

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. **C WP No.11985 of 1995**

Harjit Singh Rana

...Petitioner

Versus

Guru Nanak Dev University, Amritsar and another

...Respondents

AND

2. **CWP No.12014 of 1996**

Shri Gurbachan Singh Ghai

...Petitioner

Versus

Guru Nanak Dev University, Amritsar and another

...Respondents

Date of Decision: February , 2015

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sanjay Majithia, Sr. Adv assisted by
Mr.Shailender Sharma, Advocate
for the petitioner.

Mr. Amrit Paul, Advocate
for the respondents - University.

HARINDER SINGH SIDHU, J.

This order will dispose of two writ petitions, namely,
CWP No.11985 of 1995 and CWP No.12014 of 1996 as the
common questions of law and facts are involved therein.
However, the fact are being taken from CWP No.11985 of 1995.

The challenge in this writ petition is to the order 02.08.1995 (Annexure P-8), whereby, the petitioner has been reverted from the post of Assistant to the post of Clerk and his seniority fixed at the last amongst the confirmed Clerks.

The petitioner joined the service of respondent-Guru Nanak Dev University, Amritsar in January, 1972 as Clerk in its UMC Branch. He was later promoted to the post of Assistant. In April, 1992 he was posted in the UMC Branch as Assistant. One Ms. Jaspreet Kaur, who happened to be a relation of the petitioner appeared as a private candidate in B.A.-II examination in the year 1992 and was declared failed. She applied for re-evaluation. Thereafter, discrepancies were detected to the effect that she had attempted one question later on with the help of some persons. The University summoned the Examiner Sh. Dharamvir Singh and enquired about the alleged last question attempted by the candidate. He stated that he had not evaluated the said question. A preliminary enquiry was got conducted by the University through one Sh. Lal Singh Aujala. On the basis of preliminary enquiry report, the University issued a charge-sheet dated 19.03.1993 to the petitioner as well as two other officials of the UMC Branch namely, Sh. Gurbachan Singh Ghai, Assistant and Smt. Kamlesh, Clerk. The specific charge was regarding manipulation of answer book by getting a question attempted subsequently, after the declaration of the result.

The petitioner filed his reply on 29.03.1993. The University got a regular enquiry conducted through Sh. P.K.Garg, Additional District & Sessions Judge (Retired). The Enquiry Officer submitted his enquiry report exonerating all the three officials. He held that though there may be suspicious circumstances as to why the candidate applied for re-checking, but on the basis of evidence it is not possible to hold that the relevant answer 8(b) did not exist when the answer book was first evaluated.

It is averred by the petitioner that though the Enquiry officer submitted his report on 27.10.1993 but a copy of the same was never sent to the petitioner. No disagreement note was recorded or sent to the petitioner nor was he intimated that a second enquiry had been ordered. It was only in March, 1994 when the petitioner received an intimation from Sh.H.S.Maunders, Additional District and Sessions Judge (Retired) to participate in the enquiry, he learnt that a second enquiry had been instituted against him. The petitioner participated in the enquiry under protest. The same witnesses, who had appeared before the first Enquiry Officer, deposed before the second Enquiry Officer and stated that their earlier statements be read as final and they had nothing more to add. The second Enquiry Officer submitted his report dated 15.06.1994 recording a finding of guilt against the petitioner as well as the other two officials of the UMC branch.

The report was examined by the Vice Chancellor and agreeing with the report he proposed inflicting the punishment of removal from service. The petitioner received a show cause notice dated 05.09.1994, to which he submitted his reply on 26.09.1994. In the reply, he highlighted various issues, namely, that copy of the first enquiry report had not been endorsed to him, that on the same evidence Sh. P.K. Garg, the first Enquiry Officer had exonerated him and without any additional evidence having come on record, the second Enquiry Officer recorded a finding of guilt; that Sh. Dharamvir, Sub Examiner, while appearing as PW-4 himself admitted that he had made mistakes in calculating the total marks obtained by the candidate and that by adding grace marks, she would have passed in the subject and there was no need for tampering; and, that the second enquiry could not have been ordered without recording note of disagreement.

However, disregarding the objections of the petitioner, order dated 02.08.1995 was passed reverting the petitioner from the post of Assistant to the post of Clerk. It is this order (Annexure P-8) and the second enquiry report (Annexure P-5) that has been impugned in the present writ petition.

