IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101)

RSA-628-1994
Date of Decision: - 26.09.2025

Harinder Singh

....Appellant

Versus

Punjab State Electricity Board and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Gurcharan Dass, Advocate, and
Ms. Ravinder Kaur, Advocate
for the appellant.

Mr. Vishal Mittal, Advocate
for the respondent.

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VIKAS BAHL, J. (ORAL)

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1. Plaintiff has filed by the present Regular Second Appeal under Section 41 of the Punjab Courts Act, 1918.

2. Challenge in the present appeal is to the judgment of the 1st Appellate Court to the extent that the suit of the plaintiff has not been

decreed in toto and although the orders dated 11.10.1984 and 10.06.1980 had been held to be illegal, null and void but the order dated 28.04.1980 had been upheld. Challenge is also to the judgment of the trial Court dated 09.04.1990 vide which the suit of the plaintiff had not been decreed in toto and only the order dated 11.10.1984 had been held to be null and void, whereas, the orders dated 28.04.1990 and 10.06.1980 had been held to be valid.

3. Since the 1st Appellate Court had even held the order dated 10.06.1980 to be illegal, null and void and no cross-appeal has been filed by the respondent/defendant, thus, only issue which is required to be considered in the present case is with respect to the legality of the order dated 28.04.1980 (Ex.P3), vide which one annual increment of the appellant was stopped with cumulative effect, without holding a regular enquiry.

ARGUMENTS ON BEHALF OF THE APPELLANT

4. Learned counsel for the appellant has submitted that the order dated 28.04.1980 (Ex.P3) vide which the major penalty of stoppage of one annual increment with future/cumulative effect was imposed upon the present appellant, deserves to be set aside on two grounds. It is submitted that for imposing a major penalty, it was incumbent upon the authorities to have held a regular inquiry and the procedure as detailed in Regulations 8 and 9 of the of the Punjab State Electricity Board (Employees Punishments and Appeal) Regulations, 1971 (hereinafter to be referred as “1971 Regulations”), which were applicable in the year

1980 at the time of the passing of the impugned order were required to be followed. It is further submitted that in the present case, admittedly, the said procedure had not been followed as neither any charge-sheet/substance of allegations along with the list of documents/list of witnesses had been supplied to the appellant nor any inquiry officer had been appointed nor any witness had been examined, much less, cross-examined nor any inquiry report had been submitted and nor any further hearing, subsequent to the said inquiry, had been given to the appellant-plaintiff. It is further submitted that as per the law laid down by the Hon'ble Supreme Court in the case of "***Kulwant Singh Gill Vs. The State of Punjab***", ***reported as Supp 1991 (1) SCC 504***, the stoppage of increment with cumulative effect/future effect is a 1major penalty and in case the regular inquiry and the procedure as prescribed under the regulations/rules is not followed, then, the order imposing penalty would be *per se* void. It is further submitted that in the said case, apart from holding the impugned order therein to be void, it had further been observed that on account of lapse of time, it would not be expedient to direct a regular inquiry at that stage. It is submitted that the case of the present appellant is squarely covered by the judgment of the Hon'ble Supreme Court in the case of ***Kulwant Singh Gill (supra)***.

5. Learned counsel for the appellant has further relied upon the judgment of the Co-ordinate Bench of this Court dated 12.07.2011 passed in the case titled as "***Smt. Tripta Kumari Vs. The State of Haryana and another***", ***reported as 2011 SCC OnLine P&H 7772*** in support of the

said contention. It is further submitted that the impugned order also deserves to be set aside on the ground that the same is a non-speaking order. Learned counsel for the appellant has further submitted that there is no finding recorded on the allegations made against the present appellant and simply on account of the fact that no reply to the show cause notices had been given, the punishing authority had passed the order dated 28.04.1980.

ARGUMENTS ON BEHALF OF THE RESPONDENT

6. Learned counsel for the respondent, on the other hand, has opposed the present appeal and has submitted that the judgments and decrees of the trial Court as well as of the 1st Appellate Court are in accordance with law and deserve to be upheld. It is further submitted that the 1971 Regulations, as they were applicable in the year 1980, when the impugned order was passed, provided that withholding of increment of pay was a minor penalty under Regulation 5 (iv). It is submitted that at the relevant time there was no specific category defining the penalty of stoppage of one increment with cumulative effect as being major penalty or minor penalty under the Regulations and thus, by necessary implication, the penalty of withholding of one increment with cumulative effect was a minor penalty and there was no requirement of holding a regular departmental inquiry and in order to meet the requirement of principles of natural justice, two show cause notices were issued to the present appellant, which was sufficient compliance. It is further submitted that the appellant did not file reply to the show cause notices and thus, the

order dated 28.04.1980 had been rightly passed and the same had been rightly upheld by both the Courts. It is argued that the imposition of minor penalty is governed under Regulation 10 of the 1971 Regulations, which procedure has been complied with in the present case.

