IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.551 of 1997
Date of Decision-18.07.2016

Sagli Ram ... Appellant

Versus

FCI …Respondent

2. CWP No.8333 of 2009

Balwant Singh ... Petitioner

Versus

Presiding Officer, Central Govt. Ind. TR-CUM-LC
... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.S. Dadwal, Advocate for the appellant in RSA No.551 of 1997 and CWP No.8333 of 2009.

Ms. Jatinder Jit Kaur, Advocate for the respondent in RSA No.551 of 1997.

Mr. Arun Walia, Sr. Advocate with
Mr. Gursimar Singh, Advocate for the respondent in CWP No.8333 of 2009.

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__RAJ MOHAN SINGH, J.__

[1]. Vide this common judgment RSA No.551 of 1997 titled as Sagli Ram Vs. F.C.I and CWP No.8333 of 2009 titled as Balwant Singh Vs. Presiding Officer, Central Govt. Ind. TR-CUM-LC are being decided.

[2]. Facts are being taken from RSA No.551 of 1997.

[3]. Plaintiff-appellant has assailed judgment and decree dated 07.11.1996 passed by District Judge, Hoshiarpur vide which judgment and decree dated 20.08.1994 passed by Sub

Judge, Second Class, Hoshiarpur was set aside and appeal of the plaintiff-appellant was dismissed.

[4]. Brief facts as gathered from the record are that plaintiff filed a suit for declaration to the effect that the order dated 20.05.1988 passed by Senior Regional Manager, FCI/defendant No.3 compulsorily retiring the plaintiff with immediate effect, the order dated 27.01.1989 passed by Zonal Manager, FCI/defendant No.2 dismissing the appeal and the order dated 07.08.1991 passed by defendant No.2 again dismissing the appeal after review were illegal, void and without jurisdiction and against the principles of natural justice.

[5]. Plaintiff claimed that after declaring the action of the defendants to be null and void, plaintiff be declared in continuous employment of FCI with all consequential reliefs with interest @ 12 % per annum. Plaintiff asserted that he was working as Assistant Grade-I (Depot) and was posted at FSD, Mukerian in the year 1983. He was holding the charge of TSD, Mukerian jointly with Rameshwar Sharma AC-II(D) on 05.02.1983. Plaintiff remained present at Regional Head-quarters, Mukerian to supervise the loading of special train in view of the order dated 01.02.1983 passed by Assistant Manager (Depot). On 05.02.1983, the Special Squad visited the TSD Sheds A and B and prepared an alleged report showing shortage of 122 bags of wheat. According to the plaintiff, there

was no shortage of wheat bags, but the Squad members got the signatures of the plaintiff on some papers and later on, converted the same into a confessional statement. No counting of bags in Shed A was done in the presence of the plaintiff and other custodian of the stock. When the Squad left the sheds, the plaintiff along with Assistant Manager (Depot) counted the stock and a telegram was sent to District Manager, FCI, Hoshiarpur for verification of the stocks by the Assistant Manager (Depot).

[6]. As per record, there was no shortage as alleged on 05.02.1983. There was wheat sheds A and B, but the Squad only checked Shed B, no inspection was done qua Shed A. On the basis of report of the Special Squad, the plaintiff along with Rameshwar Sharma AG-II, AC Abbi AM(D), one AG-III and three watchmen were charge-sheeted. Plaintiff submitted his response to the charge-sheet, but the same was not considered by the defendants and Enquiry Officer was appointed. Enquiry Officer illegally held the plaintiff responsible for the embezzlement along with Rameshwar Sharma. The Enquiry Officer never supplied the copy of Enquiry Report to the plaintiff. Defendant No.3 imposed major penalties upon the plaintiff. Rameshwar Sharma was compulsorily retired from service and penalty of demotion was inflicted upon Shri AC Abbi vide order dated 20.05.1988. Plaintiff along with Rameshwar Sharma filed appeals before defendant No.2 who without applying his judicious mind dismissed the appeal vide order dated

27.01.1989. Thereafter, plaintiff-appellant filed review petition before defendant No.1 who ordered re-hearing of the appeal by the appellate authority i.e. defendant No.2. Defendant No.2 again dismissed the appeal vide order dated 07.01.1991. Plaintiff was never given opportunity of being heard before imposing penalty and no enquiry report was submitted along with the show cause. Sh. AC. Abbi was only demoted while the AG-III was exonerated.

