2023:PHHC:074596

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8848-1994
Date of decision : 11.05.2023

Sawran Singh **..... Petitioner**

versus

State of Punjab and another **..... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harinder Sharma, Advocate
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

Mr. G.S. Bal, Senior Advocate with
Mr. Laxman Choudhary, Advocate
for respondent No.2.

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PANKAJ JAIN, J. (Oral)

By way of present writ petition, the petitioner prays for issuance of a writ in the nature of certiorari quashing chargesheet dated 30.07.1990 (P-1), order dated 16.08.1991 (P-12) and that dated 28.10.1992 (P-19), whereby the petitioner stands dismissed from services.

2. The petitioner who was working as Clerk with the respondent-Board was served with chargesheet vide memo dated 30.07.1990. A regular departmental inquiry was conducted. The petitioner was held guilty. He was served with the show cause notice dated 22.04.1991 alongwith inquiry report dated 20.03.1991. The petitioner replied to the said show cause notice claiming that he was not dealt with fairness during inquiry and pleaded innocence. Considering

the reply submitted by the petitioner and after giving him opportunity of hearing, the order dated 16.08.1991 (P-12) was passed. During the interregnum, petitioner preferred civil suit dated 27.07.1991. In view of the fact that order annexure P-12 was passed, the civil suit was rendered infructuous. Vide P-12, the disciplinary authority found that the petitioner ought to have been given full opportunity to defend his case and sent the matter back to the inquiry officer. Inquiry officer however responded that since he has already conducted inquiry and it will not be in the fitness of things that he conducts further inquiry that too when the same has been found to be not fair by the punishing authority. Resultantly, fresh inquiry officer was appointed, who conducted denovo inquiry against the petitioner. It is admitted case of the petitioner that though he was aware of the inquiry proceedings, yet he opted not to participate in the same deliberately. On the basis of fresh inquiry report submitted, the petitioner was ordered to be dismissed from services. Vide order dated 28.10.1992 (P-19), the petitioner preferred appeal thereagainst. The same also stands dismissed vide order Annexure P-20.

3. Mr. Sharma counsel for the petitioner submits that a bare perusal of Annexure P-8 would reveal that the disciplinary authority fully agreed with the inquiry report and proposed a punishment, however, on considering the reply submitted by the petitioner, opted to withdraw the show cause notice. That being so, denovo inquiry ought not have been ordered against the petitioner. While raising aforesaid plea, he has drawn attention of this Court to the Employees Punishment and Appeal Regulations framed under clause (b) of sub-section 2 of Section 24 of the Punjab School Education Board Act, 1969 to submit

that Annexure P-8 was issued while exercising power under Regulation 10(3) and thereafter there was no looking back for the disciplinary authority and thus all proceedings subsequent thereto cannot be sustained. In support of his contention, he has relied upon ***K.R. Deb vs. Collector of Central Excise, Shillong 1971(2) SCC 102, Mathura Prasad vs. Union of India and others, 2007 AIR (SC) 381, Vijay Shankar Pandey vs. Union of India and another 2015(1) AIR (SC) 326.***

4. Per contra, Mr. Bal submits that the regulations applicable precisely deal with such situations. Regulation 9 provides for procedure for holding an inquiry and Regulation 10 provides for action on the inquiry report. After the inquiry report was submitted for action before the punishing authority, the petitioner was served with the inquiry report as well as show cause notice proposing punishment. In his reply to the show cause notice, the case pleaded by the petitioner was that he was not dealt fairly by the inquiry officer and it was in these circumstances that the authority found that the matter be remanded for further inquiry. It was only after the inquiry officer has expressed its inability that the authorities resorted to Regulation 9(15)(a) and thus, no fault can be found with the action of the authority.

5. I have heard counsel for the parties and have gone through the records of the case.

6. The precise issue that arises for consideration before this Court is:

> "(i) Whether the authority could have resorted to Regulation 9(15)(a) after having issued show cause

notice under Rule 10.

7. Facts are not much in dispute being matter of record. It is also not disputed that after the petitioner was served with the inquiry report alongwith show cause notice, he raised grievance w.r.t. lack of opportunity by the inquiry officer. Regulations 9 and 10 need to be perused which read as under:-

> ***"Procedure for holding an enquiry.***
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> 9. (1) In case where the punishing authority is of the opinion that it is necessary to hold an enquiry it shall frame in writing a definite charge in respect of each imputation of misconduct or misbehaviour and draw up a list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained.
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> (2) The punishing authority may itself enquire into or appoint an officer of the Board or any person (in service/or retired) from outside the Board to enquire into the charges against any employee. An enquiry officer, other than the officer of the Board, may be paid remuneration upto Rs. 4000/-, as determined by the Chairman in accordance with the nature/ value of the case.
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> **Explanation-** Where the punishing authority itself holds the enquiry any reference in this regulation to the enquiry officer shall be construed as a reference to the punishing authority.
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> (3) The punishing authority shall forward the charge-sheet framed under sub-para (1) alongwith the list of documents, list of witnesses and the record of the case to the enquiry officer.
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> (4) The punishing authority may appoint an employee of the Board or any other person to be known as the presenting officer to present on its behalf the case in support of the articles of charge.
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> (5) The employee may take the assistance of any other employee to present the case on his behalf, but may not engage a legal practitioner for the purpose,

unless the presenting officer appointed by the punishing authority is a legal practitioner, or the punishing authority having regard to the circumstances of the case, so permits.

(6) The enquiry officer shall call upon the employee to appear before him on such day and at such time as the former may, by a notice in writing, specify in this behalf. When the employee so appears, the enquiry officer shall read over and explain the articles of charges to him and shall deliver to him a copy each of the articles of charge, list of documents and list of witnesses.

