



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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LPA-1549-2024 (O&M)

Date of decision: 11.07.2024

HARYANA SCHEDULED CASTES FINANCE AND DEVELOPMENT
CORPORATION

...Appellant

VERSUS

AK SRIVASTAVA AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Deepak Balyan, Advocate
for the appellant.

DEEPAK SIBAL, J.(ORAL)

1. The present intra-court appeal is directed against the judgment dated 01.02.2024 passed by a learned Single Judge of this Court allowing respondent No.1's writ petition through which he had challenged the order dismissing him from service. Also under challenge was the order rejecting his appeal filed by him against the order of his dismissal.

2. A few essential facts may be noticed.

3. On 16.01.1986 respondent No.1 was appointed as a Project Officer in the Haryana Harijan Kalyan Nigam which is now known as the Haryana Scheduled Castes Finance and Development Corporation (for short – the Corporation). In the year 1991 respondent No.1 was placed



under suspension. He was then served a chargesheet through which 07 charges were levelled against him. A regular departmental enquiry ensued on the completion of which the Enquiry Officer submitted his enquiry report dated 11.03.1993 through which qua most of the charges respondent No.1 was not found solely responsible. Only 02 of the charges were proved against him. The enquiry report was duly forwarded to respondent No.1's disciplinary authority but for about 03 years no action was taken thereupon. On 22.02.1996, the Enquiry Officer submitted another report which contained substantial changes when compared to the earlier report dated 11.03.1993. Respondent No.1's disciplinary authority, after referring to the second report submitted by the Enquiry Officer, ordered respondent No.1's dismissal from service. Recovery of an amount of Rs.6,04,919/- was also ordered. Respondent No.1 appealed against his dismissal and the order of recovery before the Board of Directors of the appellant-Corporation on the dismissal of which he approached this Court through CWP No.3240 of 1998 – ***A.K. Srivastva Vs. State of Haryana and others*** which petition of his was disposed of vide order dated 17.08.1998. This Court set aside the order of the appellate authority with liberty to the said authority to pass a fresh order after grating opportunity of hearing to respondent No.1. In compliance with the order of this Court, the appellate authority granted opportunity of hearing to respondent No.1 and then passed a fresh order reiterating its earlier decision.

4. Respondent No.1 again knocked the doors of this Court through CWP-10143 of 2000 – ***A.K. Srivastva Vs. State of Haryana and others*** which petition was also disposed of by this Court on 08.05.2015. This time both the orders passed by the appellate authority as also the



disciplinary authority were set aside as this Court found that both of these orders had been passed without application of mind. The matter was remitted to the disciplinary authority to pass a fresh order, in accordance with law. In terms of the order passed by this Court, respondent No.1's disciplinary authority reconsidered the matter but the result remained the same as earlier as such reconsideration also ended with the passing of the order dismissing respondent No.1 from service as also for recovering an amount of Rs.6,04,919/- from him. This order then became the subject matter of challenge in the third round of litigation initiated at respondent No.1's behest. Such challenge was accepted by a learned Single Judge of this Court. The learned Single Judge concluded that respondent No.1's dismissal was illegal primarily on the ground that the same was based on a second enquiry report dated 22.02.1996 the submission of which was unheard of in service jurisprudence and because before making of which, respondent No.1 had neither been issued any notice nor granted any opportunity of hearing. The learned Single Judge further supported his decision on account of respondent No.1's acquittal in the criminal proceedings which had been lodged against him on the same set of facts as the disciplinary proceedings.

5. The prayer made on behalf of the appellant to grant liberty to the appellant to commence proceedings from the stage from which the procedure had been found by the learned Single Judge to be illegal was also rejected by the learned Single Judge on the ground that the proceedings in question were being litigated by respondent No.1 for more than 27 years and because respondent No.1 on the date of passing of the impugned judgment, was more than 75 years of age.



6. Learned counsel for the appellant assails the impugned judgment on a solitary ground which is that the learned Single Judge erred by considering the second report by the Enquiry Officer as the second enquiry report as through such report only additional information had been provided by the Enquiry Officer for consideration of respondent No.1's disciplinary authority and that such additional information could always be supplied by the Enquiry Officer which could also be considered by the disciplinary authority.

7. The afore sole contention raised on behalf of the appellant is required to be considered only to be rejected.

8. Through chargesheet dated 13.01.1992, 07 charges were levelled against respondent No.1 to which he filed a reply. The appellant did not find respondent No.1's reply to be satisfactory. Accordingly, a regular departmental enquiry ensued. What followed was is the submission of an enquiry report dated 11.03.1993 by the Enquiry Officer to respondent No.1's disciplinary authority. As per the said enquiry report qua 02 charges respondent No.1 was held solely responsible but qua the 05 other charges responsibility of other employees, along with respondent No.1, was also found. For nearly 03 years, no action on the enquiry report was taken by respondent No.1's disciplinary authority. On 22.02.1996 another report was submitted by the Enquiry Officer to respondent No.1's disciplinary authority on the basis whereof the respondent No.1's disciplinary authority ordered recovery from and respondent No.1's dismissal from service.

9. The following table, which was considered by the learned Single Judge, shows the distinction in the findings recorded in both the aforesaid two reports submitted by the Enquiry Officer:-

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Charge No.	1 st Enquiry Report	2 nd Enquiry Report
1.	<p>The Project Officer (P) placed an order for the supply of 5000 pairs of derby shoes vide No. Nil dated 28.12.90 followed by another order of 6000 pairs of derby shoes placed on M/s New Advance Shoe Factory, Sadar Bhatti, Agra. Those orders were placed by the P.O (P) with a copy to Head Officers. Thereafter two more orders were placed by the Head Office on 3.5.91 and 19.1.91 for the supply of 4000 pairs and 4800 pairs of shoes on the firm following rates:</p> <p>i) Closed upper Rs.59.13 ii) Cut components <u>Rs.39.96</u> Rs.99.09</p> <p>In the order it was made clear that the total cost should not exceed the above amount and request was made to supply these components to our factory.</p> <p>While checking the record 17550 pairs of shoes were got manufactured through cut components and the payment have been made to the firm at Rs.110/- per pair as detailed below:-</p> <p>i) Upper component (closed) Rs.59.13 ii) Cut component Rs.39.96 iii) Labour Rs.10.00 iv) Cartage <u>Rs.00.91</u> Rs.110,00</p> <p>Shri A.K. Srivastava intimated that he had sought approval to pay Rs.10/- as Labour charges vide his note dated 10.4.91 addressed to G.M. (P) but on checking the record and the statement of the Presenting Officer no such sanction to pay Rs. 10/- as labour charges has been issued by Head Office. Shri A.K. Srivastava</p>	<p>The project officer verified and recommended the payment of Rs. 10/- as labour charges and Rs. 0.91/- as cartage per pair to the fabricator of Police Derby shoes without the permission of Head Office resulting in loss of Rs. 191470.50. In the findings it has been proved that payment of labour charges and cartage charges @ Rs. 10.91 made to M/s New Advance Shoe Factory, Agra without obtaining the approval of the Head office. As regards the financial responsibility is concerned, Shri A.K. Srivastava PO(P) is fully responsible for this loss as he had recommended the payment without the approval of the Head of Department. Besides this, there was administrative lapse on the officers/officials who dealt this case without seeing the facts and approval of competent</p>

