

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CWP-11583-2018 (O&M)
Date of decision: 10.05.2024

Dr. Sohan Lal Arora

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Arshnoor Singh, Advocate for the petitioner.

Mr. Amarpreet Singh Bains, AAG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1. The present petition has been filed for quashing the show cause notice dated 30.11.2016, Annexure P-13 and orders dated 30.01.2017, 25.10.2017, 21.02.2018 and 09.04.2018, Annexures P-14, P-16, P-17 and P-19, respectively.
2. Learned Senior counsel submits that the petitioner who was working as Senior Medical Officer was issued a chargesheet on 22.11.2000 with the following charges:

“1. Excess claim of arrears
You (Dr. Sohan Lal Arora Service No.4056) while posted as Medical Officer at PHC Sardoolgarh during year of 1995-96 you were holding DDO power of PHC Sardoolgarh and as DDO you claimed your arrears from PHC Sardoolgarh through following mentioned bills:

Sr. No.	Bill number and date	Period of claim	Amount	Remarks
1	275/AP 16.11.1995	03.05.1995 to 13.07.1997	1,24,749/-	Drawn of full pay of suspension period
2	311/AP 05.12.1995	01.11.1989 to 02.05.1993	2,79,335/-	Claim of full pay
3	313/AP 05.12.1995	11.07.1983 to 30.11.1989	31,220/-	Arrears of annual increments
4	314/AP 05.12.1995	02.05.1993 to 30.11.1995	18,522/-	Arrears of annual increments
		TOTAL	4,53,826/-	

No revised LPC order of government/Court etc. regarding sanction of claim to draw full pay were found attached with the office copies of the bills. Therefore, there is no justification of these claims and this is excess claim of arrears. Thus you are charged with misuse of your powers to claim unentitled arrears.

2. Non Deduction of Income Tax

You have not paid income tax on the arrears claimed as under:-

(a)	01.11.1989 to 02.05.1993	2,79,335/-	Excess claim of arrears/subsistence
(b)	03.05.1993 to 13.07.1995	1,24,749/-	Excess claim of arrears/subsistence
(c)	11.07.1983 to 30.11.1989	31,220/-	Excess claim of arrears/subsistence
(d)	02.05.1993 to 30.11.1995	18,522/-	Excess claim of arrears/subsistence

3. Sanction of additional increments

On account of house job and PG qualification you (Dr. Sohan Lal Arora) applied to the office Civil Surgeon, Patiala on 21.03.1995 for grant of additional increments in lieu of house job/PG qualifications and got sanctioned these four additional increments w.e.f. 11.07.1993. Office of Civil Surgeon Patiala asked you to submit your House job/PG Certificate vide letter No.E-1/99/482 dated 06.02.1999, No.E-1-99/1012 dated 19.03.1999, No.E-1/99-1220 dated 31.03.1999, No.E-1/99-1892 dated 28.05.1999. Later on office of Civil Surgeon Mansa also asked for submission of these certificates vide letter No.E-2/2000-3562 dated 06.07.2000. Even then you failed to submit these documents. It is clear that you have got sanctioned these increments by misleading and deceiving the department without having any house job/PG Certificates. A sum of Rs.90,212/- has thus been claimed in excess of entitlement which is recoverable from you. You have put unrequired burden on the government exchequer by misuse of powers.

In the light of above charges you have made yourself liable to punishment under rules of Punjab Civil Services (Punishment and appeal Rules, 1970).”

3. The aforesaid chargesheet culminated in an order of dismissal which, upon being challenged before this Court was set aside vide judgment dated 11.07.2006, Annexure P-10, *albeit* on a technical ground that the copy of approval letter of PPSC had not been supplied to him and with liberty to pass a fresh order. Be that as it may, no order having been passed, contempt proceedings were initiated wherein the Secretary was summoned, whereafter vide order 08.10.2007, Annexure P-11, the punishment of dismissal was maintained. The aforesaid came

to be challenged by the petitioner in CWP-10490-2007, as he having retired on 31.05.2007, the impugned order could not have been passed, which was set aside vide judgment dated 04.08.2016, with the limited liberty to resort to provisions of Rule 2.2 (b) of the Punjab Civil Service Rules, Vol. II, Chapter II, while directing to release the pensionary benefits with interest @ 9% per annum. This led to issuance of a show cause notice dated 30.11.2016, wherein a new allegation of embezzlement was levelled against the petitioner which was not part of the original charge-sheet dated 22.11.2000. A reply thereto submitted, however, the impugned order dated 30.01.2017, Annexure P-14 came to be illegally passed, relevant para whereof reads thus:

“In view of the above discussions, the allegation given in the Show Cause Notice under rule 2.2 (b) of the Rules are proved against Dr. Sohan Lal Arora. This doctors has acted in a fraudulent manner by claiming and drawal of financial benefits of Rs.90,212/- by way of four additional increments for PG degree which in fact he did not achieve. He claimed such benefit in gross misuse of his drawing and disbursing powers. Secondly he had drawn and embezzled various cheques total amounting to Rs.95.65 lakh during the year 2002 and 2003. I order to impose a cut of 33% in provisional/regular pension of the said doctor. Further pecuniary loss of Rs.95.65 lakh and Rs.90,212/- may be recovered from the retiral dues of said doctor in accordance with financial rules.”

