



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CWP-7900-2022

Date of decision: 09.01.2025

GOBINDER SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Dinesh Kumar Jangra, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

Impugning the order of punishment dated 28.01.2022 imposing stoppage of three annual increments with cumulative effect, the petitioner has approached this Court.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner is working as an Assistant District Attorney in the Department of Prosecution and that at the relevant point in time he was posted in the office of District Attorney, Panchkula. The petitioner was served with a charge sheet vide memo No. 9/11/2017-1JJ(I) dated 16.08.2018 whereby the following charges were conveyed:-



While being posted as Assistant District Attorney in the office of District Attorney, Panchkula from 06.02.2016 to 28.03.2018, Shri Gobinder Singh committed certain acts of omissions and commissions for whichever is charged as under:-

That he i.e. Shri Gobinder Singh failed to appear in 15 Civil cases financial implications of the State wherein huge were involved and which were pending before the Learned Court of Additional Civil Judge, (Senior Division). Panchkula, on behalf of defendant No.2 i.c. Land Acquisition Collector despite the fact that he was deputed to appear in the Learned Civil Court to represent the interest of the State. Due to his non-appearance on behalf of Defendant No.2, the Learned Civil Court proceeded ex parte against the aforementioned defendant and also granted status quo. The list of the Civil Cases along with amount of financial implication involved are mentioned as in statement of allegations.

In this way, he i.e. Sh. Gobinder Singh the then Assistant District Attorney remained negligent and irresponsible towards his duty and as such, committed an act unbecoming of the Government officer and violated the provision of rule 4(1) of Haryana Civil Services (Government Employees Conduct) Rules, 2016.

The lapses detailed above constitute grave misconduct on the part of Sh. Gobinder Singh, the then Assistant District Attorney, office of the District Attorney, Panchkula (now posted in the office of Director, Sports and Youth Affairs, Haryana, Panchkula), rendering him liable for strict disciplinary action under rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016.



CWP-7900-2022

-3-

3. He contends that the said charge was not sustainable against the petitioner in light of the settled rules and regulations as well as the circular issued by the Government as per which the petitioner was required to perform his duties as a Public Prosecutor. Being a Public Prosecutor, he had been exempted vide Notification dated 20.10.2003 to perform the functions as the 'government pleaders' specified in Rule 4 of Order XXVII and Rule 6 of Order XXXIII of the First Schedule of Code of Civil Procedure, 1908. It is further contended that on the date when the matter was listed before the Additional Civil Judge (Senior Division), Panchkula, the petitioner had actually entered appearance and defended the interest for and on behalf of the State of Haryana through the District Collector but since he was not having any instructions from the Administrative Secretary of the Department to appear on behalf of the Land Acquisition Officer, hence, he did not put up an appearance on his behalf. It is further contended that the office of the Legal Remembrancer and Administrative Secretary to Government of Haryana, Law & Legislative Department had issued a Circular bearing Memo No. 1286 to 1465 dated 20.04.2016 about the procedure to be followed for issuance of instructions of defence in all Courts at District Level, High Court/Tribunal(s)/Commission(s)/Arbitrators and Supreme Court. The same extracted as under:-

Subject: Procedure to be followed for issuance of instruction of defence in all courts of District Level, High Court/ Tribunal(s). Commission(s)/ Arbitrator(s) and Supreme Court.



Sir,

I have been directed to say that the question regarding issuance of instructions for defence of Govt. cases in civil litigation at the level of departments itself was under consideration of Hon'ble Chief Minister for some time past and it has now been decided by Hon'ble Chief Minister vide orders dated 14.04.2016 as under:-

**The concerned Administrative Department shall issue instructions for defence of all cases at public expenses in all courts of District Level, High Court/ Tribunal(s)/ Commission(s)/ Arbitrator(s) as well as in the Supreme Court directly to the District Attorney or Advocate General, Haryana, as the case may be."*

It has further been decided that necessary amendment in the Law Department Manual in this regard will be carried out in due course.

