

PUNJAB AND HARYANA HIGH COURT

Roop Lal Nand Lal Rawla

Vs

State of Punjab

Civil Writ No. 2641 of 1966

(Bal Raj Tuli, J.)

08.03.1971

JUDGMENT

Bal Raj Tuli, J,

1. The petitioner joined service as a temporary Engineer in the Public Works Department of the former State of Pepsu in the pay scale of Rs. 250/750 on October 30, 1954, and was posted as Sub-Divisional Officer with effect from that date. After the merger of the States of Punjab and Pepsu, his name was included in the joint seniority list of the Irrigation Branch of the Punjab Public Works Department and his name appeared against serial number 210 in that list. In October, 1960, he was issued a charge-sheet by the Secretary to Government, Punjab, Irrigation and Power Departments, asking him to submit his reply to the charges. The petitioner asked for the copies of the relevant records or inspection thereof before filing the reply, but he was not allowed to see the records. He, therefore, from his memory, submitted a reply and explained the charges levelled against him. After enumerating the various allegations constituting charges against the petitioner, the petitioner was asked to "explain in writing whether you admit the truth of the above mentioned charges. You may also State why disciplinary action under Rule 4 read with Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, should not be taken against you." The petitioner submitted his reply to the charge-sheet on December 10, 1960. Earlier in 1957, a similar charge-sheet was served on the petitioner to which he sent a reply and no further proceedings were taken till the fresh charge-sheet was served on him in October, 1960. The petitioner was also suspended from service with effect from April 8, 1960. After the submission of his reply to the charge-sheet on December, 10, 1960, the petitioner did not hear anything from the respondent till he received a memorandum dated May 18, 1961, reinstating him in service with immediate effect. It was further stated that "his period of suspension will be treated as duty for purposes of pension, leave and increment, but he will not be paid for this period anything more than the subsistence allowance already paid to him". After reinstatement the petitioner received a copy of the following order dated September 26, 1961, which was despatched to him on September 28, 1961 :-

"The explanation No. C/28 dated 10th December, 1960 of Shri R.S. Rawla, Temporary Engineer, in connection with the charge that he was instrumental in making fraudulent

payment to a contractor of Rs. 2,715/- for fictitious earth work on Banga Distributary in May, July, 1956 having Governor of Punjab in consultation with the Punjab Public Service Commission, is pleased to impose on Shri Rawla the following punishment :-

(i) stoppage of two increments with cumulative effect; and

(ii) recovery of Rs. 2,715.00 n.P. from his pay suffered as loss by Government due to negligence in respect of the amount paid to the contractor for the work which was not done, in 27 monthly instalments of Rs. 100/- each the last instalment will of course be of Rs. 115/-."

2. Against this order the petitioner submitted a memorial to the Governor of Punjab on April 29, 1962, which was rejected on April 23, 1963, and the rejection was conveyed to the petitioner on May 2, 1963. In June, 1964, the Punjab Government set up an Establishment Board and invited the Government officials to submit their representations against the injustices done to them during the Kairon regime even if their previous representations had been rejected. The petitioner submitted a representation to the Establishment Board on September 14, 1964. he was informed by letter dated August 16, 1966, that "the Governor of Punjab has considered the representation dated the 14th September, 1964, of Shri R.N. Rawal, Executive Engineer, on the above cited subject and has rejected it." The petitioner then filed that present petition on December 20, 1966, to which written statement has been filed by the respondent, Shri Paramjit Singh, Commissioner for Public Works and Secretary to Government, Punjab, Public Works Department (Irrigation Branch). In the written statement it has been pointed out that the record of the case is not available and, therefore, most of the allegations made by the petitioner have not been replied to for want of record.

3. The point argued by the learned Counsel for the petitioner is that the charge-sheet issued to the petitioner in October, 1960, clearly showed that action under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter called the Rules), was contemplated, which Rule deals with the procedure for the infliction of major penalties. There is no doubt that Rule 4 of the Rules is also mentioned but the meaning of the phrase "disciplinary action under Rule 4 read with Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952" clearly shows that the imposition of a major penalty was contemplated for which the procedure prescribed in Rule 7 of the Rules was to be followed. The petitioner had made various requests for the supply of copies of the relevant documents or the inspection of the records which were not allowed to him and he clearly mentioned in his reply that he was submitting it without having had the benefit of seeing the records. He naturally expected that the things would be cleared during the course of enquiry when witnesses would be examined. After the receipt of his reply the Government decided not to hold the enquiry under Rule 7 and, therefore, reinstated him in service. Thereafter, a minor punishment of stoppage of two increments with cumulative effect and recovery of Rs. 2715/- was imposed, but without following the procedure prescribed in Rule 8 of the Rules. If minor punishment was proposed to be inflicted, the proposed punishment had to be mentioned in the show-cause notice wherein the allegations against the petitioner were also to be specified. It is admitted in the return that no such notice was issued to the petitioner. The imposition of penalty on the petitioner was, thus, not in accordance with the Rules and has, therefore, to be set aside. The learned counsel for the respondent submits that the minor punishment was indicated in the charge-sheet and the Government could impose a minor

