

CWP No.3350 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3350 of 2016
Date of Decision-27.02.2016

Jaswant Singh ... Petitioner

Versus

Union of India and ors ... Respondents

CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 20.01.2015 passed by Central Administrative Tribunal, Chandigarh Bench in OA No.060/00329/2014 titled as Jaswant Singh Vs. Union of India and others, whereby order of punishment dated 02.09.2013 passed by Disciplinary Authority retiring the petitioner compulsorily from service and order of Appellate Authority dated 11.03.2014/25.03.2014 were upheld.

[2]. Petitioner was appointed as Peon on 17.03.1999 in General Hospital, Sector-16, Chandigarh in PFA Cell. In due course, he was posted at Poly Clinic, Sector-45, Chandigarh. He was served with Memorandum dated 19.02.2012 under Rule 8 of Punjab Civil

Services (Punishment and Appeal) Rules 1970 along with statement of charges for consuming alcohol on duty.

[3]. Sh. K.D. Arora, IAS (Retired) was appointed as Inquiry Officer. In the statement of articles of charges framed against the petitioner, it was charged that while working as Peon in Poly Clinic, Sector-45, Chandigarh, petitioner mis-conducted himself by doing an act of consuming alcohol during duty hours on 24.08.2011 and was under the effect of alcohol. He had violated the norms and mis-conducted himself at public place, thereby attracting action against him. He had acted in a manner unbecoming of a Government servant, thereby contravening the provision of Government Employees (Conduct Rules), 1966 calling for disciplinary action under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules 1970 as applicable to UT Chandigarh.

[4]. The imputation made against the petitioner was that after availing earned leave from 18.07.2011 to 30.07.2011 on account of ailment, he joined duty on 01.08.2011. Since then, he was having problem. On 24.08.2011, he was not well and was advised to get himself treated. He gave second half day casual leave, but left the office at about 12.00(noon). Chowkidar Ujagar Singh and one Ramesh Kumar informed that the petitioner was lying on the ground outside the main gate. Medical Officer saw him and authorities were informed. Petitioner was found under the influence of liquor and had a bottle of alcohol with him. Police was called, but the petitioner fled away from

the spot and the Police could not locate him. Inquiry Officer enquired into the charges i.e. charge of consuming liquor during duty hours.

[5]. Presenting Officer got examined two witnesses namely Smt. Krishna Chaudhary, Medical Officer/Incharge, Poly Clinic, Sector-45, Chandigarh as PW1 and Sh. Gurmeet Singh Sodhi, Superintendent Administration, Sector-16, Chandigarh as PW 2. PW 1 in her statement has stated that on 24.08.2011 at about 12.00 PM, Ujagar Singh, Chowkidar and Ramesh Kumar informed her that the petitioner was lying down on the ground at the main gate. The witness deputed Dr. Baljit Singh to check up the position. Later on she also joined Dr. Baljit Singh and found that the petitioner was under the influence of alcohol and a bottle of alcohol was also with him. Petitioner was responding to their command while lying on the ground. The witness informed the Medical Superintendent, GMSH, Sector-16, Chandigarh and she was advised to inform the police. Police was informed accordingly. When the police came to the hospital, petitioner had already gone away from the site. The witness also tendered in evidence copy of the dispatch register according to which second half casual leave application was sent to Medical Superintendent on 24.08.2011. The witness also tendered in evidence copy of memo No.1216 dated 07.10.2011 Ex.PW 1/5 regarding the misconduct of the petitioner. Opportunity was given to the petitioner, but the witness was not cross examined by him and the statement of the prosecution witness went unrebutted.

[6]. Similarly, Sh. Gurmeet Singh Sodhi, Superintendent Administration, Sector-16, Chandigarh tendered in evidence copy of DHS letter No.28093 dated 15.12.2011, wherein the petitioner was directed to appear in the office of Medical Superintendent, GMSH, Sector-16, Chandigarh on 20.12.2011 at 11 AM to explain his position in person. He was asked to explain about the report given by the MO/Incharge, Poly Clinic, Sector-45, Chandigarh. Petitioner appeared before the Medical Superintendent on 20.12.2011 and accepted his mistake and further assured that he will not repeat any mistake in future. After considering the pleas of the petitioner, he was charge-sheeted under the order of Director Health Services. This witness was also not cross-examined by the petitioner.

[7]. In his defence the petitioner accepted that he had consumed alcohol during duty hours and was lying down on the ground on 24.08.2011. He tendered his apology and undertook that he will not repeat such mistake in future. Inquiry Office submitted his inquiry report on 10.04.2013, and found the charges to be fully proved. Disciplinary Authority while concurring with the findings recorded by the Inquiry Officer, imposed penalty of compulsory retirement from service upon the petitioner in terms of Order 5 (vii) of Punjab Civil Services Rules (Punishment and Appeal) Rules 1970.

[8]. Feeling aggrieved against the order of punishment dated 02.09.2013 passed by Director, Health and Family Welfare, Chandigarh Administration, Chandigarh the petitioner preferred

statutory appeal under Rule 15 of Punjab Civil Services (Punishment and Appeal) Rules 1970 before the Secretary Heath, Chandigarh Administration, Chandigarh. Appellate Authority vide order dated 11.03.2014/25.03.2014 dismissed the appeal of the petitioner.