Thus, in view of above, no reference for issuance of instructions for defence of Govt. cases in civil litigation shall be entertained by this department in future and accordingly necessary instructions to this effect are required to be issued by the concerned Administrative Department at its own level in compliance of orders passed by Hon'ble Chief Minister. "

4. It is submitted that in view of the decision taken by the Chief Minister vide order dated 14.04.2016 and circulated by the above said memo dated 20.04.2016, the instructions to defend the cases at public expenses are to be issued by the Administrative Department and that in the present case, the Administrative Department had not issued any such instructions to the



CWP-7900-2022

-5-

petitioner or to the office of the District Attorney, Panchkula to enter appearance and to defend the case on behalf of Land Acquisition Officer. He submits that notwithstanding the aforesaid stand having been taken by the petitioner in his reply filed as well as during the course of the departmental enquiry, no specific finding with respect to same was recorded by the Enquiry Officer. The petitioner has not been found in the inquiry to be in breach of any instruction or guidelines/directions issued by the Administrative Department or the competent authority. He contends that in the absence of any specific instructions by the competent authority or the Administrative Secretary to enter appearance for the office of the Land Acquisition Collector (more so when no person from the office of the Land Acquisition Collector had contacted the office of the District Attorney or the petitioner to brief or to apprise about the facts involved thereunder), the respondents could not have departmentally proceeded against the petitioner who acted as per the directions issued vide memo dated 20.04.2016. Reference is also made to the specific averment pleaded by the petitioner in the reply to the charge sheet served upon him under Rule 7 of the Haryana Civil Services (Punishment and Appeal), Rules, 2016. The relevant extract of the reply dated 26.10.2018, reads thus:-

2. That as per the provision of Haryana Law Department Manual, L.R or department is required to issue instruction of Government Pleader for defending the civil suit in the Civil Court on Govt. expenses. No such instructions were issued to undersigned which are mandatory for the department to authorize the



Government Pleader to defend the civil cases. The provision of Law Manual is reproduced as under:-

As per Rule 13.7 of Haryana Law and Legislative Department Manual, the Legal Remembrancer will furnish to the legal practitioner or other person appointed to conduct or defend a civil suit on behalf of State, his instructions alongwith the:-

- i) departmental statement of the case*
- (ii) the opinion of the Legal Remembrancer, Haryana*
- (iii) the order of appropriate authority to sue or defend.*

Further as per Chapter 14 (14.3) (c) also Government pleader is required to defend the suit after receipt of instructions from the Legal Remembrancer, Haryana.

This issue has further been clarified vide Legal Remembrancer and Administrative Secretary to Govt. Haryana, Law and Legislative Department memo No. 1286-1455 dated 20.04.2016 (Copy) enclosed as Annexure R-1) to the effect that " The concerned Administrative Department shall issue instructions for defence of all cases at public expenses in all courts of District Level, High Court/ Tribunal(s)/Commission(s) Arbitrator(s) as well as in the Supreme Court directly to the District Attorney or Advocate General, Haryana as the case may be".

It is worthwhile to mention hear that the notification dated 24.12.2013 issued by the Government of Haryana there by exempting the Govt. Pleaders for the whole state of Haryana to perform functions specified in Rule 4 of Order XXVII and Rule



6 of Order XXXIII of the First Schedule of Code of Civil Procedure

3. *That no representative from the Land Acquisition Collector, Panchkula (respondent No.2) came present in the Ld. Trial Court, Panchkula on 18.08.2017 to apprise the factual position of the cases to the undersigned, nor reply to the suits as well as to the stay applications were filed despite receipt of summons by the department (respondent No.2). It is not possible for a Government Pleader to argue on the stay application without filing of written statement by Land Acquisition Collector, Panchkula (respondent No.2), as well as without briefing regarding the factual position of the cases by the department.*

4. *That the civil suits titled as Jaswinder Vs. State of Haryana, Devinder Singh Vs. State of Haryana, Kaushlya Vs. State of Haryana, Kesar Singh Vs. State of Haryana, Kuldeep Vs. State of Haryana, Mohinder Kaur Vs. State of Haryana, Narinder Vs. State of Haryana, Rajjo Devi Vs. State of Haryana, Pyari Vs. State of Haryana, Sukhwinder Vs. State of Haryana, came up for hearing on 07.09.2017 in the in the court of Dr. Savita Kumari, Ld. Additional Civil Judge (Senior Division), Panchkula. But no official from Land Acquisition Collector, Panchkula (respondent No. 2) came present in the Ld Trial Court, even notices in the above said cases were served upon Land Acquisition Collector, Panchkula (respondent No. 2)*

