IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

R.S.A No. 3900 of 2006 (O&M)
Date of decision : 06.05.2015

State of Haryana ...**Appellant**

versus

T.S. Bhatti **...Respondent**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sidharth Sanwaria, DAG, Haryana

Mr. Ashwani Talwar, Advocate
for the respondent.

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RITU BAHRI , J.

State has come up in Regular Second Appeal against the judgment and decree dated 18.04.2006 whereby appeal filed by the plaintiff-respondent (for short 'the respondent') was allowed, which was against the judgment and decree dated 10.02.2003, whereby the suit of the respondent was dismissed.

The case as put forth by the respondent is that he joined as District Food and Supplies Controller, at Hissar in February, 1986. As per instructions of the Government, wheat was purchased from the grain markets through out Haryana and was stored/kept in P.R. Centres at different towns and cities. Approximately, 1,33,475 quintals wheat was purchased in April/May 1985 at Tohana for the year 1985-86. At that time T.S. Bindra was the District Food and Supplies Controller at Hissar and this Centre fell under his jurisdiction. It was his duty to take all precautions and measures as per required and prescribed by the Government to save the food, which he had not taken and the wheat lying/stored at P.R. Centre Tohana was infested. Atta formation started and weeivling also developed in it. The Director, Food and Supplies Department, Haryana Chandigarh inspected the P.R. Centre on 04.09.1985 and observed that because of lack of treatment of stocks in time, the stocks lying in the P.R. Centre have infested atta formation has started. Special physical verification be got done done and report be sent to him immediately. Thereafter, Ram Lal Sethi Fumigation Inspector inspected the stock lying at P.R. Centre Tohana on 06.09.1985 and submitted the report on 09.09.1985 to the District Food and Supplies Controller, Hissar informing him that there was fumigation in whole of the stock of wheat and atta formation. It has badly been infected and stock germination has started. The wheat has been completely damaged up to 10% to 15% of the total stock. The respondent, after resuming duties in February 1986 inspected various centres and on inspection of P.R. Centre at Tohana, he found that 20 to 25 percent of the stock lying at this centre is totally damaged with rain and infestation. He did his best to save the stock from further damaged/loss. He started submitting to monthly reports to the higher authorities whereas these report were not sent by the then D.F.S.C by the names of T.S. Bindra and B.D. Bansal despite repeated reminders. The stock which was badly damaged was not accepted by the above said agency. The respondent was transferred from District Hissar in July, 1987. The Director, Food and Supplies Department, Haryana Chandigarh called the explanation of Sh. T.S. Bindra and B.D. Bansal the then Director, Food and Supplies Controllers of District Hissar in this regard and also held them responsible for causing the damage/loss. After a lapse of about 5 years, a show cause notice was served upon the respondent and R.P. Kumar, then then Director, Food and Supplies Controller regarding the damage and shortage of wheat stock in the P.R. Centre at Tohana in the year 1985, by defendant No. 2 absolving respondent No. 8 of his liability. The respondent gave its reply on 19.04.1990. Thereafter, penalty of Rs.1,82,484.75 paise on account of loss/damage to the wheat stock was imposed upon the respondent vide order dated 21.08.1997. The respondent preferred an appeal against that order, which was also dismissed vide order dated 02.09.1998. Hence, the present suit.

The Lower Appellant Court while considering the appeal of the respondent has observed that the charge sheet (Ex P1) was served upon the appellant under Rule 7 of the Haryana Civil Services Punishment and Appeal Rules, 1987 (for short 'the Rules) and the respondent gave its reply (Ex P7) and was heard personally. Thereafter, penalty of Rs.1,82,484.75 paise on account of loss/damage to the wheat stock was imposed upon the respondent vide order dated 21.08.1997. The respondent preferred an appeal against that order, which was also dismissed vide order dated 02.09.1998. However, the respondent was not posted at Hissar when the stocks were infested, atta formation and germination started in the wheat stock at P.R. Centre Tohana. The report of Ram Lal, Fumigation Inspector, FCI, Hissar dated 09.09.1985 supports the plea of the respondent. The respondent had joined only on 04.02.1986. The Director, Food and Supplies Department, Haryana Chandigarh inspected the P.R. Centre on 04.09.1985 and observed that because of lack of treatment of stocks in time, the stocks lying in the P.R. Centre have infested atta formation has started, vide his report dated 11.09.1985 (Ex PA). Thereafter, the Fumigation Inspector visited the above said centre, conducted pheripheral checking of the stock and submitted the report on 09.09.1985. Since the respondent joined the office on 04.02.1986, he could not be held liable for the damage caused to the wheat which was reported on 09.09.1985, as the atta formation has started in the wheat stocks in the year 1985-86. Much water was flown when the respondent joined the office. He did his best to save the stock from further damaged/loss. He started submitting monthly reports to the higher authorities whereas these report were not sent by the then D.F.S.C by the names of T.S. Bindra and B.D. Bansal despite repeated reminders. Thus, the suit of the respondent was rightly decreed by the Lower Appellate Court while dismissing the judgment passed by the trial Court.

Learned counsel for the appellant had argued that the respondent had been issued charge sheet under Rule 7 of the Rules for imposition of major penalty. However, after getting the reply from the respondent, without holding regular enquiry, major punishment was awarded to the respondent

Before dealing with the issue, it is appropriate to reproduce Rules 7 and 8 of the Rules, which are as under:-

"7. Inquiry before imposition of certain penalties.

(1) Without prejudice to the provisions of the Public Servants Enquiries) Act, 1950, no order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he

has given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(2) The grounds on which it is proposed to take such action shall be reduced to the form of definite charge or charges which shall be communicated in writing to be persons charged together with a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take up into consideration in passing orders on the case 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 of defence, if any, he has to offer and whether he desires to be heard in person. If the punishing authority is not satisfied with the explanation given by the person charged or (5) there are other reasons to do so shall direct that an enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The persons charged shall, subject to the conditions described in Sub-Rule (3), be entitled to cross-examine the witnesses, to given evidence in person and to have such witnesses 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 proceedings shall contain a sufficient record or the evidence and statement of the findings and the grounds thereof

provided that -

(a) it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement of allegation made by the person charged in the course of his defence; and

(b) the provisions of the foregoing sub-rule shall not apply where any major penalty is proposed to be imposed upon a person on the ground of conduct which has led to his conviction on a criminal charge; or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reasons to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him, or where in the interest of the security of the State it is considered not expedient to give to that person such an opportunity."

Rule 8 of the Rules reads as follow :-

"Without prejudice to the provisions of Rule 7, no order for imposing a minor penalty shall be passed on a Government 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. (Provisos omitted as not relevant for our purpose).

" For imposing major penalty, long procedure has been prescribed. The object of Rules 7 and 8 is to give reasonable opportunity to show cause the action proposed to be taken against the concerned employee. Sub-rule (2) of Rule 7 require the grounds, on which the action is proposed to be taken and for that a definite charge or charges are to be communicated in writing to the person charged with statement of allegations. The concerned chargesheeted employee is called upon to submit his explanation in defence, if any. In case the explanation is not found to be satisfactory, the enquiry is to be conducted, for which evidence is required with regard to charges which are not admitted. The chargesheeted employee has to be given an opportunity to cross-examine the witnesses and for that purpose, the chargesheeted employee is permitted to give evidence and also to examine witnesses in his defence. Whether the chargesheet is given under Rule 8 of the Rules for imposition of minor penalty, the chargesheeted employee is to be given an opportunity to submit his/her explanation. On giving personal hearing or after considering the reply of an employee, the disciplinary authority imposes a minor punishment. In case the procedure required under Rule 8 is not followed, then it would amount to violation of principles of natural justice. In case the chargesheet is issued under Rule 7 to an employee and after considering his/her explanation, a minor penalty is imposed as per Rule 8, a serious prejudice will be caused to the chargesheeted employee. Simply by stating that explanation of the chargesheeted employee has been considered and minor punishment has been awarded is not sufficient as has been done in the present case. Different procedures have been prescribed for Rule 7 and Rule 8 and in violation of that procedure, the action is not only unjust but arbitrary also. The said rules are intended to safeguard the rights of such chargesheeted employee and to comply with the principles of natural justice.

This aspect has been considered by this Court in a case of ***Dr. K.G. Tiwari vs. State of Haryana, 2002 (2) S.C.T, 915*** wherein it was held that once the charge-sheet is issued for imposition of major penalty which envisages holding of regular inquiry, the disciplinary authority cannot by merely examining the reply to the charge-sheet inflict even a minor punishment without holding a complete departmental inquiry. In para 24 and 28 of the judgment, it has been observed 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 chargesheet is issued under Rule 7 for the imposition of a major penalty, 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 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 punishing. 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.

28. We hold that charge sheet 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 be merely examining the reply to the charge *sheet, inflict even a minor punishment without holding a complete departmental enquiry.*

The aforesaid judgment of Full Bench of this Court has also been relied upon in Single Bench judgment of this Court in ***Gurparkash Singh Vs. State of Punjab and another 2009 (8) SLR 36***. The relevant para of this judgment is reproduced as under:-

> "Having heard the learned counsel for the parties, this Court is of the view that the controversy raised in the instant petition is fully covered by the ratio of the judgement rendered by a Full Bench of this Court in the case of Dr.K.G.Tiwari v. State of Haryana and others 2002(4) SLR 329 wherein it has been held that once a charge sheet has been issued then a regular departmental enquiry is required to be held even for inflicting a minor penalty. The view taken by a learned Single Judge of this Court has been approved by the Full Bench in Dr. K.G.Tiwari's case (supra). The rationale of the Full Bench in Dr. K.G.Tiwari's case (supra) appears to be that the State Government cannot take shelter behind the provision providing for minor penalty by avoiding to hold departmental enquiry for the fear of

> lack of evidence. Therefore, the possibility of not proving the charge cannot result into infliction of minor penalty."

The Full Bench of this Court in Dr. K.G. Tiwari's case (supra) has specifically held that a regular enquiry should be conducted even in case of imposition of minor penalty when charge has been issued under Rule 7 of the Rules.

In the present case, charge sheet was under rule 7 of the Rules. However, the major punishment of has been imposed upon the appellant by imposing a penalty of Rs.1,82,484.75 paise without holding regular enquiry.

Further, the respondent had joined the department on 04.02.1986 and this is one of the ground by which the punishment order was liable to be set aside.

It has further been informed by learned counsel for the respondent that the respondent had retired from the service in the year 1999.

The appeal filed by the State of Haryana could have been disposed of by giving them opportunity to conduct a fresh inquiry and pass appropriate orders, as prescribed under Rule 7 of the Rules but since the respondent had retired in the year 1999.

Keeping in view the above fact, the clock cannot be put back to 16 years by giving a direction to the appellant to conduct a fresh inquiry, as the respondent had already retired from service in the year 1999.

Accordingly, the appeal stands dismissed.

(RITU BAHRI)
JUDGE

06.05.2015
G Arora