

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.26382 OF 2014
DECIDED ON: MARCH 01, 2018

JASBIR SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Jyoti Sareen, Advocate,
for the petitioner.

Ms. Deepali Puri, Additional Advocate General, Punjab.

JASPAL SINGH, J.

Petitioner-Jasbir Singh has preferred instant petition under Article 226/227 of the Constitution of India seeking issuance of a writ particularly in the nature of certiorari for quashing impugned order dated 12.03.2014 (P-4) whereby cut to the extent of 5% in his pension has been imposed and for issuance of a writ in the nature of mandamus directing the respondents to refund the amount of pension already recovered along with interest @ 12% per annum till its actual realization.

2. The facts giving rise to the instant petition are that petitioner has been working as Driver in Punjab Roadways, Hoshiarpur and prior to his retirement he was served with charge sheet No.10441/P.M.A., dated 27.08.2001 with regard to accident of bus No.2005, on which, he was performing duty.

After having considering the reply to the charge-sheet furnished by petitioner and conducting detailed enquiry, Inquiry Officer submitted his report (P-1) whereby it was clearly concluded by him that allegations levelled in the charge-sheet dated 27.08.2001 are not true. The enquiry report was sent to the head office i.e. Director, State Transport Authority, Chandigarh for its approval vide letter dated 21.04.2003. However, the case was returned with the remarks that Director did not agree with the enquiry report and ordered that enquiry to be conducted afresh vide letter No. 9757/TA-6 dated 17.06.2003. Accordingly, a new Inquiry Officer was appointed to conduct enquiry and submit his report. Thereafter, he conducted enquiry and sent his report holding the petitioner guilty of the charges. Ultimately, after having issued show cause notice, penalty was imposed to the extent of 5% cut in his pension.

3. Aggrieved against the aforesaid order (P-4), petitioner has preferred instant petition. Learned counsel appearing on behalf of the petitioner contends that the impugned order dated 12.03.2014 (P-4) is against the letter and spirit of Rules as well as settled canons of law. By catena of cases, it has been observed by Hon'ble Apex Court as well as by this Court that no *de novo* enquiry can be ordered or conducted and in case the Punishing Authority is not satisfied or agreed with the enquiry report submitted by the Inquiry Officer, he can only order for further enquiry and report.

4. On the other hand, learned State counsel submits that no prejudice is caused to petitioner by ordering a *de novo* enquiry especially when he was afforded an opportunity of being heard and to defend his case. Otherwise also, Punishing Authority did not agree with the report submitted by the Inquiry

Officer, which was suffering from a number of irregularities and illegalities and, as such, imposition of 5% cut in the pension of petitioner is legally and factually justified.

5. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties but does not find any legal force in the submissions made by learned State counsel, which otherwise are not supported by any legal evidence or principles.

6. Crucial question which arises for determination in the instant petition is as to whether a fresh departmental enquiry/proceedings could be ordered by the Punishing Authority after the submission of enquiry report whereby petitioner has been exonerated; and the answer to this question is in the negative, as under the Rules and settled proposition of law, no *de novo* enquiry can be ordered at the most by Punishing Authority after recording the reasons may remit the case to the same Inquiry Officer for further enquiry and report. Rule 9(1) of the Punjab Civil Service (Punishment and Appeal) Rules 1970 (for short, "1970 Rules") deals with the situation, which has emerged in the instant petition. For proper appraisal of the controversy, it reproduced as under:-

"9-Action on the enquiry report 1 (1) The Punishing Authority if it is not itself the enquiry authority may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for further enquiry and report the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Rule 8 as far as may be."

7. A glance at the aforesaid Rule clearly provides that the Punishing Authority can only order for further enquiry and report and no *de novo* enquiry

is permissible.

