

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

CWP No.15897 of 2014.

Date of Decision: 22.05.2018.

Parvesh Chander Chadha

... Petitioner

Versus

The Punjab State Power Corporation Limited and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. J.S. Jaidka, Advocate,
for the petitioner.

Mr. Harsh Garg, Advocate,
for the respondents.

JITENDRA CHAUHAN.J.

By filing present civil writ petition under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of certiorari for quashing the order of punishment dated 28.07.2011 (Annexure P-3) and; order dated 18.11.2013 (Annexure P-5) vide which appeal filed by the petitioner has been rejected.

While working as Revenue Accountant, the petitioner was charge-sheeted vide charge-sheet dated 23.10.2009 (Annexure P-1) for being negligent in receiving 'No Objection Certificates' from 19 consumers of NRS connection without verification. On inquiry, out of 19 'No objection Certificates', 13 were found to be bogus. An inquiry was held and the petitioner was exonerated from the charges vide report dated 01.02.2011 (Annexure P-2). Despite the exoneration, vide order dated 28.07.2011 (Annexure P-3), the petitioner was awarded

punishment of stoppage of two annual increments with cumulative effect. Thereafter, the petitioner filed departmental appeal before the authorities which was dismissed vide order dated 18.11.2013 (Annexure P-5).

It has been contended by the learned counsel for the petitioner that once the petitioner stood exonerated, the disciplinary authority could not have straightway punished the petitioner. After the exoneration order, the proper course for the disciplinary authority was either to agree with the report or to disagree. In case of dis-agreement, the petitioner ought to have been given an opportunity of hearing. He relies upon authorities (i) ASI Darshan Singh vs. State of Haryana 1998(1) SCT 193 and; (ii) Mulkh Raj Chabra vs. State of Punjab 1994(1) SCT 174.

On the other hand, the stand of the respondents is that the petitioner has caused gross financial loss to the respondent/corporation. While working as Revenue Accountant with Unit No.1, Nagar Kendri Mandal (K) Ludhiana, the petitioner received 'No Objection Certificates' from 19 consumers of NRS category without verification. On inquiry, out of total 19 Certificates, 13 were found to be bogus.

It has been contended by the learned counsel for the respondents that the punishing authority is not bound by the inquiry report and it can pass the punishment order irrespective of the finding recorded by the Enquiry Officer.

Heard.

Admittedly, the petitioner was charge-sheeted for being negligent in receiving 'No Objection Certificates' from 19 consumers of NRS connection without verification. On inquiry, out of the total 19 No objection Certificates, 13 were found to be bogus. It is also the admitted position of the parties that in the inquiry report (Annexure P-2), the petitioner was exonerated. Before dis-agreeing with the inquiry report, no notice was issued to the petitioner.

In ASI Darshan Singh's case (supra) it was held as under:-

“6. The enquiry is held to ascertain the factual position. It is a proceeding to find out the truth. The Enquiry Officer has to determine whether the charges as levelled against the delinquent employee are borne out from the evidence produced on behalf of the department or that the employee is free from blemish. The finding recorded by the Enquiry Officer is normally placed before the disciplinary authority. In the very nature of things, it is open to the disciplinary authority to disagree with the Enquiry Officer. It has the option to ask for a further enquiry or even to record its disagreement with the findings recorded by the Enquiry Officer on the basis of the evidence which has already been brought on the file. However, if the disciplinary authority chooses to dis-agree with the findings recorded by the Enquiry Officer, it would only be fair that it records its reasons for doing so. Not only that. These reasons should be even communicated to the employee so that he has an opportunity to show that the reasons are not tenable in view of the evidence on the record or that the conclusion recorded by the disciplinary authority is not warranted by the circumstances of the case. This would be in consonance with the principles of natural justice and fair play.”

Further, in Mulkh Raj Chhabra's case (supra) it has been held as under:-

“After hearing learned counsel for the parties and going through the records of the case, I am of the considered view that the cause of petitioner is meritorious and, therefore, this writ must succeed. The report of the Enquiry Officer, while dealing with various charges, as mentioned above, clearly exonerates the petitioner. It may be true that with regard to one or two charges, it has been held that petitioner committed some irregularities but insofar as the real allegations against the petitioner, were concerned, the same were disproved. With regard to two charges, there is no doubt that the Enquiry Officer had completely exonerated him. Irrespective of the enquiry report, the Punishing Authority chose to have a different opinion from different quarters and came to the conclusion that the allegations against petitioner stood proved. He further relied upon the report of Civil Surgeon, Faridkot and Accounts Officer, Civil Surgeon's office, Faridkot and went on to say that the Enquiry Officer had not considered all the facts in his report. The reports of the Civil Surgeon and Accounts Officer, it is maintained, were not before the Enquiry Officer. If the Punishing Authority was to come to a different opinion, it was incumbent upon it to have heard the petitioner.”

In the present case, neither any notice was issued to the petitioner nor was he heard before passing the order of punishment, therefore, the impugned order is bad in law. Consequently, the writ petition is allowed; the impugned order dated 28.07.2011 (Annexure P-3) and; order dated 18.11.2013 (Annexure P-5) are hereby set-aside. However, the respondents are at liberty to pass fresh orders after issuing notice and affording due opportunity of hearing to the petitioner and in accordance with law.

22.05.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No