

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.181 of 1992

Date of Decision: 10.07.2017

Nachhattar Singh

... Appellant

Versus

The State of Punjab

... Respondent

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

Present: Mr. Gaurav Chopra, Advocate,
for the appellant.

Mr. B.M. Vinayak, DAG, Punjab.

RAJIV NARAIN RAINA, J.

1. The following three substantial questions of law arise in this appeal in a service matter:-

“A. Whether violation of the mandatory substantive provision of Rule 8 (11) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 whereby the delinquent employee was entitled to seek inspection/copies of the relevant record forming part of the charge sheet vitiated the departmental enquiry and rendered the punishment order illegal and consequently liable to be set aside as being legally unsustainable?”

B. Whether the impugned judgments and decree passed by both the Courts below suffer from mis-appreciation and misreading of the oral and documentary evidence available on the record and have been passed contrary to the law laid down by the Hon'ble Supreme Court of India in State Bank of Patiala v. S.K. Sharma, AIR 1996 SC 1669 in respect of the scope of interference by a Court in departmental action/proceedings?”

C. Whether the departmental proceedings initiated

against the Plaintiff/Appellant and concluded without following the principles of natural justice thus causing substantive loss and prejudice to the Appellant and denying him a fair trial in the departmental proceedings vitiates the punishment order dated 22.4.1985 passed by the General Manager, Punjab Roadways, Moga?”

2. The order challenged in the suit was an order imposing penalty of withholding four annual increments with cumulative effect besides restricting arrears of salary for the period of suspension to the subsistence allowance already paid. The punishment was inflicted after serving charge sheet and holding enquiry.

3. Plaintiff complained in suit that the enquiry teems with irregularities and illegalities with the flaw that Sub-Rule (11) of Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 was breached inasmuch as the delinquent though was entitled to opportunity of inspecting the record and being supplied copies of the relevant documents forming part of the charge-sheet but that opportunity was denied and thereby his defence was prejudiced.

4. The plaintiff was a Conductor in Punjab Roadways, Moga Depot. On September 20, 1985 while he was on duty on bus travelling from Moga to Khosa Kotla route it was stopped and checked by two Inspectors namely, Surjit Singh and Balbir Singh Sangera of the Roadways. The Inspectors discovered that he re-issued tickets No.617264 to 617288 to 24 passengers travelling from Moga to Khosa. He had charged ₹ 28.80 P from them and thereby misappropriated the fare amount.

5. The plaintiff was put to departmental proceedings on a charge-sheet and the enquiry was conducted and report sent to the General

Manager, Punjab Roadways, Moga who on receipt of report imposed punishment on April 22, 1985 holding him guilty of the charge.

6. There is hardly any doubt that the plaintiff had moved an application Ex.P-6 on November 23, 1984 to the Enquiry Officer to supply him a copy of the report along with the Conductor Way Bills dated September 20, 1984 and Return of even date made by the Inspectors. The Enquiry Officer endorsed the request of the plaintiff and forwarded the same to the General Manager, Moga to supply requisite documents but the documents were not supplied. This became the main plank of challenge to the impugned order on the ground that reasonable and adequate opportunity of being heard was not provided to him which had deprived the plaintiff right to material documents which were made part of the charge-sheet to enable him to make effective reply to the charge-sheet. The request for supply of copies of documents was denied by inaction of the General Manager.

7. His statement Ex.D-5 was recorded by the Enquiry Officer on December 07, 1984 regarding allegations contained in the charge-sheet.

8. The trial Court found that the plaintiff had made an endorsement over Ex.D-5 that copies which were demanded by him were not supplied yet this endorsement had been struck off by him and it bears his signatures. The statement of the two Inspectors was recorded on January 25, 1985 and they were duly cross-examined by the plaintiff. The Sub Judge First Class, Moga in his judgment dated May 19, 1989 reasoned that had there been any truth in the claim of the plaintiff that the copies required by him were not supplied, he would never have cross-examined the prosecution

witnesses. The trial Court found another application of the plaintiff on the file moved by him on December 21, 1984 in which he had stated that he would produce the defence evidence and documents after the examination of the official witnesses and his request was allowed. From these set of circumstances, the trial Court drew an inference that either the documents required by the plaintiff were duly supplied to him or he had waived his request. The trial Judge held that even otherwise, the enquiry proceedings or the impugned order cannot be held to be illegal on this score, until and unless any prejudice caused to the plaintiff was proved. On this reasoning, the suit was dismissed.

