September 1995 (P-1). That was not done and as a result the petitioner stipulated to pay the penal interest at the rate of 4% per annum in case of mis-utilisation of loan amount.

(6) The contention that Rule 10.15 of the Punjab Financial Rules, Volume-I, Part-I, is applicable with regard to interest on advances, we are of the view that the same is not attracted to the facts of the present case because the rules does not deal with the question of penal interest. The aforementioned Rule only shows that the interest on advances is to be charged at such rates as may be fixed by the Government from time to time.

(7) For the aforementioned reasons the writ petition is allowed and order dated 6th January, 2006 (P-3) and 3rd March, 2006 (P-5) are quashed. The respondents are directed to calculate the penal interest at the rate of 4% per annum instead of 10% and raise the demand accordingly. In case the amount of penal interest in excess of 4% per annum has already been recovered from the petitioner and he is found entitled for refund, the same shall be refunded to him within a period of two months from today.

(8) The writ petition stands disposed of accordingly.

R.N.R.

Before M. M. Kumar & M.M.S. Bedi, JJ.

GURDEV SINGHS,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. NO. 7298 OF 2006

3rd August, 2006

Constitution of India, 1950—Haryana Civil Service (Punishment and Appeal) Rules, 1987—Rl.7—Wilful absence from duty—Inquiry Officer finding petitioner guilty of charge of remaining absent from duty from 10th September, 1997 to 21st December, 1997—No charge of absence in respect of period from 1st January, 1998 to 24th September, 1998 framed nor any opportunity in this regard was

given—Punishing authority finding petitioner guilty of absence from duty in respect of later period also—Violation of principles of natural justice—Petitioner claiming to have sent a leave application for the second period of absence—Nothing on record to show that petitioner disobeyed any of the orders of his superiors—Petitioner rendered about 24 years of service—Petition allowed order of dismissal converted into compulsorily retirement of petitioner.

Held, that the punishing authority had taken into consideration the period of 1st January, 1998 to 24th September, 1998 as period of absence from duty by recording a finding that the petitioner has admitted absence in his reply to show cause notice. This is in addition to the period of absence of over three months from 10th September, 1997 to 21st December, 1997 for which alone charge was issued. However, a perusal of para 1 of the reply sent by the petitioner would show that this would not amount to admission as the petitioner is claimed to have sent a leave application through his son. It does not suggest an inference that the petitioner has in term admitted his absence nor any such inference could be raised therefrom in respect of period 1st January, 1998 to 24th September, 1998. It is well settled that statement which amount to admission have to be read as a whole and cannot be torn out of context. We further find that the charge of insubordination for having disobeyed any order has not been proved as there is no evidence on record to that effect.

(Para 11)

Sonia G. Singh, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana, *for the respondents.*

JUDGMENT

M. M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution by Shri Gurdev Singh, Patwari, prays for quashing order dated 15th June, 1999 (P-1) dismissing the petitioner from service in pursuance to a departmental inquiry in which the petitioner has been found guilty of absence from duty. The order dated 9th August, 2000 (P-2) passed by the Appellate Authority is also subject matter of challenge as are the orders dated 6th November, 2003, passed by the Revisional

Authority (P-3). as also the order dated 24th September, 2004, passed on the Review Application (P-4).

(2) Brief facts may first be noticed. The petitioner joined the service of the respondent department in February, 1975. His work and conduct has been found to be Good or Very Good. However, from 10th September, 1997 to 21st December, 1997, the petitioner was found absent from duty when he was working as Patwari Halqa Kheri Saraf Ali, Tehsil Assandh, District Karnal. Accordingly, he was charge-sheeted on 24th February, 1998 under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987 (for brevity, 'the Rules'). The following four charges were framed against him :—

> "1. That he remained continuously absent from his halqa from 10th September, 1997 to 21st December, 1997 without application for leave/intimation.
>
> 2. That SDO (C) Karnal,—*vide* his letter dated 30th September, 1997 called for his explanation. He neither submitted his explanation nor presented himself in his halqa.
>
> 3. That he never took interest in his work so that the charge of his halqa was given to Chhabildas, Patwari.
>
> 4. That Shri Gurdev Singh, Patwari is habitual in remaining absent, not taking interest in Government work and disobedient."

(3) The petitioner did not file any reply to the charge-sheet and thereafter the Sub-Divisional Officer was appointed as Enquiry Officer to inquire about the veracity of the aforementioned charges. The Enquiry Officer submitted his report on 13th February, 1999 and reached the conclusion that the petitioner was guilty of charges as he remained wilfully absent from duty from 10th September, 1997 to 21st December, 1997. The Collector, Karnal, respondent No. 3, who is the punishing authority of the petitioner, issued a second show cause notice to the petitioner on 19th March, 1999 which was duly replied by the petitioner on 2nd June, 1999. After considering the reply to the show cause notice, the punishing authority granted an opportunity of personal hearing to the petitioner. The punishing authority recorded an additional finding that the petitioner had admitted in the reply his absense from duty from 10th September, 1997 to 21st December, 1997

and 1st January, 1998 to 24th September, 1998 due to illness and that he was unable to do the Government duty efficiently. After noticing the aforementioned facts, the punishing authority passed an order dated 15th June, 1999 (P-1), dismissing the petitioner from service. The operative paras of the order are reproduced hereunder for facility of reference :—