(7) (a) The enquiry officer shall then adjourn the enquiry to another date for the filing of the written statement of defence by the employee.

(b) For the purpose of preparation of his defence, the employee may inspect the record in possession of the enquiry officer He may also inspect with the permission of the enquiry officer. any record in possession of the Board, if in the opinion of the enquiry officer such record is relevant for the purpose of enabling him to prepare his defence.

(8) If the employee does not admit any of the charges in his written statement of defence, the enquiry officer shall call upon the presenting officer and the employee to produce their evidence with regard to such articles of charge and may for this purpose fix one or more dates as he deems fit.

Explanation- An imputation not specifically denied in the written statement of defence shall be deemed to have been admitted.

(9) Evidence shall be recorded in the presence of the parties and the opposite party shall have the right to cross-examine the witnesses.

(10) If it shall appear necessary, in the interests of justice, the enquiry officer may in his discretion allow the presenting officer or the employee, or both to produce additional evidence or may himself call new evidence or recall and re-examine any witness.

(11) The enquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances, appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

(12) The enquiry officer shall, after the conclusion of the evidence, hear the arguments of the presenting officer and the employee or may permit them to file written arguments, if they so desire.

(13) The enquiry officer shall then record his findings on each article of charge and give reasons in support thereof.

(14) If the employee does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the enquiry officer on any date fixed for the enquiry or otherwise fails or refuses to participate in the enquiry, the enquiry officer may hold the enquiry ex-parte.

(15) (a) Where the enquiry officer ceases to be in the service of the Board, or becomes incapable of conducting the enquiry or the punishing authority is of the opinion that unnecessary delay has been caused by the enquiry officer in conducting the enquiry or the enquiry by him may not be or appear to be fair and impartial the punishing authority may withdraw the enquiry from him and appoint another enquiry officer and transfer the enquiry to him.

(b) The enquiry officer appointed under para (15) (a) may in his discretion, conduct the enquiry de novo or proceed with it from the stage at which it stood on the date of his appointment in which case the enquiry shall from the date of its commencement be deemed to have been held by him:

Provided that if such enquiry officer is of the opinion that further examination of any of the witnesses whose evidence has already been

recorded is necessary in the interest of justice, he may recall, examine and cross-examine any such witness as here in before provided.

(16) No finding or order passed in an enquiry shall be called into question before or set aside by any authority including the enquiry officer merely on the ground that there has been any infringement of any provision of this regulation unless such infringement causes prejudice to the aggrieved party and objection thereto is taken at the earliest opportunity.

Action on the Enquiry Report

10. (1) The punishing authority if it is not itself the enquiring authority may, for reasons to be recorded by it, in writing, remit the case to the enquiring authority for further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of regulation 7 as far as may be.

(2) The punishing authority shall, if it disagrees with the findings of the enquiring authority on any article of charge record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) (i) If the punishing authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation S should be imposed on the employee, it shall:-

(a) furnish to the employee a copy of the report of the enquiry held by it and its findings on each article of charge or where the enquiry had been held by an enquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the enquiring authority;

(b) give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of

> the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry held under regulation 7.
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> (ii) The punishing authority shall after considering the representation, if any, made by the employee determine what penalty, if any, should be imposed on the employee and make such orders as it may deem fit."

8. After the inquiry report was submitted with the punishing authority, obviously punishing authority in compliance of the procedure as laid down in the regulation 10 provided copy thereof to the delinquent alongwith show cause notice. After petitioner complained of lack of fairness and the authority found favour with the grievance raised by him, the authority exercised power as contemplated under Rule 10 to order further inquiry. Once further inquiry was ordered, obviously the procedure as laid down in Regulation 9 was to be followed. Thus after the inquiry officer expressed his inability, the disciplinary authority resorted to Regulation 9(15)(a).

9. Trite it is that a provision contained in Section has to be read as a whole and the same cannot be splited in stages as is being argued by Mr. Sharma. Moreover, the manner in which Mr. Sharma wants to interpret the natural corollary thereof would be that wherever a show cause notice is issued alongwith the inquiry report to the delinquent, the only option available with the punishing authority is only to decide upon quantum of punishment. In case the same is read so, the same shall render whole object of issuing show cause notice alongwith the inquiry report to be otiose. Regulation 10(1), 10(2) and

10(3) contemplate three situations and not stages as is being canvassed by Mr. Sharma.

10. The reliance made by Mr. Sharma on the expression used in P-8 to the effect 'I am fully agreed with this inquiry report' to submit that by agreeing with the report, the doors were closed for the authority even to comment upon the fairness of the inquiry report is totally alien to law and would rather be prejudicial to the delinquents in case the same is held to be so. In Constitution Bench, Apex Court in the case of ***Managing Director, ECIL, Hyderabad vs. B. Karunakaran 1993(5) SLR 532*** has held as under:-

> "xx xx xx
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> 25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment."
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> 26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and

also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The finding further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a findings is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own finding on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the

disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

27. It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his

innocence in the disciplinary proceedings."

11. Definitely, after inquiry report has been submitted to the punishing authority, the punishing authority is required to put the same across to the delinquent and ask for his comments. It is an important stage. Only after receiving reply to the show cause notice, punishing authority has to apply its mind. The stage as aforesaid is not mere formality, but is rather in consonance with the principles of natural justice recognised to weed out the arbitrariness and to promote reasonableness in this whole process.

12. Keeping in view that it is an admitted case of the employee that he deliberately opted not to participate in the second inquiry proceedings, no fault can be found with the same and the punishment imposed as a consequence thereof.

13. Consequently, the present writ petition is dismissed.

(PANKAJ JAIN)
JUDGE

11.05.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes