

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

-.-

Reserved on 29.08.2024
Pronounced on: 18.09.2024

1. CWP-3127-2019 (O&M)

Rajesh Chaudhary Petitioner

Vs.

The Chandigarh Administration and Others Respondents

2. CWP-3129-2019 (O&M)

Arvinder Kaur Petitioner

Vs.

The Chandigarh Administration and Others Respondents

3. CWP-3196-2019 (O&M)

Vijay Kumar Petitioner

Vs.

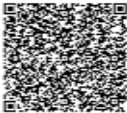
The Chandigarh Administration and Others Respondents

4. CWP-3218-2019 (O&M)

Mahender Chaneja Petitioner

Vs.

The Chandigarh Administration and Others Respondents



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5. CWP-3223-2019 (O&M)

Anju Bala Petitioner

Vs.

The Chandigarh Administration and Others Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Rohit Seth, Advocate for the petitioners(s).

Mr. Aditya Jain Gupta, Addl. Standing Counsel – UT Chandigarh
with Mr. Rahul Vohra, Advocate
for respondent Nos. 1 and 2 (in CWP-3129-2019)

Mr. Ravi Kamal Gupta, Advocate
for the respondent-UT, Chandigarh (in CWP-3129-2019)

Mr. Aman Pal, Advocate and
Mr. Japsehaj Singh, Advocate
for the respondent-UT Chandigarh (in CWP-3218-2019)

Mr. Ashish Rawal, Sr. Standing counsel with
Mr. Deepak Malhotra, Advocate
for the respondent-U.T. Chandigarh
(in CWP-3127-2019 & CWP-3223-2019)

Mr. Anil Kumar Sharma, Advocate
for respondent No.1 and 2 (in CWP-3196-2019)

SUDEEPTI SHARMA J.

1. Since the challenge in all the above-numbered writ petitions is to the order dated 03.12.2018/10.01.2019, whereby the original applications filed by the petitioners in all the writ petitions before the Central Administrative Tribunal, Chandigarh Bench, are dismissed, therefore, we decide all the writ petitions vide one common judgment.

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2. As the facts of all the writ petitions are same, therefore, for the sake of brevity, we take the brief facts of the case as per the pleadings in original application No.060/01044/2018 in CWP No.3127 of 2019 titled as Rajesh Chaudhary Vs. The Chandigarh Administration and Others. The same are as under:-

- i) The petitioner was appointed as Staff Nurse on 20.04.2007.
- ii) He was General Secretary of Government Medical College and Hospital Nurses Welfare Association, registered under Trade Union Act, 1926 and recognised at relevant point of time.
- iii) Several Staff Nurses requested on 10.11.2016 through Union for discussions regarding provision of grant of benefit of National Holidays to nursing staff and regarding their promotions as the same were not granted for about 20 years.
- iv) Several nurses were waiting before joining duty outside office of Nursing Superintendent to ascertain about request of declaring 11.11.2016 as holiday. The petitioner went for a scheduled meeting with Nursing Superintendent alongwith 5 to 7 office bearers-cum-Nurses to ascertain the position.
- v) On 17.11.2016 a complaint was submitted by Nursing Superintendent to Medical Superintendent against the President of Government Medical College and Hospital Nurses Welfare Association.
- vi) File notings dated 16.02.2017 is the one in which the preliminary enquiry report was reproduced and the file was put up for approval to accept the inquiry report and allow to issue the charge-

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sheet to the petitioner and others. The said approval was granted by Director Principal on 17.02.2017.

vii) On 21.02.2017, the proposal for issuance of minor/major penalty, charge-sheet was put up before Director Principal and he approved issuance of minor penalty, charge-sheet under Rule 10 of Punjab Civil Service (Punishment and Appeal) Rules, 1970 on 25.02.2017.

viii) On 03.03.2017, two sets of draft of charge-sheets were put up and forwarded by Medical Superintendent for vetting by Law Officer and the same were found in order on 09.03.2017.

ix) On 16.03.2017, the proposal was thereafter put up that since all the allegations against the petitioner and others stood proved, the quantum of punishment be changed from minor to major penalty under Rule 8 of Punjab Civil Service (Punishment and Appeal) Rules, 1970. The said proposal was approved by Director Principal. On 17.03.2017 major penalty charge-sheet under Rule 8 of Punjab Civil Service (Punishment and Appeal) Rules, 1970 along with article of charges was issued to petitioner by Director/Principal.