9. Aggrieved by the dismissal, the plaintiff carried First Appeal in the Court of the learned Additional District Judge, Faridkot. The Appellate Court found no flaw in the enquiry proceedings holding that procedure under Rule 8 of the 1970 Rules was followed. The plaintiff had full opportunity to defend himself. The charge-sheet was issued on October 11, 1984. The reply was submitted on October 12, 1984. His reply was considered by the General Manager, Punjab Roadways, Moga and found unsatisfactory and vide letter dated October 17, 1984 Sh. Lal Singh was appointed as the Enquiry Officer. On November 19, 1984 the plaintiff submitted an application to the General Manager for change of the Enquiry Officer while submitting that previously when the Enquiry Officer was stationed as Legal Assistant at Punjab Roadways depot at Moga a complaint had been submitted by some members of INTUC alleging corrupt practice adopted by Lal Singh. They had even sworn affidavits to that effect. The appellant had not submitted any such affidavit but was prodded by Lal

Singh to persuade the members of INTUC to withdraw their allegations and affidavit to that effect.

10. Mr. Chopra appearing for the plaintiff-appellant submits that his client had politely declined the request for intervention due to which the Enquiry Officer harboured ill-will and bias against him. The plaintiff appeared before the Enquiry Officer on November 23, 1984 requesting supply of copies of the report dated September 20, 1984, the requisite Conductor Way Bills dated September 20, 1984 and the Returns submitted by the Inspectors prepared on the same day, which is at p.21 of the enquiry file. The request and the order sheets dated November 23, 1984 on the enquiry file are relevant and read as follows:-

*“The Enquiry Officer
Punjab Roadway, Moga
Sir*

It is submitted that in the pending enquiry, copies of the Report against me, Way Bills dated 20.9.1984 of the concerned Conductor, Inspector Returns dated 20.9.1984 of the concerned Inspectors may kindly be supplied to me so that I can effectively cross examine the Departmental witnesses.

Thanking you

*Yours sincerely
Sd/- Nachhattar Singh
23.11.1984”*

11. The Enquiry Officer considered the Application and made an endorsement on the same to the following effect:

“Considered. GM is requested to supply the returns of concerned official so that the undersigned may be able to start with the enquiry pending against Sh. Nachhattar Singh No.163 of Punjab

Roadways, Moga

Sd/-

Enquiry Officer, 23.11.1984”

12. Mr. Chopra submits that without supply of documents effective cross-examination was not possible. Even though copies of the requisite record was neither supplied to the plaintiff nor was he permitted to inspect the same but the Inquiry Officer himself wrote on December 07, 1984 on the face of the application that the record had been inspected by the appellant. December 07, 1984 was a Friday. On Monday next i.e. on December 10, 1984 the plaintiff without any delay addressed a letter Ex.P-4 sent by registered post to the General Manager, Punjab Roadways, Moga with receipt Ex.P-5 as proof of posting the letter, complaining about the grave illegality committed by the Enquiry Officer. However, no action was taken on the complaint. On March 12, 1985 the enquiry report was made with a finding of charge of embezzlement levelled against the plaintiff was found to have been proved. A show cause notice was issued by the General Manager on April 10, 1985 which the plaintiff appellant replied to on April 15, 1985 and on April 22, 1985 the order was passed imposing major penalty.

13. Mr. Chopra draws attention to para.6 of the trial Court judgment where the Judge records that there is no doubt, the plaintiff had expressed his desire to the Enquiry Officer for supply copies of certain documents but there is no conclusive finding since the trial Court diverted its mind to hold that from the solitary statement of the plaintiff it cannot be concluded that copies of the documents had not been supplied to the plaintiff. The request was Ex.P-6 filed on November 23, 1984 and the

statement of the plaintiff recorded before the Enquiry Officer was reduced in writing on December 07, 1984 which is after about a fortnight.

