

(2016) 09 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24783 of 2012 (O&M)

Satpal Singh Dahiya

APPELLANT

Vs

HUDA

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

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

Citation : (2017) 1 SCT 803

Hon'ble Judges : Tejinder Singh Dhindsa, J.

Bench : Single Bench

Advocate : Saurabh Goel, Advocate, for the Respondent; R.K. Malik, Senior Advocate with Tejpal Dhull, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J. - Petitioner who is serving as an Executive Engineer under the Haryana Urban Development Authority has filed the instant petition impugning the order dated 27.06.2011 (Annexure P-4) in terms of which he has been awarded the punishment of stoppage of one increment with cumulative effect. Challenge is also to the order dated 27.12.2011/13.01.2012 (Annexure P-6) passed by the Appellate Authority rejecting the statutory appeal preferred by the petitioner against the order of punishment.

2. Pleadings on record would indicate that petitioner was appointed as Sub Divisional Engineer on 20.09.1990 and promoted as Executive Engineer on 17.07.2007. On 05.12.2007 petitioner was served a charge-sheet under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 for imposition of a major penalty. The acts of omission and commission alleged against the petitioner were in relation to his tenure on the post of Sub Divisional Engineer and while serving in the office of Estate Office, HUDA, Gurgaon. Petitioner submitted his reply to the charge-sheet and thereafter an Inquiry Officer was appointed. Inquiry Officer submitted his report dated 31.12.2008 holding the petitioner guilty of the charges. Copy of the inquiry report was supplied to the

petitioner and he was granted opportunity to file objections against the same. Having considered the representation filed by the petitioner against the findings of the Inquiry Officer, petitioner was issued a show cause notice contemplating the imposition of penalty of stoppage of two annual increments with cumulative effect. Petitioner submitted his response to the show cause notice. The Punishing Authority imposed the punishment of stoppage of one increment with cumulative effect vide order dated 27.06.2011. Petitioner filed a statutory appeal before the Vice Chairman, HUDA and the same has been declined vide order dated 27.12.2011/13.01.2012 (Annexure P-6). It is against such brief factual backdrop that the instant writ petition has been filed.

3. Learned senior counsel appearing for the petitioner has assailed the punishment imposed upon the petitioner on the solitary ground of discrimination and quantum of punishment. In furtherance of such submission, it is submitted that the charge levelled against the petitioner was primarily in relation to having not pointed out a building violation i.e. of basement having been constructed under the corridor of Booth Nos.22-B and 23, Jail Road, Gurgaon. It is submitted that identical charge was also levelled against one Harjit Singh, Junior Engineer and common inquiry proceedings were held. The charges were proved against both i.e. the petitioner as well as Harjit Singh, Junior Engineer. Insofar as the Junior Engineer is concerned, he was awarded the punishment of stoppage of two increments with cumulative effect by the Punishing Authority dated 17.03.2010. However, the statutory appeal preferred by Harjit Singh, Junior Engineer has been partly accepted and the punishment stands reduced to stoppage of one increment without cumulative effect. Precise submission raised is that the employee who actually inspected the site of the booths in question i.e. Harjit Singh, Junior Engineer has been finally awarded the punishment of stoppage of one increment without cumulative effect and the petitioner who had only forwarded the said report to the higher authorities has also been awarded the same punishment and the action as such is discriminatory.

4. Another limb of the argument raised is that the Punishing Authority against the backdrop of the gravity of the charge had imposed the punishment of stoppage of two increments with cumulative effect upon Harjit Singh, Junior Engineer as opposed to stoppage of one increment with cumulative effect upon the petitioner. The statutory appeal preferred by Harjit Singh, Junior Engineer has been partly accepted and the punishment has been whittled down whereas the appeal preferred by the petitioner has been rejected. It is submitted that such action is arbitrary on the face of it and as such the punishment awarded to the petitioner cannot sustain. In support of his contentions, learned Senior counsel has placed reliance upon a Division Bench Judgment of this Court dated 13.09.2001 in CWP No. 10235 of 2000 (Chhattar Singh v. Haryana Vidyut Parsaran Nigam Limited) as also a judgment of this Court rendered in CWP No.14534 of 2011 (Janak Singh v. State of Haryana and others) decided on 16.09.2014.