4. Learned Senior counsel draws attention of the Court to the letter dated 29.04.2003, Annexure P-8, ordering recovery of the amount of additional increment i.e. Rs.90,212/- that had been allegedly withdrawn by the petitioner which he, on instructions, submits stands already recovered.

5. Further the submission advanced is that it is settled law that without there being a charge, the employee cannot be penalised. Even otherwise, as per Rule 2.2(b) *ibid*, the allegation levelled has to be subject to limitation of 4 years prior to the date of incident, which admittedly, in this case is not, as the allegation of embezzlement also relates to the year 2002-03. Moreso, the impugned order

wrongly relied on the judgment of Addl. Chief Judicial Magistrate dated

21.02.2014, referring that he was convicted therein, which however, related to a different amount of Rs.12,62,043/-, which was not included in the show cause notice based on which punishment order has been passed, whereas regarding the amounts of Rs.71,15,387/- and Rs.12,34,995/-, that were made part of the above notice, he was acquitted vide judgment of even date, relevant paras whereof read thus:

“120. Dr. Sohan Lal Arora has remained Incharge w.e.f. 15.03.2002 to 15.02.2003. He did not enter the following cheques in the cash book which he received during that period. Even the copies of bills regarding the above stated cheques have not been produced, so, the detail of payment to the employees and deductions made by treasury cannot be ascertained. Even there is no official order/order passed by the Court has been produced from which it can be ascertained how the above stated payments have been made. But it is concluded that there is no need of above stated payment and there is no justification for drawing of the above stated payment. The above stated payments were drawn from the treasury with the intention to misappropriate it. So, Dr. Sohan Lal Arora has cheated the government. It has been stated that the official copies of the bills were lying with Dr. Sohan Lal Arora. The details of cheques are given as under:-

Sr. No.	Cheque No.	Date	Amount (in Rupees)
1	187907	27.03.2002	736911/-
2	188206	30.04.2002	785204/-
3	188572	31.05.2002	920523/-
4	189589	17.09.2002	185000/-
5	190242	18.11.2002	322089/-
6	190322	27.11.2002	1269892/-
7	190413	12.12.2002	405000/-
8	190563	17.12.2002	150000/-
9	190716	07.01.2003	833224/-
10	190967	04.02.2003	1507544/-
		Total amount:-	71,15,387/-

XX

XX

XX

125. He further stated that no further quarry was conducted regarding this payment.

126. It shows that the star witness of prosecution PW44 Gurcharn Singh on whose report the entire prosecution case is based himself stated that he himself is only doubtful regarding the above stated payment of Rs.12,34,945/-. No enquiry was conducted either by him or the concerned department to verify whether the above stated amount has been validly disbursed or not.

XX

XX

XX

131. Hence, in view of discussion made hereinabove, this Court has come to the conclusion that the prosecution has miserably failed to prove its case against the accused beyond the shadow of reasonable doubt. Thus, by giving the benefit of doubt, the accused Kanwarjit Singh, Bal Krishan and Sohan Lal Arora are ordered to be

acquitted of the charges framed against them under Sections 409/467/468/471/477-A/120-B IPC. They are also discharged from the liabilities of their bail bonds and surety bonds. File be consigned to the record room, after due compilation.”

6. Learned State counsel, despite his best efforts, is unable to rebut the aforesaid submissions and offer any justifiable resistance to the petition.
7. It is an elementary rule of natural justice that employer's action of punishing an employee, whose civil rights are to be affected by a public authority in respect of the charge, not levelled against him, results in breach of the said principles, as he must know the basis of it and an opportunity to defend himself. In absence of which, the said order has an effect of rendering it a nullity. The charge of embezzlement, in the present case, based on which the punishment order has been passed, being not a part of the original charge sheet, thus, the show cause notice and the consequent punishment relating thereto cannot be sustained. To that extent, the impugned order dated 30.01.2017 is set aside.
8. Now as regards, the direction contained in the order of punishment, Annexure P-14 to recover Rs.90,212/- is concerned, the same requires to be relooked particularly in view of the submission of learned Senior counsel stemming out of the letter dated 29.04.2003, Annexure P-8 and having regard to the fact that the impugned order has been passed by the government, as such, there would be no provision of appeal, thus, without expressing any opinion on merits, the matter is remitted to the competent authority to decide afresh on the quantum of punishment, after granting personal hearing to the petitioner.
9. In view of the above, the present petition stands disposed of.

10.05.2024
ashok

(AMAN CHAUDHARY)
JUDGE

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