

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

Date of decision: 21.02.2017

CWP No.4555 of 2012

Chhote Lal

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Hitesh Verma, Advocate, for the petitioner.

Dr. Puneet Kaur Sekhon, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.

Challenge in this petition is to the Award passed by the Presiding Officer, Industrial Tribunal, Ludhiana rendered in Reference No.21 of 2009. The Award is dated 13.10.2011 (Annex P-1). The reference has been answered against the petitioner holding that he is not entitled to any relief.

A charge-sheet under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 was served on the petitioner on 10.08.2001. He filed a reply denying the allegations. The explanation was not found satisfactory and a regular inquiry was ordered to be conducted. The Enquiry Officer was appointed on 18.10.2001. He submitted his report on 26.11.2001 in which the petitioner was held guilty of negligence in a case of theft of 35 bags of wheat from the Godown maintained by the employer. The disciplinary authority without furnishing copy of the enquiry report proceeded to impose major punishment.

On facts, the petitioner was a Watchman serving in the Food & Civil Supplies Department, Punjab since 1980. The petitioner alongwith one Dal Bahadur Watchman was on duty at the Godown situated at Ramgarh Road, Sahnewal on the intervening night of 21/22.07.2001. On 22.07.2001, Inspector Lakhbir Singh visited the Godown for checking and found some wheat grains scattered in the right corner of the Godown and on inspecting the spot, he found 35 bags of wheat missing. He followed the trail of scattered wheat for almost half a kilometer leading to an adjoining field, where the missing bags were found. The needle of suspicion was pointed to the petitioner, which led to the departmental proceedings.

The order of punishment was passed on 18.03.2002. The petitioner was aggrieved and the All India Trade Union espoused his cause and the dispute, which led to the reference to the Tribunal under Section 10 of the Industrial Disputes Act, 1947.

The respondent – State has filed its reply to the petition. There is a positive assertion in the writ petition that the inquiry report was not furnished to the delinquent before the punishment order was passed. The contents of Para.2, where the assertion lies, have been partially admitted by the State. There is no specific denial that inquiry report was not served. That which is not specifically denied in law stands admitted. The Industrial Tribunal has mulled over this essential step in the departmental proceedings which require as a matter of right to issue show cause notice on the enquiry report by supplying a copy of the inquiry report asking the delinquent if he has anything to say in the matter to prove his innocence of the misconduct and to assail the findings recorded in the report. If this fact of non-supply is established as truth, then there is a fundamental flaw in the proceeding

arising at the stage of delivery of the enquiry report to the disciplinary authority and before passing of the order of penalty without inviting response in writing and considering the same. The law on the subject was settled by the Supreme Court in Union Of India & others Vs. Mohd. Ramzan Khan, AIR 1991 SC 471; 1990 SCR Supl. (3) 248. The flaw is such that it inherently prejudices the petitioner and no further proof is to be shown as it is fatal to infliction of punishment in absence of affording a reasonable opportunity to the delinquent to plead and prove innocence by assailing the report with grounds of challenge.

I have heard at great length Mr. Hitesh Verma, learned counsel appearing for the petitioner and Dr. Puneet Kaur Sekhon, Additional Advocate General, Punjab representing the State. The record was at hand and has been perused and all are agreed that there is no proof of supply of copy of the inquiry report on record. Due to this fundamental flaw in the disciplinary proceedings, the Award of the Industrial Tribunal is unsustainable and has to be set aside. The nature of infraction of procedural safeguards is a constitutional protection of second show cause and is of such a kind that a remand to the Tribunal to cure the defect would not be good enough and will serve no useful purpose since the correction and the amends have to be made by the disciplinary authority for abject violation of the law in *Mohd. Ramzan Khan's* case, which was available to the authority at the time of passing the order of punishment.

Having heard the learned counsel and examined the paper-book and seen the record, I have no doubt in my mind that the petitioner has been seriously prejudiced in his defence of the allegations levelled against him and, therefore, I deem it fit to remit the case to the disciplinary authority to

supply a copy of the inquiry report to the petitioner, receive his response and provide a opportunity of hearing, and then pass a fresh order in accordance with law.

As a result, the instant petition is partially allowed and the Award of the Industrial Tribunal is set aside as also the punishment order and the matter is remitted to the stage post inquiry report. The disciplinary authority would take up the file and initiate fresh proceeding and complete the task within a period of four months from the date of supply of a certified copy of this order, either from this Court or from the petitioner, whichever is earlier.

In making this order, I remain guided by the decision of the Supreme Court in Managing Director ECIL Vs. B. Karunakar, (1993) 4 SCC 737: AIR 1994 SC 1074 to return the petitioner to the stage where the flaw occurred.

21.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*