

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

**C.W.P. No. 13840 of 2012
Date of Decision:- 30.08.2016**

Rakesh Kumar Jassal

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Veneet Sharma, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of Certiorari for quashing enquiry report dated 16.3.1995 (Annexure P-17), order dated 23.2.1996 (Annexure P-21) and order dated 31.1.2012 (Annexure P-23). A further prayer has also been made for issuance of direction to the respondents to reinstate the petitioner in service with all consequential benefits.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was working as Junior Engineer in the office of respondent No.3. He was placed under suspension under Rule 4 (1)(a) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (hereinafter referred to as 'The 1970 Rules') vide order dated 30.12.1991

(Annexure P-1). Subsequently, vide order dated 17.5.1993 (Annexure P-2), he was reinstated in service during pendency of the enquiry. A charge-sheet dated 4.5.1992 was issued to him vide letter dated 5.5.1992 wherein certain allegations of misappropriation of Bitumen were there. The petitioner submitted a representation for inspection of certain documents for submitting his reply but he was not allowed to do so. During the course of enquiry, the petitioner also made a request to allow him to avail the assistance of Sh. Surjit Singh, Superintendent (Retd.) to defend his case being of typical nature but he was not allowed. Ultimately, vide enquiry report dated 16.3.1995, the enquiry officer found the charges levelled against the petitioner to be proved to which petitioner submitted his objections but without considering those objections, show cause notice was issued on 25.5.1995. Petitioner submitted his reply to the show cause notice and thereafter vide order dated 23.2.1996, he was compulsory retired from service and order for recovery of an amount of ₹ 1,32,000/- was passed. Petitioner filed an appeal under Rule 15 of the Rules, 1970 but the same was rejected vide order dated 31.1.2012. The chargesheet, order of compulsory retirement as well as the order passed in appeal are the subject-matter of challenge in the present petition.

Learned counsel for the petitioner submits that one similarly situated Ajay Kumar was also facing charge-sheet and was also awarded punishment of compulsory retirement and recovery of ₹ 67095/-. He filed a civil suit but the same was decreed in his favour on 29.7.2000. Although, petitioner also filed civil suit but it was dismissed in default. Learned counsel also submits that the enquiry officer neither allowed the petitioner

to inspect the record nor supplied the requisite documents. Even his request to take assistance of some official was not allowed whereas it was specifically provided under Rule 8(8) of the 1970 Rules that a Government employee may take the assistance of any other Government employee or a retired Government employee to present his case on his behalf. It is also the argument of learned counsel for the petitioner that three persons were cited as witnesses against the petitioner by the Department but during the course of enquiry, the enquiry officer allowed the department to examine the witnesses who were not even cited in the charge-sheet. The enquiry proceedings were held in a biased and pre-determined mind just to prove the guilt of the petitioner without having any sufficient evidence.

Learned counsel also submits that the appeal filed by the petitioner was rejected after a delay of 16 years by passing totally a cryptic order and without considering the judgment passed in case of one Ajay Kumar, Junior Engineer as the case of the petitioner is at par with said Ajay Kumar.

Learned counsel for the respondents opposes the submissions made by learned counsel for the petitioner and submits that petitioner has not approached this Court with clean hands as he has concealed certain material facts.

The petitioner has earlier filed civil suit before the civil Court and challenged the order dated 23.2.1996 but the said civil suit was dismissed in default. The allegations of misappropriation of amount were there against the petitioner and those allegations were proved in the enquiry conducted by the Enquiry Officer. Even the petitioner himself has admitted

his guilt as an undertaking was given by him on 10.12.1991. Learned State counsel also submits that in spite of giving undertaking, the petitioner could not make good the loss and thereafter a charge-sheet was served upon him and he was placed under suspension. Hence, the petitioner cannot take advantage of the civil suit filed by the other employee.

Heard learned counsel for the petitioner as well as learned counsel for the State and have also perused the impugned orders as well as other documents available on the file.

The facts regarding issuance of charge-sheet, conducting of regular enquiry and also placing the petitioner under suspension are not disputed. It is also not disputed that the allegations against the petitioner and other employee, namely, Ajay Kumar who was working as Junior Engineer were the same. Said Ajay Kumar was also charge-sheeted, faced enquiry proceedings and was also awarded punishment of compulsory retirement alongwith recovery of an amount of ₹ 67095/-. The petitioner as well as said Ajay Kumar filed civil suits before the Civil Courts. The suit filed by Ajay Kumar was decreed vide judgment and decree dated 29.7.2000 whereas the civil suit filed by the petitioner was dismissed in default. Subsequently, petitioner also filed statutory appeal which was rejected. Admittedly, it was specifically mentioned in the grounds of appeal that the civil suit filed by said Ajay Kumar has been decreed in his favour but the same was not taken into consideration. On perusal of record, it is apparent that three witnesses were cited against the petitioner by respondent-Department i.e. Amandeep Singh Brar, SDE and Sh. B.R. Brar, SDE CDC and Gurcharan Singh (SDC). The Enquiry Officer neither allowed him to

cross-examine the witnesses nor allowed to inspect the documents which were cited in the charge-sheet. As per allegations in the charge-sheet, the petitioner received the tankers of bitumen by forging the signatures but the signatures of the petitioner were never compared with the disputed signatures and as such, no evidence was available on record to prove the case against the petitioner. On the same set of allegations, co-accused of the petitioner, namely, Ajay Kumar who had filed civil suit was found innocent by the Civil Court as the civil suit filed by him was decreed in his favour. The findings recorded by the Civil Court in the suit filed by Ajay Kumar are reproduced as under:-

“ The show cause notice was issued by Sh. M. S. Guram, Chief Engineer upon the plaintiff and he was also personally by him and the reply to the show cause notice was also filed at that time by the plaintiff but the impugned order dated 23.2.96 has been passed by Sh. Surjit Singh Chief Engineer who has not personally heard the plaintiff and not given any opportunity of being heard to the plaintiff before passing the impugned order dated 23.2.96 and he has not considered his defence and representation and Sh. Surjit Singh, Chief Engineer was not competent to pass the impugned order. Admittedly, the impugned order passed by Sh. Surjit Singh Chief Engineer when the plaintiff was personally heard by Sh. M. S. Guram, Chief Engineer was given to Sh. Surjit Singh Chief Engineer by Secretary to Government

Punjab, PWED B&R, therefore, the order was passed by Sh. Surjit Singh Chief Engineer being the appointing and punishing authority, but no such order was brought on record by the defendants. It is also violation of the well settled law that when any competent authority passes the order against the delinquent official he will give full opportunity to the delinquent official of being heard before passing the such order.”

It was held by the Civil Court that no opportunity of hearing was given at the time of passing of impugned order and even the Chief Engineer was not competent to pass the impugned order. It was also not brought on record by the defendants that the Chief Engineer was the Appointing and Punishing Authority. The impugned order being violative of principles of natural justice as well as being passed by the incompetent Authority was declared as null and void and Ajay Kumar was ordered to be reinstated in service along with all consequential benefits including full pay and allowances under law.

In the present case, the petitioner brought to the notice of the enquiry officer that certain documents and the witnesses, who were allowed to be examined were not mentioned in the charge-sheet whereas, as per Rule 8.15 of the Rules, 1970, those witnesses could not be produced by the defendants. The case of co-employee Ajay Kumar was also brought to the notice of the Appellate Authority but same was not considered. The order passed by Punishing Authority as well as by the Appellate Authority are

contrary to the facts and evidence available on file whereas same allegations were there against co-employee Ajay Kumar and his order of punishment was declared as null and void and he was reinstated in service.

In view of facts and law position as discussed above, the present petition is allowed and impugned enquiry report dated 16.3.1995 (Annexure P-17), order dated 23.2.1996 (Annexure P-21) and order dated 31.1.2012 (Annexure P-23) are set aside. Respondents are directed to consider the case of the petitioner in view of judgment and decree of Civil Court passed in case of Ajay Kumar by considering the same allegations in charge-sheet and admission on the part of both the employees by passing a fresh order thereafter within a period of two months of receipt of copy of the order of this Court.

August 30, 2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes