

(14) In view of above, present revision petition is allowed. The impugned order 3.01.2011 is set aside. MACT Mohali shall proceed with the claim petition in accordance with law.

V. Suri

Before Mahesh Grover, J.

BALDEV SINGH—Petitioner

versus

STATE OF PUNJAB AND ANOTHER—Respondents

CWP No. 15344 of 2013

October 31, 2014

A. Constitution of India, 1950 - Art. 226 - Departmental Inquiry - Co-existence of major and minor penalty - Petitioner charge sheeted for embezzlement and other misconduct - Two orders of punishment passed - By first order, recovery ordered - By second order, Petitioner compulsorily retired from service and recovery of a different sum also ordered - Appeal against first order accepted with a direction that after adjusting the amount to be recovered pursuant to second punishment order, remaining retiral benefits due to him be released - Appeal against second order ultimately dismissed, which was impugned before the Writ Court - Held, if the Petitioner had been compulsorily retired, which is a major punishment, then the other minor punishment could not have co-existed with major punishment - By virtue of an earlier order the authorities had accepted the appeal against the first punishment order on similar charges - On parity with that order, recovery set aside keeping the order of compulsory retirement intact.

Held, that if the petitioner had been compulsorily retired which is a major punishment then the other minor punishment could not have co-existed with the major punishment. In any eventuality by virtue of an earlier order the respondents-authorities had accepted the appeal against the order dated 5.5.1995 on similar charges. On the parity of the

aforesaid, the recovery of ₹41,745.90 deserves to be set aside keeping the order of compulsory retirement intact. Ordered accordingly.

(Paras 9 and 10)

B. Constitution of India, 1950 - Art. 226 - Departmental proceedings - Plea against Appellate Authority, for not having dealt with the issue that inquiry was improper - In the appeal, Petitioner failed to show any procedural irregularity before inquiry officer except to emphasise on the factual matrix pleading innocence and false implication - Failed to establish prejudice on this count - Appellate Authority's order need not be adversely commented upon.

Held, that the plea of the petitioner that the inquiry was improper and issue having not been dealt with by the appellate authority is totally misplaced as he has referred to the issue that he has raised before the appellate authority in his appeal which does not show any procedural irregularity except to emphasize on the factual matrix of the case where he pleads his innocence and false implication. Since the petitioner has failed to elaborate what is the irregularity in procedure before the inquiry officer, I am of the view that the petitioner has failed to establish prejudice on this count. Thus the appellate authority's order need not be adversely commented upon as far as this aspect is concerned.

(Paras 11 and 12)

R.K. Malik, Sr. Advocate with Henna Sabherwal, Advocate *for the petitioner*

Ashish Sharma, Addl.AG, Punjab

MAHESH GROVER, J.

(1) The petitioner impugns the order Annexures P-1 and P-4. Vide Annexure P-4 the appellate authority dismissed the appeal preferred by the petitioner against the order of disciplinary authority compulsorily retiring the petitioner from service and imposing a recovery of ₹ 41,745.90.

(2) The petitioner during his tenure of service faced charges of embezzlement and other misconduct which were reflected in the chargesheet issued to him. An inquiry followed and an order of retiring

him compulsorily from service was passed. In fact two orders of punishment were passed against the petitioner; one dated 5.5.1995 and another dated 6.2.1996. By virtue of the first order, recovery of ₹ 1,76,361/- was ordered. Vide the second order recovery of ₹ 41,745.90 was inflicted upon the petitioner; besides retiring the petitioner compulsorily from service.

(3) The petitioner preferred an appeal against the first punishment order dated 5.5.1995 which was accepted by the appellate authority on 6/14.1.2009 but with direction that after adjusting the amount to be recovered from him pursuant to the second order dated 6.2.1996, the remaining retiral benefits due to him be released.

(4) The petitioner preferred an appeal against the second punishment order as well.

(5) The appeal apparently was taken up for hearing by the minister in-charge who passed an order in favour of the petitioner but the State Govt, did not accept this order. It has now been brought to the notice of this Court that Hon'ble the Chief Minister did not agree with the order of the minister in-charge. The Court then directed the hearing of the appeal afresh by taking into consideration the observations made by the minister in-charge and also with a direction that a speaking order be passed. The present impugned order is a result of the aforesaid exercise and a cause of grievance to the petitioner.

(6) Learned counsel for the petitioner contends that his foremost point that the inquiry was not fair and proper has not been dealt with appropriately by the appellate authority. Apart from this he has raised an issue that once the petitioner stood compulsorily retired which was a major penalty inflicted upon him, the other minor punishments such as recovery could not be inflicted upon him being impermissible in law. In this regard, he has placed reliance on *Union of India and another v. S.C. Parashar(1)*.

(7) On the other hand, learned counsel for the respondents justified the order passed by the appellate authority and states that the

(1) 2006 AIR SC 3566

petitioner was charged with a serious issue of embezzlement and thus the punishment awarded as also the recovery are totally justified in the given set of circumstances.

(8) On due consideration of the matter, I am of the considered opinion that the petitioner has raised legal submissions regarding the co-existence of the major and minor penalty. The Hon'ble Supreme Court in the abovesaid case has observed as follows :-

“9. Before adverting to the said question we may record that wrong concession of a counsel on a pure question of law is not binding upon a party. It is furthermore trite that non-mentioning or wrong mentioning of a provision in an order may be held to be irrelevant if it is found that the requisite ingredients thereof were available on records for passing the same. We may further notice that the High Court proceeded on the basis that the penalty imposed upon him was a major penalty.

10. The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties : (1) reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the loss incurred by the Government to the tune of ₹ 74,341.89p., i.e., ₹18,585.47p. On account of damage to the Gypsy in 18 (eighteen) equal monthly instalments. Whereas reduction of time-scale of pay with cumulative effect is a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by clause (iii) and (iii)(a) thereof. The Disciplinary Authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law.

11. However, there cannot be any doubt whatsoever that the Disciplinary Authority never intended to impose a minor penalty. The concession of the learned counsel appearing for the appellant before the High Court was apparently erroneous. It is now well-

settled that wrong concession made by a counsel before the court cannot bind the parties when statutory provisions clearly provide otherwise. [See Union of India and Others v. Mohanlal Likumal Punjabi and others (2004) 3 SCC 628]. The penalty imposed upon the respondent, in our considered view, therefore, should be kept confined to the reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect. The effect of such a penalty has been considered by this Court in Shiv Kumar Sharma v. Haryana State Electricity Board, Chandigarh and others AIR 1988 SC 1673 in the following terms :

“We are unable to accept the above contention. The penalty was imposed on April 15, 1968, and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant’s increment for one was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from Dec. 1, 1969, that is, long after the date of confirmation of the said respondents Nos. 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list.”

The ratio of the said decision is applicable to the fact of the present case also.”

(9) If the petitioner had been compulsorily retired which is a major punishment then the other minor punishment could not have co-existed with the major punishment. In any eventuality by virtue of an earlier order the respondents-authorities had accepted the appeal against

the order dated 5.5.1995 on similar charges. On the parity of the aforesaid, the recovery of ₹ 41,745.90 deserves to be set aside keeping the order of compulsory retirement intact.

(10) Ordered accordingly.

(11) The plea of the petitioner that the inquiry was improper and issue having not been dealt with by the appellate authority is totally misplaced as he has referred to the issue that he has raised before the appellate authority in his appeal which does not show any procedural irregularity except to emphasize on the factual matrix of the case where he pleads his innocence and false implication.

(12) Since the petitioner has failed to elaborate what is the irregularity in procedure before the inquiry officer, I am of the view that the petitioner has failed to establish prejudice on this count. Thus the appellate authority's order need not be adversely commented upon as far as this aspect is concerned.

(13) Disposed of in above terms.

J.S. Mehndiratta/V. Suri