

(2010) 09 P&H CK 0362

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 5647 of 2010

Raj Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Sept. 10, 2010**Citation:** (2013) 3 SCT 471**Hon'ble Judges:** Ranjit Singh, J**Bench:** Single Bench**Advocate:** Vikas Malik, for the Appellant; Sunil Nehra, D.A.G., Haryana for State, for the Respondent**Final Decision:** Dismissed

Judgement

Ranjit Singh, J.

Though this writ petition is filed to impugn the order of punishment of stoppage of one increment with permanent effect and to challenge the remarks of integrity doubtful endorsed in the A.C.Rs of the petitioner for the years 1991-92, 1992-93 and 1993-94, yet an incidental question relating to suppression of fact by way of nondisclosure and the extent of its effect on the right of a person to access to justice, would also arise in this case. The petitioner, who is serving as a Conductor in Haryana Roadways, was issued a charge sheet on 15.7.1993 (Annexure P-1). Some adverse remarks were also endorsed in his annual confidential reports for the years 1991-92, 1992-93 and 1993-94. The petitioner has not made mention to the allegations for which he was issued charge sheet but from the reply, it can be seen that bus conducted by the petitioner was checked on 27.6.1993 and it was found that the petitioner had taken full fare from thirty and a half passengers but had not issued them tickets. The petitioner was, thus, accused of embezzling a sum of Rs. 1,016/-. Enquiry was ordered and the Enquiry Officer exonerated the petitioner of the charge on 18.2.1996. The Disciplinary Authority, however, differed with the finding returned by the Enquiry Officer and issued a show cause notice to the petitioner, calling upon him to show cause as to why his services be not terminated.

As per the petitioner, this show cause notice was issued without recording any dissent note. The petitioner filed reply but was awarded a penalty of stoppage of three increments with cumulative effect on 7.1.2000.

2. The petitioner had remained quiet for over 4 years till he filed appeal on 10.10.2004 against the adverse remarks endorsed in his A.C.Rs and against the order of stoppage of three increments with cumulative effect. As per the averments made in the petition, the appeal filed by the petitioner against adverse remarks endorsed in the A.C.Rs was rejected on 29.12.2008 and the petitioner thereafter has filed the writ petition in March 2010.

3. In the reply filed by the State, it is pointed out that there is no provision to file a second appeal. Besides, it is pointed out that the petitioner had challenged the punishment awarded to him by filing Civil Writ Petition No. 1713 of 2003, which was disposed of by this Court on 3.2.2003 with a direction to the respondents to decide the legal notice served by the petitioner by passing a speaking order. The said plea of the petitioner was accordingly rejected on 13.5.2003, which the petitioner never challenged. The copy of the order passed by the respondents has been annexed with the reply as Annexure R-2. While replying on merits, it is pointed out that the petitioner has been punished on 37 occasions and imposed different punishments mainly for committing fraud. It is also disclosed that the Enquiry Officer was appointed by the competent authority, who had given a finding in favour of the petitioner. This, however, was not agreed to by the Disciplinary Authority, which had recorded a detailed note of dissent against the finding returned by the Enquiry Officer. Copy of the dissent note is also annexed with the reply as Annexure R-5. Show cause notice thereafter was issued to the petitioner and then the impugned punishment was imposed on him. This punishment, as per the reply, was imposed by taking lenient view of the matter, though the punishment proposed was for dismissal from service.

4. The remarks, which have been endorsed in the confidential reports of the petitioner for various years, have also been justified, which were duly conveyed to him. It is accordingly stated that there is no reason or a cause made out to call for any interference in the order of punishment or against the remarks endorsed in the annual confidential report of the petitioner.

5. It is noticed that the petitioner had made a deliberate attempt to suppress the facts about having filed earlier writ petition, which was disposed of. The petitioner has also not impugned the order passed by the respondents pursuant to the direction issued by this Court while disposing of the writ petition filed in the year 2003. Obviously, the petitioner is seen making an attempt to mislead the Court and has not mentioned these facts to avoid detection of delay on his part in making the present approach. The order of punishment was passed on 7.1.2000. The incident relates to the year 1993. The reports which are challenged in the present writ petition also pertain to the years 1991 to 1994. There is no explanation forthcoming

to explain this inordinate delay on the part of the petitioner in filing the present writ petition. The petitioner had not taken any action against the adverse remarks till October 2004. Thus, the remarks which were endorsed and conveyed to him in the years 1991 to 1994 were put to challenge, perhaps for the first time only after expiry of period of about 10 to 13 years.

