

CM-1124-CWP-2020 in/and
CWP No. 18430 of 2018

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

CM-1124-CWP-2020 in/and
CWP No. 18430 of 2018
Date of decision: 24.01.2020

Surjit Singh

.....Petitioner

V/s.

Chandigarh Housing Board and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

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

Mr. Subhash Sehgal, Advocate,
for the respondents.

Sanjay Kumar, J. (Oral)

CM-1124-CWP-2020

This application is not opposed. In consequence, the additional information/facts sought to be placed on record, by way of the affidavit of Mr. Rajiv Tiwari, Administrative Officer, filed on behalf of the respondents, are taken on record.

The application is accordingly allowed.

CWP No.18430 of 2018

The petitioner, a Junior Technician in the Chandigarh Housing Board, was removed from service, *vide* order dated 20.02.2017.

In terms of Regulation 12 of the Chandigarh Housing Board (Officers and Servants) Service Regulation, 2003, all matters relating to discipline, punishment and appeals involving a member of the service would be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970, (hereinafter, referred to as 'the Rules of 1970').

The record manifests that the petitioner approached this Court earlier by way of CWP No.5255 of 2017 challenging his removal from service on the ground that the said order was not passed by his appointing authority, viz., the Executive Engineer, but by the Chairman of the Chandigarh Housing Board. However, by order dated 15.03.2017, this Court permitted the petitioner to withdraw the writ petition while observing that the petitioner's right to appeal under the Rules of 1970 still stood protected as he could apply to the Board of Directors of the Chandigarh Housing Board, if he was aggrieved by the removal order passed against him by its Chairman.

The petitioner thereupon preferred an appeal before the Board of Directors of the Chandigarh Housing Board on 20.03.2017. The same was placed before the Board of Directors at its 408th meeting held on 13.11.2017. The Board of Directors, upon being apprised that the CBI case filed against the petitioner, viz., CC No.14 of 2014, was still pending consideration, decided that as the matter was still in the CBI Court, the dismissal of the petitioner should be revoked and that he should be re-instated in service. In consequence, the petitioner submitted his joining report on 14.03.2018.

Mr. Raman Sharma, learned counsel for the petitioner, would

however inform this Court that the petitioner was not permitted to attend duty despite submission of the said joining report.

It may be noted that the said joining report was endorsed by the Chairman of the Chandigarh Housing Board to that effect that the petitioner should be permitted to attend duty in the light of the decision of the Board of Directors.

Be that as it may.

While so, it appears that the Board of Directors of the Chandigarh Housing Board, at its 410th meeting held on 17.04.2018, exercised the power of review available to it under Rule 21 of the Rules of 1970 and resolved as under:

' The Board has reviewed its decision taken in 408th meeting held on 13.11.2017 and decided that the appeal filed by Sh. Surjit Singh regarding re-instatement is hereby rejected and the order of removal passed by Chairman/CHB under order No. 50 dated 20.02.2017 will remain in force/existence'.

Mr. Subhash Sehgal, learned counsel appearing for the Chandigarh Housing Board, would fairly concede that no notice or opportunity of hearing was given to the petitioner before such exercise of review power by the Board of Directors.

In this regard, it may be noted that the *Proviso* to Rule 21 of the Rules of 1970 categorically states to the effect that no order imposing or enhancing any penalty should be made by any Reviewing Authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty.

Mr. Subhash Sehgal, learned counsel, would however contend that as the Board of Directors did not impose any penalty afresh by exercise of review power, there was no requirement to put the petitioner on notice or afford him an opportunity of hearing.

This Court is not persuaded to agree.

It is an admitted fact that the Board of Directors, in the first instance, exercised appellate power and decided that the petitioner should be re-instated in service as the criminal case filed against him was still pending in the CBI Court. Having taken such a decision, the Board then exercised the power of review and decided to set aside its earlier direction and to continue to enforce the removal order dated 20.02.2017. Therefore, the punishment order which had been set aside earlier was again brought into play. In effect, the petitioner was visited with adverse civil consequences owing to the exercise of such review power and the enforcement of the removal order, which had been set aside in the first instance. Such an exercise could not have been undertaken behind the back of the petitioner, in the light of the mandate of the *Proviso* referred to *supra*. That apart, doing so was also violative of the principles of natural justice.

On the above analysis, the decision dated 17.04.2018 of the Board of Directors, in exercise of review power, at its 410th meeting is set aside and in consequence, the order dated 30.04.2018 communicating the said decision to the petitioner is also set aside. The matter is remitted to the file of the Board of Directors of the Chandigarh Housing Board for exercise of review power, if still warranted at this stage, in accordance with the due procedure and as per the mandate of the *Proviso* to Rule 21 of the Rules of

1970. The petitioner shall be given due opportunity of hearing, as contemplated by the aforestated *Proviso*, before any decision is taken by the Board, if it still seeks to exercise such review power. The review exercise, if contemplated, shall be concluded expeditiously and in any event, not later than six weeks from the date of receipt of a certified copy of this order. It is left open to the petitioner to make a representation to the Chandigarh Housing Board for any benefits that he claims entitlement to pending such exercise.

The writ petition is accordingly allowed.

Pending miscellaneous application, if any, shall stand closed in the light of this final order.

No order as to costs.

(SANJAY KUMAR)
JUDGE

24.01.2020

rakesh

whether speaking/non speaking : Yes/no

whether reportable/non reportable : Yes/no