> "Sh. Gurdev Singh, Patwari submitted his reply in this office on 2nd June, 1999 to the second show cause notice and in his reply, this official admitted that he was absent from 10th September, 1997 to 21st December, 1997 and 1st January, 1998 to 24th September, 1998 and due to illness, he was unable to give explanation called,—*vide* letter dated 30th September, 1997 and was unable to do the Government duty efficiently but he has not submitted any medical certificate with the reply from which it can be taken that he was ill. This Patwari was given personal hearing on 15th June, 1999.
>
> Today on 15th June, 1999 I have heard Shri Gurdev Singh Patwari, Halqa Kheri Saraf Ali, Tehsil Assandh personally in presence of Sadar Kanungo, Karnal. During personal hearing the employee was unable to give any clarification and neither he has produced any medical certificate. So it is clear that Shri Gurdev Singh Patwari remained absent willfully from his area, Kheri Saraf Ali and neither he has shown any interest in Government duty. I understand that Shri Gurdev Singh Patwari wilfully absented himself from his area, disobeyed the orders of his higher officials and is habitual of not taking interest in Government duties. Like this he has remained absent from his area for more than one year i.e. 370 days without any leave application and information and he is fully guilty. To keep such an employee is neither in the benefit of the Government nor is beneficial for the people.
>
> So, I Davinder Singh, I.A.S., Collector Karnal, hereby punish Sh. Gurdev Singh, Patwari, Halqa Kheri Saraf Ali, Tehsil Assandh by dismissing him from services."

(4) The aforementioned order was challenged in appeal under Rule 9 of the Rules and the Commissioner, Rohtak Range, Rohtak, dismissed the appeal on 9th August, 2000 (P-2). The petitioner then availed the remedy of revision by invoking the provisions of Rule 13 of the Rules but the same was also dismissed by the Financial Commissioner and Principal Secretary to Government, Haryana, Revenue Department,—*vide* order dated 6th November, 2003 (P-3). The petitioner also made an unsuccessful attempt by filing review application, which was dismissed on 24th September, 2004 (P-4).

(5) The principal stand taken by the respondents is that the absence of the petitioner from duty has been proved for the period commencing from10th September, 1997 to 21st December, 1997 and 1st January, 1998 to 24th September, 1998, which is about 370 days. It is further asserted in the written statement that the petitioner had made admission in his reply to the second show-cause notice, which has been placed on record with the written statement as Annexure R-1.

(6) Ms. Sonia G. Singh, learned counsel for the petitioner has argued that in the charge-sheet the petitioner is alleged to have remained absent from duty from 10th September, 1997 to 21st December, 1997 without any application for leave. According to the learned counsel, no charge-sheet was ever issued for absence from duty with regard to the period commencing from 1st January, 1998 to 24th September, 1998, for which in fact the petitioner had sent an application through his son, as is evident from the perusal of para 1 of the reply to the show-cause notice (R-1), which has been relied by the respondents against the petitioner. Learned counsel has further argued that the petitioner has rendered unblemished service from 1975 to 1997 and his dismissal from service on the trivial charge of absence from duty, which has been blown out of proportion and the same cannot be made the basis to dismiss him from service by depriving him the pensionary benefits. She has emphasized that there was ample room for the respondnets to retire the petitioner compulsorily. In support of her submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Hussaini** *versus* **Hon'ble Chief Justice of High Court of Judicature at Allahabad and others, (1).**

(1) AIR 1985 S.C. 75

(7) Mr. Harish Rathee, learned State counsel, however, has argued that the provisions of Rule 7 of the Rules have been religiously followed and there is no lapse committed by the Enquiry Officer or the punishing authority which may warrant the conclusion that findings recorded by the Enquiry Officer are vitiated. According to the learned State counsel in the absence of any irregularity or illegality it would not be proper to interfere in such like cases. Learned counsel has also submitted that absence from duty without sanction is a misconduct which may attract extreme penalty of dismissal and there is no room to deviate from the penalty awarded by the punishing authority as upheld by the appellate as well as revisional authority.

(8) We have thoughtfully considered the submissions made by the learned counsel for the parties and are of the view that this petition deserves to be allowed. A perusal of the charge-sheet would show that four charges were framed against the petitioner. The first charge was that he remained continuously absent from duty from his Halqa from 10th September, 1997 to 21st December, 1997 without application or leave/intimation and secondly he had failed to tender his explanation nor presented himself in his Halqa. The third charge was that he never took interest in his work and the charge of his Halqa was given to Shri Chhabildas, Patwari and that he is habitual to remain absent and did not take interest in Government work and was disobedient. The Enquiry Officer found the petitioner guilty of charge of remaining absent from duty from 10th September, 1997 to 21st December, 1997. There is nothing on the record to show that the petitioner disobeyed any of the order of his superiors. It is also evident that no charge of absence in respect of the period from 1st January, 1998 to 24th September, 1998 was framed against him nor any opportunity in that regard was given. A perusal of the reply filed by the petitioner to the show-casue notice (R-1) would show that the petitioner has not admitted the charge in respect of the period from 1st January, 1998 to 24th September, 1998. He, in fact, has stated as under :—

> "1. That from 10th September, 1997 to 21st December, 1997 and 1st January, 1998 to 24th September, 1998 I could not appear in Halqua Office, due to sickness. I have done my treatment from private doctors. I have also not received the pay of the period, during which I remained absent. During this period, I have sent the leave application through my son, to the office of tehsil Assandh."

(9) A perusal of the aforementioned para would show that the petitioner had asserted to have sent leave application through his son and also the fact that he had obtained treatment of his illness from private doctors. The punishing authority,—*vide* order dated 15th June, 1999 (P-1), however, has found the petitioner guilty of absence from duty in respect of the later period also i.e. from 1st January, 1998 to 24th September, 1998. Firstly no charge-sheet was issued to the petitioner in respect of the aforementioned period thereby the principles of natural justice have been completely violated. Moreover, the petitioner had asserted that leave application in respect of the aforementioned period was sent to the office by him through his son. It is true that the quantum of punishment cannot be interfered with as per the catena of judgments of Hon'ble the Supreme Court in the cases like **Union of India** *versus* **Parmanand, (2) B.C. Chaturvedi** *versus* **Union of India, (3) Apparel Export Promotion Council** *versus* **A.K. Chopra, (4).** However, it is equally true that if the principles of natural justice are found to have been violated then the Court can interfere with the quantum of punishment. These principles are popularly known as "Wednesbury Principles" to which reference has been made by Hon'ble the Supreme Court in the case of **Om Kumar** *versus* **Union of India, (5).** The views of Lord Greene in the case of **Associated Provincial Picture Houses** *versus* **Wednesbury Corporation, (6),** have been relied upon by Hon'ble the Supreme Court in para No. 26 and the conclusion has been recorded in para 71. The aforementioned paras read as under :—

> "26. Lord Greene said in 1948 in the Wednesbury case, (1947) 2 All ER 680 (CA), that when a statute gave discretion to an administrator to taka a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the others of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services

(2) (1989) 2 S.C.C. 177
(3) (1995) 6 S.C.C. 749
(4) (1999) 1 S.C.C. 759
(5) (2001) 2 S.C.C. 386
(6) (1947) 2 All England Reports 680

Union *versus* Minister of Civil Service, (1983) 1 AC 768 (called the GCHQ case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

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71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

(10) A Constitution Bench had another opportunity to succinctly state these principles in the case of **Rameshwar Prasad (VI)** *versus* **Union of India (7).** In para 242, their Lordships' have issued the guidelines for correct understanding of Wednesbury Principles and the same reads as under :—

"242. The Wednesbury principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it." (Emphasis added)

(7) (2006) 2 S.C.C. 1

(11) When the principles laid down in the aforementioned judgments are applied to the facts of the present case it becomes evident that the punishing authority had taken into consideration the period of 1st January, 1998 to 24th September, 1998 as period of absence from duty by recording a finding that the petitioner has admitted absence in his reply to show cause notice (R-1). This is in addition to the period of absence of over three months from 10th September, 1997 to 21st December, 1997 for which alone charge sheet was issued. However, a perusal of para 1 of the reply sent by the petitioner (R-1) would show that this would not amount to admission as the petitioner has claimed to have sent a leave application through his son. It does not suggest an inference that the petitioner has in term admitted his absence nor any such inference could be raised therefrom in respect of period 1st January, 1998 to 24th September, 1998. It is well settled that statement which amount to admission have to be read as a whole and cannot be torn out of context. We further find that the charge of insubordination for having disobeyed any order has not been proved as there is no evidence on record to that effect. Therefore, the Wednesbury principles, as per the guidelines given in Rameshwar Prasad's case *(supra)* have been violated. Accordingly, two courses could be followed by us (i) to issue direction to the respondents to re-examine the matter; or (ii) exercise the jurisdiction ourselves. However, we are availing the second option for the reasons that the inquiry report in this case was submitted on 13th February, 1999 and the order dismissing the petitioner from service was passed on 15th June, 1999 (P-1). A period of more than seven years has already gone by. Therefore, we would conclude that the order of dismissal be converted into the one of compulsorily retirement because the petitioner has rendered long service of about 24 years. This would meet the ends of justice as the petitioner would become entitle to pension and all other pensionary benefits. Accordingly, the respondents are directed to treat the petitioner to have retired from service with effect from 1st July, 1999 and on that basis all retiral benefits be calculated and paid to the petitioner within a period of three months from the date a copy of this order is received by them.

(12) The writ petition is allowed in the above terms.

R.N.R.

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