

CWP-20841 of 2017

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-20841 of 2017
Reserved on: 24.01.2024
Pronounced on: 13.02.2024

Avtar Singh Azad

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Dhiraj Chawla, Advocate,
for the petitioner.
Mr. T.P.S. Walia, AAG, Punjab.
Mr. Joginder Sharma, Advocate,
for respondents No.2 and 3.

NAMIT KUMAR, J.

1. The petitioner has approached this Court invoking the jurisdiction under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing impugned order dated 23.09.2016 (Annexure P-6), whereby the petitioner has been inflicted the punishment of 3% cut in pension as well as the impugned enquiry report (Annexure P-3) (qua proving charge No.2) in so far as recovery of market rent has been ordered. Further a writ of *mandamus* has been sought for directing the respondents to restore full pension and release the arrears thereof and further to release the excess amount deducted on account of recovery of rent from the arrears of salary along with interest and also to release the gratuity and leave encashment.

2. Brief facts, as have been pleaded in the writ petition, are that petitioner was appointed as Executive Officer Class-III, Trust on 04.06.1979 and retired on 30.06.2015, on attaining the age of

superannuation from the post of Executive Officer Class-I. While the petitioner was in service, he was issued charge-sheet dated 16.11.2012 for some acts of omission and commission and was consequently ordered to be compulsory retired from service vide order 09.04.2013 against which the petitioner filed an appeal and since no decision was taken on the said appeal, therefore, petitioner approached this Court and on the directions issued by this Court in the writ petition filed by the petitioner, appellate authority set aside the order of compulsory retirement and reinstated the petitioner on 24.04.2015.

3. The allegations in the charge-sheet dated 16.11.2012 were that petitioner got the official room of the Executive Officer renovated at a cost of Rs.3,03,763/- without inviting tenders while posted as Executive Officer at Jalandhar and secondly, that while he was transferred from Ludhiana to Jalandhar, he did not vacate the official residence at Ludhiana and also claimed house rent for the period 10.05.2010 to 28.12.2010 amounting to Rs.49,639/- thereby causing financial loss.

4. Petitioner filed reply to the said charge-sheet on 04.03.2015 and denied the allegations. Along with the reply, petitioner attached resolution No.321 of the Jalandhar Improvement Trust dated 30.08.2011, whereby it was resolved to make the entire payment on old rates on which on earlier occasion the room of the Chairman was renovated. It is the case of the petitioner that as per provisions of the Punjab Improvement Trust Act, 1922, Town Improvement Trust, Ludhiana is legal authority and vests all rights to purchase, sell and to

give the property on rent. Ludhiana Improvement Trust took decision to charge Rs.2,16,009/- as rent and to regularise the period of occupation of the residential house. Accordingly, petitioner deposited the amount of Rs.2,16,009/- vide receipt No.83047 dated 25.01.2011 and subsequently, Ludhiana Improvement Trust vide its Resolution No.145 dated 30.03.2012 approved the same. Since the competent authority did not agree with the reply submitted by the petitioner, and vide order dated 03.06.2014, Sh. B.C. Gupta, retired Additional District and Sessions Judge, was appointed as Enquiry Officer to look into the charges. The Enquiry Officer conducted the enquiry and in the enquiry only charge No.2 was proved. Said enquiry report dated 08.07.2015 was served upon the petitioner for his comments on the enquiry report and it is the case of the petitioner that since only charge No.2 was proved in the enquiry, therefore, he submitted a detailed reply/representation dated 06.06.2016 to the show-cause notice with regard to charge No.2 only. However, it is the case of the petitioner that punishing authority even disagreed on charge No.1 and without supplying any disagreement note to the petitioner proceeded to punish the petitioner with 3% cut in pension for charge No.1 and for charge No.2 it was ordered to recover due house rent on market rate from the petitioner. The said order has been impugned in the present writ petition.

5. On issuance of notice of motion, separate written statements have been filed on behalf of respondents No.1, 2 and 3, wherein it has been stated that the punishment order dated 23.09.2016

has been issued after following due procedure of law and there is no procedural irregularity. It has further been submitted that competent authority has not agreed with the findings of the enquiry officer as far as charge No.1 listed in the charge-sheet is concerned and has, in fact, recorded its dissent by specifically stating that even though the work was ordered to be done at the instance of the Chairman, even then when the same was being done at the instance of the Chairman, petitioner, who was the executive head of the Trust should have given his dissent on the same. So far as charge No.2 is concerned, it has been stated that competent authority has chosen to recover market rent from the petitioner being in unauthorised occupation as the resolution of the Improvement Trust was not accepted by the competent authority.

