

**(2003) 04 P&H CK 0048**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 4536 of 1992

K.C. Kapoor

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

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**Date of Decision:** April 30, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Haryana Civil Services (Punishment and Appeal) Rules, 1987 - Rule 4

**Citation:** (2003) 135 PLR 457

**Hon'ble Judges:** M.M. Kumar, J

**Bench:** Single Bench

**Advocate:** K.K. Jagia, for the Appellant; N.K. Joshi, A.A.G., for the Respondent

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**Judgement**

M.M. Kumar, J.

This petition filed under Articles 226 of the Constitution of India challenges the order dated 23.2.1987/13.3.1987 (Annexure P.4) passed by the respondent-State to the extent the petitioner has been refused arrears of the pay from his assumed date of promotion i.e. 14.1.1967 which promotion was actually given on 6.1.1969. Further prayer has also been made for quashing orders dated 25/29.5.1990 and dated 2.1.1992/23.3.1992 (Annexure P.16) vide which the findings of the inquiry officer have not been accepted and reasons for dis-agreement have been recorded. Challenge has also been made to the order dated 19.2.1991 (Annexure P.15) declaring that leave from 31.7.1989 to 25.5.1990 availed by the officer was unauthorised and for that reason punishment of censure has been awarded. The claim of the petitioner for Transfer Travelling allowance has also been declined. Memorials filed by the petitioner were rejected on 2.1.1992/23.3.1992 vide Annexure P.16 which have also been subject matter of challenge. The petitioner has also prayed for issuance of a writ of mandamus by issuing following directions to the respondents:

- a) grant medical leave due to the petitioner from 20.8.1986 to 6.8.1987;
- b) release his salary for compulsory waiting period from 7.8.1987 to 24.9.1987;
- c) pay his leave encashment;
- d) grant annual grade increments;
- e) grant him benefits of revised pay scale w.e.f. 1.1.1986 in the pay scale of Rs. 5700-5000 and then from 1.5.1989 in the pay scale of Rs. 4100-5300 with all consequential retiral benefits.

2. Facts in brief are that the petitioner on attaining the age of superannuation retired on 31.11.1989 from the post of Superintending Engineer from the respondent-department. From 7.6.1985 to 19.8.1986 the petitioner remained posted as Superintending Engineer at Jind Circle, Jind and towards the end of his posting at Jind he applied for sick leave as was recommended by the Chief Medical Officer, Jind on 29.8.1986 upto 24.10.1986. However, his application was returned with the advice that it should be sent on a proper proforma. Thereafter on 13.11.1986 petitioner sent his application on proper proforma (Annexure P.2). In the meanwhile, Engineer-in-Chief, respondent No. 2 on 27.9.1986 requested the State Government for constitution of a Medical Board and a copy of the request sent by the respondent No. 2 to respondent No. 1 was forwarded to the petitioner vide endorsement dated 8.10.1986. Accordingly, Director, Health Services constituted a Medical Board for the medical check up of the petitioner vide letter dated 16.1.1987/27.1.1987 directing the petitioner to appear before the Medical Board/Principal Medical Officer, General Hospital, Chandigarh on 6.2.1987. The petitioner sent an intimation to the Engineer-in-Chief, respondent No. 2 with its copy to respondent No. 1 and Principal Medical Officer, General Hospital, Chandigarh and Director Health Services asserting that as his foot was fractured on 10.1.1987 and therefore, he cannot undertake any journey for appearing before the Medical Board. It has further been claimed that he was eventually operated upon Orthographically on 19.3.1987 at Sir Ganga Ram Hospital, Delhi. Suspecting the bona-fide of the petitioner, respondent-State initiated disciplinary proceedings against the petitioner alleging that the petitioner disobeyed the order of the Government dated 10.8.1986 and 18.9.1986 by not joining his duties at his place of posting. It was further alleged that he failed to furnish the requisite medical certificate for the total period of leave on medical ground sanctioned by the competent authority during the period of his transfer. Further allegation in the imputation of charges made against the petitioner is that he wilfully absented himself from his official duty since 20.8.1986 without prior permission of the competent authority in violation of Rule 8.16 of the Punjab Civil Services Volume 1, Part 1 Rules (as applicable to Haryana). Charge sheet dated 15.6.1987 (Annexure P5) was issued to the petitioner. The Inquiry Officer found that leave from 20.8.1986 to 24.10.1986 was duly recommended by the Medical Officer, Jind and is supported by the medical certificate issued by him which has been

accepted by the Government also. From 25.10.1986 till 30.7.1987, the Inquiry Officer found that later period of medical absence is in continuation and in fact rendered even more unfortunate by a fracture. No medical Board was formed by the Department upto 27.1.1987 as was informed to the petitioner, When the Medical Board was constituted, the petitioner had unfortunately broken his foot. However, the Government being the appointing authority disagreed with the findings of the Inquiry Officer and recorded a dissenting note vide Annexure P.11 and inflicted the punishment of Censure on the petitioner and treated the period of leave from 24.10.1986 to 6.10.1987 as unauthorised leave without pay and allowances. The order dated 25.5.1990 passed by the Government reads as under:

