(2010) 04 P&H CK 0074

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Balwant Singh Bhandair — APPELLANT

Vs

Registrar — RESPONDENT

Date of Decision: April 26, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Augustine George Masih, J.

Challenge in the present writ petition is to the order of punishment dated 20.12.1991 (Annexure P-2) which is based upon the order dated 7.12.1991 (Annexure P-4) as also order dated 26.4.1996 (Annexure P-5) passed in an appeal preferred by the petitioner.

2. Briefly, the facts of the case are that the petitioner, who at the relevant time, was a Protocol Officer of the High Court, when it is alleged that he had undertaken certain journeys to Mussoorie, Madras and Delhi by road and by air without proper authorization. He was charge-sheeted for having submitted his claim for encashing travel allowance (T.A.) on the assumption put forth as if he had actually performed journeys whereas it was alleged that he had not undertaken any such journey. The petitioner was placed under suspension on 29.11.1989. A charge-sheet dated 22.12.1989 was served upon the petitioner to which he submitted his reply on 5.2.1990. Being not satisfied with the reply submitted by the petitioner, a regular departmental enquiry was initiated against him qua the charges which read as follows:

1. That you undertook journeys to Mussoorie on 20.2.1988, 31.3.1988, 9.4.1988, 22.4.1988, 25.4.1988, 7.5.1988 and 4.6.1988 which were confirmed by either Hon''ble

the Chief Justice or Shri Vohra, Secretary/Special Secretary to His Lordship but on these days the Hon''ble the Chief Justice was not present at Mussoorie, a hill station. Your aforesaid journeys cannot be treated as official for purposes of T.A. Under Rule 61 of S.R. You, thus claimed false T.A. for the aforesaid journeys.

2. That you undertook unauthorized journeys when you travelled by air on 11.2.1988 from Chandigarh to Madras, on 16.2.1988 from Madras to Delhi, on 15.10.1988 from Chandigarh to Srinagar and back on 18.10.1988 and from Madras to Chandigarh on 28.5.1989, as your pay at the relevant time was less than Rs. 4100/- and you were as such required to obtain prior permission as required under S.R. 48. You thus claimed T.A. without proper sanction of the competent authority which is very serious lapse on your part.

3. That you took staff car CHK 5600 to Delhi on 18.6.1989 and stayed there upto 22.6.1989 without proper authorisation and thus violated High Court Staff Car Rules, 1979, which is very serious lapse on your part.

By your aforesaid acts you are guilty of misconduct which is unbecoming of a Government servant.

3. On the basis of the evidence led by the parties, the Inquiry Officer exonerated the petitioner of the second and third charge. As regards charge No. 1, barring his journey dated 20.2.1988 rest of the journeys were found to be unauthorized. The Inquiry Officer accordingly submitted his report dated 31.5.1991 (Annexure P-1) to the Chief Justice. Against the said report, the petitioner submitted a representation. The Chief Justice gave a personal hearing to the petitioner on 16.11.1991 and on consideration of the enquiry report, representation and the submissions made by the petitioner, passed order of punishment dated 7.12.1991 (Annexure P-4). Vide the said order, the petitioner was directed to be reduced in rank from the post of Translator to that of Senior Clerk. It was also ordered that he will get the minimum of the time scale of the pay of Senior Clerk and will rank junior most in the cadre of Clerks. The said order was communicated to the petitioner on 20.12.1991 (Annexure P-2).

4. The petitioner preferred service appeal against the order of punishment imposed by the respondent. The said appeal came up for hearing before the Appellate Authority as per the High Court Establishment (Appointment and Conditions of Service) Rules, 1973 (in short the Rules) which was partly allowed vide order dated 26.4.1996 and it was directed that instead of reduction in rank from the post of Translator to that of Senior Clerk and getting the minimum of time-scale of Senior Clerk besides being junior-most in the cadre of Clerks, he would be deemed to have been awarded the punishment of withholding of four annual grade increments with cumulative effect. The petitioner thereafter preferred a review application dated 3.7.1996 but no decision on the said review application was allegedly conveyed to him and this led the petitioner to file the present writ petition challenging impugned

order of punishment as also the appellate order dated 7.12.1991 (Annexure P-4) communicating the said punishment order dated 20.12.1991 (Annexure P-2) and Appellate Order dated 26.4.1996 (Annexure P-5).

5. Counsel for the petitioner contends that the charge-sheet issued to the petitioner was for claiming false travelling allowance for the journeys which have been enumerated in charge No. 1. He contends that the charge itself is not sustainable against the petitioner as he had not, at any stage, claimed travel allowance for the said journeys. What had been claimed by the petitioner was daily allowance only as he had travelled in an official car. He submits that in any case, the petitioner who was a Protocol Officer was carrying out the dictates of Hon''ble the Chief Justice. He had no option but to comply with the instructions issued or conveyed to him. He submits that the bills submitted by the petitioner were duly considered by the Competent Authority and cleared after following the due procedure. It is only after the clearance of the said bills, the payment was made to the petitioner. He contends that once the Competent Authority had considered the claim of the petitioner and the decision has been acted upon and is in effective operation, the Successor-in-office cannot reopen the same matter and arrive at another and totally different decision. He submits that the daily allowance bills submitted by the petitioner were not only cleared by the Accounts Branch but were also cleared by the first Puisne Judge and thereafter by the Chief Justice and, thus, the claim as put forth by the petitioner could not have been reviewed by the Successor-in-office especially when the Chief Justice on whose directions the petitioner had undertaken the journey had approved the said bills. Counsel contends that it amounts to ex-post facto sanction of the approval and, thus, it cannot be said that the journeys undertaken by the petitioner were unauthorized. In support of his contention, he relies upon the judgment in the case of AIR 1937 27 (Privy Council) . He submits that in case in the given facts and circumstances the Punishing Authority had come to a conclusion that the claim as put forth by the petitioner was not in accordance with the Rules, the refund of the amount paid to the petitioner as daily allowance could have been ordered especially when the said bills were duly cleared by the competent Authority and ultimately by the Chief Justice on whose dictates the petitioner had undertaken the journeys.

6. His next submission is that the punishment imposed by the Appellate Authority in the departmental appeal preferred by the petitioner i.e. award of punishment and withholding of four annual grade increments with cumulative effect does not find mention in the Rule 5 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 wherein penalties have been provided. He, on this basis, contends that since the punishment imposed upon the petitioner by the Appellate Authority has not been provided under the Rules, the same deserves to be set aside. In support of this contention, he relies upon the judgment of the Hon''ble Supreme Court in the case of Kulwant Singh v. State of Punjab 1991 (2) SCT 30 as also a Division Bench of this Court in the case of Sham Lal v. District & Sessions Judge, Ferozepur 1994 (3) SCT

829. In the end, counsel contends that the punishment which has been imposed by the Punishing Authority as also the Appellate Authority is disproportionate to the charges allegedly committed by the petitioner and, therefore, the punishment so imposed deserves to be reduced further.

7. On the other hand, counsel for the respondent has submitted that a regular departmental enquiry was held against the petitioner in which he had fully participated and it is not the allegation on the part of the petitioner that either the statutory rules were violated or the principles of natural justice have not been complied with. Counsel contends that on the basis of the evidence led by the parties, the Inquiry Officer exonerated the petitioner of charges 2 and 3 whereas in charge No. 1 except for the journey undertaken by him on 20.2.1988, the petitioner had been held guilty. The petitioner was supplied the copy of the enquiry report against which the petitioner submitted representation. Hon''ble the Chief Justice who is the Punishing Authority had given personal hearing to the petitioner. On consideration of the enquiry report, representation and the submissions as made by the petitioner during the personal hearing given to him, the Punishing Authority imposed the punishment upon him which on appeal was reduced by the Appellate Authority. He contends that firstly the Inquiry Officer had gone into the evidence which was produced by him and thereafter the Punishing Authority on consideration of the evidence and the enquiry report had proceeded to hold the petitioner guilty of the charges levelled against him which were duly proved. The Appellate Authority also on re-appreciation of the evidence had upheld the charges levelled against him and had only interfered on the quantum of punishment. He submits that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India may not re-appreciate the evidence which has been led by the parties. The High Court while exercising its writ jurisdiction does not act as an appellate Authority and, therefore, has a limited power of judicial review. In the given case where the finding of guilt is based upon the evidence led by the parties before the Inquiry Officer, the Court should not interfere in such findings recorded by the Punishing Authority as also by the Appellate Authority. He further submits that the jurisdiction of the High Court is restricted to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The Court would also not interfere in the quantum of punishment unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court. This is not a case of no evidence and the Appellate Authority has already interfered by reducing the punishment imposed on the petitioner and no further interference by this Court is called for. Reliance has been placed on the judgments in the case of R.S. Saini Vs. State of Punjab and Others, , State of Andhra Pradesh Vs. Sree Rama Rao, , Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, and State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, . On this basis, counsel prays for dismissal of the writ petition.

8. I have heard counsel for the parties and have gone through the records of the case. It is, by now, well settled principle of law that the High Court in exercise of its powers of judicial review does not act as an appellate Authority. Its jurisdiction is circumscribed by limits of judicial review i.e. to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The power under Article 226 of the Constitution of India is also limited while appreciating the evidence which has been adduced, during the enquiry proceedings which have been gone into by the Punishing Authority as well as the Appellate Authority. The Court would not exercise its extraordinary powers if there is some evidence which would support the findings returned by the Inquiry Officer. The adequacy or reliability of the evidence cannot be gone into by the Court in exercising its writ jurisdiction which would amount to reviewing the evidence, being beyond the domain of the Court.

9. As regards the interference in the quantum of punishment, again through a catena of judgments, it stands settled that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, there is no scope for interference. The Court in exercise of its powers of judicial review would not normally interfere with the quantum of punishment if during a departmental enquiry, there is no jurisdictional error either procedural or violative of the principles of natural justice. The Court should be reluctant to interfere in the matters unless it comes to a conclusion that the findings recorded by the Inquiry Officer which have been approved by the Punishing Authority are without any evidence. These parameters, when kept in view, the present case has to be assessed accordingly.

10. In the case in hand, it is not the contention of the counsel for the petitioner that there was either any procedural lapse or violation of the statutory rules or the principles of natural justice during the enquiry proceedings or thereafter. What is alleged by the petitioner in the present writ petition is that he had followed the dictates of Hon''ble the Chief Justice as he being the Protocol Officer was obliged to undertake the journeys which have been found to be unauthorized by the Punishing Authority and the Appellate Authority. The petitioner could not have challenged the decision of the Chief Justice deputing him to go to the destination. The contention also is that the bills which were submitted by the petitioner i.e. the daily allowance bills, were duly approved by the Competent Authority upto the Chief Justice and, therefore, the journeys could not be termed as unauthorized and, thus, the claim of daily allowance made by the petitioner was fully justified. His further submission with regard to the review of the decision by the Successor-in-office being not maintainable, cannot be accepted for the simple reason that the official who is an employee of an Institution is not working for an individual and is thus required to follow all lawful orders passed by the Competent Authority. All acts of the officials are governed by the Rule of Law. A direction may have been given by the Chief Justice to perform the journey but the purpose for which the said journey was

undertaken, was required to be disclosed in the claim. At least, when a doubt on the journey undertaken by the petitioner was raised and he was charge-sheeted and thereafter the departmental enquiry was initiated against him, he was required to divulge the said information which would have helped the Inquiry Officer to return a finding as to whether his journey, which he had undertaken, was authorized or not. Even the Punishing Authority as well as the Appellate Authority would have benefitted from such disclosure, to arrive at a conclusion with regard to the nature of journey undertaken by the petitioner, however, unfortunately the petitioner has not disclosed the same in the present writ petition as well.

11. In the light of no explanation coming forth on the part of the petitioner with regard to the nature of journey and the purpose for which it was undertaken, the conclusions drawn by the Inquiry Officer, the Punishing Authority and the Appellate Authority cannot be faulted with. The contention as raised by the petitioner that the Successor-in-office cannot review the decision taken by the earlier incumbent cannot be accepted for the reason that if the same is to be accepted in absolute terms, it would lead to an encouragement to misuse of power, authority and office which would neither be in the administrative interest or in the interest of justice. No one is above law and the Rule of Law is mandated to be followed. Status, stature and office are all subservient to Law which is supreme and thus, occupy the highest pedestal. There cannot be any compromise, deviation or dilution on this sacrosanct principle.

12. As regards the contention of the counsel for the petitioner that the petitioner was charge-sheeted for having claimed travel allowance whereas no such claim was submitted by the petitioner and, therefore, the charge-sheet itself cannot be sustained, again cannot be accepted for the reason that Rules 31 and 32 of the Punjab Civil Services Rules, Vol.III state that the travel allowance includes daily allowance which is the ingrained consequence flowing from the incidence from travel on duty. Thus, this submission also does not carry any weight.

13. As regards the interference of this Court in the quantum of punishment imposed by the petitioner, suffice it to say, the Appellate Authority has already considered this aspect in detail after re-appreciating the total evidence led by the parties before the Inquiry Officer and on consideration thereof, has proceeded to interfere by reducing the punishment imposed upon the petitioner. The punishment now imposed by the Appellate Authority cannot be said to be such which would shock the conscience of the Court to interfere in the quantum of punishment.

14. It has been contended by the counsel for the petitioner that the punishment as imposed by the Appellate Authority i.e. withholding of four annual grade increments with cumulative effect could not have been imposed for the reason that the same does not find mention in Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which enumerates the penalties to be imposed upon a government employee. This contention of the counsel for the petitioner cannot be sustained for

the reason that this punishment would be covered under Sub-rule (v) of Rule 5 which reads as follows:

(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction will or will not have the effect of postponing the future increments of his pay;

15. The Hon''ble Supreme Court in Kulwant Singh''s case (supra) has observed as under:

Withholding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5(iv). But Sub-rule (v) postulates reduction to a lower stage in the time-scale of pay for a specified period with further directions as to whether or not the Government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of this pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v)? If it so falls, Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned Counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time-scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5 (iv) of the Rules. But then penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time-scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order by necessary implication, is that the appellant employee is reduced in his time-scale by two places, and it is in perpetuity during the rest of the tenure of his service with a direction that two years'' increments would not be counted in his time-scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in Sawran Singh v. State of Punjab 1985 (2) SLR 76 (P&H) speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within Clause (v) of Rule 5 or in Rule 4.12 of the Punjab Civil Service Rules. It was further held that under Clause (v) of Rule 5 there has to be a reduction to a lower stage in the time-scale of pay by the competent authority as a

measure of penalty for the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the Government employee is never reduced to a lower stage of time-scale of pay. Accordingly it was held that Clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted, the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, of earning future increments in the time-scale of pay even permanently with expressly stating so. These preposterous consequences cannot be permitted to be permitted. Rule 5 (iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle, we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without Enquiry is per se illegal.

16. It is an admitted position that a regular departmental enquiry was held against the petitioner, which enquiry proceedings have not been challenged by the petitioner either at the appellate stage or in the present writ petition. That being so, the punishment as imposed upon the petitioner by the appellate Authority is in accordance with the statutory rules governing his service and, thus, cannot be faulted with. Sham Lal''s case (supra) was a case where no regular enquiry was held before imposing the punishment of withholding of increments with cumulative effect, thus, cannot be of any help to the case of the petitioner.

17. In view of the above, finding no merit in the present writ petition, the same stands dismissed.