

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

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CWP-11581-2019

Date of Decision: 23.01.2024

BALJEET SINGH

.....PETITIONER

V/S

NATIONAL INSURANCE COMPANY LTD AND ORSRESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.J.S.Maanipur, Advocate
for the petitioner.

Mr. V.Ramswaroop, Advocate
for the respondent-Insurance Company.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 30.09.2016 (Annexure P-6) whereby he has been awarded punishment of reduction of basic pay by ten stages.

2. The above-noted punishment has been awarded on account of unauthorized absence from duty. The petitioner concededly remained absent from duty for 700 days during the period from 1996 to 2013. The said period was considered as loss of pay period.

3. The petitioner is a physically handicapped person suffering from 50% disability as per certificate dated 27.11.2015 (Annexure P-1). The

petitioner on 09.02.1998 joined respondent-Company i.e. National Insurance Company Ltd. as Sub Staff. In August' 1986, he was promoted as Record Clerk and thereafter in August' 1992 as Assistant. The petitioner during 1997 to 2013 remained absent from duty for 700 days. The petitioner primarily remained absent from duty for 50-70 days in a year, however, in 2009, he remained absent from duty for 114 days. The respondent, at this stage, did not take any action against the petitioner rather regularized his absence period. The respondent served upon the petitioner charge-sheet dated 30.04.2015 (Annexure P-3) for remaining absent from duty in an unauthorized manner. The enquiry officer in its report concluded that there was lapse on the part of petitioner and he is liable to punishment. The disciplinary authority vide order dated 30.09.2016 awarded punishment of reduction of basic pay by 12 stages. The petitioner preferred an appeal before the appellate authority which vide order dated 31.03.2017 (Annexure P-8) reduced the quantum of punishment from 'reduction of basic pay by 12 stages' to 'reduction of basic pay by 10 Stages'. The petitioner unsuccessfully preferred memorial before the Chairman-cum-Managing Director.

4. Learned counsel for the petitioner submits that absence period of the petitioner has been treated as loss of pay period, thus, he cannot be subjected to further punishment of reduction of basic pay by 10 stages. In support of his contention, he relies upon judgment of Co-ordinate Bench of this Court in *Surinder Singh vs. State of Punjab and others. 2007(3) S.C.T. 288.*

5. Learned counsel for the respondents submits that unauthorized absence from duty amounts to misconduct and as per regulation 4(7) of National Insurance Company (Conduct, Discipline & Appeal) Rules, 2014, (hereinafter referred as '2014 Rules') absence from duty falls within scope of misconduct. The petitioner concededly remained absent from duty during 1997 to 2013, thus, he was liable to punishment as contemplated by 2014 Rules.

6. The petitioner remained absent from duty for 700 days during 1997 to 2013. There is a short span of absence in every year and in 2009, he remained absent for 114 days. At this stage, no notice was issued to petitioner rather he was permitted to continue in subsequent years and absence period was treated as loss of pay period.

7. On being asked, learned counsel for the respondents expressed his inability to controvert the fact that despite absence of 114 days during 2009, no notice proposing punishment was issued till 2014. He submitted that competent authorities at that point of time formed sympathetic view and on account of sympathy, no notice was issued to the petitioner.

8. The petitioner has concededly remained absent from duty from 1997 to 2013. The respondent taking a sympathetic view did not initiate disciplinary proceedings against the petitioner. During 2009, the petitioner remained absent from duty for 114 days. The parties could not point out any Rule which prescribes period for initiating disciplinary proceedings. It is settled proposition of law that in the absence of prescription of period, every action should be initiated by public authorities within reasonable period of

limitation. The reasonable period of limitation depends upon the facts and circumstances of each case.

The Supreme Court in *State of H.P. v. Rajkumar Brijender Singh AIR 2004 SC 3218*, while interpreting the words "at any time", held that such power had to be exercised within a reasonable time. The relevant extracts of the judgment read as:

6. We are now left with the second question which was raised by the respondents before the High Court namely the delayed exercise of the power under sub-section (3) of Section 20. As indicate above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be, exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such power should be exercised within a reasonable time. No fix period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power suo moto action could be exercised. For example in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo moto power, well it could be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn some time in March 1976. The learned counsel for the appellant

was not able to point out such other special facts and circumstances by the reason of which it could be said that exercise of suo moto power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo moto in a suitable case even though an appeal preferred before lower appellate authority is withdrawn may be by the State. Thus the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullified the order passed by him in exercise of power in sub-section (3) of Section [20](#).

