

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-263-2015 (O&M)

Date of Decision:-21.11.2018.

Sohan Singh

.....Petitioner

Versus

Punjabi University, Patiala and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

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Present: Mr. N.C. Sahni, Advocate for the petitioner.

Mr. Ajaiveer Singh, Advocate for the respondents.

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**ARUN MONGA, J. (Oral)**

This petition has been filed seeking a writ in the nature of *certiorari* to quash the suspension order of the petitioner dated 26.09.2012 (Annexure P-1) and charge-sheet dated 05.11.2012 (Annexure P-2).

2.) The facts of the case, as pleaded, briefly, are that the petitioner joined as Peon in Punjabi University in the year 1990. He was promoted in the year 2008 as Senior Assistant. The petitioner states that on 15.09.2012, certain employees of Secrecy Branch of the University were suspected of carrying answer sheets of B.A. Part II and Law, outside the University, which was against the rules. The security staff, after investigating the matter, reported the same to the Vice Chancellor of

Punjabi University, who further appointed a Fact Finding Committee to

look into the allegations. As per the petitioner, the suspected employees, to save their own skin, made false and vexatious claim against the petitioner. The Committee indicted the petitioner and submitted its report to the Vice Chancellor, who accepted the said report. Pursuant thereto, vide order dated 26.09.2012 (Annexure P-1), the petitioner was ordered to be suspended from the service of Punjabi University.

3.) A charge-sheet dated 5.11.2012 (Annexure P-2) was served on the petitioner charging him of stealing answer-sheets from the secrecy branch and for negligence in performance of his duties. He was ordered to show cause within 15 days of the issuance of charge-sheet. Meanwhile, it was decided to hold a disciplinary inquiry against the petitioner, notice of which was not given. By notice dated 25.3.2013 (Annexure P-3) the petitioner was informed that one Mr. S.S. Lamba has been appointed as Inquiry Officer. The petitioner filed his reply on 24.12.2012. The respondents kept on delaying the proceedings by seeking time to file reply and to produce witnesses.

4.) The presenting officer did not adduce any evidence or produce any witnesses before the Inquiry Officer. The Inquiry Officer closed the proceedings and submitted his report dated 25.03.2014 (Annexure P-4). The report states that for want of evidence proceedings could not be continued and the charges against the petitioner were not proved. In light of the findings of the report, the petitioner submitted representation dated 13.06.2013 to the respondent praying for his reinstatement. However, no heed was paid to the said representation and other such subsequent representations.

namely, Sh. A.S. Kataria was appointed. No formal notice of the same was given to the petitioner. On 23.12.2014, the petitioner submitted representation to the Inquiry Officer to drop the case as a second inquiry could not have been ordered, as per applicable rules. Yet another representation was submitted to the respondents on 31.12.2014 (Annexure P-7). The Inquiry Officer declined the request of the petitioner to not proceed in second inquiry and continued with the proceedings. Feeling aggrieved, the present writ has been filed impugning the initiation/continuation of second inquiry. Proceedings in the second inquiry were stayed by an order dated 02.02.2015 passed by this Court in the present writ proceedings.

6.) In the written statement filed on behalf of the respondents, stand taken is that after the receipt of report by the first Inquiry Officer, punishing authority disagreed with the same. Having differed from the first inquiry report, a second inquiry, therefore, was ordered. The second inquiry has thus been justified. Dismissal of the writ petition has been sought on that ground.

7.) I have gone through the respective pleadings/record and have heard the rival contentions of the learned counsels for both sides.

8.) Before proceeding with the merits of the case it would be instructive to reproduce Rule 8 (1) and 9 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 which govern the service conditions of the petitioner herein:-

*“8 (1.) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 5 shall be made except after an inquiry held, as far as may be in the manner provided in this Rule and Rule 9 or in the*

*manner provided by the Public Servants (Inquiries) Act, 1850(37 of 1850), where such inquiry is held under that Act.”*

**9. Action on the inquiring report**

*(1) The punishing authority, if it is not itself the inquiry authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry according to the provisions of Rule 8 as far as may be.*

*(2) The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.*

*(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in Rule 10, make an order imposing such penalty:*

*Provided that in every case where it is necessary to consult the commission, the record of the inquiry shall be forwarded by the punishing authority to the commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.*

*(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in Clause (v) to (ix) of Rule 5 should be imposed on the Government employee, it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making representation on*

*the penalty proposed to be imposed:*

*Provided that in very case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee.*

9.) In the backdrop of the Rules, *ibid*, the first Inquiry was conducted conclusively by Sh. S.S. Lamba holding that the charges as framed in the charge-sheet dated 05.11.2012 (Annexure P-2) are not proved against the petitioner and submitted his inquiry report dated 25.03.2014 (Annexure P-4). The respondents were free to agree or disagree with the inquiry report and give reasons thereof to either reinstate the petitioner or to inflict appropriate punishment, as deemed fit on the basis of the said inquiry report. Alternatively, per Rule 9 (1), *ibid*, they could remit the case to the same inquiring authority for further inquiry. However, the respondents chose to hold a fresh inquiry against the petitioner, based on the same very charge-sheet, which was held to be not proved by the earlier Inquiry Officer. This procedure adopted by the respondents is foreign to the Punjab Civil Services (Punishment & Appeal) Rules, 1970, which govern the procedure of inquiries as applicable to the petitioner and the respondents herein.

