

(2011) 09 P&H CK 0142

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No"s. 5459 and 5504 of 1989 (O and M)

Kartar Singh,
Accountant-cum-Head Clerk,
Market Committee

APPELLANT

Vs

The State of Haryana and
Another

RESPONDENT

Date of Decision: Sept. 26, 2011

Acts Referred:

- Haryana Civil Services (Punishment and Appeal) Rules, 1987 - Rule 7, 8

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Judgement

K. Kannan, J.

Both these writ petitions are connected in the sense that the same employee has been visited with two orders of punishment for two independent episodes of misconduct. In CWP No. 5504 of 1989, the misconduct attributed to the Petitioner was that while he was an Accountant, he had not furnished some information particularly with reference to the anticipated rates and arrivals of agricultural produce to the Secretary from the sabzi mandi and that he had used some harsh language against his superior. A notice had been given to show cause as to why action shall not be taken for his non-cooperative conduct. This was resisted by the Petitioner contending that he was not doing the work of dispatch Clerk and the copy of the complete information was already with the Secretary and the question of completing the proforma did not arise. He also denied that he used any harsh language against the Secretary in the presence of the Board officials. According to him, the Secretary was favourably disposed towards sabzi mandi Clerk Prem Chand and his inaction has been foisted against the Petitioner and he had been made a scapegoat. Having given the explanation, he had sought for personal hearing. The authority, while passing the order dated 11.04.1988, stated that the explanation was

not satisfactory and he had actually been found non-cooperative in the dispatch of his official duty and that he had misbehaved with the Secretary and used harsh language. On that basis, the Chief Administrator passed an order of stoppage of increment without cumulative effect.

2. In yet another case in CWP No. 5459 of 1989, the charge was that the 3rd Respondent-the Administrator had specifically given some instructions when the Petitioner was working as an Accountant-cum-Head Clerk not to pass the bill for Rs. 936.80 to one Gopal that included a claim for TA Bill. The Petitioner had deliberately disobeyed the direction and had allowed for the TA bill claimed by the said Gopal. When he was questioned on the same, the Petitioner was alleged to have met with other employees and carried a procession against the Administrator as though he had caused the salary bills of all employees to be stopped. A charge-sheet had been issued and an explanation obtained from the Petitioner, before an order was passed finding him guilty of the charges and withdrawing one grade increment with cumulative effect.

3. The learned senior counsel for the Petitioner would contend that as far as imposition of the minor penalty was concerned, the order came to be passed by the appellate authority without considering any of the objections made but by a cryptic order merely affirming the decision of the first authority. The learned Counsel would argue that as per the procedure as laid down by the Haryana Civil Services (Punishment and Appeal) Rules, any penalty could be imposed only for "good and sufficient reasons" and Rule 7 required an enquiry before imposition of penalties. The Section requires that no order imposing a major penalty shall be passed against a person to whom the Rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken. The Section contains elaborate procedure about how to constitute an enquiry, including procedure for appointment of an Enquiry Officer and permission to secure the mode of assistance for allowing the delinquent to be defended, before a final report is given. Rule 8 prescribes a procedure for imposing minor penalty that begins with the expression that it would be without prejudice to the provisions of Rule 7. The laid down procedure is that no order for imposing a minor penalty shall be passed unless he has been given an adequate opportunity of making the representation.

4. The attempt of the learned senior counsel for the Petitioner was to say that even for a charge that results in imposition of a minor penalty, the procedure under Rule 7 of constituting an enquiry by framing a charge-sheet and proceeding with a full-fledged enquiry must be observed. The learned Counsel for the Respondent would state that such a procedure is unnecessary for all that Rule 8 requires is that he should be given an adequate opportunity for making any representation before any decision is taken. In my view, the nature of enquiry which is contemplated for a minor penalty that is prefaced with the expression that the same shall not be without prejudice to the enquiry contemplated for certain penalties, cannot be

understood as requiring the transposition of the entire exercise contemplated under Rule 7 into Rule 8. The Rule 7 is attracted in all cases where an authority comes to a finding of guilt or commission of the misconduct that finally results in imposition of a major penalty. If a minor penalty was to be imposed all that would be necessary would only be an adequate opportunity and the expression without prejudice occurring in Rule 8 must be understood only as arising in situations where the authority may decide to hold an enquiry and in the manner of awarding a punishment, he may choose to impose only a minor penalty if the gravity of charges had not been fully established. Rule 7 gives room for finding of a lesser misconduct that would merit only imposition of a minor penalty. I cannot understand Rule 8 as inevitably requiring a full-fledged enquiry in all cases where even at the threshold the disciplinary authority finds on securing a reply that the misconduct alleged was not of such a serious nature as would require constitution of a full-fledged enquiry. If in this case, the authority had decided to impose only a minor penalty, I would not find that the absence of a full-fledged enquiry was in any way a vitiating factor.

5. The learned senior counsel would further argue that there is no discussion at all in the order about the defence which he had raised and even when an appeal had been filed setting up various grounds as to how he was being victimized for the inaction on the part of the Clerk Prem Chand, the appellate authority had not considered the same and merely reproduced what had been stated by the first authority and summarily rejected the appeal. The forensics of detailed reasoning cannot at all times be imported in domestic enquiries. It all depends on the nature of charges and the kind of enquiry that was necessary. In this case the charge was fairly simple, namely, that he had not filled-up a particular proforma giving some details of information that were sought for and he had used intemperate language. By the very nature of things, they do not call for extensive examination of any evidence of witnesses. It is for an authority that takes a decision to see whether a particular misconduct complained of was properly explained or not. If the authority decided that explanation given was not satisfactory and he recorded so in his order, the matter must rest there. I would not see this Court as a Court of appeal to reappraise the decision taken when the case has ultimately resulted only in imposition of a minor penalty. I find no reason to interfere with the said decision.

6. As regards the subject matter in CWP No. 5459 of 1989, the issue on law is fairly simple. The authority has proceeded to impose a major penalty. I have outlined the requirement of Rule 7 in cases where a charge is laid and how the enquiry should be conducted. It is an admitted case that the authority did no more than issue of show cause notice, secured a reply and proceeded to impose a major penalty without going through the formalities spelt out under Rule 7. The learned Counsel points out to the judgment of the Hon'ble Supreme Court in *Kulwant Singh Gill v. the State of Punjab* 1991 (1) RSJ 413 that held that imposition of a major penalty is such as it would require conducting a regular enquiry. The principle was directly applied to a similar situation in *Rohtas Singh Malik v. State of Haryana* and Anr.-1995 (2) Recent

Services Judgments 354, when the Court held, referring to the Hon"ble Supreme Court judgment in Kulwant Singh Gill that major punishment imposed without a regular departmental enquiry was vitiated and quashed the same in the light of what was discussed above.

7. The major penalty imposed on the Petitioner was clearly untenable. The learned Counsel for the Respondent would argue that at the relevant time, the judgment of the Hon"ble Supreme Court had not been rendered and, therefore, it was not applicable. I would take the judgment of the Hon"ble Supreme Court in Kulwant Singh Gill as declaratory of what it has said and no matter that the enquiry in this case related to a period prior to the judgment in Kulwant Singh Gill, I would hold that the same principle would still be required to be applied for an event before 1991 as well.

8. The learned Counsel for the Respondent would seriously urge that if there was a defect in procedure the Court shall remit the matter to the authority for taking action in accordance with law. The matter relates to an incident of the year 1983 and for a punishment imposing a cut of one year increment with cumulative effect, the Respondent cannot be unfair to insist reopening the matter and allowing for fresh enquiry to go on. The prayer is, consequently, rejected.

9. In the light of the above discussion, CWP No. 5504 of 1989 is dismissed and the minor punishment already imposed is upheld. CWP No. 5459 of 1989 is allowed and the order imposing a major penalty of withdrawal of increment for one year with cumulative effect is quashed.

10. I am informed that the Petitioner has already retired. The benefits which would flow from the adjudication made as above is ordered to be paid and I would direct that the calculation of what the Petitioner is entitled by the denial of increment with cumulative effect which is set aside is worked out within a period of 8 weeks and paid to the Petitioner with interest at 6% from the time when they became due.