



CWP-24270-2018 and connected case

:1:

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

250 (2 cases)

CWP-24270-2018 (O&M)

Date of decision : 17.02.2025

SOHAN LAL

..... Petitioner

VERSUS

**DISTRICT AND SESSION JUDGE, KAITHAL, DISTRICT
KAITHAL (HARYANA)**

..... Respondent

2.

CWP-36606 of 2018 (O&M)

SOHAN LAL

..... Petitioner

VERSUS

**DISTRICT AND SESSION JUDGE, KAITHAL, DISTRICT
KAITHAL (HARYANA)**

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Ms. Parbeen Kumari, Advocate for
Mr. Gunjan Mehta, Advocate
for the petitioner.

Mr. Munish Kapila, Advocate
for respondent in CWP-24270-2018.

Mr. Shobit Phutela, Advocate and
Mr. Yashdeep Shah, Advocate
for respondent in CWP-36606 of 2018.

Harsimran Singh Sethi, J. (Oral)

1. By this common order, two writ petitions, the details of which have been given in the heading, are being decided as both these petitions involve the same question of law on similar facts.

2. In the first petition i.e. CWP-24270-2018 the charge sheet dated

**CWP-24270-2018 and connected case****:2:**

05.09.2018, copy of which has been appended as Annexure 8 and in second petition i.e. CWP-36606 of 2018, the charge sheet dated 23.10.2018 copy of which has been appended as Annexure 13 with the writ petition, are being challenged.

3. Learned counsel for the petitioner argues that the petitioner was issued a charge sheet on 05.09.2018 (Annexure P-8) by the respondent in CWP-24270-2018 with the allegations that the petitioner while filing a representation (Annexure P-2) for deletion of certain adverse remarks in the ACR for the year 2017 had mentioned that his record is good and unblemished whereas, during the continuance of his career he had been imposed with certain punishments and according to respondent, the mere act of the petitioner mentioning a wrong fact in the representation amounts to misconduct and on account of such misconduct a charge sheet dated 05.09.2018 (Annexure P-8) was issued to the petitioner.

4. Similarly, qua the charge sheet dated 23.10.2018 (Annexure P-13) in CWP-36606 of 2018, the allegations alleged against the petitioner is that as he had filed a service appeal on 17.08.2018 and was duly informed that the said service appeal is not maintainable but he still requested for the supply of copy of the letter by which a service appeal has been sent to the High Court, the said request of asking for a copy of the said letter amounts to misconduct under the Haryana Civil Services (Punishment and Appeal) Rules, 1987 read with Section 12(2) of Haryana Subordinate Courts Establishment (Recruitment and General Condition of Service) Rules 1997.

5. Learned counsel for the petitioner argues that the petitioner has

**CWP-24270-2018 and connected case****:3:**

been charge sheeted on both of the above mentioned accounts without there being any justification or any alleged misconduct as, the mere fact of mentioning in the representation that the service record of petitioner is good does not mean that he has committed a misconduct or even asking for the letter by which his appeal has been forwarded to the High Court, does not in any way amounts to misconduct in any manner and therefore, without there being any solid basis, the charge sheets have been served upon him.

6. Upon notice of motion, the respondents have filed the reply wherein, in regard to charge sheet dated 05.09.2018 (Annexure P-8) the respondents have stated that it is pertinent that the employee must remain disciplined. Learned counsel submits that while mentioning in his representation that his record is good, the petitioner should have also mentioned the adverse record against him also and the non-mentioning of the same amounts to misconduct for which he is being proceeded against rightly.

7. With regard to the charge sheet dated 23.10.2018 (Annexure P-13), it is being mentioned that once the petitioner was informed that his appeal cannot be sent to the High Court, demanding the copy of letter by which the appeal of the petitioner was sent to High Court amounts to misconduct and he is rightly being proceeded against.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. Vide order dated 19.12.2018 passed by this Court, the enquiry in pursuance to the charge sheet dated 05.09.2018 (Annexure P-8) was

**CWP-24270-2018 and connected case****:4:**

stayed and even as of now, no enquiry has been conducted.

The question which arise in the present petition is whether the facts on the basis of which both the charge sheets have been filed amounts to misconduct or not.

An employee making certain submissions in a representation that his record is good, does not commit a mistake in misconduct, he or she has been given punishment during his/her service tenure. It is a conceded position that in the year 2012 the petitioner was given promotion and it is only when an employee has a good record that he or she is given promotion and under the said belief, writing of a fact in the representation by the petitioner so as to expunge certain remarks in the ACR was not such that it should have invited a charge sheet by treating the same to be a misconduct. Further, it should be noted that on the same representation, the adverse remarks in the representation have been expelled by the same authority. Once, the representation has been accepted, the averment of the respondent that the petitioner in his representation has mentioned his service record to be 'good' even though he was imposed with certain punishments cannot be a ground to start a disciplinary proceedings by treating the same as a misconduct.

10. Similarly, in the charge sheet dated 23.10.2018 (Annexure P-13), the only request of the petitioner was to supply him a copy as to by which letter, his service appeal has been sent to the High Court. The mere demand of copy of a letter in itself does not mean misconduct, the same could have been easily replied by stating that the same was not permissible.

**CWP-24270-2018 and connected case****:5:**

11. Keeping in view the totality of the circumstances that there is no disobedience, embezzlement or non-performance at the hands of the petitioner and either of the fact that certain letters were written by him demanding a particular letter qua forwarding of the service appeal to the High Court or that he has put forth with regard to the certain assertion qua his service record, are not misconduct so as to initiate the disciplinary proceedings. The punishing authority should not be sensitive to such things so as to initiate disciplinary proceedings on every error on the part of the employee. There is a difference between the terms 'error' and 'misconduct' and such difference should be kept in mind before initiating the disciplinary proceedings.

12. Keeping in view the above, the charge sheets dated 05.09.2018 (Annexure P-8) and 23.10.2018 (Annexure P-13) are quashed especially when no action has been taken qua them for the last seven years and the employee has already been retired and his pensionary benefits have been withheld on the basis of the said charge sheet.

13. Keeping in view the fact that the charge sheets have been *set aside*, the department is directed to release all the pensionary benefits admissible to the petitioner forthwith.

14. As the charge sheets have been set aside, the same cannot be allowed to cause prejudice to the petitioner by withholding his retiral benefits apart from this, the employee shall also be entitled for interest at the rate of 6% per annum from the date he retired till the actual payment of the same keeping in view the judgment of Coordinate Bench of this Court in



CWP-24270-2018 and connected case

:6:

J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

15. Let the retiral benefits withheld be released within a period of four weeks of the receipt of the copy of this order.
16. A photocopy of this order be placed on the connected case file.

(HARSIMRAN SINGH SETHI)
JUDGE

17.02.2025
Rimpal

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