

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 15981 of 2018
Date of Decision: 17.05.2019

Sanjeev Kumar Sharma

...Petitioner

Vs.

District and Sessions Judge, Hoshiarpur and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Vikas Suri, Advocate
for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. Heard learned counsel for the parties.
2. I have no doubt in my mind that impugned order 16.09.2016 passed by District and Sessions Judge, Hoshiarpur has to be set aside. The reason is not far-fetched and it is specific from the reading of the concluding part of the order which is reproduced as under:

“Though Sh. N.S. Gill, learned Addl. District and Sessions Judge, Hoshiarpur has exonerated Sh. Sanjeev Kumar, Leave Reserve Clerk from the charge sheet issued upon him with regard to the loss of the file titled as Dharam Pal Vs. Daljit Kaur, but the fact remains that the said file has since been lost and has not been traced. Sequelly to express any opinion on

the enquiry report submitted Sh. N.S. Gill, Addl. District and Sessions Judge, Hoshiarpur and so as to find out as to who is the erring official responsible for the loss of the file titled as Dharam Pal Vs. Daljit Jaur, it is deemed necessary that the Civil Judge, (Sr. Div.) Hoshiarpur be asked to conduct a thorough preliminary enquiry once again to fix the responsibility of the erring official. Consequently, the Civil Judge (Sr. Div.) Hoshiarpur is directed to conduct preliminary enquiry and submit fresh report within 15 days. File be put up on 12.10.2016.”

3. The facts in brief are noticed. The petitioner was accused in a case of loss of judicial file. He was charge-sheeted. Regular enquiry was held by the Additional District and Sessions Judge, Hoshiarpur. The charge was not proven. At that stage, the District and Sessions Judge as punishing authority could have done any of the three things prescribed in Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules 1970. He could have accepted the report and exonerated the petitioner of the charge and dropped the matter qua him. However, if he was satisfied that the findings of the enquiry office were incorrect, he could have put a dissent note by briefly recording the reasons of disagreement. He would then have had to send the dissent note with forwarding letter to the delinquent to invite his objections, if any.

4. Having considered those objections, he could have still dropped the matter agreeing with the reasons of the delinquent or else could have resorted to Rule 9(I) (II) of the Punjab Civil Services (Punishment and Appeal) Rules 1970. This rule prescribes that if the punishing authority is not itself the inquiring authority may, for the reasons to be recorded by it in writing, remit the case to the inquiring authority. The inquiring authority would thereupon proceed to hold the further inquiry according to the provisions of Rule 8 as far as may be and 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.

5. In departure to all that the rules provide for, the District and Sessions Judge, Hoshiapur adopted a hybrid procedure by neither commenting on the correctness or otherwise of the findings of the enquiry officer nor in adding to them his insight, appearing to be completely pre-occupied with loss of file and, therefore, in my considered view there is something seriously wrong in the impugned orders if it seeks to reopen the case of the petitioner. On the other hand, if the order is made to find out the truth as to who is the erring official responsible for the loss of the file other than the petitioner, then the matter can proceed to its logical end by a preliminary enquiry once again to fix the responsibility of the erring official.

6. Mr. Suri appearing for the respondents has seen the fallacy in the order and submit that it should have been split in two parts; the first part should have noted with the report of the Additional District and Sessions Judge, Hoshiarpur or he could have resorted to Rule 9(1) and (2) and then considered passing a separate order nominating the Civil Judge, Senior Division, Hoshiarpur to conduct the preliminary enquiry.

7. This could have been done without trenching upon the rights of the petitioner accrued to him by proof of innocence on the same charge and subject matter of the loss of judicial file. It is in this manner that an error has been committed by the District and Sessions Judge, Hoshiarpur which requires to be remedy and, accordingly, the following direction is issued while partially allowing the writ petition; the report of the learned Additional District Judge Hoshiarpur will be taken up and considered by the District and Sessions Judge, Hoshiarpur to decide whether he wishes to agree with the findings or to enter a disagreement note. In case he makes a dissent note then he must give reasonable time to the petitioner to file his objections in support of the findings, in which case he would have to hear the petitioner in person in support of the grounds taken in his objections. He can then proceed to pass an order. He may also consider the provisions of Rule 9(1) of the 1970 Rules and pass appropriate orders accordingly. Once having heard the case of the petitioner on the preliminary enquiry in search of person

responsible for loss of file and to decide one way or the other, he could then deal with separately to find the real culprit in which case the petitioner can be only associated as a witness.

8. As a result, the order dated 26.04.2018 marked as Annex. P-9 is set aside and consequently the order Annex. P-11 dated 14.06.2018 is also quashed.

9. The application filed by the petitioner for supply of documents is rendered infructuous because in the reply filed by the respondents those documents has been brought on record.

10. Accordingly, the writ petition is partly allowed in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

17.05.2019

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