ANALYSIS AND FINDINGS

7. This Court has heard learned counsel for the parties and has gone through the paper-book as well as the record of the case and is of the opinion that the present appeal is meritorious and deserve to be allowed for the following reasons.

8. The substantial questions of law which arise for consideration in the present case are as follows: -

(i) Whether stoppage of one annual increment with future/cumulative effect would amount to a minor penalty or a major penalty in accordance with Regulation 5 of the 1971 Regulations as applicable at the time of the passing of the order dated 28.04.1980?

(ii) In case the said penalty is held to be a major penalty, then, whether it was incumbent upon the respondent department to have conducted a regular inquiry in accordance with the Regulations 8 and 9 of the 1971 Regulations?

9. Before adjudicating the above-said two substantial questions of law, it would be relevant to give a brief background of the present case. The present appellant/plaintiff had filed a suit for declaration to the effect

that the office order No.385 dated 11.10.1984, order No.412 dated 28.04.1980 and order No.635 dated 10.06.1980 were illegal, null and void, malafide, arbitrary and against the principle of natural justice and non-speaking and not binding on the plaintiff. Other prayers had also been made in the suit. Several grounds were raised in the plaint to challenge the impugned orders including the ground that the impugned orders were non-speaking and were passed without holding an inquiry in accordance with the rules/regulations. It was further the case of the plaintiff in the plaint that no copy of the inquiry report was supplied to the plaintiff. The averments made in the plaint were denied in the written statement.

10. The trial Court vide order dated 12.09.1988, framed the following issues: -

> *"(1) Whether the orders No.385 dated 11.9.84, No.412 dated **28.4.80** & No.635 dated 10.6.80 **stopping increments of the plaintiff with future effect etc.** are malafide null & void and not binding on the plaintiffs?OPP*
>
> *(2) Whether the suit is bad for mis-joinder of causes of action?OPD.*
>
> *3. Whether the suit is within time?OPP*
>
> *4. Whether the civil court has jurisdiction to try the suit?OPP*
>
> *5. Whether the suit is not justiciable?OPD.*
>
> *6. Relief."*

11. After taking into consideration the evidence and documents on record, the trial Court, vide judgment and decree dated 09.04.1990, partly decreed the suit of the plaintiff and observed that the order dated 11.10.1984 (Ex.P1) was null and void but upheld the orders dated

28.04.1990 and dated 10.06.1980. With respect to issues No.2, 3 and 5, it was observed by the trial Court that the same were not pressed by the learned counsel for the defendants/respondents and thus, the said issues were decided against the defendants. Issue No.4 was held in favour of the plaintiff and it was observed that the civil court has jurisdiction to try the suit.

12. Two appeals were filed against the said judgment and decree i.e., one by the present appellant and other by the respondent authorities. The 1st Appellate Court vide judgment and decree dated 05.10.1993 partly allowed the appeal filed by the present appellant and dismissed the appeal filed by the respondent authorities. The order dated 10.06.1980 in addition to the order dated 11.10.1984 was held to be illegal, null and void and not binding on the plaintiff/appellant but however, the order dated 28.04.1980 was held to be valid. Against the said judgment, only the plaintiff had filed the present appeal and no appeal had been filed by the respondent authorities and thus, the finding of the 1st Appellate Court with respect to orders dated 11.10.1984 and dated 10.06.1984, being illegal, null and void, has attained finality.

13. With respect to the order dated 28.04.1980 (Ex.P3), it is not in dispute that only two show cause notices were issued and no inquiry much less regular inquiry, as envisaged under Regulations 8 and 9 of the 1971 Regulations, was held. It is the case of the respondents/defendants that since stoppage of one annual increment with future effect is a minor penalty as per the regulations which were prevalent at the time of passing

of the order, thus, there was no requirement of holding a regular inquiry and the issuance of show cause notices and calling of reply was sufficient compliance. On the other hand, it is the case of the present appellant that in accordance with the law laid down by the Hon'ble Supreme Court and various Courts, the stoppage of increment with future effect would be a major penalty.

