

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****104****CWP-1693-2003 (O&M)****Date of decision: 22.09.2026****Sudarshan Lal Arora****...Petitioner(s)****Vs.****The State of Haryana and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mrs. Uru Sharma, Advocate
for the petitioner.

Mr. Harish Kumar Nain, D.A.G., Haryana.

NIDHI GUPTA, J.

Present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed by the petitioner for the issuance of a writ in the nature of certiorari for quashing of impugned order dated 7.3.2001 (Annexure P-8) subsequently modified vide order dated 12.7.2001 (Annexure P-9) vide which a permanent cut of 5% in pension has been imposed being absolutely illegal, arbitrary, against the principles of natural justice, un-warranted and without application of mind; with a further direction to the respondents to repay the arrears of pension with interest @18% per annum which is being deducted at the rate of 5% in pursuance of the impugned order dated 7.3.2001 (Annexure P-8); and any other writ, order or direction which this Court may deem fit and proper in the facts and circumstances of the case may kindly be issued in the interest of justice.



2. Ld. Counsel for the petitioner has *inter alia* submits that petitioner had joined the respondent-Cooperative Department as Clerk on 13.06.1961. Petitioner was promoted as Steno Typist in 1974 and was posted at Rohtak. Petitioner was again promoted to the post of Assistant in the year 1981 and was posted at Chandigarh. In 1997, petitioner was promoted to the post of Deputy Superintendent.

3. Vide order dated 10.10.1998 (Annexure P-1), petitioner was placed under suspension with immediate effect. Subsequently, a Chargesheet dated 26.11.1998 (Annexure P-2) was served upon the petitioner under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (hereinafter referred to as '1987 Rules'). Thereafter, petitioner was reinstated in service on 15.01.1999, pending enquiry. Petitioner had duly filed his reply dated 12.02.1999 (Annexure P-3) of the aforesaid Chargesheet dated 26.11.1998 (Annexure P-2); thereby denying all the allegations. Subsequently, an enquiry was conducted in the matter; and vide Report dated 26.05.1999, charge No.1 was held to be proved against the petitioner.

4. Ld. Counsel submits that petitioner has retired from service on 31.05.1999 upon attaining the age of superannuation. The retiral benefits and arrears of subsistence allowance payable to the petitioner during the suspension period and annual increment were paid to the petitioner finally on 22.08.2001 after a delay of approximately 2 years and 8 months.



5. However, grievance of the petitioner is that after his retirement, a Show Cause Notice dated 22.06.2000 (Annexure P-5) was issued to the petitioner as to why a cut of 50% be not imposed on the pension of the petitioner. Moreover, it was only vide letter dated 11.08.2000 (Annexure P-6), that the petitioner was supplied a copy of the Enquiry Report. Petitioner had duly submitted his reply dated 06.09.2000 (Annexure P-7) to the Enquiry Report. However, vide the impugned order dated 07/09.02.2001 (Annexure P-8), 95% of the pension was ordered to be released to the petitioner after imposing a cut of 5%. Vide second impugned order dated 12.07.2001 (Annexure P-9), it was clarified that period of suspension of the petitioner from 12.10.1998 to 15.01.1999 be considered as duty period. It was further stated that the order of cut of 5% in pension will come into effect from 07.03.2001 and will be permanent cut.

6. Ld. Counsel for the petitioner has submitted that the impugned orders are unsustainable on account of the fact that impugned action has been taken against the petitioner under Rule 15(3) of the Government Servants (Conduct) Rules, 1966 (hereinafter referred to as 'Rules, 1966'), which reads as under: -

"No Government employee shall without the previous sanction of the Government, except in the discharge of his official duties, take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 or any other law for the time being in force or any co-operative society for commercial purposes:



Provided that a Government employee may take part in the registration, promotion or management of a co-operative society substantially for the benefit of Government employees or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860) or any corresponding law in force, subject to the conditions that:

- i) he shall, within a period of one month of his taking part in such activity, report to the Government giving full details;*
- ii) his official duties do not thereby suffer;*
- iii) he shall discontinue taking part in any such activity if so directed by the Government:*

Provided further that, if taking part in any such activity involves holding of an elective office, he shall not seek election to any such office without the previous sanction of the Government."

7. It is contended that the case of the petitioner does not fall within the parameters of the abovesaid provision as the said Rule has nothing to do with the facts of the present case.

8. Ld. Counsel submits that a bare reading of the above shows that the said provision is not attracted in the instant case. As such, no ground is made out for penalising the petitioner for alleged lapse. Rule 15(3) only debars a Government Servant for taking part in the promotion or management of a Bank or a company by allowing his own duties to suffer thereby, without previous sanction of the Government. However, in the present case, there is no such allegation against the petitioner. Clearly



therefore, no charge is made out against the petitioner. Accordingly, the impugned orders deserve to be set aside.

9. Ld. Counsel for the petitioner further submits that proceedings against the petitioner were initiated under Rule 7 of the 1987 Rules which can only be initiated in case of misconduct. Whereas under Rule 15(3) of the 1966 Rules, a Government Servant is debarred to take part in the promotion or management of a Bank by allowing his own duties to suffer. It is submitted that there is no connection between the two provisions. Therefore, impugned action against the petitioner cannot be sustained.

10. She accordingly prays that the present Writ Petition be allowed; and following prayers be accepted:-

“a writ in the nature of certiorari for quashing of impugned order dated 7/9.3.2001 (Annexure P-8) subsequently modified vide order dated 12.7.2001 (Annexure P-9) vide which a permanent cut of 5% in pension has been imposed being absolutely illegal, arbitrary, against the principles of natural justice, un-warranted and without application of mind:

a direction be issued to the respondents to repay the arrears of pension with interest @18% per annum which is being deducted at the rate of 5% in pursuance of the impugned order dated 7.3.2001 (Annexure P-8).”

11. *Per contra*, learned State Counsel has vehemently opposed submissions advanced on behalf of the petitioner and has submitted that the charges levelled against the petitioner were serious which has



resulted in grave financial loss to the State of Haryana. Findings of the Enquiry Officer; as also the Enquiry Report has not been challenged by the petitioner. In such a situation, mere misquoting of the provision, if at all, cannot be held to be fatal to the case. He accordingly prays for dismissal of the present Writ Petition.

12. No other argument has been raised on behalf of learned counsel for the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions of the petitioner.

13. A perusal of the Chargesheet dated 26.11.1998 (Annexure P-2) shows the details of the allegations against the petitioner, are as under:-

"1- Shri Sudershan Lal Arora, Deputy Superintendent (under suspension) gave the following approval by signing at his own vide letter No.5/2/96-C-6/2153 dated 12.2.1997 to the Chief Executive Officer, the Postal and R.M.S. Employees Cooperative Bank Ltd., Ambala:-

"Approval of the Registrar for the refund of 50% accumulation in member C.T.D. accounts after every three years is hereby conveyed"

Thereafter the aforesaid file has been mis-placed intentionally by the above employee.

2- Due to issuance of aforesaid letter against the rules and regulations, approximately Rs.2.00 crores were withdrawn from the deposits by the Postal and R.M.S. Employees Cooperative Bank Ltd., Ambala Cantt. which resulted into a financial loss of Rs.6.00 lacs per annum towards interest at the rate of Rs.50,000/- per month to the bank.



In this way, by committing the aforesaid irregularities and by causing financial loss to the bank, Shri Sudarshan Lal Arora, Deputy Superintendent has violated rule 15(3) of the Employees Services Regulations, 1966 and made himself liable for departmental action."