5. *That in such a circumstances, the Ld. Civil Court proceeded the Land Acquisition Collector, Panchkula (respondent No. 2) as exparte vide its order dated 18.08.2017 and 07.09.2017 respectively. The Collector, Panchkula as well as department was immediately informed regarding the order passed by the Civil Court vide letter no. 1409 dt. 22.08.2017,*



1491 dated 07.09.2017, 1495 dated 07.09.2017, (Annexures R-2 to R-4) vide which Land Acquisition Collector, Panchkula was proceeded exparte. But department did not bother the exparte proceedings, thereafter on dated 10.10.2017 undersigned moved applications (Annexures R-5, R-6) for setting aside the order dated 18.08.2017 and 07.09.2017 of exparte proceedings at his own level in the interest of State of Haryana. Ld. Civil Court allowed all applications and set aside the order dated 18.08.2017 and 07.09.2017 vide which respondent No. 2, Land Acquisition Collector, Panchkula was proceeded exparte. Hence, there is no lapses on the part of undersigned. And even no any loss was caused to the Government. Order of Ld Trial Court for setting aside the exparte vide its order dated 10.10.2017 are (Annexures R- 7, R-8). All copies of orders are available in the department.

6. That undersigned requested the department/ respondent No. 2, Land Acquisition Collector, Panchkula to file reply to the civil suits as well as to the stay application. Vide letters no. DA/2017/1787-1788 dated 16.10.2017, 2233-2234 dated 20.12.2017, 2259-2260 dated 04.01.2018, 2524-2525 dated 09.02.2018, 16.10.2017,2241-2242 dated 20.12.2017, 1784-1785 dated 2299-2300 dated 08.01.2018, 2530-2531 dated 09.02.2018, 1770-1771 dated 16.10.2017, 2237-2238 dated 20.12.2017, 2297-2298 dated 08.01.2018, 2528-2529 dated 09.02.2018, 1809-1810 dated 16.10.2017, 2239-2249 dated 20.12.2017, 2295-2296 dated 08.01.2018, 2532-2533 dated 09.02.2018, 1774-1775 dated 16.10.2017, 2245-2246 dated 20.12.2017, 2293-2294 dated 08.01.2018, 2534-2535 dated 09.02.2018, 1805-1806 dated 16.10.2017,2243-2244 dated 20.12.2017, 2289-2290 dated 08.01.2018, 2536-2537 dated 09.02.2018, 1780-1781 dated 16.10.2017, 2235-2236 dated



20.12.2017, 2329-2330 dated 11.01.2018, 2538-2539 dated 09.02.2018, (Annexures R-9 to R-20). The above said letters are available in the department. But the department did not file reply despite my written requests, all my efforts in the interest of State proved futile because of non-filing of reply by the department /Land Acquisition Collector, Panchkula. Though Order VIII Rule-1 of Code of Civil Procedure provides for 30 days time for filing reply by the department. However, replies were filed by the department/Respondent No-2, Land Acquisition Collector, Panchkula in March, 2018 more than seven months after receipt of the summons. Even department/Land Acquisition Collector Panchkula (respondent No. 2) ignored all my above written requests.

7. That a Preliminary Enquiry was ordered by Ld. Director Prosecution. Haryana against Sh. S.K. Bairagi, DDA and Sh. Mohinder Pal, ADA office of respondent No. 2 was conducted by District Attorney. State Vigilance Bureau, Panchkula. Haryana, wherein inquiry officer found that undersigned did his job efficiently, the observation of inquiry officer is reproduced as under:-

Letters dated 16.10.2017 (in 6 cases), dated 20.12.2017 (in 12 Cases), 08.01.2018 (in 12 cases) and dated 09.02.2018 (in 12 cases) issued by the then Government Pleader to the LAO, Panchkula (with copy to Director, Urban Estates, Haryana) intimating the fact about written statements as well as reply to injunction applications in these matters having not been filed and the next date of hearing being the last opportunity to file the same. **This shows the alertness of the then Government Pleader (but laxity on part of the office of LAO, Panchkula in filing the written statements and reply to the injunction**



application despite the matter of recovery being monitored by the Hon'ble High Court). (Annexure R-21).

