

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

**CWP NO.357 OF 2018
DECIDED ON: 28.01.2020**

PRABH DAYAL GABHA

...PETITIONER..

VERSUS

**PRINCIPAL SECRETARY, STATE OF PUNJAB, FOOD CIVIL
SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT,
AND ANR.**

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Naresh Prabhakar, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance, which is being raised by the petitioner, is in respect of order dated 18.07.2017 (Annexure P-4), vide which, he has been imposed punishment of recovery of ₹13,19,141.70/-.

The facts as stated in the present writ petition are that the petitioner retired on 30.11.2003 on attaining the age of superannuation. After a period of more than one year of retirement, a charge-sheet was issued on 23.12.2004, which as per the petitioner, was served upon him in February 2005. The petitioner replied to the said charge-sheet denying the alleged allegations. As the respondent-department found the reply non-satisfactory, an enquiry

officer was appointed to enquire into the allegations and the enquiry officer gave a report on 28.03.2006 (Annexure P-2). In the said report, the petitioner was held guilty of the allegations. The report of the enquiry officer was supplied to the petitioner and before taking any action, he was afforded personal hearing as well.

It is pleaded by the petitioner that he was afforded a personal hearing and he personally appeared on 07.12.2007 before the Director, Food Civil Supplies and Consumer Affairs Department-respondent No.2. After the said hearing, no action was taken until the impugned order dated 18.07.2017 (Annexure P-4) was passed. By the said impugned order, the punishment of recovery of ₹13,19,141.70/- has been imposed upon the petitioner. This order is under challenge in the present writ petition.

The grievance raised in the present writ petition is that the aforesaid order is liable to be set aside on the ground that he was afforded personal hearing on 07.12.2007 by respondent No.2, whereas, after approximately 10 years of the said hearing, the impugned order dated 18.07.2017 has been passed by the Principal Secretary, State of Punjab, Food Civil Supplies and Consumer Affairs Department-respondent No.1, and therefore, the rules of natural justice have been violated, as the personal hearing to the petitioner was given by respondent No.2, whereas, another officer i.e. respondent No.1, has passed the order imposing the punishment.

Upon notice of motion, respondents have filed the reply. In the reply, the respondents are defending the order dated 18.07.2017

(Annexure P-4) by taking a stand that the petitioner was held guilty

by the enquiry officer and it is only due to his acts of omission and commission, the department had suffered loss, therefore, the recovery, which has been imposed upon him, is perfectly valid and is in consonance with the facts and circumstances of this case. With regard to the factum that the petitioner was given hearing by respondent No.2 on 07.12.2007, has been admitted in paragraph 11 of the reply. However, the delay in finalizing the report has been attributed to the pendency of FIR No.67 dated 20.04.2004, which was registered by the department. The relevant paragraph of the reply is as under:-

"That the contents of the para No.11 are wrong and hence denied. The petitioner is raising the plea of limitation to avoid making payment of recovery amount from him. In this regard, it is submitted that the petitioner was charge-sheeted vide letter No.3077, dated 23.12.2004 and he joined the inquiry conducted by the Department after his retirement. He was also fully aware about the FIR No.67 dated 20.04.2004 registered by the department. It is further submitted that he was present in the personal hearing given to him by the then Director on 07.12.2007. Hence, the delay is due to the pendency of criminal proceedings in the trial court about which the petitioner had full knowledge and rather he was pressing for deferring decision to that plea. It is denied that the order passed is illegal."

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

Learned counsel for the petitioner argues that the rules of natural justice have been violated while passing the impugned order. The averment, which has been made by the petitioner that after submitting the reply to the enquiry officer, the petitioner was afforded opportunity of hearing by respondent No.2 on 07.12.2007, whereas, the impugned order is passed by respondent No.1, has not been denied, rather, the same is admitted by the respondents in their reply.

As per the settled principle of law settled by this Court in **CWP No.10626 of 1992**, titled as "**Jagdish Kumar, Assistant Food & Supplies Officer vs. State of Punjab**", decided on 05.07.1994, it has been held that only the authority, which has granted the opportunity of personal hearing, is competent to pass punishment order and the order cannot be passed by an officer, who has not heard the employee. The relevant paragraph of the judgment is as under:-

"First and the foremost argument advanced by learned counsel for the petitioner is that the order of punishment is vitiated on account of patent violation of the rule of natural justice namely audi alteram partem. The submission is that the disciplinary authority/punishing authority had not afforded the real opportunity of hearing to him because the person who ultimately passed the order of punishment had not heard him. Shri C.M. Chopra argued that Shri Rajesh Chhabra who had heard the petitioner in response to the notice is sued by him did not pass the order of