[7]. Plaintiff claimed that the order dated 20.05.1988 was discriminatory and arbitrary in nature. Defendant No.3 had no authority for imposing such a penalty upon the plaintiff, rather, defendant No.2 was the authority who could have imposed punishment upon the plaintiff. Plaintiff further claimed that enquiry was biased and lacked opportunity to the plaintiff.

[8]. Suit was contested by the defendants. Besides, taking plea of limitation, estoppel and maintainability, defendants claimed that Civil Court had no jurisdiction to try the suit. Allegations of plaint were denied on merits and it was submitted that the plaintiff while working as AG-1 (D) failed to maintain absolute integrity and devotion towards his duties inasmuch as that there was shortage of 122 bags of wheat in Shed B of TSD when the same was inspected by District Squad on 05.02.1983. The Squad detected shortage of 61 qtls., 80 Kgs

and 200 gms on 100% weighment of balance 249 bags of wheat lying in the shed.

[9]. It was alleged that the plaintiff in connivance with Rameshwar Sharma, AG-II, Gurdev Singh, AG-III (D), Mohinder Lal, AG-III(D), R.C. Abbi AM (D), Balwant Singh H/W/M and Tarsem Lal W/M unauthorizedly and illegally brought 123 bags of wheat from outside in the night of 05.02.1983 and 06.02.1983 and kept the same in Shed A/1 to cover up the shortage which was illegal. It was alleged that the plaintiff did not discharge his duty efficiently and according to the expectations of the employer and there was shortage of 16 of B class bags which were found in A Shed on 10.02.1983 and no proper record was maintained by the plaintiff. The confessional statement was made by the plaintiff. It was also alleged that plaintiff misappropriated 122 bags of wheat along with 61 qtls, 80 kgs and 200 gms wheat found short as a quantity of 187-19-800 was physically available against in the book balance of 249 qtls in Shed B at TSD, Mukerian. It was alleged that there was misappropriation in B Class gunny bags.

[10]. Defendant further alleged that the reply filed by the plaintiff was considered and proper enquiry was done. The Senior Regional Manager, FCI/defendant No.3 was competent authority being the appointing authority of category-III post and the order passed by the appellate authority was lawful order and

review petition filed by the plaintiff was dismissed by the competent authority after giving proper opportunity of hearing to the plaintiff. The punishment awarded to the plaintiff was commensurating to the lapses on the part of the plaintiff and punishment was inflicted only after proper opportunity of hearing provided to the plaintiff.

[11]. Parties went to trial on the following issues:-

"1) Whether the order dated 20.05.1988 passed by defendant No.3 and impugned order dated 07.08.1991 is illegal, null and void? OPP

2) Whether the plaintiff is entitled to the declaration as prayed for? OPP

3) Whether the suit of the plaintiff is barred by limitation? OPD

4) Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD

5) Whether the present suit is not maintainable in the present form? OPD

6) Whether the Civil Court at Hoshiarpur has got no jurisdiction to try and decide the present suit? OPD

7) Relief."

[12]. Both the parties led their respective evidence to prove their case. Rameshwar Sharma was ordered to be compulsorily retired from service along with the plaintiff vide order dated 20.05.1988. Plaintiff along with Rameshwar Sharma filed appeal before defendant No.2 which was dismissed. A

review petition was submitted before defendant No.1 who remanded back the case to the appellate authority. The appeal was once again rejected by defendant No.2 vide order dated 09.05.1991.

[13]. Trial Court decreed the suit of the plaintiff declaring the impugned orders to be illegal, null and void. Plaintiff was held to receive all the emoluments and service benefits along with simple interest @ 6%. The judgment and decree of the trial Court dated 20.08.1994 was challenged by the defendant-Corporation through its officers in appeal before the lower Appellate Court. Lower Appellate Court accepted the appeal thereby reversing the judgment and decree of the trial Court. Resultantly, suit was dismissed in appeal. That is, how, the present appeal came to be filed before this Court.

[14]. Though no substantial question of law has been formulated, however, this Court proceeded to consider the following question:-

> *"Whether the impugned action on the part of the defendant was in utter violation of principles of natural justice in addition to non-furnishing of report of Enquiry Officer to the plaintiff before imposing major punishment?"*

[15]. Trial Court found that there was no proof available on the record to show that the plaintiff was ever supplied documents regarding enquiry. Plaintiff was not in a position to

reply to the charges leveled against him and punishing authority did not supply report of the Enquiry Officer-Gurdass Ram. No show cause notice was issued by the punishing authority to the plaintiff before inflicting major punishment. Principles of natural justice were violated to the hilt.

[16]. Lower Appellate Court while reversing the judgment and decree of the trial Court held that the copy of the enquiry report was required to be supplied to the delinquent where it was provided specifically under the Service Rules that the delinquent is entitled to such a copy. Rule 9(4) (1) of Punjab Civil Services (Punishment and Appeals) Rules, 1970 shows that a notice is to be issued to the delinquent stating the penalty proposed and he is entitled to a copy of enquiry report.

[17]. In the present case, the rules governing the employees of FCI provided that it was not necessary to give employees of corporation any opportunity of making representation on the proposed penalty to be imposed upon them. In view of Rule 59 (4) of the Food Corporation of India (Staff) Regulations, 1971, it was mentioned that " it shall not be necessary to give the corporation employee any opportunity of making representation on the penalty so proposed". By citing the aforesaid rule, lower Appellate Court held that the rules governing the service conditions of the plaintiff negated the supply of enquiry report to the plaintiff before inflicting

punishment by the competent authority. The reference was also made to ***Managing Director ECIL, Hyderabad Vs. B. Karunakar, 1994(1) S.C.T. 319*** to hold that the supply of enquiry report to the delinquent was necessary only where the enquiry was completed after 20.11.1990.

[18]. After holding of regular enquiry and availing departmental remedy of appeal/review, the scope of interference by the Civil Court is minimal unless and until, it is found that the enquiry vitiated on account of non-observance of rules and there was infraction of any legal preposition or punishment awarded by the authority did not commensurate to misconduct alleged against the delinquent.

[19]. In ***Union of India and others Vs. Mohd. Ramzan Khan, (SC) 1991(1) SCT 111***, the Hon'ble Apex Court held that in view of 42nd Amendment it is no longer necessary to furnish a copy of enquiry report to the delinquent employee, if the punishment was passed prior to 20.11.1990. The report of Enquiry Officer and observance of principles of natural justice were an integral part of opportunity of defence against the charges. Any breach would entail vitiating the departmental proceedings. The law laid down in Mohd. Ramzan Khan's case (supra) was held to be prospective in operation i.e. applicable to order passed after 20.11.1990. The law so made expressly prospective in operation and was not to be applied

retrospectively. It was held that the law laid down by Hon'ble Apex Court was prospective in operation to prevent unsettlement of the settled prepositions in order to prevent administrative chaos and to meet ends of justice. The observations made by the Hon'ble Apex Court in **Managing Director, ECIL, Hyderabad Vs. B.Karunakar's case (supra)** answered the incidental questions in the following manner:-

> *"30. Hence the incidental question raised above may be answered as follows:-*
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> *(i). Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.*
>
> *(ii). The relevant portion of Article 311 (2) of the Constitution is as follows:-*
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> *"(2). No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and give a reasonable opportunity of being heard in respect of those charges."*
>
> *Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be*

construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311 (2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employees asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report in an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan' case

(supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made on difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and

sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

[20]. It was also held that the law laid down in Ramzan Khan's case (supra) was prospective in operation. It was also observed that in many of the cases, misconduct has been grave and in other cases, the denial on the part of the management to furnish enquiry report would ultimately prove to be no more than a technical mistake. To re-open all the departmental proceedings would result in grave prejudice to the administration which will provide undue benefit to the employee. On overall assessment both administrative realties and public interests, the Hon'ble Apex Court held that the orders of punishment prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer were not to be disturbed and the disciplinary proceedings which gave rise to the said orders should not be re-opened.