14. It is not in dispute that by virtue of the impugned order dated 28.04.1980, the punishment of one annual increment with future effect was imposed upon the present appellant. Thus, the moot question, as has been framed herein above, would be as to whether the stoppage of one annual increment with cumulative effect/future effect would be a major penalty or a minor penalty. The 1971 Regulations, as they stand after the amendment, leave no matter of doubt that the said penalty is a major penalty. Regulation 5, as amended up to 2005, is reproduced herein below: -

> *"5. The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on an employee, namely:-*
>
> ***MINOR PENALTIES***
>
> *(i) censure;*
>
> *(ii) withholding of his promotions;*
>
> *(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders;*
>
> ***(iv) witholding of increments of pay without cumulative effect.***
>
> ***MAJOR PENALITIES***
>
> ***(v) witholding of increments of pay with cumulative effect*** *or reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether*

on the expiry of such period, the reduction will or will not have the effect postponing the future increments of his pay ;

(vi) reduction to a lower time-scale of pay, grade, post or service, which shall ordinarily be a bar to the promotion of employee to the time-scale of pay, grade, post or service, from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the employee was reduced and his seniority and pay on such restorations to that grade, post or service ;

(vii) compulsory retirement ;

(viii) removal from service which shall not be a disqualification for future employment under the Board ;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Board."

A perusal of the above regulation would show that withholding of increment with cumulative effect has been specifically included under major penalties and thus, after the amendment having been made, there is no dispute regarding the said fact.

15. Learned counsel for the appellant as well as learned counsel for the respondent has fairly submitted that the said regulation, which has been reproduced herein above, was not the regulation which was prevalent at the time when the impugned order dated 28.04.1980 was passed and the Regulation 5 of the 1971 Regulations, which was in force at the said time, is reproduced herein below: -

"5. The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on an employee, namely:-

MINOR PENALTIES

(i) censure;

(ii) withholding of his promotions;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders;

(iv) withholding of increments of pay ;

MAJOR PENALTIES

(v) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay ;

(vi) reduction to a lower time scale of pay, grade, post or service, which shall ordinarily be a bar to the promotion of the employee to the time scale of pay, grade, post or service, from which he was reduced with or without further directions regarding conditions of restoration to the grade or post or service from which the employee was reduced and his seniority and pay on such restoration to that grade, post or service ;

(vii) compulsory retirement ;

(viii) removal from service which shall not be a disqualification for future employment under the Board ;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Board."

A perusal of the above regulation would show that under Regulation 5 sub-clause (iv) of the 1971 Regulations, withholding of increment of pay is stated to be a minor penalty and there is no specific reference as to whether stoppage of one increment with cumulative effect would fall under minor penalties or major penalties.

16. The said issue came up for consideration before the Hon'ble Supreme Court in the case of ***Kulwant Singh Gill (supra)***. The rule which was being considered in the said case was similar to the regulation which

was applicable in the year 1980 in the present case. The Hon'ble Supreme Court, after considering the said provisions, came to the conclusion that stoppage of increment with cumulative effect/future effect would be a major penalty and would not fall under Rule 5 (iv) and would rather fall under Rule 5 (v) of the Punjab Civil Services (Punishment and Appeals) Rules, 1970. It was further held that the punishment of stoppage of increment with cumulative effect could only be passed after holding an inquiry and after following the prescribed procedure and in case the same is not done, then, the order passed would be *per se* void. Even the arguments raised on behalf of the department that issuance of show cause notice and seeking reply on the same was sufficient compliance of the principles of natural justice was rejected and it was observed that once it was found that the penalty was a major penalty, then, the entire procedure as envisaged in the rules and regulations, which included conducting of an inquiry, opportunity of adducing evidence, examination and cross-examination of witnesses, placing of inquiry report before the disciplinary authority and then, following the further procedure, was necessary before the said penalty could be imposed.

17. In the said case, after holding the impugned order to be illegal, the Hon'ble Supreme Court had also taken into consideration the fact that since sufficient time had elapsed and thus, it was not expedient to direct a regular inquiry in accordance with the rules and thus, the decree granted by the trial Court in the said case was upheld and the judgment and decree of the High Court was set aside. The relevant part of the said

judgment is reproduced herein below: -

> *"5. Penalties - The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a government employee, namely:*
>
> ***MINOR PENALTIES***
>
> *(i) Censure;*
>
> *(ii) withholding of his promotions;*
>
> *(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the government by negligence of breach of orders;*
>
> ***(iv) withholding of increments of pay;***
>
> ***MAJOR PENALITIES***
>
> ***(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;***
>
> *(vi) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the government employee to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the government employee was reduced and his seniority and pay on such restoration that grade, post or service;*
>
> *(vii) compulsory retirement;*
>
> *(viii) removal from service which shall be a disqualification for future employment under the government;*
>
> *(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the government'.*
>
> *xxx xxx xxx*
>
> *4. .....The insidious effect of the impugned order by necessary implication, is that the appellant employee is reduced in his time-scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would*

