

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

Date of decision:25.5.2016

1.

CWP No.15807 of 1998(O&M)

Arjan Singh

... Petitioner

Versus

State of Punjab & anr.

... Respondents

2.

CWP No.16004 of 1998(O&M)

Raj Dulari

... Petitioner

Versus

State of Punjab & anr.

... Respondents

3.

CWP No.16005 of 1998(O&M)

Ramji Das Sharma

... Petitioner

Versus

State of Punjab & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurdip Singh, Advocate, and
Mr. Chanderdeep Singh, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl.A.G., Punjab.

1. To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of the above cited cases as common questions of law and fact are involved in them which can conveniently be decided by a common order. The facts are taken from CWP No.15807 of 1998 for the sake of convenience.

2. During the pendency of the petitions two of the petitioners in the first and third petition retired on attaining the age of superannuation on 28.02.2006 and 31.10.2009 respectively while the petitioner in the second petition took voluntary retirement on 29.08 2008 on grounds of ill health.

3. While in service all the petitioners, including a fourth non-applicant, were charge-sheeted for major misconduct alleging embezzlement of employer's money. They were put to departmental proceedings. The Enquiry Officer appointed by the respondent department issued notice to the petitioner on January 4, 1996 calling him [and the other petitioners] to appear before him on January 10, 1996. The petitioners pleaded not guilty and claimed trial. On January 10, 1996 the enquiry officer concluded the entire inquiry on a single day without giving them any opportunity to lead evidence in their defence. Prosecution witnesses submitted affidavits against the petitioners and in their absence the 'evidence' was taken on the enquiry file. Opportunity of cross-examination was denied. The work of the enquiry officer to say the least deserves to be seriously criticized for lack of knowledge of rudimentary procedure in holding a domestic trial in violation of set procedure in Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The work of the enquiry officer leaves his conduct in serious doubt and shows that he was biased against the petitioner. The enquiry officer acted as judge, prosecutor and the presenting officer all rolled into one. A perusal of the inquiry report shows that evidence was not gathered by affording reasonable opportunity to the petitioners to defend

themselves and none of the charges were actually proven there being no legal evidence to arrive at the stage of consideration of alleged misconduct on a preponderance of probabilities and yet he held the charges were proven against the petitioners in a most slipshod manner.

4. In the order Annex. R-2 passed by the Government of Punjab, Department of Finance Local Audit Wing the competent disciplinary authority was of the view that the petitioner had not passed the disputed bill and to this effect the findings of the Enquiry Officer were endorsed. Strange as it may seem, the enquiry officer had found that the bill was not passed by petitioner Arjan Singh but by Ramji Das, Junior Auditor. The blame then shifts to Ramji Das and at least the petitioner cannot be accused of non-passing of the bill. The only doubt expressed in the order of the Government was that the petitioner was not able to explain how the enhanced amount was claimed by the Punjab State Electricity Board when he had passed the bill without raising the objection. What was found against him was that he had approved payment but not the bill in the careless manner. But the bill was not passed by him. None of the other charges like dereliction of duty etc. were held proved. When the first charge is noticed, even if proved to the extent of carelessness, that cannot justify major punishment of withholding of two increments with cumulative effect. In the facts and circumstances the punishment inflicted on the petitioner is excessively disproportionate to the alleged charge to the extent of due care not exercised on a bill which was the duty of someone else to pass and therefore, the orders suffer from errors apparent on the face of record.

The findings of the enquiry officer are all perverse, irrational and opposed to common sense. The petitioner has culled out the findings of the enquiry officer at page 7 of the paper-book on Charges A to D, which are reproduced below, which tell their own story militating against the punishment inflicted without substance:-

“Charge-A: “In the light of the above, this charge levelled against Sh. Arjan Singh, Auditor, is not proved, as the latter bill in which excess payment is alleged has been passed by Sh. Ramji Das, Auditor and not by Sh. Arjan Singh Auditor.”

Charge-B- Therefore, Sh. Arjan Singh, Auditor, cannot be held guilty in his individual capacity.”

Charge-C- “ It appears from the E.C.R. And the vouchers that these excess payments are possible, however, it is difficult to arrive at a definite conclusion, because in the absence of original bills, it cannot be said with certainty that these payments pertain to a single month.”

Charge-D- “This charge is not specific and no body can be held guilty merely on the basis of doubt.”

5. Leave that apart, the inquiry itself is held to be a defective inquiry which was neither fair nor proper when the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1970 was not followed and to the contrary was flagrantly breached by a sham enquiry visiting the petitioner/s with harm of grave magnitude by major punishments totally disproportionate to the alleged misconduct. It is trite law that a defective enquiry is no enquiry in the eyes of law and stands on

the same footing as are cases of no enquiry.

6. As a result, the petitions are allowed and the entire inquiry proceedings and the punishment orders which followed are quashed being illegal, arbitrary and unconstitutional. For the reasons recorded above, the accompanying petitions also succeed, the illegal and perverse enquiry proceedings being common to them suffer from the same patent defects. As a corollary the petitioners are declared entitled to consequential benefits i.e. arrears of pay and revision of pension after re-fixation of pay. The amounts be calculated and paid within three months from the date of supply of a certified copy of the order.

(RAJIV NARAIN RAINA)
JUDGE

25.5.2016
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