14. The contention is that both Courts have not visited the material facts of the case and based their judgments on superficial generalizations and legal platitudes forgetting that the burden under the rules was on the management to prove that documents upon which the proof of charge was based were supplied at the time of issuance of the charge-sheet and inviting reply and failing which at least at the time of cross-examination of witnesses. In the charge-sheet dated October 11, 1984, the two Inspectors were named as departmental witnesses and the report submitted by them along with unpunched tickets collected by the Inspectors was mentioned as documentary evidence to prove the charge against the appellant. The documents relied on in the charge-sheet and forming part of it were mandatorily required to either be supplied free of cost or put up for inspection for the delinquent employee to prepare his defence effectively. This condition precedent is provided in Sub-Rule 3 of Rule 8 of the 1970 Rules says Mr. Chopra. The defendant-respondent failed to prove supply of material evidence beforehand on which the charge was based and having failed to do so there was no reason for the Courts below not to have relied on the application Ex.P-6 and the oral testimony recorded in the departmental proceedings becomes open to serious criticism. This departure from rule 8 has caused serious prejudice to the plaintiff per se.

15. Mr. Chopra attacks the unilateral and wrong endorsement recorded by the Enquiry Officer to the effect that the requisite documents/record had been inspected by the plaintiff on December 07,

1984. This false remark was objected to on December 10, 1984 by a formal representation Ex.P-4 made in writing to the General Manager. The onus and burden had shifted on the General Manager, Punjab Roadways, Moga to prove on the basis of evidence in his office that inspection was allowed to the plaintiff and it was so recorded. The Enquiry Officer was no one to make the endorsement of the record lying not with him but in the office of the General Manager, Punjab Roadways, Moga.

16. Rule 8 of the 1970 Rules lays down the procedure for imposing major penalties. Sub-Rule (11) of Rule 8 on which heavy reliance is placed by Mr. Chopra is reproduced below:-

“(11) The inquiring authority shall if the Government employee fails to appear within the specified time or refuses or omits to plead, require the Officer to produce the evidence by which he proposes to prove the articles of charges, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government employee may for the purpose of preparing his defence-

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);*
- (ii) submit a list of witnesses to be examined on his behalf;*
- (iii) apply orally or in writing for the supply of copies of the statements, if any recorded, of witness mentioned in the list referred to in sub-rule (3), in which case the inquiring authority shall furnish to him such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the punishing authority; and*
- (iv) Give a notice within ten days of the order or within*

such further time not exceeding ten days, as the inquiring authority may allow for the discovery or production of any documents which is in the possession of Government, but not mentioned in the list referred to in sub-rule (3) and the Government employee shall also indicate the relevance of the document required by him to be discovered or produced by the Government.”

17. The demands of Rule 8 (11) read with Rule 8 (3) of the 1970 Rules according to Mr. Chopra have been *ex facie* flagrantly violated by the Enquiry Officer thus denying to the plaintiff-appellant a fair and reasonable opportunity to defend himself in the departmental proceedings where the substantive safeguards have not been reasonably afforded to the delinquent, with the principles of natural justice departed and thus the departmental enquiry and the consequent punishment is liable to be declared illegal, null and void. These rules of procedure are not an empty formality but involve the liberty of the delinquent to defend himself with the documents made available to him by supply or inspection at the vital stage in advance to enable him to prepare his defence and to cross-examine the departmental witnesses properly. The case has not been viewed by both the Courts below in its proper perspective with the lower Appellate Court dismissing the appeal and upholding the order of the trial Court without due application of mind. The provisions in the rules are structured from the universal perspective of the substantive procedural law which is designed in public interest. Such a right is not personal to a delinquent and breach of rule causes prejudice *per se* and nothing more has to be shown.

18. Learned counsel falls back in defence of his client to the judgment of the Supreme Court of far reaching consequences in State Bank

of Patiala v. S.K. Sharma, AIR 1996 SC 1669. In para.34 their Lordships of the august Supreme Court summarized the principles emerging in this disciplinary branch of the service law which deals with departmental proceedings and the place the doctrine of prejudice occupies to determine when to be applied and its extent. The broad approach of the Court commended is to find out whether the delinquent officer did or did not have a fair hearing in the departmental proceedings leading to infliction of major penalty. The principles of prejudice in disciplinary matters are stated in the words of the Supreme Court in the context of rules of procedure for holding enquiries, in para.34 of the report which read as under:-

“(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and

effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the

delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram partem] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. It is made clear that this principle No.5 does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure

of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

19. The law appears clearly to be in favour of the delinquent for Court to hold that all was not well in the enquiry and there was no fairness-in-action received from the hands and mind of the enquiry officer and the punishing authority. The judgment in appeal was decided on September 03, 1991 when the principles in *S.K. Sharma* had not been articulated and reduced to a dogma even though the principles are ancient enough and as old as when Courts introduced the unwritten principles of natural justice which have over a long period of time branched out into every discipline of the law where there is procedure and test of prejudice to be applied.