[21]. Apex Court in the above said case in para No.45 of the judgment further held in the following manner:-

> *"45. The need to make the law laid down in Mohd. Ramzan Khan's case (supra) prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the report. In some of the cases, the orders of punishments have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishment the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."*

[22]. Learned counsel for the appellant vehemently argued that in the instant case prescribed authority passed the

impugned order dated 20.05.1988 against which appeal was filed. The appellate authority vide order dated 27.01.1989 dismissed the appeal. On a review petition filed before defendant No.1, the case was remanded back to the appellate authority on 06.12.1989 and thereafter, the appellate authority dismissed the appeal only on 07.08.1991 much after the date i.e. 20.11.1990. According to the learned counsel, appeal was the continuation of original proceedings and therefore, the order dated 07.08.1991 was the order of punishment passed by defendant No.2 and the original order of punishment dated 20.05.1988 stood merged in the order passed by the appellate authority. Therefore, the prospectivity attached to Mohd. Ramzan Khan's case (supra) was very much attracted to the present case as well.

[23]. Learned counsel for the appellant also submitted with reference to the conclusion arrived at in para No.45 of the Managing Director, ECIL, Hyderabad Vs. B. Karunakar's case (supra) that Mohd. Ramzan Khan's case (supra) was made prospective in operation in order to scuttle innumerable cases where employees have been punished without giving them the copy of enquiry report. In some of the cases, the orders of punishments have long since become final while other cases are pending in Courts at different stages.

[24]. In order to give complete rest to the controversy, it was thought appropriate that punishment inflicted after 20.11.1990 would require supply of Enquiry Report to the delinquent. The cases relating to earlier period stood concluded without such a relief.

[25]. On the other hand, learned counsel for the respondent has vehemently relied upon the applicability of Mohd. Ramzan Khan's case (supra) as well as Managing Director, ECIL, Hyderabad's case (supra) and submitted that the order of punishment was passed against the appellant on 20.05.1988 and therefore, the date of order of punishment was prior to 20.11.1990 wherein the law laid down by the Hon'ble Apex Court while holding that the delinquent officer cannot be called upon to make a representation on the quantum of punishment without furnishing a copy of enquiry report was expressly given a prospective effect. It was therefore, not at all necessary for the disciplinary authority to furnish a copy of enquiry report to the delinquent. Reference was made to the judgment of the Hon'ble Apex Court in ***<u>P.D. Aggarwal VS. State Bank of India and others, 2006 AIR (SC) 2064.</u>***

[26]. The controversy involved in the present *lis* is with regard to the date of order of punishment. Managing Director, ECIL, Hyderabad case (supra) gave emphasis upon the fact that in innumerable cases the punishments were given without

supplying copy of enquiry report and in some cases, the orders of punishments have long since become final and while other cases are pending in Courts at different stages. The reference of word ‘Court’ was only in respect of challenged made to the order of punishment in the Courts.

[27]. In the instant case, the prescribed authority passed the order of punishment on 20.05.1988. The appellate authority confirmed the same vide order dated 27.01.1989. However, on a review filed before defendant No.1 the case was remanded back to the appellate authority on 06.12.1989 and thereafter, the appellate authority again dismissed the appeal on 07.08.1991. The date of judgment passed by the appellate authority in any case was subsequent to the target date as mentioned in Mohd. Ramzan Khan’s case (supra). The cited precedents did not point out as to whether original order of punishment was to be considered or the order passed by the appellate authority on merger was to be considered. According to learned counsel for the appellant, it was the order dated 07.08.1991 passed by the Appellate Court which should have been taken for consideration in the context of applying dictum laid down in Mohd. Ramzan Khan’s case (supra).

[28]. Reference was made to **Food *Corporation of India Vs. The Commissioner of Sales Tax, M.P., Indore, 1998(2) SCC 363*** to contend that it was the appellate authority which

was having powers to reduce, enhance or annul the impugned action. By referring to the provisions of M.P. General Sales Tax Act, the Hon'ble Apex Court held that under the provisions of the tax Act, it was the appellate authority who had the powers to confirm, reduce, enhance or annul the penalty in disposing of the appeal. Though in the cited case as per provision of the Act, additional powers were conferred upon the appellate authority to impose the penalty for the first time in course of proceedings under the said act and the punishment so imposed by the appellate authority would be treated to be fresh assessment. The Court ultimately held that the power of the appellate authority on that specific statute could be invoked. Only in the proceedings in appeal from the assessment order, fresh imposition of the penalty by the appellate authority was a part of original proceedings and was not to be recorded as fresh assessment. By relying upon the aforesaid precedents, learned counsel for the appellant submitted that it was the order passed by the appellate authority i.e. order dated 07.08.1991 which should have been treated to be an order of punishment which came to be passed after remand to the appellate authority who had all the powers to confirm, reduce, enhance or annul the proceedings of the prescribed authority.

[29]. Having considered the submissions made on either side, it would be relevant to see the observations made by the Hon'ble Apex court in Para No.45 of **<u>Managing Director, ECIL,</u>**

Hyderabad Vs. B. Karunakar's case *(supra).* Evidently, the order of punishment was passed against the appellant on 20.05.1988 and therefore, the order of punishment was certainly prior to the date i.e. 20.11.1990 given in Mohd. Ramzan Khan's case (supra). Therefore, pendency of cases in Courts at different stages was in-consequential in view of observations made in aforesaid paragraph No.45 of the cited judgment as the order of punishment preceded the date i.e. 20.11.1990, therefore, the controversy was set at rest by the Hon'ble Apex Court irrespective of the fact that whether continuation of proceedings were at departmental level or before the Court. The case is covered with the dictum laid down in the Apex Court in both the cases as mentioned above. Plea of merger as highlighted is apparently not attracted in departmental proceedings. The ratio of case titled **Food *Corporation of India Vs. The Commissioner of Sales Tax, M.P., Indore*** (supra) is not applicable as in the said case powers were statutorily given to appellate forum under tax laws.

[30]. In view of aforesaid, it has to be observed that the requirement of supplying enquiry report to the delinquent was not *sine qua non* as the order of punishment was passed prior to the magic date given in Mohd. Ramzan Khan's case (supra) and therefore, the Court was justified in not granting any relief to the appellant as the same did not involve any infraction of rule. Rameshwar Sharma's case (supra) though treated similarly, but

he was taken back in service and RSA No.233 of 1994 has been decided on candid information submitted by FCI that he has already attained age of superannuation and his dues were duly paid by the corporation.

[31]. Though the basic controversy originated from common source, the present appellant remained unsuccessful before the lower Appellate Court and he could not join the post and remained out of job. The case of the appellant has to be tested on the touchstone of the import of judgments as cited in the aforesaid paragraphs. The grant of relief to Rameshwar Sharma was on different parameters as no stay was granted in favour of corporation and Rameshwar Sharma was taken back in service till the date of his superannuation.

[32]. This Court cannot draw any exception in the case of the appellant as the case is covered by the dictum laid down in Mohd. Ramzan Khan's and Managing Director, ECIL, Hyderabad Vs. B.Karunakar's cases (supra).

[33]. In the light of aforesaid, no exception to the dictum laid down in aforesaid judgments can be made out in favour of the appellant, therefore, this appeal is found to be totally devoid of merits and consequently, the same is dismissed.

(RAJ MOHAN SINGH)
JUDGE

18.07.2016
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