

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

RSA No.1338 of 1999 (O&M)

Date of decision: 08.04.2015

& CR No.4020 of 2001

State of Haryana

..... Petitioner

VERSUS

Mussadi Lal

..... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gagandeep S. Wasu, Addl. AG, Haryana.

Mr. Shailendra Jain, Senior Advocate with
Mr. Gaurav Aggarwal, Advocate for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether the judgment should be reported in the digest ?

K.KANNAN, J. (ORAL)

The regular second appeal is against the judgment of the Lower Appellate Court granting the benefit which was claimed by the plaintiff in suit, namely, that the stoppage of five increments with cumulative effect passed by the appellate authority in the departmental proceeding was against the principles of natural justice. Pursuant to the Appellate Court decree, the claim was made by the decree holder for monetary benefits and the Court declined the relief. The Executing Court granted the relief claimed in the judgment. The revision against the order in both the cases, therefore, relate to tenability or otherwise of the relief claimed in the plaint by the respondent.

Some more facts would require to be stated to get the hang of the case. The plaintiff-respondent proceeded on casual leave for two days on 11.04.1992. The appellant was to report for duty on 15.04.1992. He reported back for duty and disciplinary proceeding had been initiated on the ground that the plaintiff had overstayed for 48 days beyond the period of leave availed by him. When show cause notice was issued on 17.07.1992. The plaintiff attempted to explain that he could not join back on account of a serious injury in an accident at home and that he remained admitted in Civil Hospital, Jind up to 31.05.1992 and his own absence was, therefore, under the circumstances, which were beyond his control on account of his illness. The departmental proceedings resulted in dismissing him from service on finding that explanation given by the plaintiff was not acceptable. The plaintiff had preferred an appeal to the DIG, Hisar and the appellate authority rejected the plea of the plaintiff that there was any justification for his absence but modified only the punishment by withdrawing the punishment of dismissal and converting the same in stoppage of five increments with cumulative effect. Revision to the DGP, Haryana had been dismissed on 03.11.1993.

The plaintiff filed the civil suit, which is now the subject to second appeal containing that all the 3 orders were bad in law, against the service rules and violated the rules of natural justice. The trial Court dismissed the suit and the Appellate Court allowed the appeal on the finding that there had been denial of natural justice in not having given to the plaintiff the right of hearing by application of the maxim *audi alteram partem* to explain the justification for his non-appearance in duty

and hence the order of the Inquiry Officer was wrong. The second appeal was on notice without formulation of questions of law and admitted on the date of hearing on 01.04.2015 after substantial questions of law as under:

“The following substantial questions of law are framed in the Regular Second Appeal:-

- 1. Whether Lower Appellate Court was justified in reversing the judgment of the trial Court as regards the validity of the findings in the enquiry on cogent reasons given that the plaintiff delinquent had a full opportunity to state his case and participated in person before the Enquiry Officer.*
- 2. Whether the plaintiff could assail the punishment awarded by the Appellate authority without proving substantial prejudice, especially when the plaintiff came by relief of reduction of punishment from dismissal to stoppage of increments cumulatively.*
- 3. Whether the absence of personal hearing not necessary before Appellate authority when the prejudice shown by the plaintiff was only denial of increments cumulatively.”*

There is no denial of the fact that after the conclusion of the disciplinary inquiry, the State issued a show cause notice against the proposed punishment of dismissal from service. The plaintiff had given a response explaining that he had given an application in the office and also informed to the Tohana Police Station about the injuries that he had suffered and even the Inquiry Officer had believed the version given by him that he had received the injuries. The plaintiff had also explained

that he had examined one Ram Pal for support of his case that Ram Pal had given information to his office about the serious injuries that he had suffered and his inability to rejoin duty. He was, therefore, pleading for a reversal of the finding of the Inquiry Officer that his own absence was unjustified and sought for retraction of the provisional decision to terminate him from service. The response to show cause notice did not cut ice with the establishment and it proceeded to pass an order on 26.08.1992, dismissing the plaintiff from service. The order was subject of challenge to the DIG in appeal pointing out to the fallibilities of the order. The disciplinary authority had actually not disbelieved the evidence of Ram Pal that he carried the leave application of the plaintiff for extension of leave. It was the reasoning of the disciplinary authority that such a submission of the leave application would not give a right to the employee to assume that the leave was sanctioned. The plaintiff was, therefore, challenging the correctness of this reasoning and sought for a reversal of the decision. The appellate authority dismissed the appeal without any hearing and the revisional authority dismissed it in limine.

