

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

RSA-1887-1995

Date of Decision:03.04.2018

Punjab State Warehousing Corporation Chandigarh and others

... Appellants

Vs.

Bhushan Chander

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Anil Kumar Sharma, Advocate
for the appellants.

Mr. G.S. Bal, Sr. Advocate with
Mr. A.D.S. Bal, Advocate
for respondent.

P.B. BAJANTHRI J. (Oral)

In the present appeal, appellants have questioned the validity of the appellate court judgment dated 21.3.1995.

2. Respondent while working as a Godown Assistant was subjected to disciplinary proceedings on account of the fact that he is stated to have committed certain misdeeds due to which loss has caused to the appellants-corporation. It was concluded in imposing the penalty of recovery of Rs.33926.21 p and stoppage of four annual grade increments with cumulative effect. Respondent being aggrieved by the order of the disciplinary authority dated 24.6.1987 preferred an appeal before the appellate authority wherein he suffered an order on 27.1.1988. Consequently, he filed suit before the trial Court. Trial Court decreed the suit in favour of the respondent on 5.11.1993. Appellants-Corporation preferred an appeal before the Appellate Court against the decree wherein they suffered an order before the appellate court. Hence, the present appeal.

3. Learned counsel for the appellants submitted that appellate

court has not considered whether is there any violation sub rule 8 of Rule 8 of the Punjab Civil Services (Punishments and Appeals) Rules 1970 (for short “1970 Rules”) which is stated to have been adopted by the appellants-corporation. It was submitted that there is a compliance to the aforesaid provision. Thus, appellate court has erred in stating that there is violation of sub rule 8 of Rule 8 of the 1970 Rules. It was also submitted that respondent had been given ample opportunity in the process of inquiry. Therefore, appellate court has erred in appreciating procedures adopted for the purpose of holding inquiry.

4. Per contra, learned counsel for the respondent submitted that in para-11 of the appellate court, it is held that there is a violation of sub rule 8 of Rule 8 of 1970 Rules. In respect of compliance to the aforesaid provision, no material has been produced by the appellants-corporation. Therefore, there is no infirmity in the appellate court's decision. Hence, no interference is called for.

5. Heard the learned counsel for the parties.

6. Whether sub rule 8 of Ruled 8 of 1970 Rules has been complied or not is one of the core issue is required to be considered in the present appeal.

7. Cause of action accrues to the respondent as and when he submitted application for engaging a co-employee or assistance of a lawyer as and when inquiry officer or disciplinary authority failed to act on the respondent's application. If the respondent is of the view that no action is taken on the respondent's application under sub rule 8 of Rule 8 of 1970 Rules by the competent authority, in that event, respondent should have resorted to approach appropriate forum. After surrendering his right before

the inquiry officer as well as the disciplinary authority, he cannot turn around and say that there is a violation of sub rule 8 of Rule 8 of the 1970 Rules. Therefore, appellate court has erred in considering that there is a violation of sub rule 8 of Rule 8 of 1970 Rules. That apart respondent has not pointed out as to how prejudice has been caused. If really prejudiced has been caused to the respondent then he could have approached appropriate forum. Therefore, appellate court has erred in holding that there is a violation of sub rule 8 of Rule 8 of 1970 Rules.

8. Perusal of the disciplinary authority order dated 24.6.1987 read with the appellate authority order dated 27.1.1988, it is evident that both the authorities have failed to consider whether a copy of the inquiry officer report has been furnished to the respondent and further if a copy of the inquiry officer report has been furnished to the respondent whether respondent has field his objection on the inquiry officer report or not. Nothing is forthcoming. Therefore, order of the disciplinary authority and appellate authority dated 24.6.1987 and 27.1.1988 are not speaking. On that score, it is necessary to remand the matter to the disciplinary authority to pass a fresh order in accordance with law. In this regard, respondent is hereby directed to file his fresh representation/objections on the inquiry officer's report within a period of eight weeks from today. Thereafter, disciplinary authority is hereby directed to pass a speaking order after considering each of the contentions of the respondent which would be taken in his representation/objection and pass appropriate order within a period of three months from the date of receipt of the respondent's representation/objections on the inquiry officer's report. Appeal is allowed in part.

9. At this stage, learned counsel for the respondent opposed for the finding given on sub rule 8 of Rule 8 of 1970 Rules contending that in an identical matter i.e. in the case of **Hans Raj Gupta v. State of Punjab and others**; 1992(1) RSJ 462, it is held that violation of sub rule 8 of Rule 8 of 1970 Rules can be raised at any point of time.

10. Supreme Court in the case of **MDECIL v. B. Karunakar**; 1993 (4) SCC 727 has considered identical issue relating to furnishing of inquiry officer's report to the extent that respondent-employee is prejudiced in not furnishing the inquiry officer's report. Therefore, decision in the case of Hans Raj Gupta (supra) relied upon by the learned counsel for the respondent is not applicable to the present case. Moreover, the respondent had cause of action in respect of taking the assistance of a co-employee or lawyer, it was denied orally or in writing at earlier point of time i.e., before commencement of inquiry. Thus, after surrendering his right to the disciplinary proceedings, he cannot turn around and say that he has been caused prejudice in the inquiry.

11. Disposed of accordingly.

03.04.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**