

(2013) 07 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6087 of 2010 (O and M)

Jaspal Singh Tiwana

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 4 SCT 238

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : R.K. Chopra and Ms. Maninder, for the Appellant; B.S. Walia, Addl. A.G., Punjab, for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—The petitioner, who was serving on the post of Treasury Officer under the Department of Finance, State of Punjab has filed the instant writ petition impugning the order dated 28.11.2008 passed by the Principal Secretary, Punjab Govt., Finance Department, whereby he has been removed from service under Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 read with Punjab State Treasury Service (Class-III) Rules, 1979. Facts in brief that emanate from the pleadings on record and would require notice are that the petitioner joined service in the Finance Department (Treasury & Accounts Branch) as Clerk on 23.7.1974. Thereafter, in pursuance to a regular selection process conducted by the Punjab Public Service Commission (herein after to be referred as the Commission) the petitioner was duly selected and appointed as Treasury Officer in the year 1981. It has been asserted by the petitioner that since the year 1992 he has been suffering from a psychiatric disease and was under constant treatment with the Psychiatric Department of the P.G.I., Chandigarh. He had applied for four days leave i.e. w.e.f. 13.3.1995 to 16.3.1995. Such period was followed by three Gazetted Holidays. The District Treasury Officer, Punjab vide memo dated 14.3.1995 called upon the petitioner to produce the requisite medical certificate in support of his illness. However, vide order dated 20.3.1995 he was placed under suspension. He was issued a

charge sheet dated 3.4.1995 alleging that he had violated instructions dated 28.2.1995, wherein the employees had been asked not to proceed on leave or leave the station without prior approval. The petitioner was dismissed from service vide order dated 21.6.1995. Such dismissal order was challenged by the petitioner by way of filing of a civil suit in the court of Civil Judge (Sr. Divn.), Chandigarh. Vide decision dated 3.5.2001 passed by Civil Judge (Sr. Divn.), Chandigarh the suit of the petitioner was partly decreed, the order of dismissal dated 21.6.1995 was set aside but the disciplinary authority was directed to take action strictly as per law by holding a regular inquiry and it was also held that during such inquiry proceedings the petitioner would be deemed to be under suspension. It is further asserted that the State filed an appeal against the decision dated 3.5.2001 of the Trial Court but such appeal was dismissed by the District Judge, Chandigarh on 27.7.2005.

2. Thereafter, vide order dated 16.11.2005 an Inquiry Officer was appointed to hold the inquiry afresh against the petitioner on the following Articles of Charge:-

(1) Finance Department (Treasury and Accounts) Punjab issued instructions vide letter No. 2304 dated 28.2.1995 to all the officers/employees that in government interest no officer/employee shall proceed on leave or leave the station, without the prior approval of the Director (Treasury & Accounts).

A copy of this order was forwarded for compliance to all the District Treasury Officers. The District Treasury Officer, Punjab Treasury, Chandigarh also got noted these instructions from Sh. Jaspal Singh Tiwana. However, disregarding these instructions he sent from home an application for the grant of leave for 13.3.1995 and 16.3.1995 on the pretext of illness and thereafter he did not submit any leave application upto 20.3.1995 and remained absent from the Treasury Office.

(2) On the basis of report Shri Jaspal Singh Tiwana was issued suspension orders vide No. TA (T-1-95) 3033 dated 20.3.1995 but he did not receive these orders.

(3) Remaining absent from office.

(4) Leaving the station without permission and proceeding on leave without sanction.

3. The Inquiry Officer submitted the Inquiry Report on 17.3.2006, wherein charges No. 1, 3 and 4 stood fully proved. The Punishing Authority issued a show cause notice dated 21.6.2006 for the imposition of a major penalty under Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The petitioner responded to such show cause notice by filing a detailed reply. Upon consideration of the same vide letter dated 13.9.2007 the State Govt. sought approval from the Commission as regards passing of an order to prematurely retire the petitioner from service instead of removal on account of the length of service rendered by him and he having already attained the age of 50 years. It has also been pleaded that in anticipation of the approval of the Commission

even the orders to prematurely retire the petitioner from service under the Punjab Civil Services (Premature Retirement) Rules, 1975 had been drafted and approved in the office of the respondent-department and a copy thereof stands appended as Annexure P-9 along with the petition. The Commission, however, recommended that the petitioner be removed from service instead of being prematurely retired. It is against such factual backdrop that the impugned order dated 28.11.2008 (Annexure P-11) has been passed imposing the penalty of removal from service upon the petitioner.

4. Learned senior counsel appearing for the petitioner has raised a two fold submission. In the first instance reliance has been placed upon Punjab Govt. Circular dated 6.12.1979 at Annexure P-17 issued on the subject of procedure to be followed in case of difference of opinion between a department of govt. and the Commission. Counsel would vehemently argue that in the light of such circular dated 6.12.1979 there was a clear conflict of opinion between the respondent-department and the Commission and accordingly the matter was to be referred to the Chief Minister through the Chief Secretary. It has been argued that such procedure has been given a complete go by and as such the impugned order on such short ground cannot sustain. Towards such submission counsel has placed reliance upon a judgment dated 12.9.2011 passed by this Court in CWP No. 6025 of 2010 titled as Dr. Kashmir Singh v. State of Punjab and others. The second submission raised by learned senior counsel is as regards the quantum of punishment. It has been argued in terms of placing reliance upon a judgment dated 7.1.2004 in CWP No. 2073 of 1988 titled as Smt. Kailash Sharma (since deceased) through Sh. Om Parkash Sharma (husband) v. State of Punjab and others (Annexure P-14) that the punishment of removal from service upon the petitioner, who had to his credit more than 26 years of unblemished service against the backdrop of a charge of having availed of leave for a few days necessitated on account of his illness, would be wholly disproportionate.

5. Mr. B.S. Walia, learned Addl. A.G., Punjab would on the other hand contend that in real terms there was no conflict of opinion between the respondent-department and the Commission. Learned State counsel would argue that as per Rules of Business, after having held a regular departmental inquiry the matter was referred to the Commission and the opinion has been forthcoming from the Commission vide memo dated 27.12.2007 (Annexure R-1) appended along with the written statement and it had been opined in the following terms:-

As the employee was awarded the punishment of dismissal after first inquiry and till time of second inquiry report, there has been no change in the material facts and circumstances of the case and all the charges stand proved, so there seems to be no reason to change the punishment from dismissal to that of premature retirement. Hence, the Commission observes that the penalty of dismissal from service as was proposed earlier should remain and that there is no reason to decrease the quantum of punishment.

Counsel would advert to the impugned order dated 28.11.2008 at Annexure P-11

to submit that it was an independent decision taken by the State Govt. against the backdrop of the charges having been leveled against the petitioner and the same having been proved in a regular departmental inquiry in which the petitioner had been duly associated. Learned State counsel would further submit that no conflict of opinion between the State Govt. and the Commission was evident from a bare reading of the impugned order dated 28.11.2008 and as such there was no occasion for the matter to have been referred to the Chief Minister in the light of Punjab Govt. Circular dated 6.12.1979. Learned State counsel has further argued that the penalty of removal from service has been imposed upon the petitioner after following due procedure and process of law against the backdrop of proven misconduct and dereliction of duty and in such matters interference by this Court is not called for.

6. Having heard learned counsel for the parties at length, this Court is of the considered view that the respondent-department has clearly deviated from its own Circular dated 6.12.1979 as regards the matter to have been referred to the Chief Minister through the Chief Secretary on account of the difference of opinion between the department and the Commission with regard to a disciplinary matter effecting an employee serving under the State Govt. It is not a matter of dispute that after the conclusion of the inquiry proceedings the petitioner had been issued a show cause notice, wherein a major penalty under Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 was contemplated. The petitioner had submitted a reply to the show cause notice. Upon consideration of the matter approval was sought from the Commission vide letter dated 13.9.2007 which reflected a clear change of mind as regards the contemplated penalty was concerned and a view was furnished that since the petitioner had attained the age of 50 years and had a considerable length of service, he may be prematurely retired from service. Even the factum of an order of premature retirement having been drafted in anticipation of the approval stands admitted in the reply. Annexure R-2 dated 28.5.2008 appended along with the reply would be a clincher. After the Commission had opined vide memo dated 27.12.2007 (Annexure R-1) that the petitioner be awarded the punishment of dismissal, the respondent-department had yet again sought a review as regards such proposal vide letter dated 28.5.2008 (Annexure R-2) and it had been recited as follows:-

2. The case along with necessary documents as per this office letter No. 4237-TA(T-1-TO-PF-163)2007/12035 dated 13.09.2007 (copy enclosed) has been sent to you, in connection with award of punishment to Shri Jaspal Singh Tiwana, Treasury Officer. The whole case has again been considered vis-a-vis your advice referred to above. In view of the long service of Shri Jaspal Singh Tiwana, Treasury Officer since 27.5.1981 quantum of punishment to him needs reconsideration. Therefore, it is requested that your proposal may be reviewed vis-a-vis all the facts of the case.

7. The conflict of opinion between the respondent-department and Commission was thus apparent and clearly discernible. At such stage the circular dated

6.12.1979 (Annexure P-17) issued by the State Govt. was to hold the field and the matter was required to be referred to the Chief Minister through the Chief Secretary. Such procedure has clearly been deviated from. It is not the case of the State Govt. that the circular dated 6.12.1979 (Annexure P-17) was merely directory in nature and not to be followed but on the other hand the case set out is that there was no conflict of opinion between the department and the Commission and as such, such circular dated 6.12.1979 would not apply. As noticed and discussed herein above, that is not the situation.

8. Accordingly, without expressing any opinion as regards the quantum of punishment to be awarded to the petitioner, the present writ petition is allowed and the impugned order of removal from service dated 28.11.2008 (Annexure P-11) is set aside. The respondents are directed to place the matter before the Chief Minister, Punjab in the light of circular dated 6.12.1979 (Annexure P-17), who shall taken an appropriate decision in accordance with law. Such exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. It is, however, clarified that in case the competent authority decides to impose a lesser penalty than removal from service, in that event, liberty is granted to pass such modified order from the date the order of removal from service was passed. As such, the petitioner is being denied the arrears of pay from the date of his order of removal till fresh order of penalty is passed for the reason that the State Govt. had already taken a view in the matter and had sought approval from the Commission as regards prematurely retiring him in the year 2008 itself.

Petition is allowed in the aforesaid terms.