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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-918-2023 (O&M)

Date of Decision: 16.08.2023

ANIL KUMAR SARMA

..... Petitioner

Versus

UNION OF INDIA AND ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Mr. Sunil Kumar Sharma, Senior Penal Counsel
for the Union of India-respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition is seeking setting aside of order dated 16.12.2022 (Annexure P-22) whereby Appellate Authority has enhanced minor penalty imposed vide order dated 22.07.2021 (Annexure P-5). The petitioner is further seeking direction to respondents to issue No Objection Certificate to enable him to join as Professor (Energy Engineering) in North Eastern Hill Central University, Shillong.

2. The brief facts of the case are that petitioner by way of direct recruitment on 01.07.2009 was appointed to the post of Scientist-D, in the respondent institute. He was promoted as Scientist-E on 01.01.2016. The petitioner was issued charge-sheet dated 15.10.2018, alleging violation of Government Rules and Guidelines while making purchase. The petitioner filed his reply. An enquiry came to be conducted. The Enquiry Officer after completing enquiry submitted his report dated

27.12.2019 to disciplinary authority which in turn issued show cause notice dated 11.03.2020 alongwith enquiry report. The disciplinary authority vide order dated 22.07.2021 imposed minor penalty namely 'Censure' and further ordered for proportionate recovery which was made from the petitioner for the pecuniary loss caused to the institute. There was loss of Rs. 53,000/- and there were five persons who were responsible for the loss. The petitioner preferred an appeal against order imposing minor penalty. The appeal came up for consideration before the Appellate Authority which vide order dated 16.12.2022 enhanced penalty. The minor penalty of 'censure' was enhanced to "Demotion to a Lower Rank". The petitioner applied for 'No Objection Certificate' to apply in any other department. During the pendency of present petition, the petitioner has been selected as professor by North Eastern Hill Central University, Shillong. The petitioner cannot join aforesaid University without No Objection Certificate from the respondent-department.

3. Learned counsel for the petitioner asserts that petitioner has been awarded with "Outstanding Research Achievements Awards" by an International Agency (Oxford Research Awards, OIRA 2022). The Appellate Authority has enhanced quantum of penalty whereas it is settled proposition of law that in the absence of specific power, an Appellate Authority cannot enhance penalty. The petitioner during the pendency of present petition has been selected as Professor by North Eastern Hill Central University, Shillong and he needs No Objection Certificate from the respondent-department.

4. Learned counsel for the respondents pointing out reply

submits that as per Office Memorandum dated 28.09.2022, the petitioner cannot be issued NOC because he has been subjected to major penalty. As per aforesaid Memorandum, NOC cannot be granted for a period of 3 years in case of minor penalty and 5 years in case of major penalty.

5. On being asked, learned counsel for the respondents expressed his inability to show any provision which enables Appellate Authority to enhance penalty.

6. I have heard the arguments of both sides and with the able assistance of learned counsel have perused the record.

7. From the perusal of reply as well as arguments of learned counsel for the respondents, it is evident that there is no provision which empowers Appellate Authority to enhance quantum of penalty imposed by original authority. In the case in hand, appellate order dated 16.12.2022 has been passed by Joint Secretary to Government of India and it has been passed in terms of Central Civil Services (Classification Control & Appeal) Rules 1965. Neither reply nor arguments of learned counsel for the respondents are disclosing power of Appellate Authority to enhance penalty, thus, penalty has been enhanced without jurisdiction. It is settled proposition of law that Appellate Authority can enhance penalty if there is specific provision and in the absence of provision, Appellate Authority cannot enhance penalty. A Division Bench of this Court in *M/s Nirvair Singh Vs. Financial Commissioner Taxation, Punjab Civil Secretariate-1 Punjab 2019 (20) GSTL 349* has adverted with this issue and has held that Appellate Authority cannot enhance penalty in the absence of specific power. The relevant extracts of the judgment read as:

“6. Section 14 of the Punjab Excise Act reads as under:-

"14. Appeal- An appeal shall lie from an original or appellate order of any excise officer in such cases or classes of cases and to such authority as the [State] Government shall by notification declare."

7. Section 14 does not confer a power upon the appellate authority to pass an order more burdensome than the order appealed against. It does not entitle the appellate authority to enhance the penalty. Our attention was not invited to any other provision of the Act that indicated such a power either. Absent a power to the contrary conferred by a statute, an appellate authority cannot grant a relief in favour of the respondent. It can either confirm the order appealed against or set it aside. It can also modify the order, but not to the further detriment of the appellant except as to an order for costs.

Where the Legislature intends conferring a power upon an appellate or revisional authority to enhance the relief in favour of the respondent, it does so specifically. For instance, [Sections 128 and 128-A](#) of the Customs Act, 1962 (in short the [Customs Act](#)) confer such a power. Sub-section (3) of [Section 128-A](#) of the Customs Act confers the power upon the Commissioner (Appeals) to enhance the penalty. This is evident from the first proviso to sub-section (3) of [Section 128-A](#) which stipulates that an order enhancing any penalty or fine in lieu of confiscation shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed enhancement. The word "modifying" in the opening part of sub-section (3), therefore, includes an order enhancing the penalty and it is for this reason that the first proviso requires an order enhancing the penalty not to be passed

unless the appellant has been given a reasonable opportunity of showing cause against the same. The Punjab Excise Act does not confer such a power upon the appellate authority. The impugned order enhancing the penalty was, therefore, without jurisdiction.

8. The petition is, therefore, allowed to the extent of quashing the imposition of penalty of Rs 4 lacs. It is clarified that this order does not operate against or in respect of the sum of Rs 1 lac paid by the petitioner pursuant to the stay order dated 18.05.2016.”

8. The afore-cited judgment is squarely applicable to the case in hand, thus, impugned order dated 16.12.2022 (Annexure P-22) is hereby quashed. The petitioner is not disputing quantum of penalty imposed by adjudicating authority, thus, this Court does not express any opinion *qua* said penalty.

9. The petitioner is further seeking direction to respondents to issue No Objection Certificate so that he may join aforesaid University. The respondent to deny prayer of the petitioner is relying upon Clause VII of paragraph 2 of Office Memorandum dated 28.09.2022 which reads as:

“Vigilance clearance will not normally be granted for a period of three years after the currency of the punishment, if a minor penalty has been imposed on an officer. In case of imposition of a major penalty, vigilance clearance will not normally be granted for a period of five years, after the currency of punishment. During the period, the performance of the officer should be closely watched.”

10. From the perusal of afore-cited clause, it is evident that it is applicable for Vigilance Clearance whereas petitioner is not seeking Vigilance Clearance. The petitioner is not asking for certificate without

disclosing factum of penalty whereas petitioner is seeking ‘No Objection Certificate’ to join another department. The case of the petitioner is not covered by aforesaid clause, thus, reliance placed by respondent is misplaced.

11. In the wake of aforesaid facts and findings, the respondent is hereby directed to issue ‘No Objection Certificate’ within one week from today.
12. The petition stands disposed of in above terms.
13. Pending misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)

JUDGE

16.08.2023

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>