



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

216

CWP-9314-2019 (O&M)

Date of decision: 19.02.2025

Parbodh Kumar Sharma

...Petitioner

VERSUS

The British India Corporation Limited and another

...Respondents

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

Present :- Mr. D.S. Gandhi, Advocate for the petitioner(s).

Mr. Puneet Sharma, Advocate for the respondent(s)
(through V.C.).

VINOD S. BHARDWAJ, J. (Oral)

1. Challenging the order dated 19.09.2018 passed by respondent No.1 whereby order of retirement of the petitioner has been converted into an order of dismissal after 08 years of his retirement, the instant writ petition has been filed.

2. Learned counsel appearing on behalf of the respondents has taken a preliminary objection that it despite being an appealable order, yet, no statutory appeal has been preferred and writ petition has been filed outrightly.

3. Learned counsel appearing on behalf of the petitioner on the other hand has submitted that the petitioner had initially approached this Court raising a challenge to the charge-sheet served upon him by way of CWP-1850-2012. During the pendency of the above said charge-sheet, inquiry was initiated by the respondents and it was informed to this Court that the same having been completed, only a minor punishment of censure



had been imposed upon the petitioner. In view of the said statement made by learned counsel for the respondent(s), the said writ petition was withdrawn with liberty to avail appropriate alternative remedies before the Controlling Authority. The order dated 29.11.2016 passed by this Court in CWP-1850-2012 titled as 'Parbodh Kumar Sharma Vs. The British India Corporation Limited and another' reads thus:-

“The learned counsel for respondents has informed this Court that the chargesheet, which was challenged in this case, has culminated in the inquiry. The inquiry has been completed and the petitioner has been granted the punishment of censure only. The copy of order (Annexure-R12) is already on file. The inquiry report (Annexure-R-11) is also on file.

In view of the matter, the learned counsel for the petitioner withdraws the present writ petition to avail appropriate remedy before the Controlling Authority under the Payment of Gratuity Act, 1972.

Dismissed as withdrawn.”

4. Learned counsel appearing on behalf of the petitioner contends that the instant writ petition has thus been filed solely because the respondents have modified the order of punishment and have instead imposed the punishment of dismissal, notwithstanding their statement given before this Court assuring that only a punishment of censure had been imposed upon the petitioner. Since the respondents had gone back from their statement given before this Court and assuring imposing a minor penalty, hence, he had approached this Court instead of approaching the appellate forum. He submits that the aspect highlighting the breach could only be



216

CWP-9314-2019 (O&M)

raised before this Court.

5. He further submits that a mere existence of an alternative remedy is not a bar to maintainability of a writ petition

6. Learned counsel appearing on behalf of the respondent(s) is not in a position to dispute that the said writ petition was dismissed as withdrawn, after recording a specific statement. An attempt even though is made by the counsel for the respondents to contend that they had placed on record the orders/application moved by them for review of their own earlier decision to impose a punishment of censure before this Court by way of CM-8661-CWP-2016, which was taken on record on 28.07.2016.

7. Notwithstanding the same, counsel for the respondents is not in a position to dispute that on 29.11.2016 when the matter was finally listed, the aforesaid statement has been recorded by attributing the same to him and that no application for any clarification, rectification or review had ever been filed on behalf of the respondent.

8. A mere placing on record of the application moved before the disciplinary authority seeking review of punishment imposed by it would have no bearing on the present case in view of the specific statement made by the counsel for the respondents at bar, at the time when the case was finally heard on 29.11.2016, which is much later. The respondents having not taken any steps to seek a review/correction of the said order, it has to be accepted that the said statement was made consciously and on instructions before this Court and it was relying on the aforesaid statement that the writ petition was dismissed as withdrawn while granting liberty to the petitioner



to take recourse to appropriate remedy against the minor penalty. This Court would thus give precedence and weightage to the statement made before this Court by the counsel over the placing on record of the documents and to conclude that the authority had informed this Court about its decision seeking enforcement of an order of punishment of dismissal against the petitioner. The order being later, on the statement of same date, would be deemed as the final decision by the respondents.

9. On being confronted, learned counsel for the respondents is also not in a position to defend that the statement made before this Court and as reflected in the order of 29.11.2016 will out-weigh any decision taken by the respondents prior thereto and that having made a statement before this Court, they cannot wriggle out of the same at their own whims and even without first seeking a review or recall from this Court, to the said effect from this Court.

10. On being confronted, learned counsel appearing on behalf of the respondents is also not in a position to submit that the said statement made on 29.11.2016 was recorded wrongly or was recorded without any instruction(s) by him from the respondent-department.

11. In view of the above, I find that the respondents cannot unilaterally withdraw their original decision and impose a major penalty of dismissal after they have already made a statement before this Court to impose a punishment of censure only. Consequently, technical objection of learned counsel for the respondents that an alternative remedy is available is rejected. A mere availability of an alternative remedy does not debar a Writ



216 CWP-9314-2019 (O&M)

Court from exercising its jurisdiction once there is a patent illegality in the action of the respondents.

12. Further, noticing that the categoric assurance given to this Court was that punishment of censure has been imposed and without reflecting any material to show whether a power of substantive review stood vested in the disciplinary authority and as to what were the legally sustainable reasons, the respondents are legally estopped from imposing any other punishment.

13. The instant writ petition is accordingly **allowed**. The order dated 19.09.2018 passed by respondent No.1 is hereby set aside.

14. All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

19.02.2025
Mangal Singh

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