

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

RSA No.266 of 1994 (O&M)

Date of decision: 25.05.2017

Manjit Singh

... Appellant

vs.

The Punjab State & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurnam Singh, Advocate
for the appellant.

Mr. Deepak Garg, AAG, Punjab.

RAJIV NARAIN RAINA, J.(ORAL)

1. This is a second appeal. The plaintiff appellant's suit has been dismissed against the punishment orders.

2. Briefly put, the appellant faced two charge-sheets for committing misconduct, which led to punishment orders i.e. in the first charge-sheet, stoppage of four increments with cumulative effect and in the second, stoppage of one annual increment with cumulative effect. In the case of first charge-sheet, the plaintiff-appellant carried a statutory appeal to the Appellate Authority. The punishment was scaled down from four to two increments with cumulative effect. Remarkably, punishment was imposed after the Enquiry Officer had exonerated the plaintiff in the first charge-sheet. On the face of the findings in the inquiry report, the plaintiff was held innocent on the charge alleged against him. The punishing authority i.e. the

General Manager, Punjab Roadways, Amritsar-I by order dated February

22, 1988 issued a show cause notice expressing provisional opinion that penalty of removal from service and forfeiting of the wages during suspension should be imposed upon the plaintiff and if had to say anything in the matter in his defence, he could submit his objections for which the he was granted 15 days from the date of service of notice. He did. The show cause notice is reproduced below:-

“The Enquiry Officer appointed to inquire into the charges against you has submitted his findings, a copy of which is enclosed for information.

On a careful consideration of the report of the E.O. And an other record I provisionally of the opinion that a penalty of removal from service for the forfeiture of remaining wages of subsistence allowance for the suspension period should be imposed upon you. Before I take the proposed action, I desire to give you an opportunity for showing cause against proposed action to be taken. Any representation which you want to make in this connection will be considered before taking proposed action. Such representation should be made in writing and submitted to the undersigned so as to reach not later than 15 days from the receipt of the notice by you. If the representation is not received within the stipulated period, it will be presumed that you have nothing to say. You are also afforded an opportunity of personal hearing. If you may so like you can made written request, which may reach the undersigned within the above said period of time of passing the final orders.”

3. No reason has been given in the show cause notice as to why the punishing authority deemed it fit to disagree with the findings of the

Enquiry Officer. Following such procedure was a necessity for observing the principles of natural justice. The order does not reveal reasons, howsoever brief, why he did not agree with the findings of the inquiry officer on the basis of evidence on record adduced by the parties pro and contra. In such a state of affairs the dissent note cannot be sustained in law. Also the General Manager has not furnished the copy of the inquiry report but only sent it for information. This is not sufficient prescription for the last but one executive remedy, the next being the statutory appeal. This process is not in keeping with the requirements of law, the principles of natural justice which provide for adequate and reasonable opportunity to support the findings in the report which would be of hardly any use if the disciplinary has not disclosed what has weighed in his mind to overturn the report. Besides, there is remissness in the manner in which the General Manager has proceeded in not offering an effective opportunity of defence. Therefore, it cannot be said that opportunity has been granted to the plaintiff to meet the tentative findings of the disciplinary authority as to why he wishes to disagree with the conclusion of the inquiry report. In the absence of reasons for dissent, the order is open to challenge. If it does not satisfy the test of reasonableness and adequate opportunity to show that the report is fair and proper. These failures to follow due process have vitiated the punishment order.

4. It may, however, be noticed that the trial Court agreed with the plaintiff as far as second chargesheet is concerned while the appellate Court upheld the findings of the Trial Court on the first chargesheet.

5. I have heard learned counsel for the parties and considered the documents on the Lower Court Record as suitably pointed out by the learned counsel for the appellant in the relevant parts.

6. I am convinced that the show cause notice cannot be sustained in the eyes of law. For this conclusion it would not be necessary to enter into a discussion on the prospectivity of the Supreme Court judgment in ***Union of India vs. Mohd. Ramzan Khan, 1990 SCR Supl. (3) 248*** which considered the 42nd amendment in Article 311 of the Constitution of India while the punishment order was passed prior to the judgment. It may further be noticed that on 20.02.1990, the order was passed in the first chargesheet by which the punishment was reduced. A photocopy of the order has been produced by learned counsel for the appellant in Court, which is retained on record.

7. For the above reasons, the show cause notice and penalty order passed in the first charge sheet are quashed as they are illegal and arbitrary. The second charge sheet case is left untouched. The case is remanded to the disciplinary authority to pass fresh orders in accordance with law after removing the defects pointed out in this order from the stage of inquiry report.

8. Accordingly, the appeal is partly allowed and the judgment in appeal is set aside.

(RAJIV NARAIN RAINA)
JUDGE

25.05.2017

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1. Whether speaking/non-speaking?

Yes

2. Whether reportable?

No