x) On 27.03.2017 the petitioner denied charges and sought documents relied upon in charge-sheet/by officers.

xi) On 27.04.2017, the respondents supplied the documents at 'H', 'J' and Noting Portion while stating therein there is no CCTV camera/footage.

xii) On 27.07.2017 the Enquiry Officer and Presenting Officer were appointed. 4 out of 6 defence witnesses declined to be examined,

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which caused severe damage and prejudice to the defence. This fact is admitted in reply dated 22.10.2018 filed by the respondents in Original Application No.060/1044 of 2018 by stating therein that so far as the matter of producing six defence witnesses in respect of same incidence is concerned, all these witnesses would have made the same statement of occurrence/non-occurrence of any incident and the same would have been repetition of the same statement and wastage of time of the enquiry proceedings for nothing. Thus the enquiry officer has power to curtail number of witnesses to avoid repetition.

xiii) 03.10.2017 is the enquiry report concluding charges to be proved. As per the petitioner entire evidence was not analysed qua each allegation of charge. Appraisals and conclusions were straightway arrived in violation of Rule 8(23)(i) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970. Neither enquiry report was supplied to seek comments/representation against finding nor show cause notice of proposed penalty was given to the petitioner.

xiv) 08.11.2017 is the penalty order by Director Principal Government Medical College and Hospital, Chandigarh stopping three grade increments with cumulative effect.

xv) On 27.11.2017 the appeal was filed to the Secretary Health. Vide order dated 01.08.2018, the appellate authority modified the penalty from stoppage of three grade increments with cumulative effect to stoppage of one increment with cumulative effect. On 30.08.2018, the petitioner filed original application No.060/01044/2018 in the Central Administrative Tribunal,

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Chandigarh Bench.

3. After hearing learned counsel for the parties and going through the record, the original application filed by the petitioner is dismissed vide order dated 3.12.2018/10.01.2019 by the Central Administrative Tribunal, Chandigarh Bench.

4. **SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER:-**

- i) Learned counsel for the petitioner contends that the charge-sheet under Rule 8 of Punjab Civil Service (Punishment and Appeal) Rules, 1970 not conceptualised/prepared on application of mind by disciplinary authority i.e. Director Principal, therefore, vitiated.
- ii) He further contends that denial of 4 out of 6 defence witnesses violates Rule 8 (17) Punjab Civil Service (Punishment and Appeal), Rules 1970.
- iii) Learned Tribunal did not appreciate that principle of natural justice was violated and observed in the impugned order that it was for enquiry officer to decide and no prejudice was caused. DWs were to prove no man-handling, pushing of Nursing Superintendent against the wall, no breaking of sanctity of office, no misconduct relating to duties as government servant since the petitioner went in capacity of office bearer of recognised union body.
- iv) He further contends that enquiry report is illegal since enquiry officer has not analysed/examined evidence led in enquiry against each allegation of charge to reach a conclusion against

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each alleged violation.

- v) He further contends that enquiry report was not supplied to the petitioner.
- vi) Further that no show cause notice of proposed penalty was given.
- vii) He further contends that learned Tribunal relied upon the judgment titled as '*Uttarakhand Transport Corporation Vs. Sukhveer Singh*' wherein enquiry report was supplied with show cause notice of penalty and in the present case no enquiry report was supplied to the petitioner.
- viii) Further that learned Tribunal observed that for minor penalty supply of enquiry report is not required but did not appreciate the very fact that the charge-sheet and penalty order was for major penalty. Therefore, the findings of the learned Tribunal are perverse on the face of record. The material evidence in favour of the petitioner was not considered and selective evidence cannot be picked to suit the prosecution.
- ix) He further contends that action of the respondents is discriminatory as out of 30-40 employees who had allegedly gathered outside and inside Nursing Office, only 6 union leaders who were holding responsible positions were targeted and proceeded.
- x) Therefore, he prays that the present petition be allowed.