8. An identical issue with regard to the holding of *de novo* enquiry in the light of Rule 9 of 1970 Rules came up for consideration before this Court in case “**Karnail Singh v. State of Punjab, 1992 (2) SCT 27**” and while placing reliance upon Hon'ble Apex Court's judgment delivered in “**K.R. Deb v. Collector of Central Excise, Shillong, 1971 (1) SLR 29 (SC)**”, it was held as under:-

“Learned counsel for the petitioner submitted that there is no power with the Deputy Commissioner (the appointing authority of the petitioner) to order de novo inquiry against the petitioner. He further argued that under Rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (hereinafter called the 'Punishment and Appeal Rules’), he punishing authority can for the reasons to be recorded by it in writing remit the case to the inquiry authority for further inquiry or it has the power to record a finding itself when it disagrees with the finding of the inquiry officer and that too after recording reasons. The case of the petitioner is that even if the punishing authority had the power to order de novo inquiry, no reasons have been recorded for doing the same by the punishing authority. In support of his contention, the learned counsel has cited K.R. Deb v. Collector of Central Excise, Shillong, 1971 (1) SLR 29 (SC): (AIR 1971 SC 1447).

9. Undoubtedly, vide 1st inquiry report (P-1), petitioner stood exonerated from the charges levelled in the charge sheet dated 27.08.2001. The aforesaid inquiry was sent for further necessary action to the General Manager, Punjab Roadways, Hoshiarpur to further forward the same to Director State

Transport Authority, Punjab which did not find favour to him and ultimately, he ordered for conducting a fresh inquiry into the allegations unfolded in the charge sheet dated 27.08.2001. While relying upon **K.R. Deb's** case (supra), Hon'ble Apex Court made the following observations:-

“Civil Services-Central Civil Services (Classification. Control and Appeal) Rules (1957). Rule 15.

Rule 15 does not contemplate successive inquiries -If there is some defect in the inquiry conducted by the Inquiry Officer, the Disciplinary Authority can direct the Inquiry Officer to conduct further inquiries in respect of that matter but it cannot direct a fresh inquiry to be conducted by some other officer.”

10. Not only this, similar question arose before Andhra Pradesh High Court, in case captioned as **“R. Rama Rao v. A.P. State Agro Industries Development Corporation Ltd.” (1997) 5 Serv LR 508**, in which, following observation was made while dealing with the identical issue:-

“A. Constitution of India, Articles 16 and 311.-Departmental enquiry-De novo Enquiry-Once a departmental enquiry is conducted, unless the rules applicable to the case so provide, second inquiry or a de novo enquiry into the same charges cannot be initiated. In the instant case, Enquiry Officer returned a finding of “not guilty” as no evidence adduced in support of charges -Not open to the Disciplinary Authority to order for a de novo enquiry by another Enquiry Officer, when the service rules do not provide for the same.”

11. In another case, captioned as **“B. Balakishan Reddy v. Andhra Pradesh State Electricity Board”, (1997) 8 Serv LR 347**, in which, it has been held as under:-

“Constitution of India, Article 311- Departmental enquiry – De novo enquiry- First inquiry report found in favour of the delinquent. It does not suffer from any infirmity. No provision in the relevant rules giving any power to the disciplinary authority to ignore the report of Enquiry Officer submitted to it and to direct a de novo enquiry. Order of the disciplinary authority to ignore the first enquiry report without as-signing any reasons and appointing another enquiry officer not sustainable. Holding of second enquiry band and unwarranted”

12. Thus, from the aforesaid statutory law as well as authoritative pronouncements, it can be safely concluded that conducting of *de novo* inquiry is impermissible. The only option left with the Punishing Authority is that, in case, he does not agree with the inquiry report, he can take dissenting view, pass a speaking order and take further necessary action for the imposition of penalty etc. or can order for further inquiry and report. In the instant case, punishing authority disagreed with the inquiry report but instead of directing further inquiry into the matter, he opted to order for conducting *de novo* inquiry which is not proper as per rules. Consequently, the impugned order dated 12.03.2014 (P-4) based upon the *de novo* enquiry report is not sustainable in the eyes of law and is liable to be quashed.

13. As an upshot of the aforesaid discussion, petition is allowed. Consequently, impugned order dated 12.03.2014 (P-4) whereby 5% cut has been imposed is set aside/quashed. The respondents are directed to refund the amount of pension already recovered from the petitioner within a period of two months from the date of receipt of certified copy of this order.

14. In case of non-compliance of aforesaid direction, the petitioner shall be at liberty to approach this Court.

MARCH 01, 2018
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>