The point that would fall for consideration is whether the appellate authority had a duty to give a right of hearing to the person, who was complaining of the decision of the disciplinary authority, who dismissed him from service, since the Government was pleading for a position that such a right did not exist, for, the appellate authority was actually reducing the punishment of dismissal to denial of five increments with cumulative effect and, therefore, the plaintiff could not be taken as in any way prejudiced to demand a right of personal hearing.

Learned counsel appearing on behalf of the State would take me to the relevant rule of the Police Standing Order relating to inquiry in Rule 16.24 which was according to him in compliance of the constitutional provisions of Article 311.

“16.24 (1) the following procedure shall be followed in departmental inquiries:-

ix) No order of dismissal or reduction in rank shall be passed by an officer empowered to dismiss a police officer or reduce him in rank until that officer has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, provided that this shall not apply:-

a). Where a police officer is dismissed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge; or

b) Where the officer empowered to dismiss him to reduce in rank is satisfied that for some reason to be recorded by that officer in writing, it is not reasonably practicable to give to that police officer an opportunity of showing cause. Before an order of dismissal or reduction in rank is passed the officer to be punished shall be produced before the officer empowered to punish him and shall be informed of the charges proved against him and called upon to show-cause why an order of dismissal or reduction in rank should not be passed. Any representation that he may make shall be recorded, shall form part of the record of the case and shall be taken into consideration by the officer empowered to punish him before the final order passed;

Provided that if, owing to the complicated nature of the case or case or other sufficient reason to be recorded, the officer empowered to impose the punishment considers

this procedure is appropriate, he may inform the officer to be punished in writing of the charges proved against him and call upon him to show cause in writing why an order of dismissal or reduction in rank should not be passed. Any written representation received shall be placed on the record of the case and taken into consideration before the final order is passed.”

According to him, there is no rule of law that natural justice will be met only if a personal hearing is also given. It was not the plaintiff's case that there was any violation of relevant departmental rules relating to the inquiry. Learned counsel would refer to me to a decision of a Division Bench of this Court in **Baldev Singh Vs. State of Punjab-1986 LIC 466** which held that when an order was passed, it was not necessary for authority to make an express reference to requirement of Rule 16.2. If a show cause notice had been given and a decision taken after taking on board the reply, there was nothing further to be done. The counsel would read for emphasis the ultimate finding of the Division Bench which stated as follows:

“The grievance appears to be that instead of serving a show-cause notice in writing the petitioner should have been told of the same verbally and should have been verbally asked as to what he had to say. Surely, the procedure envisaged by the proviso is more satisfactory. Further, the perusal of the clause (ix) would show that it has not envisaged any personal hearing at all. What it envisages is that the punishing authority would summon the delinquent officer, tell him the charge that has been proved against him and ask him verbally to show-cause and whatever he states verbally that is to be reduced in writing

which would form part of the record and shall be taken into consideration.”

According to the counsel, clause 9 did not envisage any personal hearing at all. What it envisages is only that the delinquent must have an opportunity to participate in the proceeding and the authority could proceed to pass an order.

The extent of interference of a finding of a disciplinary authority is exceedingly limited only to examine whether the procedure established by law fulfills the natural justice requirement of *audi alteram partem* or not. The reasonings themselves will not be subject to judicial reappraisal. It is the process of such reasoning that will be examined to see whether there was any violation. If the Inquiry Officer submits a report after giving opportunity to show cause against the charge which in this case was absence from service and the plaintiff was explaining his absence, the Inquiry Officer's finding that the absence was unjustified must have an immediate bearing to what was stated in defence. Absence itself is an admitted fact and it did not require any forensic skills of an Inquiry Officer to determine an admitted fact. The inquiry was not to assess the admitted fact. The inquiry was to assess an explanation for the absence. The explanation for absence was not found to be wrong. Explanation was that he had illness. The disciplinary authority himself, on obtaining a response for the show cause notice observed that the State had been informed about his illness after an accident through the witness Ram Pal but the disciplinary authority held that information regarding absence ought not to be equaled as grant of sanction of leave itself. It

would therefore, appear that the reason for absence was also not disputed but found as genuine but the point was whether in spite of having good enough reason for absence, he could have overstayed without the leave actually being sanctioned. The disciplinary authority did not pose a question to itself whether it was justified in refusing sanction if the cause for absence was shown to be an illness that required hospitalization till the date before when he rejoined duty.

When the disciplinary authority was, therefore, confirming the provisional decision to terminate the service, it literally treaded on a thin wire of finding an explanation to be true but not willing to appraise whether a denial of leave in such a situation was justified or not and whether a punishment as serious as dismissal from service was commensurate with the employee's lapse.

The plaintiff, who had preferred an appeal was, therefore, not pleading merely for reduction of punishment. He was literally seeking for rewriting the finding of guilt as established. The appellate authority, when it was reducing the punishment, did not alter the finding of the disciplinary authority. It merely proceeded to confirm the finding and awarded as measure of grace, the reduction in punishment. This would show that the plaintiff gained nothing substantial for he carried the stigma of willful absence from service, the charge which he was stoutly denying and defending his own action before the authority.

I cannot, therefore, take an argument that when the authority was reducing the punishment, substantial justice had been done and rules of natural justice must be taken as satisfied. If the appeal was

taken on board and dismissed without any further reason and without affording an opportunity to explain as to how when the reason for absence was admitted by the Inquiry Officer and the disciplinary authority genuine, there could have been even a finding that the charge of unauthorized absence could be taken as established. While I will not go as far as to state that a personal hearing is at all times necessary, I would surely make that as an issue when a personal hearing would have made the difference to help the authority stay on focus of what he was required to adjudge upon. The disciplinary authority had simply missed the point of taking an admitted fact as a point that was proved after an inquiry. The admitted fact was his absence and the scope of inquiry was justification for absence. If the justification given was also found to be true, then the only point was whether the continuance without the sanction of leave was justified, that could never have resulted in a charge as fully established to award the punishment the way he did. If the appellate authority was reducing the punishment and if it had done so on its finding that the plaintiff had valid justification for his absence but his own mistake was only that he had not been favoured a sanction for leave, even then the appellate authority was required to take a focus on the conduct of the establishment and see what was the prevailing circumstance that could have prevented the authority from sanctioning the leave where an employee was interned in a hospital by a serious back injury. The appellate authority did not examine it and as I have observed already, it made the reduction of punishment only as a matter of grace.

A Full Bench of this Court was considering the effect of Regulation 70 of State Bank of Patiala (Officers) Service Regulations, 1979, that provided for a right of hearing before the appellate authority in departmental proceedings and posed a question of whether such a right of hearing must be taken as a right of personal hearing by the application of maxim *audi alteram partem* in the decision **Ram Niwas Bansal Versus State Bank of Patiala-1998(2) PLR 768**. The Full Bench answered the reference to hold that the personal hearing was an essential feature of natural justice. I cannot find this to be really an answer to a situation because Rule 16.29, which contains a provision for an appeal under the Police Standing Order does not contemplate such a right of personal hearing. I have held in this case already that the circumstance of whether an actual personal hearing must be given or not will depend on the nature of the case and the extent of prejudice. The formulation of point of law itself is whether there was any substantial prejudice caused to the plaintiff in not being afforded such a right. I have found also that the disciplinary authority as well as appellate authority and still a higher authority failed to note an important fact that the cause for absence had been clearly established and admitted by all authorities. The want of sanction for leave was alone the issue and the point for consideration ought to have been, therefore, more than an appraisal of their own records of why a leave could not have been sanctioned even when there was an information brought through a witness that the plaintiff had been hospitalized and hence could not return to duty. The mitigating circumstance was clearly failed to be noticed and the appellate authority

was, therefore, upholding the finding of guilt which finding it could not have entered, if it had addressed the right question and confronted the point that was being raised in the grounds of appeal as well as in the reply to show cause notice given by the plaintiff.

Substantial questions would, therefore, be answered thus: that the appellate court itself was justified in reversing the judgment of the trial Court, for, the findings at the inquiry revealed the justification for absence and when there was a justification, the finding that the charges had been fully proved was clearly wrong. The plaintiff was entitled to assail the punishment not merely as capricious or high but also on a fundamental point that the charge itself had not been established in full and the reduction of punishment given by the appellate authority could not have been without setting aside the finding of the disciplinary authority that the charges had been fully established. To that extent again the appellate authority missed what it was required to adjudicate upon and there was substantial prejudice caused to the plaintiff by not being afforded an opportunity to explain the fallabilities in the order passed by the disciplinary authority. I will hold the decision of the Lower Appellate Court was under the circumstances perfectly justified and answer the substantial questions raised in the manner that I have answered as above. The second appeal is dismissed with cost assessed at ₹10,000/- and civil revision is also dismissed with cost assessed at ₹3000/- payable to the respondent-plaintiff in separate.

08.04.2015*Bhumika***(K.KANNAN)
JUDGE**