5. **SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS**

- i) *Per contra*, learned counsel for the respondents contends that the plea of the petitioner that the 'official noting' shows that initially Director Principal (i.e. Disciplinary Authority) observed for issuance of charge-sheet for a minor penalty but thereafter, on suggestion by Additional Director, Administration (ADA), directed issuance of charge-sheet for major penalty is misconceived and unfounded for the reasons that it is settled position in law that 'official noting' is part of decision making process and such noting does not fructify into an order unless the same is communicated to the affected person(s).
- ii) He further contends that admittedly in the present case charge-sheet for minor penalty was never served upon the petitioners. Thus there is no merit in plea of the petitioner that the charge-sheet for major penalty has been served after suggestion given by the ADA.
- iii) He further contends that settled position in law is that strict rules of evidence are not applicable to the departmental enquiry proceedings/disciplinary proceedings.
- iv) He further contends that so far as plea of the petitioners qua non-serving of show cause notice and/or copy of enquiry report before awarding the punishment is concerned, the settled position of law is that the delinquent employee has to



show/demonstrate as to what prejudice has been caused due to non serving of show cause notice or enquiry report.

- v) He further contends that since the appellate authority has reduced the punishment imposed upon delinquent officials from “stoppage of three grade increments with cumulative effect” to “one increment with cumulative effect”, therefore, there is no merit in the plea of the petitioner by saying that orders are non-speaking.

- vi) He, therefore, prays that the present writ petition be dismissed.

6. We have heard learned counsel for the parties and perused the whole record.

ANALYSIS OF THE RECORD

7. A perusal of the record shows that the petitioners received memorandum/charge-sheet dated 17.03.2017 issued by the Director Principal Government Medical College and Hospital for holding regular enquiry under Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rule, 1970. The documents which were mentioned in the charge-sheet i.e. complaint ‘H’, Annexures ‘I’ & ‘J’ were not attached with the charge-sheet. In order to file the reply the petitioners demanded the documents, but those were not supplied to them. Those were taken by the petitioners through RTI. The complaint dated 17.11.2016, which is one of the documents alleged to have been made by Ms. Prem Lata, Officiating Nursing Superintendent addressed to Medical Superintendent of Hospital alleging that on 11.11.2016 the nursing staff of 40-50 in number gathered and entered in the office of Nursing Superintendent and

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disturbed the working. The other document which was supplied as Annexure 'J' is the statement of President Vijay Kumar, GMCH, Sector 32, Chandigarh, wherein he stated that he alongwith other staff members went to the office of Nursing Superintendent and they politely talked to the concerned official and there was no untoward incident and they came back after 5 to 10 minutes.

8. Fact finding enquiry was conducted by appointing Sh. C.S.Gautam, Professor Pharmacology, GMCH, Sector 32-Chandigarh at the back of the petitioners. The petitioners were never associated in the fact finding enquiry. In the fact finding enquiry it was suggested against the petitioners and five other employees of nursing staff that a charge-sheet under Rule 10 of the Punjab Civil Service (Punishment & Appeal), Rules 1970 for minor penalty be issued. But subsequently on the advice of ADA, the charge-sheet was ordered to be issued for major penalty under Rule 8 of the Punjab Civil Service (Punishment & Appeal) Rules, 1970 against the petitioners.

9. The petitioners filed reply to the charge-sheet after receipt of the documents. Sh. H.R.Ganger, IAS (Retired) was appointed as Inquiry Officer to hold an inquiry against the petitioners for imposition of major penalty under Rule 8 of the Punjab Civil Service (Punishment & Appeal) Rules, 1970.

10. Collectively, the statements of prosecution witnesses were recorded and all of them denied the charges that any employee pushed ANS to the wall and even otherwise also the charges were inflated with the purpose to hold an inquiry for major penalty. The charge No.1 was that the applicant and other employees pushed the ANS to the wall. This allegation was not there in the complaint nor it was there in the evidence.

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11. The petitioner alongwith other employees who were charge-sheeted (petitioners in other writ petitions) wanted to examine about 6 to 10 witnesses. However, the Enquiry Officer/Presenting Officer (PO) allowed the petitioners only to examine two witnesses. The Enquiry Officer/Presenting Officer after getting two witnesses examined by the defence directed the petitioners to submit their written defence.

12. Respondent No.2 (Director Principal, Government Medical College and Hospital), being a disciplinary authority without supplying a copy of the charge-sheet or show cause notice, vide impugned order dated 08.11.2017 imposed a major punishment for stoppage of three grade increments with cumulative effect. The petitioners filed an appeal before the Secretary, U.T. Health, Chandigarh, challenging the order dated 08.11.2017. The Appellate Authority reduced the punishment from stoppage of three grade increments with cumulative effect to stoppage of one increment with cumulative effect vide order dated 01.08.2018.

13. For proper adjudication of this case, it would be relevant to reproduce Rule 8 of the Punjab Civil Service (Punishment and Appeal Rules), 1970:-

“Procedure For Imposing Major Penalties :-

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of rule 5 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and rule 9 or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the punishing authority is of the opinion that there are grounds for inquiring into the truth of any imputation of



misconduct or misbehaviour against a Government employee, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority or any retired officer to inquire into the truth thereof.

Explanation:- Where the punishing authority itself holds the inquiry, any reference in sub-rules (7) to (20) and in sub-rule (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 a Government employee under this rule and rule 9, the punishing authority shall draw up or cause to be drawn up;*

(i) *The substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charges;*

(ii) *A statement of imputations of misconduct or misbehaviour 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 Government employee;*

(b) *a list of documents by which and a 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 Government employee a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge*



is proposed to be sustained and shall require the Government 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.

(4-A) If on receipt of written statement of defence, the punishing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 5 should be imposed on the Government Employee and for that reason the punishing authority does not consider it necessary to inquire into the articles of charges of imposing any of the penalties specified in clause (v) to (ix) of rule 5, it shall after following the procedure specified in rule 10, make an order imposing any of the penalties specified in clause (i) to (iv) of rule 5.

(5)(a) Subject to the provisions of sub rule (4-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-rule (2) an inquiring authority for the purpose, and where all the articles of charge have been admitted by the government employee in his written statement of defence, the Punishing authority shall record its finding on each charger after taking such evidence as it may think fit and shall act in the manner laid down in rule 9.

(b) If no written statement of defence is submitted by the Government 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-rule (2), inquiring authority for the purpose.

(c) Where the punishing authority itself inquiries into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order appoint a Government 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.

(6) The punishing authority shall, where it is not the inquiring authority, forward to the inquiring authority:-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour.

(ii) a copy of the written statement of defence, if any submitted by the Government employee;

(iii) a copy of the statement of witnesses, if any, referred to in sub-rule (3);

(iv) evidence providing the delivery of documents required to be delivered to the Government employee under sub rule (4).

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government employee shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct as the inquiring authority may allow.



(8) The Government employee may take the assistance of any other Government employee or a retired Government 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 regards to the circumstances of the case, so permits.

(9) If the Government employee who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of the defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of the charges, the inquiring authority shall record the plea, sign the record and obtain the signatures of the government employee thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government employee pleads guilty.

(11) The inquiring authority shall if the Government employee fails to appear within the specified time or refuses or omits to plead, require the Presiding Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days after recording an order that the Government employee may, for the purpose of preparing his defence –



(i) inspect within five days of the order within such further time not exceeding five days as the inquiring authority may allow, the documents, specified in the list referred to in sub-rule (3); and

(ii) submit a list of witnesses to be examined on his behalf;

(iii) apply orally or in writing for the supply of copies of the statements, if any recorded, of witnesses mentioned in the list referred to in sub-rule (3), in which case the inquiring authority shall furnish to him such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the punishing authority, and

(iv) give a notice within ten days of the order or within such further time not exceeding ten days, as the inquiring authority may allow for the discovery or production of any document which is in the possession of Government, but not mentioned in the list referred to in sub-rule (3) and the Government employee shall also indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The Inquiring Authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition.



Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are in its opinion not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority;

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall on being so informed, communicate the information to the Government employee and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the punishing authority. The witnesses shall be examined by or on behalf of the Presiding Officer and may be cross-examined by or on behalf of the Government employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.



(15) If it shall appear necessary before the close of the case on behalf of the punishing authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government employee or may itself call new evidence or recall and re-examine any witnesses and in such case the Government employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusively of the date of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government and the day to which the inquiry is adjourned. The inquiring authority shall give the Government employee an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government employee to produce new evidence if it is of the Opinion that the production of such evidence is necessary in the interest of justice.

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the punishing authority is closed, the Government employee shall be required to state his defence orally or in writing as he may prefer. If the defence is made orally it shall



be recorded and the Government employee shall be recorded and the Government employee shall be required to sign the record. In either case, a copy the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government employee shall then be produced. The Government employee may examine himself on his own behalf, if he so prefers either at the outset or after the conclusion of examination of the witnesses produced by him. The witnesses produced by the Government employee shall then be examined and shall be liable to cross- examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the punishing authority.

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

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government employee or permit them to file written briefs of their respective cases, if they so desire.

(20) If the Government employee to whom a copy of the articles of charge has been delivered, 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 inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex- parte.

(21) (a) Where a punishing authority competent to impose any of the penalties specified in clauses (i) to (iv) of rule 5 but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 5 has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of rule 5 should be imposed on the Government employee, that authority shall forward the records of the inquiry to such punishing authority as is competent to impose the last mentioned penalties.

(b) The punishing authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice recall the witness and examine and re-examine the witnesses and may impose on the Government employee such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, cases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such



jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or parity recorded by his predecessor and partly recorded by itself;

provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain:-

(a) the articles of charge and the statement of the imputation of misconduct or misbehaviour.

(b) the defence of the Government employee in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefore.

Explanation:--If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original article of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government employee has either admitted the facts on which such article of charge is based or has had a



reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority where it is not itself the punishing authority shall forward to the punishing authority the records of inquiry which shall include-

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the Government employee;

(c) the oral and documentary evidence produced in the course of the inquiry,

(d) written briefs, if any, filed by the Presenting Officer, or the Government employee or both during the course of the inquiry; and

(e) the orders, if any, made by the punishing authority and the inquiring authority in regard to the inquiry.

14. The original application filed by the petitioners challenging order dated 01.08.2018 was dismissed by the learned Central Administrative Tribunal (CAT) on 10.01.2019. The relevant portion of the impugned order is reproduced as under:-

“9. We have heard the learned counsel for the parties at length and examined the material on file with the able assistance of learned counsel for the parties.

10. To begin with, learned senior counsel for the applicants vehemently urged that the punishment order is dated 8.8.2017,



whereas the inquiry was completed only on 3.10.2017, thus, it shows that the order had already been prepared in anticipation that the applicants would be held guilty and punished accordingly, which has the effect of vitiating the inquiry. However, this plea was resisted by learned counsel for the respondents with record that it was a mistake on the part of the department in putting date of 8.8.2017 as in fact it was passed subsequently after Inquiry report was submitted and we are convinced of this fact and do not find any reason to disbelieve the respondents as it was only a clerical error, which would not afford any valid ground to the applicants to claim any benefit on the basis of the same.

11. The learned senior counsel for the applicants vehemently argued that the respondents could not have curtailed number of witnesses to be produced by them in support of their defence as it has prejudiced their defence. The plea to our mind, does not have any substance as it is for the IO to determine as to how many witnesses are to be allowed to prove a fact particularly in this case where only one particular fact as to whether manhandling had taken place, was to be proved and witnesses had stated that no manhandling had taken place. Thus, non production of further witnesses does not appear to have prejudiced the case of the applicants, in any manner.

12. The learned senior counsel for the applicants argued and with vehemence, that the copy of inquiry report was to be supplied to the applicants and show cause notice also before Imposing penalty and this flaw in decision making process has caused prejudice to the



*applicants. No doubt, the admitted position is that the applicants were not supplied with inquiry report or show cause notice, but that does not appear to have caused any prejudice to the applicants. Rather, the appellate authority has considered their pleas and has toned down the penalty imposed by the disciplinary authority. In any case, the Hon'ble Apex Court in C.A. No. 18558/2017 **UTTARAKHAND TRANSPORT CORPORATION VS. SUKHVEER SINGH**, decided on 10.11.2017 (Annexure R-1), has that mere non-supply of the Inquiry report does not automatically warrant quashing of the proceedings. It is incumbent upon on the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the Inquiry report. On examining facts in that case, the court held no prejudice was caused to the employee by non supply of enquiry report. The High Court committed an error in allowing the writ petition filed by the Respondent without examining whether any prejudice was caused to the delinquent employee by the non supply of the inquiry officer's report along with the show cause notice. Court felt satisfied that no prejudice was caused to the delinquent employee by the non supply of the report of the inquiry officer along with the show cause notice. Hence, no useful purpose will the show cause notice. Her be served by a remand to the court below to examine the point of prejudice. The case in hand is on better footing in view of rule position relied upon by the respondents, which does provide that for minor penalties, report of inquiry officer or show cause notice is not required to be provided to the concerned delinquent employee.*



13. *The learned senior counsel for the applicants argued, with some amount of vehemence, that it is a case of no evidence, as the witnesses have openly deposed that they had not seen any mishandling on the part of the applicants, which has been resisted by other side with equal vehemence. In fact it has come on record that sanctity of the office was broken by the President and others on 11.11.2016 which has even been accepted by the President Mr. Vijay Kumar. That being the factual position on record, one cannot claim from any angle, that it was a case of no evidence. In any case, appreciation or re-appreciation of evidence is not the job of the courts or Tribunal. In the case of **STATE OF TAMIL NADU VS. S. SUBARAMANIAM** [(1996) 7 SCC 509], the court has considered the scope of the power of judicial review vis-à-vis re- appreciation of evidence and concluded as under:-*

“The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of the removal. Thus this appeal by special leave. The only question is: whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of



appeal. The power of judicial review of the High Court under Article 226 of the constitution of India was taken away by the power under Article 323A and invested the same on the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and



supports the finding or whether the conclusion is based on no evidence."

*14. Not only that, the Hon'ble Supreme Court of India In Its judgments in the case of **STATE BANK OF INDIA VS. SAMARENDRA KISHORE ENDOW** [1994 (1) SLR 516) and **UOI VS. UPENDRA SINGH** (1994 27 ATR 200) has reiterated that a High Court or Tribunal has no power to substitute its own discretion for that of the disciplinary authority. The Jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226, which is one of judicial review. The Tribunal has no jurisdiction to go into correctness or truth of the charges and can interfere only if, on the charges framed, or misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.*

15. In view of the above discussion, these O.As turn out to be devoid of any merit and are dismissed, leaving the parties to bear their own costs."

15. We are not convinced with the reasoning given by the learned Tribunal while holding that it is for the Investigating Officer to determine as to how many witnesses are to be allowed to be examined to prove a particular fact, particularly in this case where only particular fact as to whether man-handling had taken place, was to be proved and witnesses had stated that no manhandling had taken place. Further, learned Tribunal held that thus, non-production of further witnesses does not appear to have caused any prejudice to the petitioners in any manner.



16. The reasoning given by the learned Tribunal with respect to supply of a copy of show cause notice and a copy of enquiry report before imposing any penalty which caused prejudice to the petitioners is that it does not appear to have caused any prejudice to the petitioners. It further held that rather the appellate authority had considered their pleas and has toned down the penalty imposed upon the petitioners by the disciplinary authority.

17. Learned Tribunal relied upon the judgment of Hon'ble Apex Court in the case of *Uttarakhand Transport Corporation Vs. Sukhveer Singh [C.A No.18558/2017, decided on 10.11.2017]*, which is the case of imposition of minor penalty and in the present case major penalty is imposed upon the petitioners without following the procedure as laid down under Rule 8 of the Punishment and Appeal Rules.

18. Learned Tribunal has further relied upon the judgment of Hon'ble Apex Court in the case of *State of Tamil Nadu Vs. Subaramaniam [(1996) 7 SCC 509]*, in which the power to judicial review by the Courts has been discussed.

19. Learned Tribunal has further relied upon a judgment of Hon'ble Apex Court in the case of *State Bank of India Vs. Samarendra Kishore Endow [1994 (1) SLR 516]*, this is again the case of power of Courts with respect to the judicial review.

20. Learned Tribunal dismissed the original application filed by the petitioners only on the ground that the Tribunal has no jurisdiction to go into the correctness or truth of the charges and can interfere only if on the charges framed, or misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

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21. Learned Tribunal while deciding the original application has totally ignored the procedure to be followed for imposing major penalty under Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 wherein it has been specifically stated that the principles of natural justice are to be followed before imposing the major penalty as reproduced above.

22. A perusal of **Rule 8(23) (i) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970**, shows that after the conclusion of inquiry, a report shall be prepared and it shall contain:-

(a) the articles of charge and the statement of the imputation of misconduct or misbehaviour.

(b) the defence of the Government employee in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefore.

There is further an explanation that if in the opinion of the inquiring authority the proceedings of the inquiry established any article of charge different from the original article of the charge, it may record its findings on such article of charge, but there is a proviso to the same that the findings on such article of charge shall not be recorded unless the government employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge. Whereas in the present petitions the procedure as laid down under Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 for imposing major penalty has not been followed.



23. Hon'ble Supreme Court in **Shadi Lal Gupta Vs. State of Punjab, 1973(1) SCC 680**, held as under:-

*“9. The rules of natural justice would undoubtedly have to be observed in any proceedings even by a domestic tribunal. But the principles of natural justice to be applied would depend upon the circumstances of each case. In **Suresh v. Kerala University, (1915) A.C.120**, this Court pointed out that the question whether the requirements of natural justice have been met by the procedure adopted must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. After referring to the decisions in **Russel v. Duke of Norfolk & Ors., (1949)1 All F.R. 108 at 119. Local Government Board v. Alridge, (1969)1 S.C.R. 317 and De Verteuil v. Knaggs & Anr., [1918] A.C. 557** this Court also referred to the observations of Lord Harman, J. in **Byrne & Anr. v. Kinematograph Renters Society Ltd., [1958] All England Reporter 579** to the following effect :*

"What, then, are the requirements of natural justice in a case of this kind ? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more."

and went on to lay down the same principle in its own words :



"Suffice it to say that in the case before us there was a fair inquiry against the appellant; the Suffice it to say that in the case before us there was a fair inquiry against the appellant; the officer appointed to inquire was an impartial person; he cannot be said to have been biased against the appellant; the charge against the appellant was made known to him before the commencement of the inquiry; the witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine them and lastly he was given every opportunity to present his case before the Inquiry Officer. Hence we see no merit in the contention that there was any breach of the principles of natural justice. It is true that the Vice-Chancellor did not make available to the appellant a copy of the report submitted by the Inquiry Officer. Admittedly the appellant did not ask for a copy of the report. There is no rule requiring the Vice-Chancellor to, provide the appellant with a copy of the report of the Inquiry Officer before he was called upon to make his representation against the provisional decision taken by him. If the appellant felt any difficulty in making his representation without looking into the report of the Inquiry Officer, he, could have, very well asked for a copy of that report. His present grievance appears to be an after thought and we see no substance in it."

10. As we have indicated earlier, if Shri Banwari Lal had imposed the punishment after he had given a hearing to the appellant, the order



would have been perfectly legal and it could not have been said that any principle of natural justice had been violated. The criteria indicated above would have been satisfied. But what is urged before us in this case is that as the report of the Treasure Officer, which we have already referred to earlier, was taken into consideration without showing, it to the appellant he has been seriously prejudiced and the principles of natural justice have been violated in so far as he has not had an opportunity of making his representation in respect of that report. We find no substance in this contention. When Shri Banwari Lal wanted a local enquiry to be made he apparently wanted the representations made by the appellant to be checked up with the records and that is what has been done as is clear from a comparison of the allegations on the basis of which the chargesheet was served on the petitioner, and the report of the Treasury Officer. We have carefully gone through it and it does not add one single instance more than what is already found in the allegations. It merely sets out the evidence in support of these allegations. We are, therefore, of the opinion that the appellant has not been in any way prejudiced by the Treasury Officer's report being taken into consideration before the order of punishment was passed against the petitioner. If before the Treasury Officer had sent his report he had 'associated the appellant in the enquiry he held it would not have been necessary to give him a copy of the report he sent. If the report had contained any material extraneous to the charges against the appellant, or anything in addition to what is found in the original allegations against him then



*only he could be said to have been prejudiced. In the decision of the Judicial Committee in **B. Surinder Singh Kanda v. Government of the Federation of Malaya, [1962] A.C. 332** noticed in Suresh v. Kerala University (Supra) a report made by the Board, which held the preliminary inquiry, which was highly prejudicial to Kanda had been placed in the hands of the officer who held the formal enquiry was not made available to Kanda. That report was likely to have prejudiced the Inquiry Officer and the Judicial Committee held that the enquiry was not fair. There is no question in this case of the Treasury Officer's report having prejudiced the punishing officer, Mr. D.D. Sharma. The application of the principles of natural justice is not a question of observance of a formula or a mere technicality. In essence it is meant to assure that the party concerned has an opportunity of being heard, the principle of audi alteram partem. Whether in any particular case it has been violated will depend on the facts and circumstances of that case. It is not to be considered that unless all the procedure of the courts are observed it would mean failure to observe the principles of natural justice. We are of the opinion that no principles of natural justice have been violated in this case. We think it useful in the circumstances of this case to refer to the observations made by this Court in Suresh's case to the effect :*

"There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that article that every disciplinary proceeding must consist of two



inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a show cause notice is provided by law from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available to the person proceeded against or that another inquiry should be, held thereafter.’

