

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

LPA No.1346 of 2014(O&M)

Date of Decision: 30.09.2016

Parmod Kumar

...Appellant

VERSUS

Union Territory, Chandigarh Administration & Ors.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr.Barjesh Mittal, Advocate for the appellant.

Mr.Daman Dhir, Advocate for respondent No.1.

Ms.Deepali Puri, Advocate for respondent Nos.2 and 3.

SUDIP AHLUWALIA, J.

This Letters Patent Appeal is directed by the appellant against the judgment delivered by the Ld. Single Judge on 7.5.2014 dismissing his Civil Writ Petition No.8634 of 2014.

2. The factual background of the matter has been noted by the Ld. Single Judge in the impugned judgment as under -

“Petitioner had joined as a Fireman in the Fire Department in the year 1986. Petitioner was promoted as Leading Fireman on 10.11.2006. On 10.12.2010, Petitioner was served with a charge sheet (Annexure P-2) and regular enquiry was ordered to be conducted against the petitioner. Petitioner denied the charges levelled against him and sought an adjournment for engaging defence assistant on 17.8.2011. However, no decision was taken

on the request made by the petitioner. Petitioner also moved an application on 2.9.2011 for change of enquiry officer but no action was taken on the same so far. Enquiry officer gave the report against the petitioner. Petitioner submitted his reply to the enquiry report. Without considering the same, show cause notice was issued to the petitioner. Petitioner submitted his reply to the show cause notice. However, impugned order dated 19.9.2012 (Annexure P-14) was passed without considering the reply of the petitioner and his four increments were stopped with cumulative effect. Appeal filed by the petitioner had been dismissed vide order dated 23.2.2014 (Annexure P-18) by passing a non speaking order.

Petitioner was served charge sheet (Annexure P-2) and the following charge was levelled against the petitioner:-

“That the said Sh. Parmod Kumar, while functioning as Leading Fireman at Fire Station, Sector 32, Chandigarh had mis-conducted himself by not performing his duties in an appropriate manner on 19.4.2009 in as much as on receiving a fire call at about 18:46 hrs, he sent the team, vehicle and machinery to attend the said Fire Call at Manav Mangal School, Sector 49, Chandigarh without providing necessary supervision and due guidance. He had also fabricated the record by making wrong entry in the occurrence book regarding his accompany with the Fire Fighting crew on 19.4.2009 to attend the fire call at Manav Mangal School, Sector 49, Chandigarh, whereas he had not accompanied the crew rather remained at the Fire Station.

The above act and commission of said Sh. Parmod Kumar, Leading Fireman is unbecoming of Govt. Servant making himself liable to calling of disciplinary action against him under the provisions of Punjab Civil Services (Punishment & Appeal) Rules, 1970.”

Annexure P-10 is the enquiry report submitted by the enquiry officer. A perusal of the same reveals that petitioner had denied the charges and had requested that he would seek

assistance of a defence assistant. Petitioner was advised to move an application in writing as well as disclose the particulars of the defence assistant on 18.8.2011. However, a perusal of Annexure P-3 reveals that the said request was made by the petitioner for engaging Gurbaksh Singh, Superintendent as defence assistant on 24.8.2011. Witnesses were examined by the enquiry officer. Opportunity to cross-examine the witnesses, was given to the petitioner but he failed to do so. Thereafter petitioner was granted opportunity to lead evidence in his defence but he left the spot without signing the enquiry proceedings. Thereafter petitioner did not join the enquiry proceedings despite notice. The enquiry officer, after considering the evidence of the witnesses, examined during enquiry, held that the charge levelled against the petitioner stood proved. Thereafter show cause notice (Annexure P-12) was served on the petitioner and he submitted his reply to the same i.e. Annexure P-13. Petitioner was also given the opportunity that he could be heard in person if he so desired. A perusal of Annexure P-14, punishment order dated 19.9.2012, reveals that the punishing authority had gone through the enquiry report and the reply submitted by the petitioner to the show cause notice. The punishing authority came to the conclusion that petitioner was working as a Leading Fireman who was to provide emergency service and take every step for protecting the life and property of the public at large. Petitioner had received information regarding breaking of fire in the ground near Gurudwara, Sector-49, Chandigarh. The message was received 19.19 hours from Sector-32 Fire Station but the petitioner had not accompanied the fire fighting crew. Keeping in view the seriousness of allegation levelled against the petitioner, the punishing authority imposed the punishment of withdrawal of four annual increments of the petitioner with cumulative effects. Thereafter, petitioner preferred an appeal. A perusal of the order dated 23.2.2014 (Annexure P-18) passed by the Appellate Authority reveals that petitioner was duly heard by the Appellate

Authority and after going through the record on the file, the Appellate Authority ordered the dismissal of the appeal.”

3. The Ld. Single Judge was thereafter inclined to dismiss the Writ Petition after putting on record the following observations -

“The scope of judicial review regarding interference with punishment order is very limited. The jurisdiction of this Court is only to see the method/manner of awarding punishment. The Court is only concerned with the procedure adopted by the Punishing Authority. If the procedure adopted by the Punishing Authority is according to rules and natural justice, then no interference with the punishment order is called for. This Court cannot go into the merits of the case. In case, the finding of the Inquiry Officer is based on some evidence, then this court cannot re-appreciate the evidence or weigh the same like the Appellate Authority. So long as there is some evidence in support of the conclusion arrived at by the departmental authority, the same has to be sustained. Some defect in the inquiry has to be pointed out before this Court can interfere with the punishment order. Furthermore, if defect is pointed out then the delinquent employee has to show as to what prejudice has been caused to him on account of the said defect.

In the present case, departmental enquiry was held against the petitioner and statements of the witnesses were recorded in the presence of the petitioner. Petitioner did not cross-examine the witnesses examined during enquiry nor led any evidence in his defence. The enquiry officer, after going through the evidence on record, held that the charge levelled against the petitioner was duly proved. Although, petitioner has taken up the plea that he was not allowed to take assistance of a defence assistant but the petitioner had failed to move an application in this regard as requested by the enquiry officer. Application (Annexure P-3) is alleged to have been moved by the petitioner on 24.8.2011. Rather on the said day, as per the enquiry report, petitioner had left the spot without putting his

signatures on the enquiry proceedings. Instead of participating in the enquiry proceedings, petitioner started moving applications for change of enquiry officer. Petitioner, despite receiving a fire call, had failed to supervise and guide the same and had not accompanied the fire fighting crew to the spot.

In the facts and circumstances of the present case, no ground for interference is made out.

Dismissed.”

4. From the aforesaid observations, it is clear that the Ld. Single Judge found no merit in the Writ Petition as there was no irregularity in the manner of holding the disciplinary proceedings by the Enquiry Officer.

5. On the other hand, the appellant is aggrieved by the decision and asserts that he is victim of bias at the hands of the Enquiry Officer, who had motivatedly decided the disciplinary proceedings against him after denying him the opportunity to defend himself in accordance with the settled principles of natural justice. It has also been asserted that the Enquiry Officer adopted a steamrolling approach in the disciplinary proceedings in spite of appellant's plea to defer the proceedings as he had specifically asserted that he did not expect justice and fair opportunity from the Enquiry officer, and had already written to the authority concerned being the Municipal Commissioner, Chandigarh for change of the Enquiry Officer. Hence, according to the appellant, the Enquiry Officer's insistence on completing the proceedings in a hurried manner without granting any opportunity to the appellant to defend himself, in spite of the apprehension of bias imputed against him makes his decision altogether untenable.

6. We have perused the original records of the departmental inquiry and noticed certain striking facts and features in the same, which are being referred to in the succeeding paragraphs.

7. Mr. H.R.Gangar, IAS (Retired) was appointed the Enquiry Officer on some (illegible) date in July, 2011. The communicating letters to the EO, PA to Municipal Commissioner Chairman and other concerned Officers, including the C.O. (petitioner/appellant) were, however, issued only on 9.8.2011 under Endorsement Nos.2665 to 2670.

8. One Mr. A.K.Gupta was appointed the Presenting Officer on 11.8.2011 and the communication of such appointment was made to him as well as to the petitioner/appellant only on 16.8.2011, vide Endorsement Nos.2725-26. The record, however, does not reveal any where as to how and when the first date for the enquiry proceedings was fixed, or how the same was communicated to the petitioner/appellant. The intimation regarding appointment of the Presenting Officer has no reference whatsoever to any date for commencement of the inquiry. The first Zimni order was passed by the Enquiry Officer on 17.8.2011 i.e. on the very next date after communication regarding appointment of the Presenting Officer was issued from the office. While the EO signed the zimni order on 17.8.2011, it was signed by the Presenting Officer, a week later i.e. on 24.8.2011. Perusal of the same reveals that on the relevant date, about which itself, there is no clarity as to which date it actually was, it was noted that the C.O. (petitioner/appellant) had refused to participate in the proceedings and had 'ran away' in presence of the Presenting Officer as well as the Steno-typist Mr. Sudhir Kumar. The said Steno-typist, however, virtually refused to support this noting by striking out his name from the Zimni sheet and putting an endorsement to the effect that "I am only performing the duties of Typist in the said inquiry (signed on 29.8.2011)".

9. In the background of the aforesaid material available on the

record as well as absence of any document, there is nothing to show that the first date of inquiry proceedings (17.8.2011) had ever been officially fixed by the E.O., much less communicated to the Charged Officer at any time.

10. Again, there is nothing on record to show how or when the proceedings were deferred from 17.8.2011 to 24.8.2011 or whether any notice for 24.8.2011 was at all served upon the Charged Officer. However, the statements of the witnesses were purportedly taken on 24.8.2011 in one single continuous running sheet. Incidentally, these are not verbatim statements, but only a summarization of the same in a third party narrative fashion. Admittedly, none of these witnesses have been cross-examined. According to the E.O., the C.O. had 'run away' from the proceedings, although the E.O. signed on such endorsement on '17.8.2011' and not on '24.8.2011', while the Steno-typist, who ostensibly was present at the relevant time, refused to support the E.O's observation. In the circumstances, there is substance in the appellant's contention that he was wrongfully denied a fair opportunity to defend himself as, admittedly, there is no material on record to show how the dates of 17.8.2011 or for that matter 24.8.2011 were ever communicated to him.

11. At any rate, from 24.8.2011 the further inquiry proceeding was postponed to 2.9.2011, for which date, 'fresh notice' was ordered to be issued upon the C.O. This time, however, such notice was at least issued under communication being SPL-222 dated 30.8.2011 signed by the E.O. But again, there is nothing in the record to show as to how the same was served on the C.O., or was served at all. Nevertheless, the C.O. was shown 'absent' on the due date (2.9.2011), on account of which, the E.O. directed postponement of the proceedings to 14.9.2011.

12. On the aforesaid next date, the E.O. himself recorded that the Charged Officer had not been served, and therefore, directed service of notice upon him by registered post for 28.9.2011.

13. It is thereafter ascertained that on the scheduled date, the Charged Officer (petitioner/appellant) was actually present before the E.O. and sought an adjournment of proceedings by stating that he had already submitted an application for change of the Enquiry Officer in the case, on account of which, the proceedings may be deferred till a decision on his application was made by the Commissioner, Municipal Corporation. But such request was rejected by the E.O. on the spot, who thereafter went on to conclude the proceedings that very day. Incidentally, copies of the representation already submitted by the C.O. to the Commissioner dated 24.8.2011, requesting change of the E.O. on account of alleged bias, as well as a separate letter from the Charged officer to the Enquiry Officer dated 2.9.2011, requesting a deferment of the proceedings pending decision on his representation sent to the Commissioner are available in the record.

14. After rejecting the appellant's request for adjourning the proceedings pending a decision on his representation for changing the E.O., the said E.O. on 28.9.2011 went ahead and concluded the proceedings then and there by preparing his Enquiry Report running into eight Pages, and holding that the charges against the C.O. were proved. Incidentally, all the discussion, reasoning and decision of the E.O. are contained in the first seven Pages of the report and C.O's request for deferring the proceedings has only been referred to as well as rejected in the concluding paragraph on the last one, being Page 8, even though, the same in the normal course ought to have been considered before pronouncing the final decision. Such

manner of conduct and approach adopted by the E.O. in the disciplinary proceedings would *ex facie* indicate a pre-meditated mindset, and strongly support the appellant's claim that he was denied a fair opportunity to defend himself by the E.O. In the given facts and circumstances, we are also of the view that the disciplinary proceedings against the petitioner/appellant were vitiated for violation of principles of natural justice, inasmuch as the Charged Officer was denied a fair opportunity to defend himself. Consequently, the appeal is allowed, the Final Report submitted by the E.O. and all subsequent orders passed in consequence of the same are, therefore, quashed.

15. The respondents are, however, granted liberty to have fresh disciplinary proceedings conducted against the appellant, if they so like, in which, they would have to ensure that adequate notice and opportunity of defence is granted to him. As regard to the consequential benefits, it is directed that as of now the appellant shall not be entitled to any arrears till he is exonerated on merits either by way of afresh proceedings to be held from the stage of appointment of E.O. or by way of a conscious decision, if any, taken by the Competent Authority to not hold any further enquiry against the appellant.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

September 30, 2016
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***