

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 12573 of 2012 (O&M)

Date of decision : 02.07.2015

...

Union of India and others

.....Petitioners

vs.

Sushil Kumar Vashisht and another

.....Respondents

**Coram: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Sh. Banni Thomas, Advocate for the petitioners.

Sh. Joginder Sharma, Advocate for respondent No.1

...

P.B. Bajanthri, J.

Union of India alongwith Principal Accountant General (A&E), Haryana, feeling aggrieved by the order dated 21.3.2012 passed in OA No. 731/CH/2010, have filed this writ petition. The Central Administrative Tribunal (CAT) has vide its above stated order allowed the O.A. of Ist respondent in part.

(2) Respondent No.1 was appointed as a clerk in the office of Accountant General (A&E), Haryana on 6.1.1983. He was promoted to the post of Accountant and Senior Accountant.

(3) Respondent No.1 was placed under suspension on 26.12.2003 on the allegations of misplacing some GPF ledger cards of subscribers of Government of Haryana and manipulating them. In this regard a charge memo was issued on 16.12.2004 under Rule 14 of the CCS (CCA) Rules, 1965. On 3.1.2005, respondent No.1 submitted his defence, while denying all the charges framed against him. Charges were enquired into and thereafter on 7.2.2005 the Enquiry Officer submitted a report. Copy of the Enquiry Officer's report was made available to respondent No.1 for his say on that report. Respondent No.1 submitted his objections on 28.2.2006. The Disciplinary Authority after perusal of the Enquiry Officer's report and other related records, imposed the penalty of dismissal from service.

(4) Aggrieved by the order of the Disciplinary Authority dated 10.3.2006, respondent No.1 preferred an appeal before the Appellate Authority. The same was rejected on 24.4.2006. Further, respondent No.1 preferred a revision petition before the CAG, who, taking into consideration the financial position of respondent No.1 and his past service rendered in the office, took a lenient view and sanctioned for compassionate allowance not exceeding 2/3rd of his pension.

(5) Respondent No.1, feeling aggrieved by the abovesaid order dated 22.4.2009, preferred OA No. 731/CH/2010 before CAT. On 23.12.2011, there was dissenting judgment among the Administrative and Judicial members of the Tribunal, resulting in

referring the matter to the third member of the Central Administrative Tribunal, for a decision. On 21.3.2012, the learned third member of the Central Administrative Tribunal allowed the OA, while quashing the impugned orders. Thus the petitioners are aggrieved by the order dated 21.3.2012, resulting into present civil writ petition.

(6) Learned counsel for the petitioners vehemently submitted that there is no infirmity in the disciplinary proceedings since the rules and procedures stipulated under the CCS (CCA) Rules, 1965, have been complied in the matter. It was further argued on merits that respondent No.1 has committed serious misconduct, therefore, there is no infirmity in imposing the punishment of dismissal or the one reduced by Revisional Authority. He submitted that the Revisional Authority has taken a lenient view by allowing the compassionate allowance with reference to his service record and length of service, so also the financial position of respondent No.1. Thus, he submitted that the Tribunal erred in quashing the order of penalty passed in the disciplinary proceedings.

(7) Per contra, counsel for respondent No.1 submitted that respondent No.1 is a paralytic and his family is suffering like anything due to one of his son had already died in an accident, while another son of his is 100% disable and he has daughter of marriageable age. It was further contended that disciplinary proceedings have not been held in terms of the CCS (CCA) Rules, 1965. Respondent No.1 has not been given sufficient opportunity. Counsel for respondent No.1 also submitted that there is no infirmity

in the order of the third member (Judicial) dated 21.3.2012.

(8) We have perused the records. The Disciplinary Authority at the time of framing of article of charges was required to furnish list of documents and witnesses. In the present case, respondent No.1 has not been provided list of documents and witnesses, while furnishing the charge memo and seeking his explanation. It is mandatory to furnish list of documents and witnesses to the concerned employee before he is subjected to disciplinary proceedings. On this issue, the Apex Court has held that the employee is entitled for list of documents and witnesses and if the same is not furnished, the entire enquiry proceedings would be vitiated.

(9) In para 5 of **Kumaon Mandal Vikas Nigam Ltd vs Girja Shankar Pant & Ors (2001) 1 SCC 182**, it has been held that :-

“5. As noticed above the respondent was served with a show- cause notice containing about 13 allegations without however any documentary support in regard thereto - copies of the documents were asked for but the same were not made available. Persistent reminder on that score though yielded the benefit of having an inspection of some of the documents in the office, but a number of other documents were not made available to the delinquent employee even for inspection on the plea that the same were already placed before the Inquiry Officer. Non-submission of the copy of the

documents or even an inspection thereof has in fact said to have made it impossible for the Respondent herein, to send an effective reply to the show-cause notice. The situation therefore shortly put thus remains that even though a show-cause notice was served but by reason of the factum of non-availability of the documents to the respondent herein, the show-cause notice could not be answered in any effective manner at all excepting however in a rough and ready manner so as to avoid the comment and criticism of acceptance of the charge.”

(10) Similarly, the Hon'ble Supreme Court in its decision reported as **State of Uttar Pradesh and others vs. Saroj Kumar Sinha (2010) 2 Supreme Court Cases 772**, in extract of paragraphs 40 and 41 has held as under :-

“37. We may also notice here that the counsel for the appellant sought to argue that respondent had even failed to give reply to the show cause notice, issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid submission. The first enquiry report dated 3.8.2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report can not legally be termed as an enquiry report as it is a reiteration of the earlier, enquiry report. Asking the respondent to give

reply to the enquiry report without supply of the documents is to add insult to injury.

41. In our opinion the appellants have deliberately misconstrued the directions issued by the High 25 Court in Writ Petition 937/2003. In terms of the aforesaid order the respondents was required to submit a reply to the charge sheet upon supply of the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7.6.2004 in Writ Petition No. 793/2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23.7.2003. In our opinion the actions of the enquiry officers in preparing the reports ex-parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.”

(11) The Disciplinary Authority is bound by the procedure laid down in the CCS (CCA) Rules, 1965 and it cannot side track or ignore. It was mandatory on its part to furnish list of documents and witnesses while seeking explanation to the charges/charge memo. In not furnishing resulted in violation of principles of natural justice. The Judicial Member (third member) has noticed the aforesaid lacuna

among other grounds and allowed the application. We requested the learned counsel for the petitioners to produce necessary materials regarding furnishing of list of documents and witnesses. He was unable to produce any materials to demonstrate that list of documents and witnesses have been furnished to respondent No.1. Since the non-furnishing of list of documents and witnesses has resulted into severe prejudice to the defence plea of respondent No.1, on this ground alone, the writ petition is liable to be rejected.

(12) It was noticed from the records that Hand Writing Expert who had given opinion in respect of one of charge, which was behind the back of respondent No.1. In other words, respondent No. 1 has not been given adequate opportunity in defending the enquiry. **Union of India and others vs. P. Gunasekaran 2015 (2) SCC 610**, authoritatively holds that in the matter of disciplinary proceeding the Court can interfere on the following issues:-

“13. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

(13) The present case is covered by paragraph 13 (b) and (c) of the cited decision.

(14) We could have remanded the matter to the Enquiry Officer or to the Disciplinary Authority to commence the enquiry from the defective stage. We refrain to do so for the reasons that the Disciplinary proceedings were initiated in the year 2004 and the alleged incident relates back to the year 2003. Moreover, the pathetic condition of respondent No.1, like he being a paralytic person, one of his son died and another son is 100% disable, dissuades us to order so.

(15) Having regard to the facts and circumstances of the case, the petitioners have not been able to make out a case, so as to interfere with the order of the Tribunal.

(16) Accordingly, the writ petition is dismissed.

(17) No order, as to costs.

(**Surya Kant**)
Judge

(**P.B. Bajanthri**)
Judge

July 2, 2015.
chugh