5. Referring to the same, learned Counsel contends that a perusal of the aforesaid sequence clearly establishes that the petitioner had taken all adequate steps within his control to sensitize the defendant department about the ongoing proceedings and to take appropriate steps including for issuance of instructions and for submission of the responses, however, to no response. Hence, the petitioner cannot be held liable for the lapses and laxity shown on the part of the Land Acquisition Officer, Panchkula in filing of the written statements and replies to the injunction application, despite the matter of recovery being monitored by the Hon'ble High Court. It is also submitted by the counsel for the petitioner that after the passing of an order of status quo, a civil miscellaneous appeal was preferred but the same was dismissed as lacking merit. It is also submitted that eventually the said Civil Suit was dismissed vide judgment and decree dated 30.11.2018 and even the subsequent Civil appeal against the above judgment and decree was also dismissed, however, the status thereafter is not known to the petitioner.

6. He further contends that as per the notification dated 20.10.2003, the petitioner had already been exempted from performance of functions specified in Rule 4 of Order XXVII and Rule 6 of Order XXXIII of the First Schedule of the Code of Civil Procedure, 1908, hence, the petitioner cannot be held liable for failure to enter appearance on behalf of the Land Acquisition Officer. He has vehemently argued that the Enquiry Officer did not take into consideration the specific defence taken by the



petitioner and has returned the charge to have been proved without recording any finding as to what instructions/government orders had been violated by the petitioner. It is contended that in the absence of the respondent-State failing to *prima facie* establish its case about the petitioner being obligated to enter appearance on behalf of the Land Acquisition Officer, even in the absence of any instructions having been issued by the Administrative Department, he cannot be at fault for having failed to enter appearance on behalf of the Land Acquisition Collector in light of the specific instructions issued by the respondents and circulated vide memo dated 20.04.2016 to the Law and Legislative Department.

7. Reference is further made to the finding recorded by the Enquiry Officer to the charge. The same is extracted as under:-

Point No. 5. *The 5th point to be decided by this forum in this case is as to whether on the basis of evidence of the prosecution, the charges as framed against the delinquent by the competent authority as noticed in the earlier part of this report have been proved or not. As the charges framed by the competent authority are interconnected, interrelated & evidence recorded is common for these charges, I propose to deal the same together. After going through all aspects of the evidence led by the parties, as reproduced in its entirety in the earlier part of this report, the charges as framed by the competent authority are fully proved against the delinquent for the reasons here-in-after mentioned. The contention of the learned counsel for the delinquent to the effect that a wrong charge sheet was issued to the*



delinquent by the competent authority has to be rejected being meritless and I reject the same on the ground that the competent authority after applying its independent mind to the documents and evidence on record, has in public interest discharged its constitutional duty in issuing the present charge sheet to the delinquent. The force behind law is moral and if the results are not always up to the standard it is due to neglect and failure of those to whom its administration is committed to properly enforce it. It cannot be lost sight that the delinquent had put a question to PWI in his cross-examination which exactly reads "Is it a fact that the Hon'ble Lokayukta, Haryana had ordered registration of FIR against Sh. Narsher Singh. Director of Prosecution, Haryana under the provisions of Prevention of Corruption, 1988", to which the witness had responded stating that he does not know. It cannot be lost sight that the delinquent had put another question to PWI in his cross-examination which exactly reads "Can you give affidavit in this regard?", to which the witness had responded that he had read in the newspaper about the recommendations of the Hon'ble Lokayukta. Haryana for registration of FIR against Sh. Narsher Singh. It may be stated that the Presenting Officer objected to the question at which in the proceedings it was recorded "At this stage, the Presenting Officer has stated that the question put by the Ld. Counsel for the Delinquent has no relevancy with the Charge Sheet issued to the Delinquent to which the Ld. Counsel for the Delinquent had stated that it is very much relevant. This aspect of the case would be taken due care at proper time." I have considered this aspect of the case and from the facts and