6. Learned counsel for the petitioner contended that action of the respondents in punishing the petitioner with 3% cut in pension and recovery of due house rent on market rate @ Rs.28,284/- vide order dated 23.09.2016 is totally illegal as no disagreement note with the show-cause notice was given to the petitioner which is in violation of the principles of natural justice and the law laid down by the Hon'ble Supreme Court in ***Punjab National Bank v. Kunj Behari Mishra, 1998(3) SCT 833***. He further submitted that no financial loss has been caused to the Improvement Trust, Jalandhar, relating to the alleged renovation work since no payment has been claimed by the contractor, as is clear from the RTI information sought by the petitioner vide Annexure P-7. He further submitted that action of the respondents in

charging market rent is also totally illegal as there was no basis to charge market rent of Rs.28,284/- as that was not fixed.

7. *Per contra*, learned counsel for respondents No.2 and 3 submitted that impugned order dated 23.09.2016 has been passed after following the due procedure of law and no procedural irregularity has been committed, therefore, petitioner is not entitled for any relief whatsoever claimed in the present writ petition. He further submitted that on receipt of enquiry report, action has been taken by the competent authority under Rule 9 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970.

8. I have heard learned counsel for the parties and with their able assistance perused the record.

9. Petitioner was charge-sheeted vide charge-sheet dated 16.11.2012 on following two counts: -

1. That he got the official room of the Executive Officer renovated without inviting tenders while posted as Executive Officer at Jalandhar.
2. When he was transferred from Ludhiana to Jalandhar he did not vacate the official residence at Ludhiana and also claimed house rent for the period 10.05.2010 to 28.12.2010 amounting to Rs.49,639/- thereby causing financial loss.

10. Petitioner filed reply to the said charge-sheet denying the allegations wherein with regard to charge No.1, it was submitted by the petitioner that in agenda No.321, it was unanimously decided that the contractor who conducted work/renovation of the official room of the Chairman, is to be paid charges for the work/renovation so that no loss could be caused to the Trust and if the same is not done, legal action

could be faced by the Trust and there would be a possibility of paying interest to the contractor. However, no payment was made by the petitioner nor any proposal to make any payment was placed by the technical branch before the petitioner. Hence, no financial loss has been caused to the Trust. With regard to charge No.2, it was submitted that Trust has decided to charge Rs.2,16,009/- as simple rent and to regularise the period of occupation of the residential house. Accordingly, the petitioner deposited the amount of Rs.2,16,009/- vide receipt No.83047 dated 25.11.2011 and subsequently Ludhiana Improvement Trust vide its resolution No.145 dated 30.03.2012 approved the same.

11. Admittedly, petitioner stands exonerated qua charge No.1 and only charge No.2 was proved in the enquiry proceedings and the findings of the Enquiry Officer with regard to both the charges are as under: -

“....The CO seems to have been very near to the Chairman at the relevant time and since the Chairman of the Trust took responsibility upon him for renovating the office of the EO and passed orders in a meeting of the Trust to make payment of Rs.303763/-, it is difficult to hold the CO guilty of this charge particularly in view of resolution no.321 passed by the Improvement Trust if the Chairman did not act according to rules, action can be initiated against him.

xx xx xx xx xx

.....It has come on record that the CO did deposit a sum of Rs.2.16 lacs with the Improvement Trust Ludhiana on 25.11.2011. When the statement was given by CO as DW3 on 24.6.15, the PO did not cross examine him on this

point. A perusal of the receipt exhibit D2 at page 212 of the file shows that the CO did deposit a sum of Rs.2,16,009/- in the Improvement Trust Ludhiana on account of payment of house rent. The CO argued that the Improvement Trust Ludhiana has illegally recovered this amount. If it is so let the CO proceed at his level to get the same back in accordance with law. However one thing is very clear that the CO retained Kothi at Ludhiana without the orders of the competent authority and secondly he claimed house rent allowance during the period when he was retaining the accommodation at Ludhiana and therefore he was not entitled to claim house rent allowance from the Improvement Trust Jalandhar for the period from 10.5.10 to 28.12.10 and therefore he not only disobeyed the orders of the higher authorities but acted in a careless, negligent and indisciplined manner and brought bad name to the Government.

8. In view of the above discussion I hold that allegation No.2 as reproduced in para no.5 above is proved against the CO that he retained a kothi at Ludhiana illegally and against the orders of the competent authority and did not vacate it nor made payment of market rate when demanded. I also hold that the CO claimed house rent allowance for the period from 10.5.10 to 28.12.10 from the Improvement Trust Jalandhar against the rules and therefore this allegation is proved. I further hold that the CO Avtar Singh Azad acted in a negligent, careless and indisciplined manner and also disobeyed the orders of the higher authorities and it brought a bad name to the Government. As regards allegation no. 1 is concerned this allegation is not proved against CO.”

