

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

**CWP No. 22741 of 2013
Date of decision : 01.04.2016**

Satish Kumar

...Petitioner

versus

Hry. Co-op Sugar Mills Ltd & anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Hooda, Advocate
for the petitioner.

Mr. Sumeet Jain, Advocate for
Mr. Pankaj Jain, Advocate
for the respondents

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioner was appointed as Accounts Clerk on permanent basis in the year 1985 and was promoted as Assistant Accountant in the year 2000. On 26.04.2012, a complaint was made against the petitioner by one N.K. Sharma, Sales Officer, Godown to the effect that petitioner hit him with stick on his back. He was caught and pushed outside by Dalsher. In pursuance of the above complaint, petitioner was issued charge sheeted, vide charge sheet No. 70 dated 04.05.2012.

K.S Dhaka was appointed as Enquiry Officer, who submitted his report

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against the petitioner and charges framed against the petitioner were found to be true. The agenda with regard to the above said charge sheet was put up before the Board of Directors in its meeting held on 23.01.2013, which was considered by the Board of Directors. Petitioner was given hearing and petitioner was found guilty of mis conduct. Thereafter petitioner requested Board of Directors to gave him another chance and he will not repeat such mistake in future. Petitioner gave in writing to the Managing Director that in future he will not use alcohol and if any complaint is received against him, his resignation be accepted without giving him any further chance. Managing Director vide order dated 28.01.2013 gave another chance to the petitioner and charge sheet dated 04.05.2012 was dropped.

Thereafter, petitioner made an application to the Managing Director on 29.01.2013 to release his pay for the period of his suspension. However, on 13.02.2013, when the petitioner was absent from duty, another complaint was made by three persons namely Ahosk Kumar, Dispenser, K.C. Gupta, Stores Officer and Deepak Khator, Offig. Chief Account Officer with the allegation that the petitioner misbehaved with them and tried to brake the electric wires. Thereafter, on 14.02.2013, the Managing Director passed order dated 14.02.2013 ordered that resignation of the petitioner be accepted with immediate

effect in view of decision of Board of Directors dated 23.01.2013 and petitioner was asked to collect his retiral dues after taking NOC from different department.

Again respondent No. 2 passed order dated 31.07.2013 (P-7) that petitioner is not entitled to any service benefits, as charge sheet issued against the petitioner dated 29.07.2010 and 13.05.2011 have been found to be proved against him.

Respondent No. 2 vide order dated 10.09.2013 (P-8) terminated the services of the petitioner on the ground that with regard to the charge sheet dated 04.08.2012 issued against the petitioner, the charges are found to be true. Hence, the present writ petition.

Learned counsel for the petitioner is seeking quashing of the above said impugned orders on the ground that once the resignation of the petitioner was accepted by the respondent-department without affording any opportunity to the petitioner, petitioner is entitled to all service benefits and his service cannot be terminated on the ground that in some other charge sheet pending against him, the charges have found to be proved against him.

Further impugned orders passed against the petitioner are against Rule 7.3 and 7.5 of C.S. Vol I Part I as the respondents have

passed the orders without following the above said Rules and without coming to the conclusion whether the complaint is true or false. Further neither any notice was served upon the petitioner nor he was given any personal hearing. It is a settled law that no one should be condemned unheard. The law of 'Audi Alteram Partem' has been well recognised as fundamental by the Courts.

To give support to its contention, reference has been made to a judgment of the Hon'ble Apex Court in a case of **Ashwin S. Mehta and another v. U.O.I and others, 2012 (1) SCC 83** wherein in para 40 to 42, it has been observed as under:-

40. *It is true that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by any authority, irrespective of whether the power which is conferred on a statutory body or Tribunal is administrative or quasi judicial. The concept of "natural justice" implies a duty to act fairly i.e. fair play in action. As observed in **A.K. Kraipak v. Union of India, (1969) 2 SCC 262** the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.*

41. *In **Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664**, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus: (SCC p. 666)*

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem (ii) memo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original

order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

42. It is thus, trite that requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi judicial or judicial authority, particularly when such an order entails adverse civil consequences, which would include infraction of property, personal rights and material deprivation for the party affected, cannot be sacrificed at the alter of administrative exigency or celerity. Undoubtedly, there can be exceptions to the said doctrine and as aforesaid the extent and its application cannot be put in a strait-jacket formula. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected.

On the other hand, learned counsel for the respondents while referring to the written statement stated that petitioner has the checkered history of indiscipline, misbehaviour and of conduct unbecoming of an employee to his credit. He was charge sheeted many times and was warned time and again regarding his misbehaviour with other employees. There were many instances whereby he misbehaved

with co-employees and sometimes he absented himself, without getting his leaves sanctioned. He was found under the influence of liquor in office hours as well. To this effect, orders have been passed against him and petitioner requested every time to give him another chance, vide Annexure R-2/1 to R-2/7.

The question which is necessary for proper adjudication of this case is that once Managing Director vide order dated 28.01.2013 gave another chance to the petitioner and charge sheet dated 04.05.2012 was dropped, thereafter, on an another complaint 13.02.2013 filed against the petitioner, whether the department can pass three impugned orders i.e accepting the resignation of the petitioner, not to give him service benefits and terminate his service, without giving any notice to the petitioner and without personal hearing to the petitioner.

After going through the file, this Court is of the view that the impugned orders are liable to be set aside.

It is not disputed that the petitioner has the checkered history of indiscipline and misbehaviour. He was charge sheeted many times and on his request, he was given chance. But once Managing Director vide order dated 28.01.2013 gave another chance to the petitioner and charge sheet dated 04.05.2012 was dropped, in view of

the fact that the petitioner gave in writing that in future he will not use alcohol and if any complaint is received against him, his resignation be accepted without giving him any further chance.

On a further complaint received by the respondent-department against the petitioner, the department at best accept his resignation but cannot stop the service benefits of the petitioner and terminate him on an earlier charge sheets. After acceptance of the resignation of the petitioner, the relationship of an employee and employer comes to an end. However, the department proceeded ahead by decided not to give service benefits to the petitioner, without coming to the conclusion whether the complaint dated 13.02.2013 is true or false. This too had been done after accepting the resignation of the petitioner.

Further the department did not stop here. They terminated the service of the petitioner as well, with regard to the charge sheet dated 04.08.2012.

The impugned orders have been passed are against the resolution dated 23.01.2013 whereby Board of Directors initially found the petitioner guilty but after considering the application of the petitioner, the Board by taking a lenient view decided to give one more chance to the petitioner and the charge sheet was dropped

against him and it was decided that in future if the petitioner again repeat the same, then the Managing Director was authorized to accept his resignation from the service of the mills as per his application without any information to him.

So, the department at best can accept the resignation of the petitioner without informing him but cannot deny him service benefits and terminate his services.

In view of the settled law and in terms of Rule 7.3 and 7.5 of Punjab Civil Service Rules, orders dated 31.07.2013 (P-7) and 10.09.2013 (P-9) are hereby quashed and the petitioner is entitled to all consequential benefits @ 9% from the date of acceptance of the resignation of the petitioner.

The petition stands allowed.

(RITU BAHRI)
JUDGE

01.04.2016

G Arora