punishment because he stood transferred and that his successor-in-office Smt. Romila Dubey did not give any opportunity of personal hearing to the petitioner. Learned Asstt. Advocate General appearing for the respondents submitted that under the rules there is no provision for giving two personal hearings, to a delinquent before the disciplinary authority passed an order of punishment and, therefore, even if Smt. Romila Dubey did not hear the petitioner personally, the impugned order cannot be negated on account of violation of rules of natural justice. In my opinion, the contention of the learned counsel for the petitioner merits acceptance. A perusal of the report submitted by the Inquiry Officer shows that after considering the evidence produced by the department, the Inquiry Officer recorded a categorical findings that the charges levelled against the petitioner have not been proved. If the disciplinary authority had accepted the report of the Inquiry Officer, that would have naturally resulted in exoneration of the petitioner. In that eventuality the petitioner could have made no grievance with the finding recorded by the Inquiry Officer or the action taken by the disciplinary authority. However, that did not happen. Apparently the disciplinary authority disagreed with the inquiry report. For this reason it called upon the petitioner to appear for personal hearing. The petitioner was heard by Shri Rajesh Chhabra. If Shri Chhabra has passed the order of the punishment, perhaps no exception could have been taken by the petitioner on the ground of violation of rules of natural justice. However, instead of Mr. Chhabra his successor-in-office made the order of punishment and that Officer namely Smt. Romila Dubey did not hear the petitioner. Once the disciplinary authority decided to comply with

the rule of natural justice, it was not open to it to go back from it, and it was not open to the successor-in-office of Shri Chhabra to have ignored the rules of natural justice and to pass the order of punishment without giving a personal hearing to the petitioner. Even in the absence of rules, it is an obligation on the quasi-judicial authority to comply with the minimum requirement of principles of natural justice. Therefore, before the disciplinary authority could rely on its disagreement with the report of Inquiry Officer and pass an order adverse to the petitioner, it was necessary for it to hear the petitioner. Only an effective and real opportunity of hearing could have enabled the petitioner to convince the disciplinary authority, who made the order of punishment, that the finding recorded by the Inquiry Officer was correct. Thus in passing the order of punishment without giving a personal hearing to the petitioner, the disciplinary authority will be deemed to have violated the principles of natural justice and on that ground its order is liable to be declared as void. Another submission advanced by learned counsel for the petitioner, which too merits acceptance is that the disciplinary authority has punished the petitioner before the charge levelled against him. A look at the charge-sheet Annexure P/1 shows that the petitioner was charged with the allegations of carelessness, irresponsibilities and not being trust-worthy. These allegations were levelled against the petitioner in the context of the fact that the petitioner had recommended the grant of licences to M/s Sehgal Sales, Phillaur, Punjab Coal Traders, Phillaur, Mehra Sales, Phillaur and Surinder Coal Traders, Phillaur without making proper physical verification. In the statement of allegations, it has been recorded that the Deputy

Director (Fields), Jalandhar had found that Mehra Sales, Phillaur and Surinder Coal Traders, Phillaur were benami parties. While the Inquiry Officer recorded his specific finding that all the four parties in whose favour recommendations were made by the petitioner were not benami, the disciplinary authority recorded that it was not agreeing with the report of the Inquiry Officer because the delinquent had not produced any proof to show that after obtaining licences, the four parties had done right work. The disciplinary authority has also recorded that no proof of fortnightly or monthly coal distribution returns were produced and therefore, these four parties have not done properly coal business after receiving coal licences and it indicates the involvement of the petitioner. A comprehensive reading of order of punishment shows that the disciplinary authority had nowhere found any infirmity in the report of physical verification or recommendation made by the petitioner. It has not recorded a conclusion that the petitioner had submitted fake report or that his action in making recommendations in favour of the four parties suffered from lack of bonafide. May be that after grant of licences to these four parties, all of them or any one of them, may have not done their business properly, but for that, the petitioner could hardly be blamed. Above all, failure of the parties to submit fortnightly or monthly coal distribution returns could not lead to an inference that the petitioner was involved with the parties in any manner. Clearly the disciplinary authority has travelled beyond the scope of charges in recording a conclusion that the petitioner was involved with the parties. No such allegation was levelled against the petitioner namely that he was involved with the parties. In the absence of such allegation having been levelled against

the petitioner, he had no opportunity to meet that allegation. It is right to say that no man can be condemned unheard."

In the present case, once it is an admitted fact that the personal hearing was given to the petitioner by respondent No.2 on 07.12.2007, it is expected that the punishment order will also be passed by the same authority/officer, who heard the delinquent. Once respondent No.2 had decided to grant personal hearing to the petitioner and the said opportunity was availed by the petitioner, passing an order by respondent No.1, who never heard the petitioner and didn't knew the aspects, which petitioner raised during the personal hearing, hence, passing of the impugned order by respondent No.1, is in violation of rules of natural justice. As per the rules of natural justice, only the officer, who heard the delinquent during the personal hearing, is to pass the required order. Even, if the concerned officer, who had afforded the opportunity of personal hearing has been transferred, the successor-in-office needs to afford a fresh hearing to the delinquent so as to comply with the rules of natural justice. In the present case, the impugned order dated 18.07.2017 (Annexure P-4) was passed by respondent No.1 after a period of 10 years of the grant of personal hearing granted by respondent No.2, which even otherwise, is impermissible.

Keeping in view the facts and circumstances recorded above, since rules of natural justice have been clearly violated by the respondents while passing the impugned order dated 18.07.2017 (Annexure P-4), the said order is set aside. The respondents are

directed to start the proceedings afresh from the stage of granting personal hearing to the petitioner and the same authority/officer, who grants the hearing, will pass the appropriate order. Respondents will be within their jurisdiction to pass a fresh order and the petitioner is at liberty to avail appropriate remedy in case, he is aggrieved against the order passed.

The petition is allowed in above terms.

28.01.2020
sonika

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes