed as an Enquiry Officer vide order dated 16.10.2017, who vide his enquiry report dated 24.09.2019 submitted the enquiry report against 12 officers who were charge-sheeted collectively vide order dated 06.07.2017 namely (a) Sh. Kulwant Singh, Joint Deputy Director, (2) Sh. Gora Lal, Executive Officer, (3) Sh. Harinder Singh Chahal, Executive Officer – petitioner, (4) Sh. Jawahar Lal, Executive Officer, (5) Sh. Rajesh Garg, Superintending Engineer, (6) Sh. Mukhtiar Singh, Trust Engineer (Retd.) (7) Gurraj Singh, Trust Engineer, (8) Sh. Baljit Singh (Assistant Trust Engineer), (9) Sh. Gurwinder Pal Singh, Assistant Trust Engineer (10) Sh. Jasbir Singh, Junior Engineer, (11) Sh. Jora Singh, Assistant Trust Engineer (Retd.), (12) Sh. Hans Raj Sharma, Trust Engineer (Retd.).

3. The Enquiry Officer proved the charges levelled against the petitioner and finally, the petitioner was inflicted the punishment of stoppage of one increment without cumulative effect vide order dated 28.09.2020 (Annexure P-6). Subsequently, vide order dated 11.03.2021, the suspension period of the petitioner from 04.05.2017 to 12.06.2018, has been ordered to be treated as leave of the kind due. The said order has been impugned in the present writ petition on the ground that once the disciplinary proceedings have been concluded by awarding minor

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punishment, the suspension period cannot be treated as leave of the kind due and the same is required to be treated as duty period. It has further been pleaded that the other officers, who were also proceeded against along with the petitioner, in their cases the suspension period has been treated as duty period and the benefits due to them have already been granted for the said period, although they were also awarded minor punishment of 'censure'.

4. In pursuance to notice of motion, reply by way of affidavit of Rakesh Kumar, Joint Secretary, Department of Local Government, Punjab, has been filed on behalf of the respondent wherein it has been stated as under:-

“14. That subsequent thereto certain junior employees, who were imposed with the penalty of Censure, approached/represented that their suspension period be considered as duty period and vide order dated 02.11.2020, the same was granted. However, when the petitioner approached seeking parity, his case was considered in light of the fact that as detailed in the enquiry report and considering his responsibility and role and also considering the reply submitted by him coupled with the penalty of stoppage of one increment (without cumulative effect), the answering respondent exercising powers under Rule 7.3 directed the conversion of the suspension period into (leave of kind due).....

15. That the contents of Para 15 of the petition are wrong and incorrect and wishful interpretation by the petitioner. The petitioner is trying to derive parity with the employees who were imposed with the punishment of censure only because of the acts and conduct of the petitioner being the senior and responsible officer who was

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at the helms of affairs. It is pertinent to reiterate that the enquiry report categorically records that it was a duty of the petitioner to check the essential works regarding the construction of flats e.g., development of outer area, fire fighting systems, laying HT/LT line and commissioning of lift etc. there was lack of supervision and the petitioner failed to reply on the unwanted delay in construction and short comings in the construction of flats. Every employee has its own role and responsibility and the petitioner being the Executive Officer was held guilty on all five charges as per Annexure P-4.”

5. Learned counsel for the petitioner contends that the disciplinary proceedings have been concluded with the issuance of punishment order dated 28.09.2020 (Annexure P-6), whereby minor punishment of stoppage of one increment, without cumulative effect, has been inflicted upon the petitioner and the suspension period from 04.05.2017 to 12.06.2018, has been treated as leave of the kind due. He submits that once only minor punishment has been inflicted, therefore, the suspension period is required to be treated as duty period for all intents and purposes. He further submits that the action of the respondents is based upon discrimination and arbitrariness and violative of Articles 14 and 16 of the Constitution as other charged officers/officials, who were also awarded minor punishment of censure, their suspension period have been treated as duty period.

6. During the course of arguments, learned counsel for the petitioner has produced a copy of Instructions dated 26.03.1990, issued by Government of Punjab, which reads as under:-

“Letter No.13/44/99-2PP-2/5152 dated 26.03.1990

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Subject: In case, only a minor punishment is awarded as a result of disciplinary action, the suspension period be treated as duty period.

I have been directed that I should draw your attention towards above subject and to say that it has been stated vide Punjab Govt. Letter No.1270-2PP-70/15809 dated 16.5.1978 to the effect that on the proposal of placing every Govt. employee under suspension, the same be considered very carefully and the orders for suspension should be passed only if the circumstances are proving the same as correct fully. The suspension orders should not be passed till there are serious charges against him and on the basis of available material, prima facie the case of termination or retirement against the concerned employee should have been prepared and his remaining continuously in service may create problem in the implementation of the legal action.

2. In the light of above shown situation, having regard to the Govt. of India Letter No.11012/15/85-Estt. (EE dated 21.12.1985) it has been decided that in case the departmental action against the employee has been initiated for awarding major punishment and lastly, he is awarded only a minor punishment, then his suspension will be unjustified and he will be given full pay and allowances for the suspension period by passing an appropriate order.

3. This order will be deemed to be applicable from the date of issuance of this letter. There is no need to reopen the decisions already taken.”

7. Learned counsel for the petitioner further submits that both punishments of ‘censure’ and ‘stoppage of one annual increment without cumulative effect’ are minor punishments and falls under Rule 5 of the 1970 Rules. He has placed reliance upon the Division Bench judgments of this Court in **“Y.P. Sehgal vs State of Punjab”**, 1992(2) SCT 179 and **“Dalip Singh vs State of Haryana and another”**, 2003(4) SCT 261, as well as the Single Bench of this Court in **“Dr. M.L. Kamra and others vs State of Haryana and others”**, 2009(4) SCT 27 and **“O.P. Sindhwani vs State of Haryana and another”**, 2009(4)

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SCT 62.

8. Per contra, learned counsel for the State submits that since in other cases only punishment of censure was inflicted and whereas the petitioner has been awarded the punishment of stoppage of one annual increment without cumulative effect, therefore, the respondents/authorities have rightly taken the decision not to treat the suspension period as duty period and has been ordered to treat the said period as leave of the kind due.

9. I have heard learned counsel for the parties and perused the record with their able assistance.

10. The issue which arises for consideration is, as to whether the suspension period is to be treated as duty period or not, when ultimately minor punishment is awarded in the disciplinary proceedings which is not res integra. The Division Bench of this Court in Y.P. Sehgal's case (supra), has held that when the petitioner has been reinstated and the proposed disciplinary action against him has resulted in imposition of minor punishment, it is neither permissible in law nor fair to deny him the arrears of salary and allowances for the suspension period.

11. To the same effect are the judgments of this Court in Dalip Singh's case, Dr. M.L. Kamra's case and O.P. Sindhwani's case (supra).

12. Since both the punishments i.e. stoppage of one annual increment without cumulative effect and censure are minor punishments in terms of Rule 5 of the 1970 Rules, therefore, the suspension period cannot be treated differently altogether by the authorities of the

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department in discriminatory and arbitrary manner, which is not permissible under the law. In other remaining cases, the respondents have treated the suspension period as duty period and granted due benefits to them, for the said period, barring the case of the petitioner in which the suspension period has been treated as leave of the kind due and even in the light of the Instructions dated 26.03.1990, whereby it has been decided that in case the departmental action has been initiated against an employee and he is awarded only a minor punishment, then his suspension period will be unjustified and he will be given full pay and allowances for the suspension period by passing an appropriate order.

13. For the foregoing reasons and in view of the Instructions dated 26.03.1990 and the law laid down by this Court in the abovesaid judgments, the present petition is allowed and the impugned order dated 11.03.2021 (Annexure P-7) is set-aside and the respondents are directed to treat the suspension period of the petitioner from 04.05.2017 to 12.06.2018, as duty period and the petitioner shall be entitled to all consequential benefits including pay and allowances after adjusting the suspension allowance and the same shall be released to the petitioner within a period of 03 months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

30.01.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No