12. Further, Rule 9 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 reads as under: -

"9. Action on the inquiry report - (1) The punishment authority, if it is not itself the inquiring authority may, for reason to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiring according to the provision of rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the finding of the inquiring 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) 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 (I) to (iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in rule 10, make an order imposing such penalty;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.

(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in clauses (v) to (ix) of Rule 5 should be imposed on the Government employee, it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee.”

13. It is further the case of the petitioner that since only charge No.2 was proved, therefore, he submitted his reply/representation to the enquiry report with regard to charge No.2 only and there was no occasion for him to submit reply to charge No.1, which was not proved. However, the punishing authority while disagreeing with the findings of the Enquiry Officer on charge No.1 has treated the same as proved also without supplying his disagreement note and without giving any opportunity to the petitioner to represent against the said disagreement. The Hon'ble Supreme Court in ***Kunj Behari's case (supra)*** while considering para materia rule has held that when the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted and it will be most unfair and iniquitous that where the charged officer succeeds before the inquiry officer and he is deprived of representing to the disciplinary authority, before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In such situation, the charged officer must have an opportunity to represent before the disciplinary authority before the final findings on the charges are recorded and punishment imposed and the principles

of natural justice have to be read into Regulations. Para Nos.15 to 17 of the judgment in **Kunj Behari's case (supra)** read as under: -

“15. Under Regulation-6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and inequitable that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the disciplinary authority before the final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (supra).

16. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative

reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

17. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Kishan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases (supra) do not lay down the correct law.”

14. Learned counsel for the petitioner on the strength of RTI information (Annexure P-7 and P-8) submitted that for renovation of office of the Executive Officer, no payment has been made and no resolution was ever passed by the Trust for approving market rent at the rate of Rs.28,284/- per month and that on earlier various occasions, various officers too have occupied these houses of the Trust free of cost without paying even a single penny and only Chairman of the Trust is competent authority in matters relating to charging of rent with respect to resolution No.260 dated 23.09.2015 of the Improvement Trust,

Officer Sh. Harinder Singh Chahal and the petitioner has already made payment of normal rent. Therefore, action of the respondents in recovering at market rate from the petitioner is neither proper nor legal.

15. In view of the foregoing discussion and since charge No.1 was not proved against the petitioner in the enquiry proceedings and the punishing authority acted in violation of the principles of natural justice and the law laid down by the Hon'ble Supreme Court in ***Kunj Behari's case (supra)***, considering the fact that no financial loss has been caused to the Trust, therefore, punishment of 3% cut in pension on the basis of charge No.1 is not proper and is set aside.

16. Vide resolution No.260 dated 23.09.2015 of the Improvement Trust, Ludhiana, in the similar matter, the payment of normal rent from its Executive Officer Sh. Harinder Singh Chahal was approved. Apart from this, it has come on record that earlier there were many officers of the Trust who had overstayed in their official accommodation and were allowed pay ordinary rent. The petitioner has already deposited a sum of Rs.2,16,009/- vide receipt dated 25.11.2011 and subsequently, Improvement Trust, Ludhiana, vide its resolution No.145 dated 30.03.2012 approved the same, therefore, keeping in view the facts and circumstances of the case, the petitioner is not liable to pay rent on market rates.

17. This Court is conscious of the fact that since charge No.1 was not proved and the disciplinary authority while disagreeing with the findings of the enquiry officer, has treated the charge proved in violation of the principles of natural justice and the law laid down by

the Hon’ble Supreme Court in *Kunj Behari’s case (supra)*, the matter is required to be sent back to the competent authority from the stage of supplying the disagreement note to the petitioner and then proceeding further in the matter. However, keeping in view the facts of the present case that the petitioner has already superannuated on 30.06.2015 and period of more than eight years has already elapsed and the fact that no financial loss has been caused to the Trust as no payment has been made to the contractor and petitioner is now 69 years old and is in the later years of his life who is pursuing his cause by way of this writ petition since the year 2017, therefore, it is deemed appropriate not to remand the case to the competent authority for taking a fresh decision at this stage as well as in order to dispose of the matter in a quietest manner.

18. Consequently, the present petition is allowed. Impugned order dated 23.09.2016 (Annexure P-6) and enquiry report (Annexure P-3) qua charge No.2 are hereby quashed. Accordingly, petitioner shall be entitled to all consequential benefits and the same be released, within a period of three months from the date of receipt of certified copy of this order.

13.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No