punishment in view of the dictum laid down in *Dayanidhi Rath v. B.S. Mohanty*¹, The Orissa case is clearly distinguishable. What was held in that case was that if the punishment proposed is removal from service, the punishment of dismissal cannot be inflicted because that is a severer punishment than removal from service but for both these punishments the procedure of holding an enquiry was to be followed and had been followed. In the present case if the procedure under Rule 7 of the Rules had been followed and instead of a major punishment a minor punishment had been inflicted no fault could be found therewith but if no enquiry was held as envisaged under Rule 7 *ibid* and the minor punishment was proposed to be inflicted under Rule 8 thereof, then the procedure prescribed under Rule 8 had to be followed, which was admittedly not done. The judgment of the Orissa High Court is, therefore of no assistance to the respondent.

4. The learned counsel for the respondent then submits that irrespective of the number of the Rule mentioned in the notice, if the Government had the authority under and other Rule to impose the punishment, then the punishment imposed has to be sustained. There is no quarrel with this proposition. What is lacking in the case is that the procedure prescribed under Rule 8 had not been followed and the proposed punishment had not been stated in the notice. In fact, no punishment had been specifically mentioned in the charge-sheet as well. The petitioner, therefore, could not show any cause against the proposed punishment.

5. The learned counsel for the respondent then submitted that the petition was a highly belated one as it was held more than five years after the imposition of penalty and such stale matters should not be decided in petitions under Article 226 of the Constitution of India. The petitioner has explained the delay. Against the order of punishment, he filed a memorial to the Governor, which was rejected in April 1963. Thereafter he submitted a representation to the Establishment Board on September 14, 1964, which was also rejected by the Governor on August 16, 1966. Promptly thereafter the petitioner filed the present petition. The period of limitation for filing a suit to get the order of punishment set aside was six years from the date of order under Article 120 of the Indian Limitation Act 1908, and the present petition having been filed within six years cannot be said to deprive the respondent of the plea of limitation. Their Lordships of the Supreme Court have held in *State of Madhya Pradesh and another v. Bhailal Bhai*², that no relief should be granted to a writ petitioner if the granting of that relief deprives the respondent of the plea of limitation which could be taken if suit had been filed. By allowing the relief to the petitioner in this petition, I am not depriving the respondent of the plea of limitation which would have been open to it if a suit had been filed by the petitioner. I therefore, repel the submission of the learned counsel that the petitioner should be dismissed on the ground of delay.

6. The petitioner was not promoted to P.S.E. Class II because the Public Service Commission did not accord its approval in view of the punishment that had been imposed upon the petitioner referred to above. In 1963, however, the petitioner was promoted as an officiating Executive Engineer with effect from November 26, 1963, and the Public Service Commission accorded its approval to that appointment. It is incongruous that the petitioner was not considered fit for promotion to a lower rank while he was considered fit for promotion to a lower rank while he was considered fit for promotion to a higher officiating rank. It is quite apparent that the punishment that had been meted out to the petitioner prejudiced his chances of further promotion, and has the adverse effect on the whole of his future career in service. It is, therefore, just and equitable to grant the necessary relief to the petitioner in this petition.

7. For the reasons given above, I accept this petition and quash the order dated September 26, 1961, imposing the punishment of stoppage of two increments with cumulative effect and recovery of Rs. 2715/- from his pay, the order of the Governor dated April 23, 1963, rejecting his memorial, and order of the Governor dated August 16, 1966, rejecting his representation made to the Establishment Board. The respondent is further directed to consider the petitioner for further promotion and confirmation in accordance with service Rules ignoring the imposition of punishment on him which has been quashed. In the circumstances, I make no order as to costs.

Petition accepted.

Cases Referred.

1 AIR 1955 Ori 33
2 AIR 1964 SC 1006