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	<p>his statement that the order of Peshori chappal was accepted by the P.O. (L) at Rs.65/- per chappal which was later on enhanced to Rs.75/- but Shri Suresh Chand, Supervisor has given cost of analysis in which the cost works out to be Rs. 120/-. When this fact was brought to the notice of Shri A.K. Srivastava he intimated that this rate was out for applying similar Chappals to Gujrat Circle, but this order was not materialized. Shri A.K Srivastava could not produce any document in which rate of Rs. 65/- was accepted by the Nigam. This loss is also due to negligence on the part of P.O. (P). Besides above, Shri Suresh Chand also brought out that material of Rs.17,784/- is still lying unused with him nor it can be used anywhere. Therefore, there is also loss of Rs.17,784/- for the material lying unused.</p>	
6.	<p>In this charge it has been mentioned that proper record has not been maintained by the P.O. (P) Shri A.K. Srivastava intimated that it is the duty of the Supervisor to complete the job books and to put up the same to the P.O. (P). Moreover it was also the duty of the staff posted in C.F.C.. The undersigned is of the view that although it is a serious matter, not to maintain the record properly which could lead excess payments but the entire responsibility cannot be put on Shri Srivastava. Moreover, the accountant General (Audit) has already completed their audit of C.F.C. up to 1991-92.</p>	<p>This charge pertains to non-maintenance of proper record. It is a serious lapse on the part of Shri A.K. Srivastava not to get the proper record maintained. The undersigned recommended that the entire responsibility cannot be put on Shri A.K. Srivastava only with the contention that the other staff is also responsible for the maintenance of record. Moreover, the audit of Accountant General have</p>



		been completed upto the year 1991-92, as such, it was not recommended to put the entire responsibility on the project officer alone.
7.	In this charge Shri A.K. Srivastava, P.O. (P) has been found negligent in performing his duty as he did not inform the Head Office regarding missing of electrical motor. Shri A.K. Srivastava intimated that he has left the charge on 25.4.91 and he had no knowledge for the missing of electric motor. Moreover, the report of the missing of said motor were sent to Head Office by the P.O. (L) on 16.10.91. The record of C.F.C. does not indicate the cost of motor, even they have not having the cost of original machinery from which these Motors have been removed. However Shri Suraj Parkash enquired from the market and given the rates of motors a Rs.1932/-, Rs.1650/- and Rs.3275/- for different quality of Motors. The loss due to remove of the motor cannot be as curtained at this belated stage but it can be presumed that there is loss of about Rs.4000/- if we take the cost of the motor at the prevailing market rate. Therefore, this charge could not be established. In addition to above, it is submitted that most of the relevant record could not be produced to me for reference. This enquiry has been completed on the bases of relevant record available with the Presenting Officer, as most of the record could not be produced by the Presenting Officer, due to non-availability of record in the office or most of the records have been taken by the Vigilance Department as initiated by the incharge of C.F.C.	This charge could not be established due to non-availability of record.



	The above report is submitted to the worthy M.D. for further orders please.	
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10. The second report dated 22.02.1996 was substantially different from the earlier report by the same Enquiry Officer. The second report also greatly prejudices respondent No.1 as several charges levelled against him for which he was not solely found responsible in the earlier enquiry report were found proved against him in the second report. It is not disputed that between the submission of the first report and the second report, the Enquiry Officer neither issued to the respondent any notice nor granted to him any opportunity of hearing. Thus, the respondent’s dismissal from service based on the second report dated 22.02.1996 was in gross violation of the principles of natural justice.

11. A perusal of the afore table further reveals that through the report dated 22.02.1996, the same Enquiry Officer has virtually substituted his earlier report dated 11.03.1993. Such a procedure is unheard of in service jurisprudence. It is also not backed by any Rule or instruction etc.

12. Terming the second report as additional information to the respondent No.1’s disciplinary authority would not help the appellant’s case as the afore quoted table clearly reveals that it in fact such report was a fresh enquiry report containing distinct findings.

13. In the afore circumstances, normally, after setting aside respondent No.1’s dismissal order, we would have permitted the appellant to continue the proceedings from the stage of submission of the first enquiry report but considering the peculiar facts of this case that from the issuance of the chargesheet till date 32 years have elapsed; this is the third round of



litigation by respondent No.1; had respondent No.1 continued in service, he would have superannuated in the year 2006 and that presently, respondent No.1 would be over 76 years of age, we refrain from interfering in the findings returned in this regard by the learned Single Judge of not granting such permission to the appellant.

14. In the light of the discussion, we find no error, in the impugned judgment.
15. Dismissed.
16. All pending miscellaneous application(s) also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

July 11, 2024

Nisha Yadav

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No