

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

**CWP-17611-2015 (O&M)
Date of Decision: 23.11.2022**

Samshad Khan

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Deepak Sibal

Present: Mr.Sunil K. Nehra, Advocate for the petitioner
Mr.Sharad Aggarwal, AAG, Haryana

Deepak Sibal, J. (Oral)

Through the present petition the petitioner seeks quashing of order dated 24.09.2008 passed by the Superintendent of Police, Railways, Ambala (for short – the SP) through which the petitioner has been dismissed from service; order dated 08.12.2008 passed by the Inspector General of Police, Railways, Ambala Cantt. (for short- the IG) through which the petitioner's appeal filed by him against the aforesaid dismissal order was rejected and order dated 18.08.2009 passed by the Director General of Police, Haryana (for short – the DGP) through which the petitioner's revision petition against the aforesaid 02 orders was dismissed.

On 01.08.1985 the petitioner was appointed as a Constable in the Haryana Police and on 10.06.2002 was promoted as a Head Constable. In the year 2004, in a discreet inquiry conducted by Inspector Om Parkash the petitioner, in connivance with Head Constable Shailender Pal, was

found to have embezzled lakhs of rupees by forging of bills etc. On the basis of such inquiry, on 24.08.2006, an FIR was registered against the petitioner being FIR No.242 dated 24.08.2006 registered under Sections 409, 467, 468, 471, 120-B IPC read with Sections 7, 8 and 13 of the Prevention of Corruption Act, 1988 at Police Station Baldev Nagar, District Ambala. While the investigation in the said FIR was under way, on 31.10.2006, disciplinary proceedings were also initiated against him. In such proceedings an Enquiry Officer was appointed who in his report dated 04.07.2008 held that none of the charges levelled against the petitioner were established and forwarded such report to the SP who was the petitioner's disciplinary authority. Through order dated 05.08.2008 the SP disagreed with the findings of the Enquiry Officer and after herself considering the evidence which had come on the record in the enquiry proceedings went on to record an opinion with regard to the petitioner's guilt and on the basis thereof ordered that he be put to notice as to why he be not dismissed from service. Resultantly, a show cause notice of the same date as the disagreement order/ note i.e. 05.08.2008 was issued to the petitioner informing him about the afore conclusion drawn by the SP and on the basis of such conclusion as to why he be not dismissed from service. The petitioner filed his reply but the same did not find favour with the SP. Accordingly, through order dated 24.09.2008 the petitioner was dismissed from service. The petitioner appealed against his dismissal which was rejected by the IG on 08.12.2008 and his revision petition before the DGP met the same fate as his appeal on 18.09.2009. The petitioner then filed a mercy petition before the Home Secretary, Government of Haryana (for short – the Government) in which through order dated 08.04.2015 the

Government sought comments of the DGP but after waiting long enough for a decision thereupon the petitioner knocked the doors of this Court through the instant petition for the aforesaid reliefs.

Learned counsel for the petitioner submitted that in the regular departmental enquiry conducted against the petitioner no charge was established against him; on receipt of the enquiry report the disciplinary authority herself went through the record and came to the conclusion with regard to the petitioner guilt; before arriving at such conclusion the disciplinary authority neither issued any notice nor granted any opportunity of hearing to the petitioner; only after recording the finding that the petitioner was guilty of the charges levelled against him the disciplinary authority ordered issuance of a show cause notice to the petitioner as to why he be not dismissed from service and that such show cause notice was only qua quantum of punishment to be meted out to the petitioner.

In the light of the afore submission learned counsel asserts that the impugned orders are liable to be set aside being violative of the principles of natural justice.

In support of the afore submissions learned counsel placed reliance on the following judgments of the Supreme Court:-

1. *Punjab National Bank and others vs. Kunj Behari Misra* (1998) 7 Supreme Court Cases 84
2. *Yoginath D. Bagde vs. State of Maharashtra* 1999(7) Supreme Court Cases 739
3. *S.P. Malhotra vs. Punjab and National Bank and others* 2013(7) Supreme Court Cases 251

On the other hand, learned State counsel urged this Court to reject the petitioner's prayer by submitting that before the impugned order with regard to the petitioner's dismissal from service was passed, a show

cause notice had been issued to him; such show cause notice contained the reasons as to why the petitioner's disciplinary authority had disagreed with the findings returned by the Enquiry Officer; therefore, no prejudice was caused to the petitioner and the principles of natural justice stood duly complied with; there is no provision under the applicable rules for the disciplinary authority to issue notice or grant opportunity of hearing to the delinquent official at the stage when the disciplinary authority disagrees with the Enquiry Officer's report and that since the impugned order was passed in the year 2009 and the petitioner had filed the instant petition only in the year 2015 the same was required to be dismissed only on the ground of delay and laches.

Learned counsel for the parties have been heard and with their able assistance the record has been perused.

The objection by the State to dismiss the instant petition on the ground of delay and laches needs to be considered but only to be rejected. It is not denied by the respondents that against the rejection of his revision petition the petitioner had filed a mercy petition before the Government in which on 08.04.2015 the Government had also sought comments from the DGP. Thus, till the year 2015 the State itself kept the petitioner's hopes alive with regard to consideration of his mercy petition. However, after having waited for a reasonably long time for a decision on his mercy petition, in the year 2015 itself the petitioner filed the instant petition. That being so, in the facts of the present case, it does not lie in the mouth of the State to raise the objection of delay, especially when after filing of the instant petition the petitioner has also withdrawn his mercy petition as he could not have maintained two parallel proceedings at the same time.

In Kunj Behari Misra's case (supra) a three Judge Bench of the Supreme Court examined a similar issue as raised in the instant petition. The respondent in that case was working as an Assistant Manager in the Hazratganj Branch of the Punjab National Bank at Lucknow (for short- the Bank). On physical verification of the currency chest, a shortage of Rs. One lakh currency notes was found leading to the lodging of an FIR. Simultaneously disciplinary proceedings were also initiated. There were six charges levelled against Misra. The Enquiry Officer found Misra to be guilty of one charge and exonerated him of the other charges. On receipt of enquiry report the disciplinary authority disagreed with the same and after holding Misra guilty for the shortage in question held that penalty of proportionate recovery be imposed upon him. Such action of the Bank was challenged by Misra before the Lucknow Bench of the Allahabad High Court. The main contention raised on his behalf was that the disciplinary authority who has chosen to disagree with the findings returned by the Enquiry Officer could not have come to such conclusion without giving him an opportunity of being heard. The Allahabad High Court allowed Misra's petition and quashed the order imposing penalty on him. The Bank challenged the said decision of the High Court before the Supreme Court. The challenge by the Bank before the Supreme Court was rejected as the Supreme Court was of the opinion that whenever a disciplinary authority disagreed with the Enquiry Officer then before recording its own findings it must first record its tentative reasons for its disagreement and at that stage give the delinquent officer an opportunity to rebut such tentative findings. Only after considering any response thereto, the disciplinary authority should go on to record its final opinion. In this regard paragraph No.19 of

the judgment is relevant and is reproduced as under:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

In Yoginath D. Bagde's case (supra) after considering a similar issue as in the present case the Supreme Court held that a delinquent employee had a right of hearing not only during the enquiry proceedings but also at the stage when the findings returned by the Enquiry Officer were sought to be reversed by the disciplinary authority. Paragraph 31 and relevant portion of paragraph 32 of the judgment in Yoginath D. Bagde's case (supra) which are relevant read as under:-

“31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the

findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution.

32. Applying the above principles to the facts of this case, it would be noticed that in the instant case the District Judge (Enquiry Officer) had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the appellant requiring him to show-cause why he should not be dismissed from service. It is true that along with the show-cause notice, the reasons on the basis

of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the appellant but the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established. The Disciplinary Committee, in fact, had acted in accordance with the statutory provisions contained in Rule 9(4)(i)(a)&(b). ”

To the same effect is the judgment of the Supreme Court in S.P.

Malhotra's case (supra) wherein the Supreme Court had held as follows:-

“7. In view of the rival submissions made by the learned counsel for the parties, two separate issues are involved in the instant case, namely, (a) requirement of issuing a second show cause notice by the Disciplinary Authority to the delinquent before imposing the punishment; and (b) serving the copy of the reasons recorded by the Disciplinary Authority disagreeing with the findings recorded by the Enquiry Officer.

*In the case of ECIL (supra), only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in Kunj Behari Misra (supra), wherein the judgment of ECIL (supra) has not only been referred to, but extensively quoted, and it has clearly been stipulated that wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the Disciplinary Authority for dis-agreement with the Enquiry Officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the court relied upon the earlier judgment of this court in **Institute of Chartered Accountants of India v. L.K. Ratna, JT 1986 SC 671.***

8. Kunj Behari Misra (supra) itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately

thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In Kunj Behari Misra (supra), this court held as under:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

(Emphasis added)

The Court further held as under:

“21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings.”

9. The view taken by this Court in the aforesaid case has consistently been approved and followed as is evident from the

judgments in Yoginath D. Bagde v. State of Maharashtra & Anr., AIR 1999 (4) S.C.T. 403; AIR 1999 Supreme Court 3734; State Bank of India & Ors. v. K.P. Narayanan Kutty, 2003(3) S.C.T. 743; AIR 2003 SC 1100; JT 2003(1) SC 479; J.A. Naiksatam v. Prothonotary and Senior Master, High Court of Bombay & Ors., 2004(4) S.C.T. 785; AIR 2005 Supreme Court 1218; P.D. Agrawal v. State Bank of India & Ors., 2006(2) S.C.T. 696; AIR 2006 SC 2064; UT 2006(5) SC 235 and Ranjit Singh v. Union of India & Ors., 2006(2) S.C.T. 437; JT 2006 (4) SC 376”

In the regular enquiry conducted against the petitioner none of the charges against the petitioner were established. On receipt of the enquiry report the disciplinary authority, without issuance of any notice or grant of opportunity of hearing to the petitioner reversed the opinion of the Enquiry Officer. Only after concluding that all the charges against the petitioner stood proved the disciplinary authority ordered the issuance of a show cause notice to the petitioner as to why on the basis of the conclusion arrived at by the petitioner's disciplinary authority he be not dismissed from service. The petitioner was not given any opportunity to persuade the disciplinary authority not to reverse the findings of the Enquiry Officer recorded in his favour. Thus, the petitioner was put to prejudice. Such action of the disciplinary authority also violated the principles of natural justice and the requirements guaranteed under Article 311(2) of the Constitution of India.

After applying the ratio of the law laid down by the Supreme Court in the afore discussed cases to the facts of the present case the impugned order of dismissal passed by the disciplinary authority, rejection of the petitioner's appeal by the IG and the revisional authority cannot be sustained and are therefore, set aside. Resultantly, the petitioner is directed

to be reinstated in service on the post that he held at the time when the order of his dismissal was passed. However, liberty is granted to the petitioner's disciplinary authority to proceed with the disciplinary proceedings from the stage of consideration of the enquiry report by the disciplinary authority, in accordance with law. The question whether the petitioner would be entitled to arrears of salary and other benefits from the date of his dismissal till the date of his reinstatement is left to be decided by the authority competent to take such decision in the case of the petitioner as per applicable rules. Such decision be taken after culmination of the disciplinary proceedings against the petitioner and would depend on its final outcome.

The writ petition is allowed in the afore terms.

23.11.2022

gk

(Deepak Sibal)
Judge

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