6. Besides, the petitioner had served a legal notice and when the same was not being decided, he filed Civil Writ Petition No. 1713 of 2003, which came up for hearing before this Court in February 2003. The writ petition was disposed of with a direction to the respondents to pass a speaking order within a period of three months. Order dated 13.5.2003 was accordingly passed by the Transport Commissioner, respondent No. 2. While declining relief, respondent No. 2 has observed that the punishment awarded to the petitioner was rather mild. The petitioner did not impugn this order in any manner. So much so, the said order is even not challenged in the present writ petition. This is with an aim and purpose to mislead the Court. If the petitioner had disclosed this fact of having filed an earlier writ petition in the year 2003, leading to passing of an order, Annexure R-4, then obviously he would have been called upon to explain the delay of 7 years in filing the present petition in the year 2010. Obviously, to circumvent this insurmountable difficulty on his part, the petitioner appears to have filed another appeal against the A.C.Rs and the punishment on 10.10.2004, which was rejected on 29.12.2008. Apparently, this appeal was against the adverse remarks endorsed in A.C.R. for the year 1992-93. Similarly, the petitioner appears to have challenged the remarks endorsed in the years 1991-92 and 1993-94, which was rejected on 15.1.2010, whereafter the petitioner has filed the present writ petition. It is, thus, seen that the petitioner is purposely suppressing facts by resorting to nondisclosure of the relevant facts with an aim to mislead the Court. The person, who does not approach the Court with clean hands and is accused of suppression of material facts with an aim to mislead the Court, would not deserve any relief in law or equity and can be non-suited on this very ground.

7. The issue concerning the suppression of facts by way of non-disclosure and the extent this fact would have on the right of a person to access to justice was considered by Hon'ble Supreme Court in [Arunima Baruah Vs. Union of India \(UOI\) and Others](#), Recent Apex Judgments (R.A.J.) 379 : 2007 (6) SCC 120. Court has held that it is always obligatory on the part of the person to disclose fact and the case may still be decided on merits, where suppression of facts is longer material. The Hon'ble Supreme Court in this case has noticed that the Court will have jurisdiction to deny equitable relief, when the complainant does not approach the Court with pair of clean hands. In this regard, it is observed as under:--

.....It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is

the question.

8. The facts, which have been suppressed by the petitioner in this case, are material. These have been suppressed not innocently but with a purpose and design to mislead the Court. If the petitioner had disclosed that he had earlier filed the writ petition pursuant to which an order was passed way back in the year 2003, his petition was liable to be dismissed on the ground of inordinate delay of over 7 years. The petitioner, thus, has chosen to hide this fact from the Court and even did not challenge the order passed in the year 2003. This order, rejecting his identical claim, would also stand in his way for seeking same relief declined to him in the year 2003. To avoid explanation in this regard, the petitioner has decided to suppress this fact by not disclosing the same. There is, thus, a clear attempt on the part of the petitioner to suppress the fact to mislead this Court.

9. Not only this, the whole basis of challenge made by the petitioner is standing on false foundation. The star argument advanced by counsel for the petitioner is that the punishment was awarded to the petitioner by the Punishing Authority without recording any note of dissent against the finding returned by the Enquiry Officer. This is seen as yet another attempt on his part to mislead and misinform the Court. The reply would disclose that the respondents had recorded a note of dissent, copy of which has been placed on record as Annexure R-5 and is dated 28.7.1996. The show cause notice was served to the petitioner thereafter on 2.8.1996 and punishment imposed. The petitioner then had challenged the same, which acquired finality in the year 2003. Having remained quiet about the same for all these years, the petitioner has made the present approach by suppressing material facts and, thus, has clearly misused the process of the Court. He does not deserve any relief either in equity or under law.

10. Rather, the petitioner has been dealt with leniently. The allegation against the petitioner is for having embezzled the fare of thirty and a half passengers, which is a serious allegation and so was required to be dealt with all the seriousness having regard to gravity of the allegations. The petitioner has clearly been let off lightly. This action in leaving the petitioner lightly would appear more grave, when seen in the background that this is not the first and the only occasion when the petitioner was so caught. There are 37 instances of imposing punishment to him and yet he was treated in this lenient manner. Over and above, his conduct is such that he has made a serious attempt to suppress the facts and to mislead this Court. There is no merit in any of the plea raised by the petitioner. There is rather inordinate unexplained delay on the part of the petitioner to make this approach, which he has made by suppressing material facts. The writ petition, therefore, is dismissed with exemplary costs, which are assessed as Rs. 10,000/-. The costs shall be deposited in the account of Legal Services Authority, Haryana. The Advocate General, Haryana, would ensure that the costs are recovered from the petitioner.