10.) Learned counsel for the petitioner relies on a judgment reported in ***AIR 1971 SC 1447*** which in turn was relied by the Hon'ble Supreme Court in its judgment reported as ***1975 (SC) 2277***. For ready reference, the relevant portion of the judgment as rendered by the Supreme Court is reproduced hereinbelow:-

*“6. From the above rule, it will be evident that the only power which the punishing authority has is to remit the*

*case to the same inquiry officer for further inquiry and that too after recording reasons. In the present case, the case has not been remitted for further inquiry. Rather a de novo inquiry has been ordered and that too by a different inquiry officer. The rule does not envisage ordering of a de novo enquiry into the same charges but enables the punishing authority to remit the case for further inquiry by the same inquiring authority. I may not be understood to hold that in no case further inquiry can be held by another inquiring authority but that would be under very special circumstances where the previous inquiring authority is unable for any reason to hold further inquiry. Further in the present case, I find that the punishing authority itself has not recorded any reasons whatsoever even for holding de novo inquiry. It is only the Additional Deputy Commissioner who has recorded the reason that the petitioner was given the benefit of doubt by the inquiring authority. He, therefore, suggested that de novo inquiry should be held. The punishing authority has not even recorded that he is agreeing with the reasons recorded by the Additional Deputy Commissioner. I have already held that rule 9 does not envisage ordering of a de novo inquiry on the same charges. If such a power is held to be there, then it would be left to the whims of the punishing authority that if he does not agree with the findings of the inquiring authority, he may depute another inquiry officer to go into the same charges and even if the second inquiry officer exonerates the delinquent officer, yet the third inquiry officer may be appointed.”*

11.) This High Court also had an occasion to deal with a similar situation in case titled as **“Subhash Chander Kaushal Vs. State of Punjab**

**and Others”** reported as **2013(1) S.C.T. 606** and the relevant of the

judgment rendered therein is extracted hereinbelow:-

*“13. Accordingly, it is held that the Punishing Authority could have recorded a dissenting note disagreeing with the Enquiry Officer and could have remitted the matter for further enquiry, but could not have ordered re-enquiry which amounts to holding a de-novo enquiry and which is impermissible in law. The decision of the Excise and Taxation Commissioner, Punjab to have appointed Shri Rahul Bhandari, IAS to conduct a re-enquiry, is in flagrant violation of rule 9 (1) of the 1970 Rules. It would also be apposite to notice that while directing a re-enquiry, no reasons whatsoever were assigned to have dis-agreed with the enquiry report submitted by the Vigilance Department. Accordingly, I hold the enquiry report dated 2.12.2004, Annexure P24, to be without any sanction in law.*

*XXX-XXX-XXX*

*16. Since the very initiation of proceedings i.e. ordering of a re-enquiry and de-novo enquiry has been held to be bad, accordingly, the pursuant enquiry findings contained in the enquiry report dated 2.12.2004, Annexure P24, cannot be sustained as the same are without any sanction in law and, in fact, in contravention of the statutory proceedings regulating the subject.”*

12.) I am in agreement with the contention of the learned counsel for the petitioner that the second inquiry could not have been held on the basis of the same very charge-sheet. Furthermore, the reliance placed by the learned counsel for the petitioner on the judgments noted above is also well placed. It is no more *res-integra* that ordering of re-inquiry and *de novo* inquiry based on the same charge-sheet is bad in law and cannot be

sustained as it is without any sanction of law. In the Punjab Civil Services

Rules, *ibid*, there is no provision for second inquiry, I, therefore, hold that the second inquiry on the same charge-sheet as directed by the respondents is unlawful and is hit by the principles of double jeopardy. Irrefragably, after the conclusion of the first inquiry, the petitioner was exonerated of all the charges. The device adopted by the respondents to fasten the guilt on the petitioner by directing to hold a second inquiry based on the same charges, does not have a sanction of law as per the Punjab Civil Services, Rules, *ibid*, which are applicable in the present case.

13.) It is not the case of respondents that second enquiry officer was appointed under very special circumstances, as the previous inquiring authority was unable, for any reason, to hold further inquiry.

14.) Even otherwise, the charges against the petitioner as per charge-sheet dated 05.11.2012 (Annexure P-2) are indefinite, uncertain and vague. It has been rightly argued by the learned counsel for the petitioner that no time or date of event or occurrence has been mentioned. The same, therefore, suffer from the vice of being tentative and vague.

15.) In view of my observations above, I hold that the second/*de novo* inquiry conducted by the respondents on the same charge-sheet i.e. dated 5.11.2012 (Annexure P-2) is not lawful. I, accordingly quash the impugned order vide which second inquiry has been directed. It is also held that there are no grounds to interfere with the first inquiry report dated 25.03.2014 (Annexure P-4). I am in agreement with the findings given by the Inquiry Officer in the said inquiry report. Accordingly, the charge-sheet dated 5.11.2012 (Annexure P-2) is quashed as the same has already been enquired into and the petitioner was exonerated. Order dated 26.09.2012

also set aside, as a consequence thereof.

16.) Resultantly, the present writ petition is allowed and the respondents are directed to reinstate the petitioner and pay arrears of back wages w.e.f. the date of suspension i.e. 26.09.2012 till his reinstatement along with interest @ 6% per annum.

**(ARUN MONGA)**  
**JUDGE**

**November 21, 2018.**

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Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.