

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1946 of 1988 (O&M)
Date of Decision: 28.03.2017**

Shri Krishan Rai Sharma

... Appellant

Versus

The Indian Red Cross Society, Ludhiana
and others

... Respondents

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

Present: Ms. Alka Chatrath, Advocate,
for the appellant.

Mr. Rajeev Anand, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.

1. There is no substantial question of service law involved in this appeal. The few facts necessary to be noticed in appeal run as follows:- the plaintiff-appellant (for short 'plaintiff') was appointed in October 1958 as District Organizer with the respondent Society and thereafter was promoted as Assistant State Training Supervisor. The petitioner was posted at Ludhiana as District Training Supervisor on request. He was thereafter promoted as Assistant Secretary on April 2, 1962 and Office Secretary of the Indian Red Cross Society, Ludhiana (for short 'Society') and redesignated as Executive Secretary. There were allegations levelled against his conduct and his services were placed under suspension on August 08, 1980. He was charge-sheeted on September 12, 1980 for financial bungling and other sundry misdemeanors. A preliminary enquiry was held into his conduct and

on conclusion of guilt established in the report. A show cause notice was issued to him on September 17, 1980. He filed reply to the charge-sheet and the show cause notice on September 24 and 27, 1980. The services of the petitioner were terminated on October 30, 1980 by a simpliciter order without attaching stigma, which order became the dispute in the original suit No.175 of 1981 for declaration and mandatory injunction praying for reinstatement with consequential benefits.

2. The Additional Senior Subordinate Judge, Ludhiana by a detailed judgment dismissed the suit on February 25, 1986. The first and foremost question to be determined in the suit in the opinion of the trial Court was whether the plaintiff in the matter of his services was governed by the Punjab Civil Services (Punishment and Appeals Rules), 1970 ("1970 Rules"). If the findings were in the affirmative then the defendant-Society was required to follow the rules and procedure as laid down in these rules. If not, then the further question was whether the principles of natural justice have been followed in terminating his services which was the minimum guarantee against arbitrary action.

3. The trial Court found nothing documented which proved that the PCS Rules were adopted by the Red Cross Society in toto. The trial Court read the resolution Ex.PX-50 relating to grant of additional relief to the employees of the Society on the pattern of Government rates and the resolution Ex.P-11, vide which additional dearness allowance was allowed to the employees of the District Red Cross Society as per scales prevailing in Punjab Government. If the 1970 Rules were applied in cases of other employees it did not mean *a priori* that those rules had to be followed in the

case of the plaintiff when not legally applicable by way of an obligation on the Society. The Society was not a department of the Government or department run by the Government being an independent entity. The employees of the Society were not civil servants. Merely because the inquiries were conducted by civil servants did not add flavour of direct employment under the State of Punjab. The termination did not have to meet the standards and procedures prescribed in Rule 8 of the 1970 Rules. Therefore, the trial Court concluded that the dismissal/termination cannot be said to be in violation of rules. There was no statutory obligation on the Society to follow any set procedure when there was none in its own regulations and constitution. Neither the plaintiff had a right to be dealt with in a particular way. His protection was only through the principles of natural justice. The State Branch of the IRCS would be a creation of statute but not State under Article 12 of the Constitution.

4. The trial Court noticed a large number of decisions of the Supreme Court and the High Courts and held that there were no express rules in the matter of holding enquiry against an employee of the Society and the principles of natural justice are alone to be followed which permeate such employment. On the question of following principles of natural justice the defendant-Society contended that the plaintiff faced several complaints in the year 1977 which was continued to be looked into for a period of about three years. The Enquiry Officer appointed to hold the domestic enquiry recorded statements of complainants and other witnesses and collected other evidence in the matter of allegations and gave reasonable opportunity to the plaintiff to defend himself.

5. There were serious allegations of dishonesty, temporary embezzlement of large amounts of money, misuse of powers etc. against the plaintiff. These allegations were looked into successively by three officers. Each of them had recorded statements of various witnesses and some of whom were cross-examined by the plaintiff. He filed replies and arguments during enquiry before the Enquiry Officer and the same were exhibited on the file. Some of the allegations were found established while others not. The ingredients of natural justice were satisfied when the allegations were looked into, the plaintiff was given opportunity of being heard to defend himself. The Enquiry Officer had recorded that many opportunities were given to the plaintiff to produce his evidence but he did not do so.

6. The trial Court read the day to day zimni orders passed by the Enquiry Officer at pages 193 and 194 of the enquiry file which confirm the belief of the trial Court. The trial Court looked into all the aspects which are relevant in arriving at a conclusion on whether the principles of natural justice were adhered to or not in the face of the finding that the punishment and appeal rules did not apply. So long as the plaintiff knew the case against him on each of the charges and acted in defence of the allegations and joined the proceedings without demur, cross-examined the witnesses and stated his case in writing before the Enquiry Officer and before the disciplinary authority then no prejudice was caused to him at any stage.