20. It may be remembered that the disputed endorsement on the application made on Friday the December 07, 1984 was stoutly refuted by the plaintiff by his registered letter Ex.P-4 on Monday the 10th of December 1984. This cast a huge burden on the opposite side to dispel. I would, therefore, reproduce in translation Ex.P-4 which reads as under:-

*“To
The General Manager
Punjab Roadways, Moga
Sir*

It is submitted that Sh. Lal Singh is conducting a departmental enquiry initiated against me. Previously also I had submitted an application for seeking change of the Enquiry Officer. In the Enquiry, the last date was 7.12.1984 on which date neither was any record shown to

me nor was I supplied copies of the record. Despite this, however the Enquiry Officer himself wrote that the Record had been seen. When I confronted the Enquiry Officer and asked in writing for the copies, he started quarrelling with me and questioned me why I had written that the record be supplied to me. He pressurized me to strike off my request but I refused to do so. On this, the Enquiry Officer remarked that the writing was in their pen and that he would get the request scored off himself. He further remarked that I will not be able to get work anywhere as the enquiry report was to be prepared by him.

In these circumstances, I do not have any expectation of getting justice at the hands of Sh. Lal Singh. Hence, in my case, I request that Sh. Lal Singh be not permitted to conduct the Enquiry and in his place, an impartial Enquiry Officer be appointed.

Yours sincerely

Sd/- Nachhattar Singh C/63”

21. The postal receipt is Ex.P-5. There has been no discussion on the point in the judgments of the Courts below who appear to have distanced themselves from the case on mere platitudes of service law without going into the core grievance and its effect on the result of disciplinary proceedings. It matters little whether the plaintiff was an embezzler or not. He had right to equal protection of the laws and the adherence of substantial procedure established in Rule 8 for all concerned in to be strictly followed in imposing major punishments. If there is doubt, it must go in favour of the plaintiff and I find sufficient evidence to agree with Mr. Chopra that the plaintiff was wronged by jumping the procedural safeguards in Rule 8 (11) and concluding upon the guilt of the plaintiff. Therefore, the cross-examination that was recorded and used against the delinquent has to be viewed as highly suspect by an inference of denial of reasonable opportunity of defence and for an effective opportunity of

proving innocence of the charge by the person in the dock.

22. The defence of Mr. Vinayak for the State of Punjab based on endorsement over Ex.D-5 with the plaintiff scoring out the original writing that the copies of relevant documents demanded were not supplied and that the endorsement had been cut out by the plaintiff and that it bears his signatures acknowledging the work cannot be accepted as an argument in defence of the suit. The situation in which the plaintiff was placed would not suggest that the plaintiff would approbate and reprobate at the same time and weaken his case. A normal person facing departmental proceedings and in the predicament that the plaintiff was making his grievance in writing after the event would not suggest the handiwork of a person with common prudence.

23. Therefore, I am unable to place an implicit trust and faith in the overwritten work on Ex.D-5. The truth may never be known but the effect of cumulative circumstances point in favour of the plaintiff and balance the case in his favour on the preponderance of probabilities. It was improbable that the plaintiff would score out the endorsement to demolish his case by an admission. Before recording the acceptance of supply of documents if true the enquiry officer should have been careful to call upon the charged official to make a fresh acknowledgement on paper and then introduce it on the materials of record to be considered in evidence. These departures from the prescribed procedure in Rule 8 appear fatal to conclusion of guilt. The enquiry stands vitiated by error. The matter is far too old to consider remand for curing the defect/s by applying principles in MD ECIL, B. Karunakar, (1993) 4 SCC 727. The three questions as framed in paragraph 1 are

answered in the above terms and in the affirmative.

24. In the circumstances, I have no option in law or on the facts of the case but to accept this appeal and set aside the judgment and decree appealed from and allow the suit. The enquiry proceedings and the punishment order are consequently quashed and the plaintiff-appellant is held entitled to all consequential benefits flowing therefrom. Decree sheet be prepared accordingly.

(RAJIV NARAIN RAINA)
JUDGE

10.07.2017
manju

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