circumstances on record, in my opinion the question put about Director of Prosecution is not relevant for the decision of the case. However from the facts and circumstances on record, it cannot be even remotely inferred that while dealing with the case of the delinquent, Director of Prosecution, Haryana, had acted with any malice. In my opinion, Director of Prosecution, Haryana in the discharge of his official functions while dealing with the case of delinquent had not committed any illegality/irregularity and has dealt with the case strictly on merits. The contention of the learned counsel for the delinquent to the effect that the delinquent was not supposed to appear on behalf of Land Acquisition Collector (defendant No. 2) in 15 cases as mentioned in Ex.PWI/1 & PWI/2 (charge sheet & statement of allegations), though he had appeared on behalf of defendant No. 1 (Collector Panchkula) in the absence of instructions of the Law Department of the State Government of Haryana/Director of Prosecution, Haryana etc.etc. had/has to be rejected and I reject the same as meritless because the delinquent in Civil Cases pending before the Civil Judges (Senior Division or Junior Division) at Panchkula do not appear as an Advocate/Assistant District Attorney but rather as a Government Pleader. It needs no emphasis that a Government Pleader as notified by the State Government (which admittedly the delinquent was/is) had/has to represent all the Government officers throughout the State of Haryana without any instructions and in the cases in hand the delinquent had represented one officer and failed to appear on behalf of another Government officer on untenable pleas resulting in passing of adverse



orders by the Civil Court concerned at Panchkula which act of the delinquent examining from any angle amounted to misconduct as per conduct rules governing his service conditions. It was expected from the delinquent being a Government Pleader notified under the provisions of Code of Civil Procedure 1908 to appear on behalf of all the Haryana Government Officers/Officials in all subordinate courts in the State of Haryana including Courts functioning under the administrative control of District Judge, Panchkula, at the relevant time, without any instructions from the Law Department or from any other Department of the State of Haryana. If the delinquent had/has any problem in not appearing in the 15 cases as mentioned in Ex.PW1/2, he could have personally contacted Additional Chief Secretary to Government, Haryana, Administration of Justice Department/Chief Secretary to Government, Haryana, which admittedly he had never resorted to. It cannot be lost sight that the adverse orders passed by the concerned Civil Court at Panchkula for non-appearance of defendant No. 2 (Land Acquisition Collector), who was the main contestant had brought bad name to the entire system headed by the Chief Secretary to Government, Haryana, as well as Additional Chief Secretary to Government, Haryana, Administration and Justice Department, for which the delinquent is fully answerable. It cannot be lost sight that the delinquent in the cross-examination of PW2 Sh. Pankaj Raj Garg, District Attorney, Panchkula, had put a question to him which exactly reads "Whether State has suffered any financial loss in cases Ex.PW1/6 to Ex.PW1/20?", to which the witness had responded that it was/is a matter of record.



In my opinion from the facts/circumstances/documents on record, it is clear that there was/is financial loss to the State in the sense that when adverse orders are passed by Courts of Law due to non-performance of the functionaries of the State Government including Government Pleaders as in the instant case, for getting the adverse orders reversed, proceedings are started in courts of law which result in payment to lawyers engaged as well as wastage of public time of the officials involved in the process. It further cannot be lost sight that in State Bank of India and another V/s Bela Bagchi and others A.I.R. 2005 S.C. 3272, the Supreme Court repelled the contention that even if by the misconduct of the employee, the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence (as observed in Divisional Controller, KSRTC V/s M.G. Vittal Rao 2012 (2) RSJ 346. The bare perusal of the evidence of PW1 and PW2 as reproduced in its entirety in the earlier part of this report would show that inspite of lengthy cross-examination nothing substantial has come on record to show or suggest that the delinquent was/is totally innocent. It cannot be ignored that in departmental proceedings the prosecution is not bound to prove its case against the delinquent beyond reasonable doubt as in criminal cases but has to prove its case on preponderance of probabilities and applying the principals of preponderance of probabilities to the present case it cannot be held that the charges framed against the delinquent were without any substance/evidence. I have already dealt this aspect of the case while deciding point No. 4 in the earlier part of this report. Evidence of the prosecution inspires full



confidence and worthy of acceptance. Furthermore PW1 & PW2 have no motive to falsely depose against the delinquent and their evidence do not suffer from any legal infirmities. On the other hand as noticed in the earlier part of this report the evidence of the delinquent is nothing but falsehood.

Evaluating the evidence as noticed in the earlier part of this report, the only logical conclusions which can be drawn by legal/judicial standards are that the prosecution has been able to prove the charges as highlighted in the earlier part of this report by acceptable legal evidence and accordingly while accepting the evidence of the prosecution and rejecting the evidence of the delinquent, I return firm findings in favour of prosecution and against the delinquent by concluding that the charges stood proved against the delinquent and I hold accordingly.

