

LPA-907-2017 (O&M)

735

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

LPA-907-2017 (O&M)

Date of decision : 23.10.2018

Anurag Vashishtha

... Appellant

Versus

The Haryana Financial Corporation and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Pawan Kumar Mutneja, Advocate and
Ms. Nikita Garg, Advocate for the appellant.

Mr. Dheeraj Chawla, Addl. A.G., Haryana.

MAHESH GROVER, J. (ORAL)

This appeal is directed against the judgment of learned Single Judge dated 26.04.2017.

Before the Writ Court, the petitioner prayed that the order dated 17.02.2000 dismissing him from service be quashed as also the order dated 17.07.2006, whereby the appeal had been dismissed. He also prayed that he be reinstated with full back-wages and all consequential benefits.

We may notice facts in brief.

The appellant was working as an Additional General Manager with the Haryana Financial Corporation (hereinafter referred to as 'the Corporation') and Incharge of the leasing section. He faced allegations that while working as such, he committed irregularities in grant of advancing finances to various firms and companies in collusion with Sh. Ajit M. Sharan, IAS, Managing Director/Sanctioning Authority and one Manisha

LPA-907-2017 (O&M)

Gupta, Leasing Manager of the Corporation.

The appellant was placed under suspension on 11.08.1996 and served with 17 charge-sheets. The other two officers, who allegedly acted in collusion, were similarly charge-sheeted. The appellant pleaded innocence and claimed that he was not the final authority to clear the cases and worked only in a supervisory capacity. The Board of Directors of the Corporation, according to him, had delegated the authority to the Managing Director to sanction, lease and advance the finances. The appellant was duty bound to follow the instructions of his superior. The collateral securities against those finances/advances were cleared by the legal division headed by the Inquiry Officer Sh. Sudhir Verma. The securities were later on found to be fake and instead of holding the person, who was the Incharge of clearance of securities as responsible, the blame was shifted to the appellant. The Corporation also lodged as many as 8 FIRs during the year 1996-97, which were subsequently dropped.

These are broadly the facts, which resulted in the dismissal of the appellant, who then questioned the said orders on various grounds. Apart from pointing out the procedural issue in the grant of leasing finances, which would prove his innocence, he also pleaded that Sh. Sudhir Verma, the Incharge of clearing the collateral securities, was appointed as an Inquiry Officer, which was improper as it displayed a conflict of interest.

Besides, Managing Director was exonerated altogether, while Manisha Gupta was dealt with leniently on the ground that she was new entrant.

Learned Single Judge while answering the writ petition found no ground to interfere with the Inquiry Officer's report, resulting in the

LPA-907-2017 (O&M)

impugned order and held that merely because in the criminal cases, the appellant was either discharged or acquitted, would be no ground to hold that the charges against him in the departmental inquiry were not proved.

We have heard learned counsel for the parties and of the opinion that the learned Single Judge fell in error in not considering the foremost grievance of the appellant of being subjected to an unfair and biased inquiry at the hands of Sh. Sudhir Verma, who would evidently be having an interest in justifying his own conduct as he in his official capacity had cleared the collateral securities that were found to be fake.

It is not the case where the appellant did not raise any objection to the appointment of Sh. Sudhir Verma as an Inquiry Officer and once it has been raised, it was incumbent upon the Corporation to take notice of this direct conflict of interest offered in the appointment and continuation of Sh. Sudhir Verma as an Inquiry Officer.

Learned Single Judge has not even adverted to this aspect. This to our minds is a gross violation of principles of natural justice as the Inquiry by a person, who himself stood to gain in seeking a justification of his conduct, would naturally find a scapegoat to escape the consequences.

Hon'ble the Supreme Court in **“Ramesh Chandra V/s Delhi University and others” (2015) 5 Supreme Court Cases 549**, observed as follows:-

"66. We are of the opinion that if an Hon'ble retired Judge of a Court before his appointment as a Judge was a lawyer of any of the party (Delhi University herein), the Disciplinary Authority should not engage such retired Judge as an Enquiry Officer, as the other party may allege bias against the Enquiry Officer and the reputation of the

LPA-907-2017 (O&M)

Hon'ble Judge may be at stake. The University is directed not to engage any Hon'ble retired Judge of any Court, who was earlier a counsel of the University as an Enquiry Officer to hold an inquiry against any of its employee.

67. *The Enquiry Officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The presenting officer also would be a person who had sufficient experience in presenting case before enquiry officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not.*

68. *In Port of Bombay v. Dilipkumar Raghvendra Nath Nandkarni, (1983) 1 SCC 124, this Court observed:*

"10.....Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex [pic] or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner....."

12.....In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated....."

LPA-907-2017 (O&M)

70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as enquiry officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair.

71 For the reasons aforesaid, we hold that all the Departmental inquiries conducted against the appellant were in violation of rules of natural justice. This apart as the third inquiry report is based on extraneous facts and first part of the charge held to be proved in memorandum dated 26-3-2010 not being the part of the charges shown in the (third) charge-sheet, the order of punishment, including Resolution by memorandum dated 26-3-2010 cannot be upheld.

72. For the reasons aforesaid, we set aside both penal memoranda dated 22-2-2010 and 26-3-2010. In effect, the appellant stands reinstated to the post of Professor but in the facts and circumstances, we allow only 50% of back wages (salary) to the appellant for the intervening period i.e. from the date of his disengagement till the date of this judgment. However, the aforesaid period shall be treated 'on duty' for all purposes including seniority, increment, fixation of pay, retrial benefits, etc. The respondents are directed to pay the appellant arrears within two months, failing which they shall be liable to pay interest @ 6% from the date of this judgment. "

In *Ramesh Chandra's case* (supra), a retired Judge, who was appointed as an Inquiry Officer, had represented the University as a counsel. While deprecating the appointment of Hon'ble retired Judge, the proceedings against the delinquent were set aside.

In the case in hand, the situation is on a far surer footing than

LPA-907-2017 (O&M)

the one offered in *Ramesh Chandra's case* (supra). Here, there was a case where the Inquiry Officer had himself misconducted by clearing the collateral securities, that were eventually found to be fake. Therefore, his appointment as an Inquiry Officer has clearly resulted in gross prejudice to the appellant. That apart we also notice an eternal bias in this process where the superior officer has been exonerated altogether and the other delinquent, Manisha Gupta, let off lightly, with the entire blame foisted on the appellant in a manner, which speaks of extreme arbitrariness and partiality. We are, thus, of the opinion that learned Single Judge has failed to take into account these crucial issues that have a far-reaching effect on the controversy. As observed earlier the appointment of a biased Inquiry Officer and the resultant process leading to the subsequent orders on the basis of such findings are not sustainable, we, therefore, accept the appeal and set aside the impugned judgment as also orders the orders dated 17.02.2000 and 17.07.2006.

Consequently, the appellant is held entitled to all service benefits that he would have gained, otherwise had the impugned orders of dismissal not intervened.

All the benefits be released to the appellant within a period of four months from today.

**(MAHESH GROVER)
JUDGE**

**(AMIT RAWAL)
JUDGE**

23.10.2018
Yogesh Sharma

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No