
(2011) 07 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 11801 of 2011

Balwant Singh Kundu

APPELLANT

Vs

Haryana Urban Development Authority and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Haryana Civil Services (Punishment and Appeal) Rules, 1987 — Rule 7(6)

Citation : (2011) 07 P&H CK 0110

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nirmaljit Kaur, J.—The present petition under Article 226 of the Constitution of India has been filed for quashing the order dated 29.7.2008/8.8.2008 (P-6) vide which the Petitioner was awarded the punishment of reduction in rank from Assistant Estate Officer to Superintendent Grade-I and recovery of Rs. 5.00 Lac was ordered as well as for quashing the order dated 31.12.2010 (P-10) vide which the Statutory Appeal of the Petitioner against the order dated 29.7.2008/8.8.2008 (P-6) was dismissed by the Chief Secretary, Haryana-cum-Vice Chairman, Haryana Urban Development Authority i.e. the Appellate Authority in the present case.

2. While praying for quashing of the impugned orders, learned Counsel for the Petitioner contended that the whole action was contrary to the Rule 7(6) of Haryana Civil Services (Punishment & Appeal) Rules, 1987), in as much as, the inquiry officer held the Charge No. 1 as only partly proved against the Petitioner but the punishing authority without recording any decenting note held the Charge No. 1 as proved against the Petitioner and therefore proceeded to impose the punishment on the Petitioner on the presumption that charge No. 1 had been fully proved against the Petitioner.

3. Secondly, the present case was of no evidence and admittedly the Petitioner

had not committed any misconduct. It was contended that the Petitioner was not held guilty of any connivance with the Estate Officer. Moreover, the 8 officers' committee found that no charge of connivance had been proved against the Petitioner. In spite of the same, the Petitioner has been punished for no fault of his.

4. Lastly, the punishment awarded to the Petitioner was excessive. Whereas, one Mohan Lal Assistant, who was issued same charge sheet and was awarded reduction in rank from Assistant to Clerk was let off by the Appellate Authority with only stoppage of 2 increments with cumulative effect.

Heard.

5. Taking up the first argument of the learned Counsel for the Petitioner that charge No. 1 was only partly proved against the Petitioner but the punishing authority went on to proceed as if the entire charge had been proved and therefore violated Rule 7(6) of Haryana Civil Services (Punishment & Appeal) Rules, 1987) by not giving any dissenting note while disagreeing with the finding of charge No. 1 and took the final decision without granting opportunity to the employee has no merit in view of the foregoing facts. Charge No. 1 reads as under:

That with the connivance with the then Estate Officer, HUDA, Sirsa, got waived off the extension fee of various plots of New Mandi Township, Sirsa and Kalanwali with malafide intention. The list of the plots is annexed as Annexure I. He violating the extension policy issued vide No. A-1-2000/24110-113 dated 19.9.2000 causing loss to HUDA to the tune of Rs. 13,48,660/-

The finding of the Inquiry Officer qua Charge No. 1 reads as under:

By keeping in view the documents produced, record and statement of officer it is apparent that the officer has not recorded any advice in the cases pertaining to waive off the construction expenses. The officer was duty bound to record about the HUDA policy on noting file and further to clarify in his note about the officer who was competent for the job. Sh. B.S. Kundu was nowhere mentioned about this in his file noting. It shows that he was agreed with this proposal in this way he has failed to discharge his responsibility although his complete connivance has not been proved because all these cases were not dealt by the AEO.

6. Thus, there is no doubt that charge No. 1 was partly proved against the Petitioner. The Punishing Authority too while imposing punishment of reduction in rank and imposing the recovery of loss to the tune of Rs. 5 lacs held the Petitioner to be responsible only for his acts and commission resulting into loss to the authority. Therefore, the Punishing Authority decided that the penalty of dismissal from service as recommended by the committee was too harsh and instead imposed the punishment of reduction in rank and recovery of Rs. 5 lacs only. In view of the same, it is evident that the Punishing Authority has rather agreed with the report of the Inquiry Officer. In case the Punishing Authority had

disagreed with the same and found the charge No. 1 to be fully proved, then the Petitioner would have been probably given the punishment of dismissal from service as is stated to have been imposed upon the Estate Officer. Therefore, there is nothing to show that the Punishing Authority disagreed with the report of the Inquiry Officer. Rather, the same has been accepted in toto. In fact, out of 4 charges, Charge No. 1 was partly proved, Charge No. 3 could not be proved and Charges No. 2 and 4 were duly proved. As such, there is no violation of Rule 7 (6) of Haryana Civil Services (Punishment & Appeal) Rules, 1987).

7. The second argument that it is a case of no evidence, is not tenable. As per the order dated 8.8.2008 passed by the Chief Administrator, HUDA, Panchkula, the Petitioner rendered due apology for his acts of omission and commission. When the Petitioner was asked, he admitted that he had not mentioned in his noting that the Estate Officer was not competent to waive off the extensions fees. As such, the Petitioner facilitated the waiving of extension fee and allotment of additional land. Thus, the Petitioner cannot take the plea that it is a case of no evidence.

8. With respect to the argument that the punishment is excessive, the finding of the Enquiry Officer qua Charge No. 4 is relevant.

9. As per charge No. 4 Sh. B.S. Kundu AEO HUDA in connivance with the then EO HUDA Sirsa has caused loss of Rs. 17,73,615- to HUDA. In relation to this, the concerned record of the office of EO and statements of Sh. B.S. Kundu has been considered. It is correct that Sh. Kundu has not made any recommendation regarding allotment of land and building construction on the file received from Clerk and Assistant. But after sending the file to a higher official by affixing his signature on his noting and maintaining silence, shows his connivance.

10. Thus, the Petitioner was held guilty of connivance qua Charge No. 4. In spite of the same, while imposing the punishment, the Punishing Authority has only held the Petitioner to be guilty of acts of omission and commission and only imposed the punishment of reduction in rank and recovery of Rs. 5 lacs. Whereas, it is also evident from the order dated 31.12.2010 passed by the Chief Secretary, Haryana-cum-Vice Chairman, Haryana Urban Development Authority that Shri Deveshwar Dayal, HCS, has been dismissed from service for the lapses on his part. Moreover, there is nothing placed on record qua the charges alleged against Mohan Lal or role attributed by the Inquiry Officer to Mohan Lal which may enable this Court to come to the conclusion that the Petitioner and Mohan Lal are similarly placed or that the role and finding qua him and the Petitioner were identical. As such, the said argument does not help the learned Counsel for the Petitioner.

11. With respect to the quantum of punishment, it is well settled proposition of law that the scope of interference is not a routine manner. Hon"ble the Supreme Court in the case of V. Ramana Vs. A.P.S.R.T.C. and Others, while discussing the law on the subject laid down by other various countries as well as various

decisions rendered by the Apex Court held in para 12 as under:

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 the *Wednesbury's* case (*supra*) the Court would not get 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 decision-making process and not the decision.

12. Similar view was expressed in the case of *Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju, .*

13. Having regard to the facts and circumstances of the present case wherein, Charge No. 1 was partly proved, Charge No. 3 could not be proved and Charges No. 2 and 4 stood proved, it cannot be said that the punishment was wholly disproportionate to the charges levelled and proved against the Petitioner.

No other argument was raised.

14. In view of the above, the present petition is dismissed being devoid of merit.