8. It is contended that a perusal of the aforesaid finding clearly shows that Enquiry Officer has not even gone to the question of the petitioner being obligated under the statute or any other Government instructions/orders issued by the competent authority to enter appearance and proceeds on a presumption that the petitioner being a Govt. pleader and ignoring the notifications dated 20.10.2003. He contends that a charge cannot be held to have been proved against a delinquent employee solely on the basis of any lacunae in his defence. A charge is required to be established by the prosecuting department and in the present case, the Presenting Officer failed to lead any evidence to establish the charge by referring to any instructions/office order mandating the petitioner to enter



appearance on behalf of the Land Acquisition Collector. There is also no discussion on the numerous letters sent by the petitioner intimating the office of the Land Acquisition Collector to issue instructions and to file written statement to the suit and reply to the application for an interim indulgence. The charge has been held to be proved on conjectures and surmises and without even making a reference to the instructions issued by the Government. In the absence of the primary burden being discharged by the respondent-State, the charge against the petitioner could not have been said to be proved. He further contends that the aforesaid aspects were pointed out again during the stage of second show cause notice, however, without considering the same, the major punishment of stoppage of three increments with cumulative effect has been imposed on the petitioner.

9. Learned Counsel appearing on behalf of the petitioner further submits that case of the petitioner is further strengthened from the Memo No. AP(1)/2017/12267 dated 11.09.2017 issued by the Director of Prosecution, Haryana to all District Attorneys posted in different departments to the effect that the Law Officers are required to appear even if no instructions have been received from the concerned department for appearance/defence of the said case so that no official is proceeded against ex-parte. The said memo is extracted as under:-

Memo No. AP (1)/2017/12267

Dated 11.09.2017



Subject: - Proper Conduct of proceedings on behalf of State of Haryana or its Departments in Civil cases.

All the law Officers/ Government pleaders (Assistant District Attorney, Deputy District Attorney, District Attorney) posted in the courts at Districts/ Sub-Divisions are hereby directed to properly conduct the proceedings on behalf of State of Haryana or its Departments in Civil cases and to appear on the behalf of all the official respondents i.e. State of Haryana or its any department or any government authority of State of Haryana in any Civil Suit/ Civil Appeal/ Civil Revision/ Execution Application or any other civil proceedings, even if no instructions has been received from the concerned department for appearance/ defence of the said case, so that official respondents should not be proceeded ex-parte in any civil proceedings. The Law officer/ Government pleader appearing in the court shall also receive notice on behalf of the official respondents of the Haryana State on the directions of the Court and shall apprise the same to the official respondent concerned/ department concerned, so as to protect the interest of the State.

It is further directed that in case, no official came from the office of official respondent for parvi of their cases, the concerned law officer shall report the matter of their Head of Department for



such lapse, but it shall not be ground for the concerned law officer for non appearance in the said cases on behalf of official respondents.

The failure to put appearance by any law officer on behalf of official respondent as directed above shall be viewed seriously and in case of non-appearance of law officers, any official respondent of state of Haryana has proceeded ex-parte, strict departmental action shall be taken against the concerned law officer and no leniency of any kind shall be shown in this matter. The entry of such lapse shall also be made in the ACR of said officer.

10. It is submitted that a perusal of the same clearly shows that the petitioner had no authority to enter appearance on behalf of the respondent No.2 during the relevant time and that a prospective direction had been issued vide office order dated 11.09.2017 to appear despite no instructions. Hence, the petitioner cannot be held to be in breach of any instructions that have been issued by the competent authority.

11. Learned Deputy Advocate General, Haryana, however, contends that the department has followed the procedure prescribed under the Haryana Civil Services (Punishment and Appeal) Rules, 2016 and proper opportunity of hearing had been granted to the petitioner. He has also been granted an opportunity to lead his evidence before the Inquiry Officer who submitted a report in which the charges were proved against the petitioner. It is submitted that even thereafter, the copy of the charge sheet and the Inquiry Report were also duly served upon the petitioner to grant ample



CWP-7900-2022

-20-

opportunity to defend himself. Consequent to the receipt of the second show cause notice, the petitioner filed his response. He was also granted an opportunity of hearing but he chose not to enter appearance. He contends that the procedure as contemplated under the Haryana Civil Services (Punishment and Appeal) Rules, 2016 had been fully complied with and that the charge against the petitioner about not having entered appearance on behalf of the respondent-Land Acquisition Collector stands well established, resulting in an order of recovery against the plaintiffs being stayed was passed. He, however, does not dispute the fact that against the interim order of ex-parte and interim order of status quo granted in favour of the plaintiffs, in the civil suit, a miscellaneous civil appeal was also preferred by the department and the same was dismissed. He, however, contends that he is not aware as to whether the Civil Suit was eventually dismissed by the judgment and decree dated 30.11.2018 by the Court of Additional Civil Judge (Senior Division), Panchkula and also about the subsequent status of the appeal by the plaintiffs.