not be counted in his time-scale of pay as a measure of penalty. ***The words are the skin to the language which if pealed off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5(v) of the Rules.*** *It is undoubted that the Division Bench in* ***Sarwan Singh v. State of Punjab, P.C. Jain, A.C.J.****, speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rules 5 of in Rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at.* ***If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, (sic stoppage) of earning future increments in the time scale of pay even permanently without expressly stating so. This preposterous consequence cannot be permitted to be permeated. Rule 5(iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the***

Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal.

5. The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, de hors the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the department as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. *Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof,* ***giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the department*** *and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer.* ***A report of the enquiry in that behalf is to be placed before the disciplinary authority who then is to consider it in the manner prescribed and to pass an appropriate order as for the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty.*** *If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure.* ***In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order***

> ***is clearly illegal. The trial court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry under Rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs."***

18. The law laid down in the above-said judgment applies on all fours to the case of the present appellant, as the rule which was being considered was also pari materia to the rule/regulation in question. The Co-ordinate Bench of this Court in the case of ***Smt. Tripta Kumari (supra)*** had relied upon the above said judgment to further hold that the stoppage of one increment with cumulative effect is a major penalty and in the said circumstances, it was necessary for the authorities to have conducted the inquiry in accordance with the rules and regulations and since the same had not been done, the impugned order in the said case was also set aside. The relevant portion of the said judgment is reproduced herein below: -

> *"The short question that would arise for consideration is whether the procedure adopted by the respondents to impose this penalty without holding an enquiry is legal and proper.* ***The answer to this question would depend upon the fact whether the penalty imposed is major or minor penalty. If the penalty of stoppage of one increment with cumulative effect is major penalty, then respondents were under legal obligation to hold the enquiry before imposing this punishment.***
>
> ***The issue, in my view, is no more res integra.*** *The Hon'ble Supreme Court in the case of* ***Kulwant Singh Gill v. State of Punjab, 1991(2) SCT 30 (SC) 9*** *has* ***held that stoppage of two increments with cumulative effect falls within the meaning of 5(v) of the***

Punishment and Appeals Rules and would amount to major penalty and, thus, regular enquiry would be a must to impose this penalty. Without enquiry, no punishment of stoppage of increment with cumulative effect, as such, could be ordered. Rules 8 and 9 of the Rules clearly envisages the procedure to conduct an enquiry into the misconduct before ordering stoppage of increment with cumulative effect.

In view of this authoritative pronouncement of the Hon'ble supreme Court in Kulwant Singh Gill (supra), there is no need to go into this issue further. ***Once the punishment of stoppage of increment with cumulative has been held to be a major penalty, the same could not have been imposed without holding enquiry. Concededly, this punishment was imposed on the petitioner without holding enquiry and as such the same would be rendered illegal and being in violation of the procedure established by law. On this short ground, the punishment imposed upon the petitioner cannot be sustained and is, therefore, set-aside.*** *Consequently, the order dated 10.5.1989 rejecting the appeal filed by the petitioner is also set aside.*

The writ petition is allowed. There shall be no order as to costs."

19. It would be relevant to note that the procedure for imposing major penalty has been provided in Regulations 8 and 9 of the 1971 Regulations as were in force in 1980 and as per the said regulations, no order imposing major penalty could have been passed without holding inquiry and the punishing authority either itself or by appointing an inquiry officer could inquire into the truth of the allegations. The substance of the allegations, articles of charge, list of all documents and list of witnesses etc. relied upon by the authorities were required to be supplied and as per the requirement of Regulation 8(5)(b) of the 1971 Regulations, even if no written statement of defence is submitted by the

employee, the punishing authority has the power to itself inquire into the articles of charge or may appoint an inquiring authority under sub-regulation (2) for the said purpose. The subsequent procedure requires the inquiry report to be submitted to the punishing authority, where the punishing authority is not the inquiring authority for the purpose of further action as detailed in Regulation 9 of the 1971 Regulations.

