

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

**CWP NO. 12559 OF 2016
DATE OF DECISION : 01.05.2019**

Rajinder Singh

...Petitioner

versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Shailendra Sharma, Advocate,
for the petitioner.

Mr. Abhay Pal Singh, AAG, Punjab.

Mr. Gautam Thapar, Advocate,
for respondent No.2.

ARUN MONGA, J. (ORAL)

1. The petitioner herein seeks quashing of letter dated 16.05.2016 (Annexure P-4), whereby respondent No.3 has been appointed as Enquiry Officer to conduct second/*de novo* enquiry.

2. The conceded position is that the petitioner was exonerated from the charges vide an earlier Enquiry Report dated 14.03.2016 (Annexure P-2). In view of his exoneration, no administrative action was taken by the departmental authority. In the interregnum, the petitioner retired from service. Later on, after a lapse of month and a half, when the petitioner had already retired, another enquiry officer was appointed behind his back, compelling the petitioner to impugn the said action of the respondents in appointing second enquiry officer.

3. Learned counsel for the petitioner submits that though second enquiry officer was appointed, but no proceedings were ever conducted. He contends that exoneration of petitioner per inquiry report submitted by the first inquiry officer has also since attained finality and no action pursuant thereto has been taken till date, therefore, impugned letter/order dated 16.05.2016 (Annexure P-4) is patently illegal.

4. Learned counsel for the petitioner further submits that even as per law, *de novo* inquiry could not have been ordered by the respondent. The said position has been settled by a judgment rendered by this Court in case titled as "*Pawan Kumar Garg v. The Punjab Cooperative Cotton Marketing and Spinning Mills Federation Limited and others*" 2001 (2) RSJ 484. Relevant thereof is extracted herein below :

"8. Going through the interpretation clause in the Rules, it is clear that any case which is not covered by the rules would be regulated and governed the Punjab Civil Service Rules. Further going through Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, it is evident that the Punishing Authority cannot order a de novo inquiry. All that he can order is further inquiry by the same Inquiry Officer who held the inquiry in the first instance or if he disagrees with the finding of the Inquiry Officer, then he will have to record his reasons as to why he was dis-agreeing. Going through impugned order, Annexure P-4, it is clear that the Punishing Authority has said "I, after thoroughly considering the report of Inquiry Officer charge-wise, do not agree with the same." He has

further said in his order, Annexure P-4, "The Inquiry Officer has also ignored several other important facts relating to the case." The Punishing Authority, i.e Managing Director, respondent No.4 in Annexure P-4, has not gone into the details as to why he was not agreeing with the Inquiry Officer. The Inquiry Officer has dealt with the inquiry charge-wise. The Punishing Authority should also pass a detailed order and not a cryptic and bald order merely saying that he does not agree with the Inquiry Officer."

4. On the other hand, learned counsel for respondent No.2 does not dispute the factum of initiation of *de novo* enquiry without passing a speaking order by the competent authority. He further contends that the second inquiry was never conducted, even though the Enquiry Officer was appointed.

5. In any case, I am in respectful agreement with the judgment relied upon by learned counsel for the petitioner, as also subsequent judgment rendered by this Court in CWP No. 11985 of 1995 titled as "*Harjit Singh Rana v. Guru Nanak Dev University, Amritsar and another*" (Annexure P-6), wherein it has been held that second inquiry *de-novo* on the same set of allegations, is not permissible in law. Relevant thereof is extracted herein below :

" The law on the question of power of the disciplinary authority to direct a fresh enquiry or de novo enquiry in cases where the delinquent is exonerated by the Enquiry Officer is well settled. It has been held by the Court that unless rules applicable so provide, a

second or de novo enquiry cannot be ordered. But if some defects have crept into the enquiry, the punishing authority is empowered to ask the enquiry officer to record further evidence or it may itself consider the evidence and come to its own conclusion. But in the absence of a specific rule enabling it to do so, it cannot order a de novo or fresh enquiry by another enquiry officer."

6. In the premise, even though the second Enquiry Officer did not conduct the inquiry proceedings, but the very appointment of second Enquiry Officer is void ab initio, therefore, I set-aside the appointment of second inquiry officer. As necessary consequence, the writ petition is allowed. The respondents are directed to release all the retiral benefits, including gratuity and leave encashment as well as arrears of salary to the petitioner which were withheld only on the ground of pendency of second inquiry.

7. Let the needful be done along with interest @ 8% per annum from the date of entitlement of pensionary benefits to the petitioner till its payment.

(ARUN MONGA)
JUDGE

MAY 01, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No