12. He contends that as a result of the laxity and negligence shown by the petitioner, the plaintiffs unduly enriched themselves at the cost of State exchequer by retaining the amount and that a loss on account of the interest has been suffered by the respondent-State. He contends that the punishment of stoppage of three increments is on the lower side and enough leniency has been shown to the petitioner. The said punishment does not deserves to be interfered with.

**CWP-7900-2022****-21-**

13. He, however, does not dispute the fact that vide office order dated 11.09.2017, the prospective directions were issued to all District Attorneys/Additional District Attorneys to appear in all cases irrespective of specific instructions having not been received by the Administrative Secretaries.

14. No other argument has been raised on behalf of any of the parties nor any judgment cited.

15. I have heard learned Counsel appearing on behalf of the parties and have gone through the documents appended with the present petition with their able assistance.

16. Undisputedly, a memo of charge had been served upon the petitioner for his non-appearance on behalf of the Land Acquisition Officer in 15 Civil Suits that had been preferred by the Landowners/plaintiffs against the recovery notice(s) sent by the office by the Land Acquisition Officer. It is also not in dispute that the petitioner had entered appearance on behalf of the State of Haryana through the Collector and was present on the respective dates of hearing when the orders against the Land Acquisition Collector were passed. It is thus not a case where the petitioner had absented from the proceedings. He appeared for the State but did not enter appearance on behalf of the Land Acquisition Officer since no instructions had been received by him to appear or defend such office even though multiple letters had been sent by the petitioner to the respondent to complete instructions and to file reply. There is also no denial of the fact that a decision had been



CWP-7900-2022

-22-

taken by the Chief Minister of the State of Haryana on 14.04.2016 (circulated vide memo dated 20.04.2016) mandating that the office of the District Attorney shall not enter appearance on behalf of any department in the absence of instructions from the Administrative Department. There is also nothing available on record or produced during the course of proceedings before the Inquiry Officer that any specific instructions had been issued by the office of the Land Acquisition Officer or by the Head of the Department directing the office of District Attorney, Panchkula to enter appearance on behalf of the Land Acquisition Officer. Per Contra, the specific case is that the office of the Collector had also forwarded letter to the office of the Land Acquisition Officer to the effect that they should defend the matter for and on behalf of the Collector as well. No evidence has been adduced by the respondents before the Inquiry Officer that any specific steps or instructions had been issued by the office of the Land Acquisition Officer to enter appearance on their behalf or any attempt had been made by the said office to instruct the petitioner to file reply. Further, there is no denial also to the specific averment made by the petitioner in the reply that was filed to the charge that numerous letters were sent by him to the office of the Land Acquisition Officer, to file reply not only to the plaint but also to the application seeking interim relief.

17. In the given undisputed factual circumstances, it would not have been justified on the part of the respondents to expect the Assistant District Attorney to travel beyond the directions issued. Adequate precaution and



effective preventive steps have already been taken by him to sensitize the defending department to protect its interest.

18. The case of the petitioner is further augmented by the fact that on 11.09.2017, the Department of Law and Justice instructed the office of the District Attorney to enter appearance notwithstanding non receipt of any instructions from the administrative department. Hence, the decision communicated earlier vide memo dated 20.04.2016 stands over-ruled vide order dated 11.09.2017. Since by the time the aforesaid order dated 11.09.2017 had been circulated, the order of status quo had already been passed, hence, prior thereto it would be a misconduct otherwise on the part of the petitioner to appear without instructions. Such clarification only supports the case of the petitioner that prior to issuance of such clarification, he was under no authority or competence to enter appearance in the absence of any instructions having been issued by the Administrative Department. The laxity, if any, is thus on the part of the Land Acquisition Officer and not on the part of the petitioner who showed due diligence and had appeared on behalf of the State of Haryana through the Collector.