5. Per contra, Mr. Saurabh Goel, learned counsel appearing for the respondent authority would contend that the punishment imposed upon the petitioner is upon culmination of regular departmental proceedings and in which the petitioner had been afforded due opportunity at each and every stage. It has been contended that no procedural irregularity or illegality has been pointed out in the inquiry proceedings and under such circumstances, there would be no occasion for the High Court to exercise powers under Article 226 of the Constitution of India so as to interfere with an order of punishment imposed upon the delinquent. Further argued that jurisdiction of this Court would be circumscribed and confined to correct errors of law or procedural error if any and which have resulted in manifest miscarriage of justice or violation of principles of natural justice. Mr. Goel would submit that no such case is made out and prays for dismissal of the writ petition.

6. Counsel for the parties have been heard at length.

7. To effectively determine the controversy raised in the instant petition, it would be necessary to refer to the precise articles of charge levelled against the petitioner. The same read as under:-

Sh. Sat Pal Dahiya, SDE (now XEN)

1. That he did not point out the violation of basement constructed under the corridor of booth No.22-B and 23 though the same was not allowed as per their sanctioned building plans.

2. That he recommended for occupation certificate to the allottees of these booth site by ignoring the violation which caused financial loss to HUDA.

The above lapses on his part constitute grave misconduct, negligence and carelessness rendering him liable for severe disciplinary action under Rule-7 of Haryana Civil Services (Punishment & Appeal) Rules, 1987."

8. The inquiry report furnished by the Inquiry Officer in relation to aforenoticed charges has been placed on record at Annexure P-1 and the same has been perused. Inquiry report would reveal that the petitioner had taken a stand that it was Harjit Singh, Junior Engineer who had inspected the site in question and had submitted his report on the prescribed proforma and had pointed out certain irregularities in the construction and a composition fee of Rs. 5006/- had been proposed. The petitioner who was then working as Sub Divisional Engineer had made a physical verification and had submitted his report also indicating the said irregularities along with composition fee for approval of the Administrator HUDA, Gurgaon on 25.05.2005. The Administrator in turn had directed rechecking and marked the same to the District Town Planner, Gurgaon (DTP). DTP upon inspection had also submitted his report on the same lines as had been reported by Harjit Singh, Junior Engineer as also the present petitioner. The matter was then approved by the Administrator and completion certificate was issued by the Estate Officer, HUDA, Gurgaon on 08.08.2005 for basement and Ground Floor

only. Before the Inquiry Officer, the defence set up by the petitioner was that the illegal construction i.e. basement underneath the corridor of the Booths in question was not there at the time of issuance of completion certificate and such violation had been committed after the physical verification report submitted by the petitioner as also after the issuance of the completion certificate.

9. The Inquiry Officer upon due appreciation of documentary and oral evidence led has recorded a finding that the basement under the corridor was raised simultaneously at the time of construction of basement at the booth sites. It was also noticed that the delinquent S.P.Dahiya (present petitioner) as also Harjit Singh (Junior Engineer) did not step into the witness box to depose that at the time of physical inspection, they did not find/notice the basement under the corridor. There would be no occasion for this Court to re-appraise and re-appreciate the evidence so as to record a finding at variance with the one recorded by the Inquiry Officer.

10. The finding so recorded by the Inquiry Officer would in itself demolish the case set up on behalf of the petitioner that he had merely forwarded the inspection report submitted by Harjit Singh, Junior Engineer to the higher officials. It stands conclusively proved during the course of the inquiry that apart from the inspection having been conducted by Harjit Singh, Junior Engineer, the present petitioner in the capacity of a supervisory officer and holding the post of Sub Divisional Engineer had also conducted a physical verification and thereupon had submitted a report to the higher officials. The plea taken on behalf of the petitioner that he had merely acted as a post office and of having relied upon the inspection report submitted by Harjit Singh, Junior Engineer for issuance of a completion certificate in respect of Booth sites in question cannot be accepted.

11. At this stage, it would be apposite to notice the articles of charge framed against Harjit Singh, Junior Engineer. The same were as follows:-

Sh. Harjeet Kumar, JE

1. That he did not issue the notices for vacation of existing sites from the shopkeepers of Jail Land Gurgaon on construction of booths at alternative site bearing No.233 to 252.

2. That he did not point out in his survey report about unauthorized construction of basement under corridor and thus failed in performance of his duty to check the construction of these shops which shows his connivance with the allottees.

3. That he did not point out the violations of basement constructed under the corridor of booth site No.23 though the same was not allowed as per sanctioned building plan and made wrong report for compounding the case and for occupation certificate with ulterior motive which caused financial loss to HUDA.