24. A Full Bench of this Court in the case of **Dr. K.G.Tiwari Vs. State of Haryana [2002(2) SCT 915]**, held as under:-

“24. We may also examine the contentions put forward by the learned counsel for the petitioner from another angle. In a case where a charge-sheet is issued under Rule 7 for the imposition of a major penalty, if the disciplinary authority, after receiving the reply to the charge-sheet, finds that there is no material against the charge-sheeted employee, and therefore, after holding of a regular enquiry, it will not be in a position to punish the charge-sheeted employee, but still, for its own reasons wants to impose some punishment on him, then the disciplinary authority will choose to adopt the methodology of dropping the procedure contemplated under Rule 7, and simply state that the explanation of the charge-sheeted employee has been considered, and impose a minor punishment. This is not the object of having two different sets of procedures in the form of Rule 7 and Rule 8. The object of prescribing these rules for holding disciplinary proceedings is to protect the charge-sheeted employee from arbitrary



and capricious exercise of power by disciplinary authority and from unjust and illegal punishments. These Rules are intended to safeguard the rights of such charge-sheeted employee and to comply with the principles of natural justice.

25. Therefore, in interpreting such beneficial provisions contained in these rules, the courts have to accept the interpretation which will advance the object of the rules rather than to defeat it, and also interpret in a manner which will protect the rights of the charge-sheeted employees against arbitrary and capricious exercise of power by the disciplinary authority.

26. Therefore, we respectfully agree with the decisions relied upon by the petitioners, wherein it has been held that once the chargesheet is issued for imposing a major penalty, then the procedure prescribed for the same in the Rule i.e. holding a regular enquiry should be adopted and completed even if it is subsequently decided to impose a minor punishment only.

27. Therefore, we are unable to concur with the view expressed by the Division Benches of this Court in Samay Singh's case and Puran Chand Sharma's case, and also in the Single Bench decision of the Delhi High Court in I.D. Gupta's case, and that of the Calcutta High Court in M.M. Dutta's case (cited supra), in so far as they hold that even in a case where the chargesheet is issued for imposing a major penalty, the disciplinary authority can still, without holding an enquiry under the relevant Rule for imposing a major penalty, impose



a minor penalty. To that extent, we hold that they are not good law.

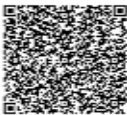
We also hold that the decision of the Hon'ble Supreme Court in Shadi Lal's case is not applicable to the facts of the cases our hand.

28. We hold that once the charge-sheet is issued under Rule 7 of the Rules 1987 for the imposition of a major penalty, which envisages holding of a regular departmental enquiry, the disciplinary authority cannot by merely examining the reply to the chargesheet, inflict even a minor punishment without holding a complete departmental enquiry.

25. In view of the above, we are of the considered view that the learned Tribunal has not taken into consideration the Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 which is to be followed before imposing major penalty.

26. The record further shows that the petitioner alongwith 40-50 nurses staff who were aggressive in their verbal expression, disturbed the working of nursing office and behaved in irresponsible and in-disciplined manner thereby violating Rule 3 of the Government Employee (Conduct) Rules, 1966, but very strangely charges are framed against only six employees. This shows the mala fide intention of the respondents towards petitioners. No reasoning has been given anywhere in the record to involve only six nurses out of 40-50 nurses. Further the date of incidence is 11.11.2016 and the complaint is dated 17.11.2016. This again creates a doubt at the intention of the respondents.

27. The petitioners were not even allowed to lead evidence. Even in the inquiry report it has been stated that the petitioner along with 40-50 nursing staff



intentionally affected the work and conduct of the office by crossing limit of the office decorum whereas nothing has been mentioned in the inquiry report by the Presenting Officer regarding not framing charges against others who were there along with the petitioners and why action against only 6 nursing staff out of 50 is taken, whereas a perusal of the record shows that 40-50 nursing staff was involved.

28. A perusal of the record further shows that the principles of natural justice have not been followed in the present case. Therefore, we find merit in the present writ petitions. The same are allowed impugned order passed by the Central Administrative Tribunal dated 3.12.2018/10.01.2019 along with order dated 08.11.2017 imposing penalty of stoppage of three grade increments of the delinquent official with cumulative effect and order dated 01.08.2018 dismissing the appeals filed by the petitioners are set aside. The writ petitions are accordingly allowed.

29. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 18, 2024
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Whether speaking/reasoned:	Speaking
Whether reportable:	Yes / No