7. Then the trial court was not incorrect in holding that the civil court cannot look into the adequacy or inadequacy of evidence and sit in appeal over the report of the Enquiry Officer call it fact finding, preliminary or regular. It would not be within the purview of the civil court to dissect or

marshal the evidence recorded by the Enquiry Officer with a view to judge the correctness or otherwise of the findings. When the employee is not a civil servant and protected by Article 311 of the Constitution then the duties of the civil court are limited to see if the principles of natural justice were followed and that effective opportunity to rebut the allegations have been given or not. The enquiry had continued in the hands of at least three PCS officers serving the State of Punjab during the span of three years which was sufficient time to conclude which outcome cannot be called a hurried decision as the plaintiff describes.

8. It may be that Mr. A.R. Darshi, Enquiry Officer had suggested the dropping of enquiry due to death of the complainant. [When the papers were put up before the Deputy Commissioner-cum-Chairman Red Cross Society Ludhiana on April 11, 1980 he disagreed with the view of Mr. Darshi and ordered further enquiry on some allegations which were marked words A.B.C. X and Y in the original report submitted by Shri S.P.Karkara, S.D.O (Civil), Ludhiana was ordered to make enquiry vide endorsement EX.P78. Shri Hardyal Singh S.D.O (C) then looked into the said specific allegations, recorded the statements of various witnesses on EX.PX/1, EX.PX/2, EX.PX/3 ad EX.PX/4. Krishan Rai plaintiff also submitted written explanation EX.P88. The enquiry officer also laboured a lot in making enquiry in the various allegations through Tehsildar and S.D. Khanna etc. as would be evident from the various correspondence lying in the above said enquiry file. He then submitted his report EX.DW/I. He found three charges having been established, while on one of the charges the plaintiff did not produce the record. The Chairman vide his order dated September 03, 1980

passed the following order:-

“The above report shows that either the charges have been proved or Mr. Sharma is willfully withholding the information which will prove the charges against him and the Enquiry Officer has found adequate substance against him for this purpose as well.”] (extracted from para.9 of the judgment of the trial court)

9. The next Enquiry Officer S. Hardyal Singh found against the plaintiff on the basis of materials on record in respect of all the allegations referred to him. The death of complainant was not the end of the matter when the charges were serious in nature and there was adequate material to conclude one way or the other. The plaintiff did not object that the punishing authority was biased towards him. He did not allege mala fides against any of the three enquiry officers to have any ill-will against him or had acted with bias or pre-determination. If the show cause notice carried the proposed punishment is also of no value because the enquiry against the plaintiff was not a regular enquiry under the 1970 Rules. It was not the business of the Court to go into the merits and de-merits of the case. A preliminary enquiry of the nature conducted in this case was practically for all intents and purposes on the same footing as a regular enquiry when Rule-8 of the rules did not apply.

10. For these reasons, the trial Court found no justification in setting aside the dismissal. The punishing authority had acted without grudge or bias against the plaintiff. Even a criminal case was registered against the plaintiff and it is a different matter that the plaintiff was acquitted in the criminal case after trial on the same set of allegations.

11. In appeal against the decree, the learned Additional District Judge, Ludhiana agreed with the reasoning of the trial Court regarding the applicability of the 1970 Rules and the guiding principles of observing principles of natural justice were all that were required to be examined in the limited jurisdiction available to the Civil Court. The Appellate Court read the resolution No.31 dated October 10, 1968 in a case arising out of the Indian Red Cross Society, Ferozepur where that Society being an independent body had adopted the Punjab Civil Services Rules in the matter of service of its employees. Each unit was independent to take its own decisions. However, there was in existence no such resolution of the Red Cross Society, Ludhiana. Therefore, the plaintiff could not place reliance on the Ferozepur case. A regular enquiry may not have been held in the presence of the appellant but in the fact finding proceedings his role was established pointing towards grave misconduct. The statement of witnesses were recorded and the appellant cross-examined them to establish his innocence and, therefore, he cannot turn around and plead that he was prejudiced in any manner. A preliminary enquiry where testimonies of witnesses is recorded is sufficient in a case arising in Indian Red Cross Society, Ludhiana when the 1970 Rules are not applicable. So long as the plaintiff-appellant had been given an opportunity of being heard on the remaining charges and to defend himself when he was fully aware of the case against him. In absence of rules employer could act in accordance with rules of natural justice avoiding causing any prejudice. The proposition that in absence of notified statutory rules laying down the procedure of holding enquiry, rules of natural justice are to be applied was settled by the Supreme

Court in The Managing Director, U.P. Warehousing Corporation & Others
v. Vijay Narayan Vajpayee, AIR 1980 SC 840.

12. It is not necessary to go into the details of the charges when the tests qualifying observance and compliances of rules of natural justice have been thoroughly examined by the two courts concurrently reaching the same conclusions and I find no additional reason to upset the findings in second appeal there being no substantial question of law involved either under Section 100 CPC or Section 41 of the Punjab Courts Act, 1918.

13. Accordingly, the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

28.03.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>