"The above facts and circumstances of the case, inter alia allegations levelled against Sh. Kapur, the reply submitted by him to the charge sheet, the report of the Inquiry Officer in which the inquiry officer travelled far beyond his jurisdiction to determine whether there was absence from duty after 20.8.86 on Sh. Kapur's part, in violation of Govt. instructions date 26.10.59 to avoid an inconvenient transfer, the dissenting note attached with the show cause notice would reveal that Shri K.C. Kapur had all along been trying to justify the leave taken by him and the medical certificate submitted by him including that from a private hospital on flimsy grounds which do not have any bearing on facts and documentary evidence. He has not been able to get himself absolved of the charges levelled against him. His period of absence in question was a clear cut case of total disregard and defiance of transfer orders and breach of Govt. instructions. The Inquiry Officer's report is moved more by extraneous consideration of attempting to regularise the wholly irresponsible absence. There was no inaction on the part of the Department. Shri K.C. Kapur himself failed to observe transfer orders and failed to submit a medical certificate of the competent authority. Thus the charges levelled against Sh. K.C. Kapur are fully established. However, taking a lenient view of the matter, the Governor of Haryana has decided that punishment of Censure be inflicted on Sh. Kapur and to treat the period from 24.10.86 to 6.8.87 as unauthorised leave without pay and allowances."

3. It is pertinent to mention that on 7.8.1987, the petitioner has submitted his joining report which was not accepted by the respondent on the ground that no fitness certificate was submitted as per requirement of Rule 8.44 of the Rules. However, he was eventually allowed to join on 24.9.1987. It is claimed that salary for this compulsory waiting period should be released to him. It is further pertinent to mention that pay scale of the employees in the State of Haryana were revised on the recommendations of the 4th Pay Commission w.e.f. 1.1.1986. The petitioner who was getting the scale of Rs. 2100-2500 was granted revised scale of Rs. 3700-5000 w.e.f. 1.1.1986. Further revision of pay was ordered on 1.5.1989 revising his pay scale to Rs. 4100-5300 w.e.f. 1.5.1989. The petitioner also claimed the Transfer Travelling Allowance. However, the same was rejected on 22.1.1991 vide Annexure P.15.

4. Learned counsel appearing for the State at the outset has pointed out that following reliefs stand already granted to the petitioner:

a) period from 7.1.1987 to 24.1.1987 has already been treated as compulsory waiting period vide letter dated 4.12.1988 and the arrears of salary stands paid to him:

b) leave encashment in lieu of unutilised earned leave of 106 days has already been granted to the petitioner vide order dated 4.1.1999 of the Engineer-in-Chief. The payment has already been made:

c) Orders for pay fixation, release of increments in the revised pay scale have also been passed vide office order dated 11.8.1992 and its payment stands already made: and

d) benefits of pay fixation on account of ante dated promotion as Executive Engineer w.e.f. 14.1.1967 has also been allowed to him vide order dated 4.10.1993.

5. What survives for consideration is the claim of the petitioner for grant of medical leave for 20.8.1986 to 6.8.1987 which has been treated as unauthorised leave without pay and allowances and also the claim of the petitioner for Transfer Travelling Allowance which has been rejected vide order dated 23.6.1989 (Annexure P.10) and his claim for arrears of difference of pay which have accrued to him on account of his ante dated promotion as Executive Engineer from 14.1.1967 to the actual date of promotion i.e. 6.1.1969 which have been denied to him vide order dated 23.2.1987 (Annexure P.4).

6. Shri K.K. Jaggia, learned counsel for the petitioner has argued that medical leave is a condition of service and when it is supported by a certificate of Civil Surgeon, it cannot be refused. According to the learned counsel, medical leave availed by the petitioner was genuine as he had broken his foot and the petitioner was exonerated by the Enquiry Officer as the charge was not proved. In support of his submission, the learned counsel has placed reliance on Rule 8.113 of the Rules to argue that under Note 2 appended to Rule 8.121, the petitioner is entitled to avail medical leave with pay as extra ordinary leave can be granted to a Government employee on the production of medical certificate and it can also be commuted retrospectively. Learned counsel has also impugned order dated 25.5.1990 (Annexure P.13) by challenging the imposition of punishment of censure. The petitioner had already retired from service on 31.11.1989. The relationship of master and servant having come to an end, no punishment of censure could have been inflicted because Rule 4 providing for such a punishment presumes the existence of relationship of master and servant.