19. It is well settled position in law that the burden to establish the charge lies on the Administrative Department and the same is to be proved by credible and objective evidence. It is evident from a perusal of the Articles of charge or statement of allegations that there is no reference of any instructions/orders that has been made by the Presenting Officer before the Inquiry Officer of which the petitioner was in breach. The respondent-



Department cannot take benefits of its own lapse or draw any analogy on conjectures and generalized assumptions about the functions to be discharged. The primary burden in departmental proceedings is to be discharged by the Department and in the absence of any instructions/office orders being violated, the petitioner cannot be held guilty of having committed any violation in non performance of any specific duty which he was not ordained to perform.

20. It is also evident from a perusal of the Inquiry report that a finding has been returned by the Inquiry Officer by observing that it is expected from the Government Pleader to appear on behalf of the government, however he has conveniently failed to refer to the notification dated 20.10.2003 exempting him from performing function as a Govt. pleader as well as the memo dated 20.04.2016 which prohibited even the Government Pleader from entering appearance except for when instructions in this regard have issued by the Administrative Department. I thus find that the finding so recorded against the petitioner by the Inquiry Officer suffers from non-appreciation of the administrative instructions/orders issued by the competent authority.

21. An Inquiry Officer appointed in a charge is not to act mechanically. He is an independent person who is expected to apply an impartial mind to the facts and evidence brought before him and to thereafter submit his report as to whether a charge/allegation stands proved from an objective consideration of the material placed before him. Conclusions



drawn by the Inquiry Officer should stem from a rational consideration of the material and not just upon perception of a duty and presumption of breach thereof. Report of an Enquiry Officer can be disregarded by the Court where the findings are based upon non-existent and irrelevant material and where the conclusions are based upon non-consideration of material instructions/orders issued by the Government. It has been held by the Hon'ble Supreme Court in the matter of ***"Nand Kishore Pandit versus State of Bihar, AIR 1978 S.C. 1277"*** that the evidentiary value of the material must be such that it would amount to guilt of the employee in respect of charge. It was further held in the matter of ***"Ishwar Chand Jain versus High Court of Punjab & Haryana, AIR 1988 SC 1395"*** that the conclusion in an enquiry report must be based on existent and relevant material. A perusal of the report shows that it does not refer to the material before it and proceeds on assumption which stand rebutted from the Government orders.

22. Further, there is nothing on record to contradict the contentions raised by the petitioner and that eventually the Civil Suit stood dismissed and even the appeal against the same has been dismissed.

23. So far as the contention of the respondent-State that the State Government has suffered a loss of interest on account of the petitioner not appearing before the Additional Civil Judge (Senior Division), Panchkula and an order of status quo having been passed, I find that the above said argument is bereft of merit. The loss suffered by the respondent-State, if any, is not on account of an order of status quo granted by the Court but it



was on account of wrongful disbursement of the excess amount by the office of the Land Acquisition Officer. The defending Public Prosecutor cannot be held liable for the consequential loss of interest that may have been suffered. The primary responsibility for ensuring proper disbursement of the compensation lies on the office of the Land Acquisition Officer and if, as a cascading result of any acts of omission and commission committed by the office of the Land Acquisition/Land Acquisition Collector, any loss to State exchequer is caused, recovery of such losses is supposed to be effected from the erring official and not from the prosecuting/defending department.

24. Although ordinarily, the High Court would not sit as a Court of appeal against an order passed by the punishing authority, however, where such order of imposing punishment is based upon non-appreciation of the evidence and non-consideration of the instructions/office orders issued by the government, such an order of punishment can always be interfered with by the High Court in exercise of powers of judicial review.

25. The Hon'ble Supreme Court in the matter of ***Union of India v. K.G. Soni*** reported as ***(2006) 6 SCC 794***, has held that even though the High Court is not a court of appeal against departmental inquiry report and should not ordinarily interfere unless there is huge procedural impropriety, and it shocks the conscience of the court or defies logic. The operative part reads as under:

14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural



impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

26. For the reasons recorded above, I find that the order dated 28.01.2022 imposing punishment of stoppage of three annual increments with cumulative effect passed by the Additional Chief Secretary to Govt. of Haryana is not based upon objective consideration of its own orders and tends to punish the Assistant District Attorney for no fault, instead of taking action against the administrative officer who was at lapse and chose not to offer any explanation to the repeated letters being sent by the petitioner. The impugned order is hence bad and liable to be set aside.



27. The present writ petition is **allowed**.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 09, 2025
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No