14. It is undisputed fact on record that as per the findings recorded by the Enquiry Officer in the Enquiry Report dated 26.05.1999, at the time when the petitioner was posted as Deputy Superintendent in the respondent-Department, at that time, without permission of the Competent Authority viz. the Registrar, petitioner had himself approved refund of 50% accumulation in the C.T.D. Accounts of the Postal and R.M.S. Employees Cooperative Bank Ltd., Ambala Cantt.; thereby resulting in huge financial loss to the respondents. It has also been categorically alleged that thereafter, the petitioner had intentionally misplaced the file. Admittedly, petitioner has not challenged the said findings of the Enquiry Officer; or even the Enquiry Report. As such, the above findings remain undisputed. In such a situation, no error can be found in the punishment imposed upon the petitioner.

15. Furthermore, it is the argument of the petitioner that petitioner has been punished under wrong provision. However, a perusal of the aforesaid Chargesheet (Annexure P-2), shows that charges have been clearly explained to the petitioner. In such a situation, mere misquoting of provision in the impugned order, cannot be held to have caused prejudice to the petitioner. Admittedly, aforesaid charges have been held to be proved against the petitioner vide the Enquiry Report



dated 26.05.1999. Petitioner has not challenged the findings of the Enquiry Officer vide which Enquiry Officer has categorically held that the charge No.1 stands proved against the petitioner. Moreover, the record reveals that due process has been duly followed by the respondents in the conduct of the enquiry. Thus, in the situation, no ground is made out for setting aside the impugned orders only because wrong provision was quoted.

16. In this situation, reference may be made to a 3-Judge Bench judgment of the Hon'ble Supreme Court passed in **N. Mani v. Sangeetha Theatre, (SC) : Law Finder Doc Id # 187417**; wherein it is held that: -

"B. Administrative Law - If an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law that by itself does not vitiate the exercise power so long as the power does exist and can be traced to a source available in law."

The relevant para of the said judgment reads as under:-

"9. It is well-settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

17. Reference may also be made to another judgment of the Hon'ble Supreme Court passed in **Ram Sunder Ram v. Union of India, (SC): Law Finder Doc Id # 131333**; wherein it is held that "Order of



*discharge - Wrong provision of law quoted by Authority in the order -
Order is not vitiated."*

The relevant paras of the said judgment read as under:-

"19. The order of discharge of the appellant from the Army service has been passed by the competent authority under Section [22](#) of the Army Act read with Rule 13 on the grounds covered under column (2)(v) of the Table, after affording adequate opportunity to him of showing cause before the said order of discharge came to be passed. We are, however, satisfied on the material placed before us that the court of inquiry was formed under Rule 177 of the Army Rules and the purpose of court of inquiry was to collect the evidence for the information of superior officers to make up their mind about the involvement of the appellant and the other army officials in the racket of clandestine sale of petrol. In the court of inquiry, the appellant was heard and was given proper and adequate opportunity to cross-examine the witnesses, which he did not choose to avail. The respondents, in Para 20 of the counter affidavit filed in opposition to the writ petition before the High Court, have made categorical statement that in the court of inquiry the appellant was given full opportunity to defend his case and to cross-examine the witnesses who appeared and deposed before the Recording Officer, but the appellant was just sitting throughout the proceedings and did not avail the opportunity of cross-examining the witnesses. The appellant has not denied this assertion of the respondents in the rejoinder affidavit.

20. As noticed above, the appellant had shown cause vide reply dated 13.08.1991 (Annexure P6) to the show cause notice dated 03.07.1991 (Annexure P5) issued to him by respondent No. 5. The competent authority considered the



reply of the appellant in right perspective and found the same not satisfactory. Therefore, on 09.09.1991, the competent authority passed the order of discharge (Annexure P7) of the appellant from the army service with immediate effect in exercise of the power under Section 20 of the Army Act. It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre & Ors., (2004)12 SCC 278].

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant....." (Emphasis added)

18. Ld. Counsel for the petitioner is unable to controvert or dispute the above said factual and legal position. Accordingly, the present Writ Petition stands **dismissed**.

19. Pending application(s) if any also stand(s) disposed of.

22.09.2026

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No