The above lapses on his part constitute grave misconduct, negligence and malafide intention rendering him liable for disciplinary action under Rule-7 of Haryana Civil Services (Punishment & Appeal) Rules, 1987."

A conjoint reading of the articles of charge framed against the present petitioner as also against Harjit Singh, Junior Engineer would no doubt reveal that the charge essentially against both was with regard to unauthorized construction of basement under the corridor of two booth sites.

However, there would be one crucial distinction i.e. there was a specific article of charge against the present petitioner that apart from having not pointed out the violation of basement under the corridor he had also recommended for occupation certificate to the allottees of such booth sites.

12. The gravity of charge in respect of the petitioner was certainly more serious in the capacity of a senior official and holding supervisory powers. The plea of discrimination in the matter of awarding of punishment in the case of co-delinquents can only be examined if there is complete parity as regards the charges levelled. This Court finds that the charge against the petitioner in the capacity of Sub Divisional Engineer was on a higher pedestal and he was under a bounden duty to physically verify and examine the veracity of the survey report that may have been submitted by Harjit Singh, Junior Engineer and only thereafter to have recommended for issuance of occupation certificate to the allottees of the booths in question. Under such circumstances, it was certainly open for the competent authority to have dealt with the petitioner differently in the matter of awarding punishment.

13. The prayer of the petitioner would also be liable to be rejected from yet another point of view. In the case of the petitioner, the show cause notice issued to him was for imposing punishment of stoppage of two increments with cumulative effect. The punishment actually imposed is of stoppage of one increment with cumulative effect. As regards Harjit Singh, Junior Engineer is concerned, the punishment imposed by the competent authority was of stoppage of two increments with cumulative effect. His appeal has been partly accepted and the punishment has been reduced to stoppage of one increment with cumulative effect. The order of punishing authority in the case of Harjit Singh, Junior Engineer now stands superseded by the order of the appellate authority. In fact, the punishment ultimately imposed upon the petitioner as also Harjit Singh, Junior Engineer is identical i.e. stoppage of one increment with cumulative effect. The grouse of the petitioner having been treated differently in the matter of award of punishment in spite of being co delinquents and a common inquiry having been conducted as such is without any substance.

14. The reliance placed by learned Senior counsel upon the Division Bench Judgment in Chhattar Singh's case (supra) is wholly misplaced. The petitioner therein was an employee of HSEB. His plea as regards discrimination in the matter of quantum of punishment imposed had been upheld on the basis that against allegations of embezzlement certain other officials/officers of the Board had been inflicted the punishment of stoppage of increments whereas the petitioner/Chhattar Singh against whom the charge proved was only that of negligence in discharging of his duties had been imposed the major penalty of

removal from service. The facts as such are clearly distinguishable.

15. Likewise even the judgment rendered by this Court in Janak Singh's case (supra) would have no applicability. In the facts of such case, Janak Singh as also one Vinod Kumar were serving under the Haryana Police. Identical memo of allegations had been served upon them and common inquiry proceedings were held. Show cause notices were issued to both Vinod Kumar and Janak Singh (petitioners therein) contemplating the penalty of stoppage of five annual increments with cumulative effect. The punishing authority vide common order dated 11.05.2000 had imposed a penalty of stoppage of two annual increments with cumulative effect on both Vinod Kumar and Janak Singh. Upon appeals having been preferred, the appellate authority vide common order dated 30.09.2010 had reduced the penalty from stoppage of two future annual increments with permanent effect to that of two future annual increments with temporary effect in the case of both the employees. It is only at the stage of the matter having been dealt with by the revisional authority, Vinod Kumar was let off with a censure so as to afford him a chance to reform himself and on the other hand the revision petition preferred by Janak Singh had been rejected. It is under such facts and circumstances that this Court had intervened and had directed the authorities concerned to reconsider the matter.

16. Even otherwise, it is a well settled principle of law that it is the disciplinary authority or the appellate authority in appeal which is to decide the nature of punishment to be given to a delinquent keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the Punishing Authority. In the case of Apparel Export Promotion Council v. A.K. Chopra, 1999 (1) SCT 642, the Hon'ble Supreme Court had observed as follows:

"The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone."

For the reasons recorded above, there would be no basis to warrant interfere in the matter. The writ petition lacks merit and is dismissed.