Before proceeding further, it is necessary to note that vide order dated 06.11.1995 passed by this Court, the operation of order dated 02.08.1995 (Annexure P-8) was stayed. This stay order was made absolute vide order dated 05.12.1995. The

petitioner retired on 30.04.2008 on attaining the age of superannuation.

Learned Senior counsel for the petitioner has mainly raised the following arguments:

- (i) There is no provision in the service rules regarding holding a second/*de novo* enquiry by a different Enquiry Officer.
- (ii) In any event, even a further enquiry cannot be ordered without recording a note of disagreement by the disciplinary authority. It was obligatory on the punishing authority to afford an opportunity to the petitioner by furnishing him a copy of note of disagreement, in absence of which a further enquiry is not competent.
- (iii) On the basis of evidence collected in the first enquiry proceedings and without any additional material or evidence, the second Enquiry Officer has recorded a finding of guilt against the petitioner. The second enquiry report does not deal with or consider the detailed and exhaustive reasoning given in the first enquiry report and gives no reason to take a contrary view.

To the contrary, learned counsel for the respondents has stated that a specific note of disagreement had been

recorded by the Vice Chancellor and after examining the entire record of the enquiry proceedings conducted by Sh. P.K. Garg and the comments of the Legal Advisor of the University, he had concluded that the Enquiry Officer had dealt with the proceedings as a criminal trial. The Vice Chancellor opined that the admitted facts and circumstantial evidence make it clear that the answer to question No. 8(b) was not written by the candidate in the examination centre but was inserted by the candidate after declaration of result, which could only be possible with the connivance of the petitioner and his colleagues charged along with him as the answer book remained in their custody. He, thereby, considered it necessary to have the matter probed further and directed that the enquiry proceedings be initiated by some Enquiry Officer *de novo*. Sh. Harchand Singh Maunder, Additional Sessions Judge (Retd.) was appointed as Enquiry Officer. Thus, learned counsel for the respondent contends that there is no procedural flaw in the appointment of the second Enquiry Officer. The note of disagreement specifically gives reasons for the disagreement and inability to accept the report of the first Enquiry Officer.

Sh. Amrit Paul, learned counsel for the respondents has produced the original file of the University containing the note of disagreement of the Vice Chancellor dated 10.02.1994, whereby, he also appointed Sh. Harchand Singh Maunder,

Additional Sessions Judge (Retd.) as Enquiry Officer. Thus, it is not possible to accept the contention of the Ld. Sr.Counsel for the petitioner that the second enquiry was ordered without recording a note of disagreement.

In order to opine on the contention on the Ld. Counsel for the petitioner about the second enquiry, it would be necessary to reproduce the relevant provisions of The Statutes of the Guru Nanak Dev University, spelling out the penalties and the procedure for imposition of the penalties which is contained in Chapter II thereof:

“33(i) The following penalties may for good and sufficient reason be imposed upon any employee of the University.

- (a) Censure;
- (b) Withholding of increment or promotion;
- (c) Reduction to a lower post or to a lower stage in the same post.
- (d) Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders;
- (e) Removal from the service of the University which does not disqualify from future employment;
- (f) Dismissal from the service of the University which ordinarily disqualifies from future employment;

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(ii) Except where otherwise laid down in the Statutes, the authority competent to appoint shall be competent to impose any kind of punishment including removal from office on grounds of misconduct, gross inefficiency etc. in the event of any such orders of punishment by the competent authority the employee concerned shall have the right of appeal to the next higher authority whose decision shall be final.

(iii) No penalty of dismissal, removal or reduction shall be imposed unless the employee has been given a reasonable opportunity of showing causes against the action proposed to be taken in regard to him

(iv) The grounds on which it is proposed to take action under clause (c), (e), (f) or (g) shall be reduced to the form of a definite charge or charges which shall be communicated in writing to the employee concerned and he shall be required within a reasonable time to state in writing whether he admits the truth of all or any of the charges, what explanation or defence if any, he has to offer and whether he desires to be heard in person. If he so desires or if the appointing authority so directs, an oral enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The person charged shall be entitled to cross-examine the witnesses, to have such witness called as he may wish provided that the officer conducting the enquiry may for reasons to be recorded in writing refuse to call any witness.

The proceeding shall contain sufficient record of the evidence and the statement of the findings and the grounds thereof.

When it is proposed to take action under clause (a), (b) or (d), no order shall be passed imposing a penalty on an employee unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation has been taken into consideration.

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(vi) **After the enquiry against an employee has been completed and after the punishing authority has arrived at a provisional conclusion in regard to penalty to be imposed, the delinquent employee shall, if the penalty proposed is dismissal, removal or reduction in rank be supplied with a copy of the report of the enquiry authority and be called upon to show cause within a reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted upon him. Any representation, submitted by the delinquent employee in this behalf shall be taken into consideration before final orders are passed."**

The law on the question of power of the disciplinary authority to direct a fresh enquiry or *de novo* enquiry in cases where the delinquent is exonerated by the Enquiry Officer is well

settled. It has been held by the Courts that unless rules applicable so provide, a second or de novo enquiry cannot be ordered. But if some defects have crept into the enquiry, the punishing authority is empowered to ask the enquiry officer to record further evidence or it may itself consider the evidence and come to its own conclusion. But in the absence of a specific rule enabling it to do so, it cannot order a de novo or fresh enquiry by another enquiry officer.

A Division Bench of this Court in **Paramjit Walia v. State of Punjab**, **ILR (2007) 1 P&H 248** after referring to various precedents quashed the de novo enquiry ordered, on the ground that there was no provision in the relevant rules for ordering a de novo inquiry and the only provision was that the matter could be remitted to the same enquiry officer for further inquiry. In **Paramjit Walia's case**, it was observed as under:-

“The provisions of rule 9(1) of the 1970 Rules, however, provide that the punishing authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry. The inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 8 as far as may be. It is appropriate to note that the Municipal Council has not remitted the case to the inquiring authority but has entrusted the case to the CVO, Local Government for fresh inquiry. In fact, in terms of Rule 9 of the 1970 Rules, after the receipt of the report of the Inquiring Authority, the punishing

authority may after recording its reasons in writing remit the case for further inquiry to the reporting authority/inquiry officer. Besides, the said rule only provides for the holding of a further inquiry by the inquiring authority and it does not provide for the conducting of a fresh or a de novo inquiry and that too by an officer other than the inquiring authority. The conduct of a de novo inquiry is, therefore, not provided by the Statute. In State of Haryana and others versus Roshan Lal Sharma, Letters Patent Bench of this Court observed that if a superior officer holds a departmental inquiry in a slip shod manner or even dishonestly, the State can take action against the superior officer and it is also open to it to prosecute in a Court of law a person once exonerated in a departmental inquiry. On the other hand, if a second departmental inquiry could be ordered without the authority of the Statute or the relevant service rules, the danger of harassment to the Government Officer would be immense and in the present climate of rapid political change such a course would be very demoralizing to the public servant. It was further held that dropping of certain charges against the public servant means the exoneration therefrom. The same is a quasi judicial order and is not liable to be varied at the will of the authority unless the relevant Statute or the rules give the authority the power to review. In Parkash Nath Saidha, Naib Tehsildar versus The Financial Commissioner (Revenue) Punjab and others, it was held that there is authority for the proposition that the fundamental principle viz. that no one shall be punished or put in peril twice for the

same matter, is applicable even to orders passed on departmental inquiries. In KR Deb versus The Collector of Central Excise, Shillong, it was held by the Supreme Court that Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 on the face of it provides for one inquiry, but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 of Central Civil Services Rules 1957 for completely setting aside previous inquiries on the ground that the report of the inquiring Officer or officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9 of Central Civil Services (Classification, Control and Appeal) Rules, 1957. It seemed that punishing authority was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant. It was further observed that from the material on record, a suspicion did arise that the Collector was determined to get some inquiry officer to report against the appellant therein. In Pawan Kumar Garg versus The Punjab Co-operative Cotton Marketing and Spinning Mills Federation Ltd. and others, the inquiry officer had exonerated the petitioner therein. The punishing authority disagreeing

with the inquiry officer appointed a new inquiry officer with a direction to hold a de novo inquiry. It was held that a de novo inquiry cannot be ordered and only further inquiry can be ordered by the disciplinary authority. The impugned order in the said case was quashed with liberty to start the inquiry from the stage when the inquiry findings were submitted by the inquiring officer. In the case in hand, as has already been noticed, the petitioner has been exonerated of some of the charges and particularly charge No.3 which is with respect to his misbehaviour with the President of the Municipal Council (respondent-3). The petitioner was exonerated in term of the inquiry report (Annexure P-8) after full fledged departmental inquiry. No statutory provisions or rules have been brought to our notice which give the Municipal Council (respondent-2) the power to get a de novo inquiry conducted merely because it disagrees with the report of the inquiring authority. The disagreement that has been recorded is without reasons. In terms of the inquiry report (Annexure P-8), the punishing authority could, after recording its reasons in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority was to proceed thereupon according to the provisions of rule 8 of the 1970 Rules. Therefore, there being a clear infraction of Rule 9 of the 1970 Rules, the impugned resolution No. 8, dated 3rd January, 2006 (Annexure P-9) is unsustainable.

In **State of Punjab Vs. Harjinder Singh 1999(3) RSJ**

(Punishment and Appeal) Rules, 1970 observed as under:-

“The language of Rule 9(1) is not suggestive that the disciplinary authority is vested with the jurisdiction to direct de novo enquiry and rendering the previously held enquiry as ineffective. The power vested in the authority is limited for further enquiry and report. This authority cannot be enlarged if the rule making authority opted to limit the powers of the disciplinary authority where it has intention and it records reasons for remittance of the case to the enquiry officer. In this regard reference can be made to the judgment of the Hon'ble Supreme Court in the case of K. R. Deb vs. The Collector of Central Excise Shillong, AIR 1971 Supreme Court 1447, where the Court was concerned with some what similar rules governing the conditions of service of the petitioner in that case. It was held as under:-

“It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other

reasons, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.”

In the present case, a reading of the relevant Statute of the respondent-University, reproduced above, reveals that there is no provision therein as per which, in case of disagreement by the disciplinary authority with the first enquiry report, enquiry can be entrusted to a second enquiry officer.

In view of above, it has to be held that the order/direction of the Vice Chancellor directing de novo enquiry through Sh. Harchand Singh Maunder, Additional District & Sessions Judge (Retd.) was without jurisdiction. Consequently, the second enquiry report is non est and void and is so declared. The consequential orders dated 2.8.1995 (Annexure P-8) in both writ petitions) are also quashed.

Now, the question is as to what relief should be granted to the petitioners.

It has come on record that during the pendency of the writ petition vide order dated 02.08.1995, operation of Annexure P-8 was directed to be stayed. This stay order was made absolute vide order dated 05.12.1995. The petitioner, who joined the service in the year 1972, retired from service on 30.04.2008 on attaining the age of superannuation. On 25.8.2005, on an application of the petitioner seeking further promotion, the following order was passed:-

“xxx Now, the instant application has been filed by the petitioner, wherein, it is prayed that the petitioner be promoted as Superintendent, subject to the decision of the writ petition. As the petitioner had been reverted and although his reversion has been stayed, however, as long as the writ petition is not decided, the petitioner cannot be promoted to the next higher post of Superintendent.”

Thus, petitioner Harjit Singh Rana continued to work as Assistant during the pendency of the petition and has also retired as such.

In the other case i.e. CWP No.12014 of 1996 also, the petitioner Gurbachan Singh Ghai must have retired by now as he had joined the service in the year 1970 i.e. about 45 years back. Vide the impugned order dated 2.8.1995 (Annexure P-8 in CWP-12014-1996) he was awarded punishment of withholding of two annual increments with non-cumulative effect.

Ordinarily, when an punishment awarded is quashed on a finding of some defect in the enquiry, liberty is given to hold

the enquiry afresh from the stage of defect. But, in the facts of this case as petitioner Harjit Singh Rana, who had joined the service in the year 1972, has already retired on 30.04.2008 there does not appear to be any justification to grant liberty to continue with the enquiry from the stage of the defect. Further, as he continued to work as Assistant till his superannuation he necessarily would be entitled to the salary and remunerations of an Assistant for the period he worked as such.

The petitioner could not be further promoted during the pendency of this petition as a consequence of the order dated 25.8.2005, quoted above. Now that the writ petition has been allowed, his pension be computed after considering the normal promotions that would have accrued to him.

So far as petitioner Gurbachan Singh Ghai is concerned, he was only awarded the punishment of stoppage of two increments without cumulative effect. So, at this belated stage, directing a further enquiry against the petitioners from the stage of recording of the note of disagreement would also not be appropriate in view of the long time that has since elapsed.

The writ petitions are disposed of accordingly.

February , 2015

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(HARINDER SINGH SIDHU)
JUDGE