[9]. Petitioner assailed both the orders dated 02.09.2013 passed by Punishing Authority and order dated 11.03.2014/25.03.2014 passed by Appellate Authority before the Central Administrative Tribunal, Chandigarh in OA No.060/00329/CH of 2014. Tribunal has also concurred with the order of punishment and dismissed the Original Application vide order dated 20.01.2015.

[10]. Learned counsel for the petitioner has argued that the incident took place when the petitioner was on leave and the place of occurrence was outside the premises of the office, where the petitioner was working. Learned counsel further contended that an admission made by the petitioner in ignorance of his legal rights or under duress cannot bind him. Petitioner was not supposed to give his consent against his own interest and therefore, there cannot be any estoppel against law. In support of his contention, learned counsel for the petitioner relied upon Rattan Lal Ex-Constable Vs. The State of Haryana and others, 1983(2) SLR 159 and Sukhdev Singh Vs. The State of Punjab and others, 1983(2) SLR 645 to contend that consumption of liquor while not on duty does not render the employee liable to disciplinary action as no misconduct can be presumed. By relying upon Charan Dass Vs. Punjab State Electricity Board,

Patial and another, 2005(4) SCT 512, Indian Oil Corporation Vs.

The Municipality Thanesar, 1989 SLJ 49 and Shri Krishan Vs.

Krukshetra University, Krukshetra, AIR 1976 SC 376, learned

counsel emphasized that any admission made by the petitioner before Inquiry Office against his own interest cannot bind him and such an admission can be explained away or withdrawn at any stage being not conclusive.

[11]. Learned counsel further emphasized that in the absence of urine test, blood test and report of doctor that the breath of the petitioner smelt alcohol, it could not be held that the petitioner was drunk. By making reference to Inder Singh and another Vs. State of Haryana 1989 (1) RCR (Criminal) 154, learned counsel intended to convey that no offence could have been made against the petitioner had he been prosecuted criminally. The analogy sought to be advanced appears to be far-fetched. Petitioner was not criminally prosecuted. In the inquiry, he voluntarily accepted his guilt. The Inquiry Report was not extraneous to the charges, nor the same could be treated to have prejudiced the rights of the petitioner in any way. The conclusion was not based on any conjectures by the Inquiry Officer, therefore, the observations made in State of Assam Vs. Mohan Chandra Kalita and another, 1972 AIR (SC) 2535 do not advance the case of the petitioner in any manner.

[12]. We have given thoughtful consideration to the facts and circumstances of the case and have also perused the material on record.

[13]. It is a settled proposition of law that the Court is not to sit as an Appellate Authority on the order passed by the Punishing Authority. The quantum of punishment cannot be interfered with by way of any judicial review. Tribunal and the Court have no such powers to substitute their own discretion on the findings recorded by the Authorities.

[14]. In the inquiry, misconduct of the petitioner was duly proved with reference to unrebutted evidence, where the petitioner had admitted his guilt of consuming liquor on the relevant date and was found lying on ground during duty hours at about 12.00 PM. Even, if it is considered that the petitioner had applied second half day leave, the same could not be applied forenoon at about 12.00 PM and therefore, it was rightly concluded by the Inquiry Office that the petitioner had consumed liquor during duty hours and was found lying on the ground by the authorities. When the police was called, he succeeded in fleeing away from the spot. The evidence of the Department went unrebutted as no cross examination of PWs was done by the petitioner.

[15]. The order of punishment was based on findings of fact recorded by the Inquiry Officer which were accepted by the Punishing Authority. There was no violation of principles of natural justice, nor

there was any infraction of law in the conduct of inquiry proceedings. Judicial review is not akin to decision and adjudication on merit by re-appreciating the evidence as an appellate and revisional authority. The powers are limited only to the decision making process and not against the decision itself. There cannot be any interference by the Court unless punishment awarded to the employee is found to be shocking to the conscience of the Court.

[16]. Once lawful procedure was adopted by the disciplinary authority, then interference of the Court is uncalled for in the discretionary exercise of powers by the punishing authority. Only exception to this general rule is that when quantum of punishment pricks the conscience of the Court and the punishment imposed by the disciplinary authority or the appellate authority is found to be shocking to the conscience of the Court.

[17]. The present case is not covered under the exception observed by the Hon'ble Apex Court in BC Chaturvedi Vs. Union of India and others, AIR 1996 SC 484, rather the case is covered under the observations made by the Hon'ble Apex Court in S.R. Tewari Vs. Union of India and another, 2013 (3) SCT 461 and the decision rendered by this Court in CWP No.1154 of 2014 titled as Union of India and others Vs. Raghbir Singh and another. Nothing has been pointed out as to how the disciplinary inquiry was not fair or the same was vitiated on account of any non-observance of principles of natural justice. Punishment of compulsory retirement cannot be

termed to be disproportionate to the misconduct of the petitioner which was proved by way of unrebutted evidence, rather petitioner had admitted his guilt before the authorities.

[18]. In view of observations made above, we do not find any substance in the writ petition and the same is accordingly dismissed.

PUNJAB AND HARYANA HIGH COURT

sd
(RAJ MOHAN SINGH)

JUDGE

27-2-2016

Prince

sd
(M. JEYAPPAUL)

JUDGE

WJP
10/3/16

DMA added 03/03/16
SC (a)
27/3/16