The Apex Court in **State of Punjab vs. Bhatinda District Cooperative Milk Producers Union Limited, (2007) 11 SCC 363** has held :

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

9. The respondent despite knowing the fact that the petitioner has remained absent from duty every year did not take action till 2014 and charge-sheet came to be issued on 30.04.2015. The absent period was treated as loss of pay period meaning thereby the petitioner did not get salary for the period of absence. The respondents refrained from initiating proceedings against the

petitioner within reasonable time and initiated proceedings after a quite long time. The respondents in view of absence of petitioner during 2013 could initiate proceedings during 2015 because at that point of time, action was within reasonable period of limitation i.e 2 years from the alleged default, however, it was unreasonable to take action in 2015 for the period of absence from 1997 to 2011.

10. The Supreme Court time and again has held that in case Court finds that punishment awarded by authority is disproportionate to alleged misconduct, the Court should remand the matter to competent authority to reconsider quantum of punishment. As per principle of proportionality, punishment prescribed by legislation must be in commensurate to alleged offence. If punishment is disproportionate to alleged offence, it is violative of Article 14 of the Constitution of India.

In ***Om Kumar v. Union of India, (2001) 2 SCC 386*** a matter came up for hearing on account of an order of Supreme Court dated 4.5.2000 proposing to re-open the quantum of punishments imposed in departmental inquiries on certain officers of the Delhi Development Authority who were connected with the land of the DDA allotted to M/s. Skipper Construction Co. It was proposed to consider imposition of higher degree of punishments in view of the roles of these officers in the said matter. The question posed before the court was whether the right punishments were awarded to the officers in accordance with well known principles of law or whether the punishments required any upward revision. Proportionality as a constitutional doctrine has been highlighted in as follows:

*"30. On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability similar to the one experienced by English Courts for declaring as unconstitutional legislation on the principle of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of "proportionality" has indeed been applied vigorously to legislative (and administrative) action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India - such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India - this Court has occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. "Reasonable restrictions" under Articles 19(2) to (6) could be imposed on these freedoms only by legislation and courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this Court, the extent to which "reasonable restrictions" could be imposed was considered. In **Chintamanrao v. State of M.P. [AIR 1951 SC 118: 1950 SCR 759]** Mahajan, J. (as he then was) observed that "reasonable restrictions" which the State could impose on the fundamental rights "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public". "Reasonable" implied intelligent care and deliberation, that is, the choice of a course which reason*

*dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Articles 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri, C.J. in **State of Madras v. V.G. Row** [AIR 1952 SC 196: 1952 SCR 597: 1952 Cri LJ 966], observed that the Court must keep in mind the "nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time". This principle of proportionality vis-a-vis legislation was referred to by Jeevan Reddy, J. in **State of A.P. v. McDowell & Co.** (1996) 3 SCC 709 recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in the last fifty years. Decided cases run into thousands.*

*31. Article 21 guarantees liberty and has also been subjected to principles of "proportionality". Provisions of the Criminal Procedure Code, 1974 and the Indian Penal Code came up for consideration in **Bachan Singh v. State of Punjab** [(1980) 2 SCC 684 the majority upholding the legislation. The dissenting judgment of Bhagwati, J. (see **Bachan Singh v. State of Punjab** (1982) 3 SCC 24 dealt elaborately with "proportionality" and held that the punishment provided by the statute was disproportionate.*

32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question

*whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable [see **Air India v. NergeshMeerza [(1981) 4 SCC 335 (SCC at pp. 372-373)]**. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in **State of A.P. v. McDowell and Co. (1996) 3 SCC 709.**"*

In **Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442**, the Apex Court held that any penalty which is disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. The relevant extracts of the judgment read as:

"15. ... It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. ..."

11. In the premise of delay on the part of the respondents and further treating period of absence as loss of pay, this Court is of the considered opinion that punishment of reduction of basic pay by 10 stages is disproportionate to alleged default committed by the petitioner. It is apt to notice here that petitioner retired from service on 30.04.2018 and he is a 50% physically handicapped person, thus, the quantum of punishment needs to be re-considered.

12. In the premise of above facts and finings, the matter is remanded back to disciplinary authority to re-consider the quantum of punishment. The needful shall be done within 04 months from today.

13. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

23.01.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>