

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

**Regular Second Appeal No. 2441 of 2003 (O&M)
Date of Decision: 13.1.2016.**

State of Punjab and othersAppellants

Vs.

Charan DassRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Neeraj Yadav, AAG, Punjab.

Mr. Arun Abrol, Advocate
for the respondent.

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SABINA, J.

Respondent had filed suit for declaration challenging the order dated 8.1.1997 whereby he was dismissed from service and order dated 26.8.1997 whereby appeal filed by the respondent against the order of his dismissal, was dismissed.

Case of the respondent, in brief, was that he was appointed as a Constable with the defendants and was placed under suspension with effect from 18.4.1998. Departmental enquiry was ordered against the respondent on the allegation that he had remained absent from duty for one month, one day and 17 hours. In fact, respondent had fallen ill on 5.4.1996 and had been advised complete bed rest. The Enquiry Officer without considering the medical certificate proved on record by the respondent, held that the charges levelled against him, were proved. On the basis of the said enquiry report, order dated 8.1.1997 was passed against the respondent whereby he was

dismissed from service. The order passed by the punishing authority was upheld by the Appellate Authority vide order dated 26.8.1997. Respondent was not afforded an opportunity of personal hearing by the punishing authority as well as the Appellate Authority.

Defendants, in their written statement, averred that the respondent had been dismissed from service after following due procedure of law.

On the pleadings of the parties, following issues were framed by the Trial Court:-

1. *Whether the plaintiff is entitled to a decree of declaration as prayed for? OPP*
2. *Whether the impugned order dated 8.1.97 and 28.6.97 are illegal, against equity and fair play etc. as prayed for? OPP*
3. *Whether the plaintiff has got cause of action to file the present suit? OPP*
4. *Whether the suit of the plaintiff is under the value for the purpose of court fee? OPD*
5. *Relief.*

Suit filed by the respondent was dismissed by the Trial Court vide judgment/decreed dated 26.4.1999. Aggrieved against the said judgment and decree, respondent preferred an appeal and the same was allowed by the First Appellate Court vide judgment/decreed dated 25.1.2003. Hence, the present appeal by the appellants-State.

Learned State counsel has submitted that the learned First Appellate Court has erred in decreeing the suit of the

respondent. In case the learned First Appellate Court was of the opinion that there was some fault in the enquiry, the Court should have granted permission to the defendants to hold a fresh enquiry, in accordance with law from the stage the defect had been pointed out. In support of his arguments, learned State counsel has placed reliance on '**State of Punjab versus Dr. Harbhajan Singh Greasy, 1996(9) SCC 322**, wherein it was held as under:-

“3. It is seen that the Enquiry Officer's report is based on the alleged admission made by the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing . Subsequently, the respondent has denied having made any admission . As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court

had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he voided responsibility as a Doctor to treat on flood victims and that was cause for the suspension.”

Learned counsel for the respondent, on the other hand, has submitted that the Enquiry Officer had himself acted as a Presenting Officer. This showed that the enquiry proceedings were not held in a fair manner and the respondent had suffered a serious prejudice. In support of his arguments, learned counsel has placed reliance on '**State of Punjab versus Harbhajan Singh, 2007(4) SCT 600**', wherein it was held as under:-

“5. It is an admitted case of the Punjab State that Inquiry Officer assumed the role of prosecutor when he conducted cross-examination on the respondent when he stepped into the witness box as his own witness in his defence. It is settled law that any inquiry into charges against a delinquent official must necessarily be in conformity with rules of fairplay and the Inquiry Officer holding the inquiry cannot take a different role from that of a person who is to adjudicate on the dispute impartially and without any bias. If he steps into the shoes of a Presenting Officer, then, to my mind, he becomes disqualified and it could no longer be said that the result of the Inquiry is fair. The Supreme Court

in Meenglas Tea Estate v. Its Workmen, (1963-2 Lab LJ 392) held as under:

" The tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hero the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in

evidence. The enquiry, such as it was, was made by Mr. Marshall or Mr. Nichols who were not only in the position of Judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the tribunal was justified in rejecting the findings and asking the company to prove the allegation against each workman de novo before it."

*Justice Gajendragadkar in the decision of the Supreme Court in **Associated Cement Companies Ltd. v. Their Workmen, (1963)2 Lab LJ 396 (SC)** said at page 399 thus:*

" it is true that domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, but they must be fairly conducted and in holding them, considerations of fairplay and natural justice must govern the conduct of the enquiry officer."

I would also like to observe that the role of the accused or the witness and of the Judge cannot be played by one and the same person and it is futile to expect when those roles are combined that the Judge can hold the scales of justice even. I find force in the pleas taken up

by the respondent in the written statement filed by him that the inquiry has been conducted in a manner which is against the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The object of questioning of delinquent servant by the Inquiry Officer is only to give him an opportunity to explain the incriminating circumstances appearing in the evidence adduced against him. But in the instant case, I find that Inquiry Officer has cross-examined delinquent officer when he stepped into the witness box as his own witness. This is not permissible under the rules. The government servant may, if he chooses, examine himself on his side. If he does not choose to examine himself, there is no question of his examination. But in that event, he can only be cross-examined by the Presenting Officer. So the cross-examination of the delinquent respondent by the Inquiry Officer is irregular and that naturally has caused prejudice to his case.”

In the present case, respondent was working as a Constable with the defendants. Respondent had absented from duty. Consequently, departmental proceedings were initiated against the respondent. During the enquiry proceedings, the Enquiry Officer himself assumed the role of the prosecutor. The Enquiry Officer himself cross-examined the respondent as well as the witnesses examined by the respondent. Since the Enquiry Officer had assumed the role of the prosecutor, it is evident that the enquiry proceedings were not in conformity with the rules of fair play. The Enquiry Officer could not assume the role of the

prosecutor as well as the person who was to adjudicate the enquiry proceedings. Since the Enquiry Officer had assumed the role of the prosecutor as well as the adjudicator, it is evident that the dispute could not have been decided by the Enquiry Officer impartially and without any bias. Thus, in the present case, the learned First Appellate Court rightly came to the conclusion that the result of the enquiry in the present case was not fair.

A perusal of the enquiry file further reveals that the respondent had submitted reply to the show cause notice. There is nothing on the reply submitted by the respondent that he be called for personal hearing. However, there is nothing on record to show that the respondent had been called for personal hearing before the passing of the punishment order. Since in the present case, the enquiry proceedings stand vitiated as they had not been conducted in a fair manner, the learned First Appellate Court rightly decreed the suit of the respondent.

I have gone through the decision of the Apex Court in *State of Punjab versus Dr. Harbhajan Singh Greasy's* case (supra). There is no quarrel with the proposition of law that if the punishment order is found to be illegal on account of defect in the enquiry, the Court could not direct reinstatement with all consequential benefits and the proper course is to direct the authority to proceed with the enquiry afresh, in accordance with law from the stage the defect has been pointed out. In the present case, the enquiry proceedings stand vitiated as the result of the enquiry cannot be described to be fair on account of the fact that the Enquiry Officer had himself acted as a prosecutor and adjudicator. Hence, the judgment relied upon by the learned

State counsel fails to advance the case of the appellants in the facts and circumstances of the present case.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

January 13, 2016
Gurpreet