7. Learned counsel has also pointed out that petitioner is entitled to difference of salary on account of his ante dated promotion w.e.f. 14.1.1967 to 6.1.1969. In support of his submission, the learned counsel has placed reliance on a judgment of

this Court in the case of K.K. Jagia v. State of Haryana 1972 SLR 578. The learned counsel has also argued that Transfer Travelling Allowance is also admissible to the petitioner as he cannot bring his luggage to the transferred place without spending extra from his pocket. The learned counsel has further argued that although the petitioner was transferred from Jind to Chandigarh, yet he was entitled to shift his luggage and other family members to Delhi in view of Rule 2.59(A)(ii)(b) because the rules permit the grant of allowance for mileage less than the transferred place.

8. Shri N.K. Joshi, learned counsel for the State has submitted that order dated 23.2.1987 has been challenged on 6.4.1992 i.e. after a period of five years. Therefore, no relief on the ground of delay could be granted to the petitioner. Learned counsel has also justified the refusal of relief in lieu of the Transfer Travelling Allowance on the ground that once the petitioner himself did not obey the order of transfer, he cannot avail the aforementioned allowance. However, no argument was addressed by the learned counsel with regard to inflicting of punishment of censure vide Annexure P.13. As regards medical leave from 24.10.1986 to 6.10.1987 having been treated as unauthorised leave without pay and allowance, the learned counsel placed reliance on Rules 8.6, 8.7 and 8.8 to argue that in the absence of a certificate from the Chief Medical Officer, no medical leave is permissible to an employee.

9. I have thoughtfully considered the submissions made by the learned counsel for the parties and as of the view that this petition deserves to be partially accepted because under Rule 4 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for brevity "the Rules") specified penalties could be imposed on a government employee. The afore-mentioned Rule presupposes the existence of relationship of master and servant. Rule 4 of the Rules read as under:

"4. Penalties.- (1) The following penalises may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee namely:-Minor penalties

i) warning with a copy of the personal file (character roll)

ii) censure:

iii) withholding of promotion;

iv) recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders, to the Central Government or a State Government or to a Company and association or a body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government or to a local authority set up by an Act of Parliament or of the legislature of a State; and

v) withholding of increments of pay without cumulative effect.

10. Under sub heading minor penalises censure is described as a punishment which could be imposed on an employee for good and sufficient reasons. Admittedly, in this case, the petitioner has retired on 31.11.1989 and the order imposing the punishment of censure has been passed on 25/29.5.1990. In other words, the relationship of master and servant had come to an end for all practical purposes. The only method contemplated by Civil Service Rules, Volume 11, Part 11 is imposition of cut in pension under Sub-rule 2.2(b). Therefore, the order dated 25/29.5.1990 cannot be sustained in the eyes of law and is thus liable to be set aside.

11. The other argument that the petitioner is entitled to relief of payment of salary in lieu of anti dated promotion cannot be accepted because the order refusing to pay the difference of salary was passed on 23.2.1987 and the instant petition has been filed in the year 1992. It is well settled principle of law that the maximum period of limitation provided for the suits would also be applicable to, the writ petitions as has been held by a Constitution Bench in the case of [State of Madhya Pradesh Vs. Bhailal Bhai and Others](#), Another Constitution Bench of 7 judges of the Supreme Court in the case of [S.S. Rathore Vs. State of Madhya Pradesh](#), went into the question of limitation and also the related question as to when cause of action would arise to an employee. Relying on the clues provided by Sections 14 and 21 of the Administrative Tribunals Act, 1985, their Lordships observed as under:-

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representation not provided by law are not governed by this principle.

It is appropriate to notice the provisions regarding limitation u/s 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application of delay of a total period of six months has been vested under Sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore as far as Government servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet suits outside the purview of three Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority. makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the

Head of the establishment in the matter of fixing limitation."

12. Keeping in view the above principles, it can be concluded that the writ petition filed in the year 1992 challenging the order passed in the year 1987 would be hopelessly time barred. Therefore, the claim of the petitioner with regard to order Annexure P.4 dated 23.2.1997/13.3.1987 is rejected.

13. I am further of the view that the Transfer Travelling Allowance would be admissible only in case the employee has complied with the order of transfer. In this case, the facts speak for themselves showing that the petitioner on one pretext or the other has ignored the order of transfer. Therefore, no Transfer Travelling Allowance would be permissible to the petitioner and his claim stands rejected.

14. For the reasons stated above, this petition is partially allowed. The order dated 25/29.5.1990 (Annexure P.13) imposing the punishment of censure on the petitioner is set aside. However, as a result of quashing the afore mentioned order, no additional benefits would accrue to the petitioner and as such it is a pyrrhic victory. The writ petition stands disposed of in the above terms.