20. From the said provisions, it is apparent that holding of an inquiry is necessary in case a major penalty is to be imposed or is proposed to be imposed and there is nothing in the regulations to show that in case, to a show cause notice, no reply is filed by an employee, then, holding of the regular inquiry could be done away with. No law has been cited before this Court also to show that in case no reply to the show cause notice is given, the holding of a regular inquiry in the said circumstances could be done away with. The relevant portion of Regulation 8 of the 1971 Regulations, as were applicable in the year 1980, is reproduced herein below: -

> ***"PART-IV Procedure for Imposing Penalties***
>
> ***PROCEDURE FOR IMPOSING MAJOR PENALTIES***
>
> *8. (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Regulation 5* ***shall be made except after an inquiry held, as far as may be in the manner provided in this regulation and Regulation 9 or in the manner provided hereinafter.***
>
> *(2) Whenever the punishing authority or any other authority empowered by the Board, by general or special order, is of the opinion that there are grounds for inquiring into the truth of any allegations against an employee,* ***it may itself, inquire into or appoint under this Regulation an authority, to inquire into the truth thereof.***
>
> ***Explanation***

Where the punishing authority, itself holds the inquiry any reference in sub-regulations (7) to (20) and in sub-regulation (22) to the inquiring authority shall be construed as a reference to the punishing authority.

(3) Where it is proposed to hold an inquiry against an employee under this regulation and Regulation 9, ***the punishing authority shall draw up or cause to be drawn up;***

(i) the substance of the allegations into definite and distinct articles of charges;

(ii) a statement of allegations in support of each article of charge, which shall contain --

(a) a statement of all relevant facts including any admission or confession made by the employee;

(b) a list of documents by which and list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The punishing authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of allegations and a list of documents and witnesses by which each article of charge is proposed to be sustained *and shall require the employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.*

(5) (a) On receipt of the written statement of defence, the punishing authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint under sub- regulation (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the employee in his written statement of defence, the punishing authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Regulation 9.

(b) ***If no written statement of defence is submitted by the employee, the punishing authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint under sub-regulation (2), inquiring***

authority for the purpose.

(c) Where the punishing authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order appoint an employee or a legal practitioner, to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge."

21. Thus, even the plea on behalf of the respondent that no reply to the show cause notices was given and the finding of the Courts on the said aspect, would not call for dismissing the suit of the plaintiff or for upholding the order dated 28.04.1980.

22. Thus, both the questions of law, as have been framed herein above, are answered in favour of the present appellant and it is held that the stoppage of one annual increment with cumulative effect is a major penalty and since it is a major penalty, the detailed procedure, as prescribed under Regulations 8 and 9 of the 1971 Regulations, was required to be complied with, which admittedly had not been done in the present case.

23. In view of the above-said facts and circumstances, the order dated 28.04.1980 is illegal and deserves to be set aside.

24. Additionally, it would be relevant to mention that the impugned order is a non-speaking order as there is no finding with respect to the allegations given in the said order and it had simply been observed that since no reply has been given to the show cause notices, thus, the charges have been admitted by the present appellant without there being any admission of the appellant having been recorded.

25. The said order is thus non-speaking and deserves to be set aside on the said ground also. It would be relevant to note that even under Regulation 10 of the 1971 Regulations, where the procedure for imposing minor penalty is given, sub-Regulation 2(v) requires the authority to give finding on each of the allegations. Even otherwise, it is a matter of settled law that an order having civil consequences should be a speaking order reflecting application of mind.

26. The question that now remains to be considered is as to whether at this stage the respondent authorities be given the right to hold a regular inquiry or not. The impugned order was passed in the year 1980 and the judgment of the trial Court was passed in the year 1990 and that of the 1st Appellate Court was passed in the year 1993 and the present appeal has been filed in the year 1994 and the present appellant is stated to have retired on 31.03.2009. The Hon'ble Supreme Court in the case of ***Kulwant Singh Gill (supra)*** had held that on account of lapse of time, it was not expedient to direct an inquiry. This Court also on account of the above-said facts and circumstances and also on account of the lapse of time, is of the view that it would not be expedient to hold the inquiry at this stage.

RELIEF

27. Accordingly, the present Regular Second Appeal is allowed and the judgment of the 1st Appellate Court, to the extent that the order dated 28.04.1980 has been held to be legal, is set aside and the judgment

of the trial Court, to the extent that the orders dated 28.04.1980 and 10.06.1980 have been upheld, are set aside and the suit of the plaintiff is decreed in toto. The appellant/plaintiff would be entitled to all consequential benefits. The arrears however would be restricted to the period of 38 months from the date of the institution of the suit i.e. 10.03.1988.

(VIKAS BAHL)
JUDGE

September 26, 2025
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes