

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

LPA No. 286 of 2021 (O & M)

Reserved on: 23.05.2022

Date of decision: 08.07.2022

242

Urvashi Goel

....Appellant(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. R.S. Kalra, Advocate,
for the appellant.

Mr. SPS Tinna, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J.

Challenge in the present Letters Patent Appeal is to the order passed by the learned Single Judge dated 03.12.2019. Though the appeal arises out of CWP No. 20607 of 2016 in which dismissal order dated 17.06.2016 (Annexure P-10) was subject matter of challenge which arose from charge sheet dated 19.11.2014 (Annexure P-5), but the learned Single Judge was also, at that point of time, dealing with three more writ petitions filed by the petitioner. CWP No. 6858 of 2015 had also been filed and in the said case, challenge had been raised to the same charge sheet on account of the fact that the petitioner had been already ordered to be compulsorily retired on 22.10.2014 (Annexure P-4). Therefore, the writ petition had been tagged with CWP No. 23287 of 2014 in which the order of compulsory

retirement had been stayed on 04.12.2014. In CWP No. 15212 of 2018, since second dismissal order had been passed on 28.02.2018 arising out of the charge sheet dated 21.03.2012 (Anneure P-2) which was pertaining to the case of M/s. Pankaj Motors and in which an inquiry officer had been appointed who had exonerated the petitioner vide his report dated 06.01.2014.

Keeping in view the above, the learned Single Judge came to the conclusion that the order of compulsory retirement dated 22.10.2014 was vitiated by illegality on account of the violation of Rule 3(1)(b) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (in short 'the 1975 Rules') since the requisite period of 3 months' mandatory notice had not been given and only 15 days notice had been given. It was noticed that it was a stigmatic order passed on the basis of the dissenting note by the Excise and Taxation Commissioner disagreeing with the findings of the inquiry report, but since the proper procedure had not been followed, the compulsory retirement was set aside with necessary consequences.

While dealing with the charge sheet dated 19.11.2014 issued under Rule 8 of the Punishment and Appeal Rules, 1970, a conclusion was arrived at that since the petitioner stood compulsorily retired on 22.10.2014 and dismissal order had been passed on 17.06.2016 and the challenge was only to the charge sheet, CWP No. 6858 of 2015 which had been filed earlier was dismissed on the ground that the same had subsumed into the punishment order. Proceeding to deal with the two dismissal orders dated 17.06.2016 and 28.02.2018, the relevant charge sheets as such were discussed and the argument that the first dismissal order dated 17.06.2016 was illegal on account of the order of the compulsory retirement having

been passed on 04.12.2014 was rejected by holding that on account of a stay, the petitioner had continued in service and, therefore, it was open to the competent authority to proceed against the petitioner by issuing fresh charge sheet and initiating departmental proceedings pursuant thereto. It was noticed that since the writ petition challenging the compulsory retirement order had been allowed and, therefore, she was continuing in service and the stay was only qua the compulsory retirement the learned Single Judge opined that the necessary procedure had been followed while passing the order of dismissal on 17.06.2016. Resultantly, challenge to the said order was repelled.

The second dismissal order dated 28.02.2018 was held to be bad since a dismissal order had earlier been passed and, therefore, once the employee had ceased to be on the rolls of the department, she could not be dismissed again. A further finding was recorded that since the petitioner had, on her own, challenged the compulsorily retirement order successfully, she was not entitled for any pensionary or post retiral benefits on account of her dismissal order being passed which had been upheld by the Court.

Mr. Kalra has taken us through the records of the case diligently and pointed out that the learned Single Judge, while dealing with the charge sheet dated 21.03.2012, took into consideration the dismissal order dated 17.06.2016 whereas, the consideration should have been of the dismissal order dated 28.02.2018, while referring to para No.31. Similarly, he referred to para No.33 to submit that reference had also been made to the inquiry report dated 06.01.2014 which again pertained to the charge sheet dated 21.03.2012 and had nothing to do with the order dated 17.06.2016.

reference had been made to the dismissal order dated 28.02.2018, which was, however, subject matter of CWP No. 23287 of 2014 and not of CWP Nos.20607 of 2016 and 15212 of 2018, which were being discussed. Similarly, while pointing out from para Nos.47 and 48, he referred to the discussion of the dismissal order dated 17.06.2016 and pointed out that the learned Single Judge was dealing with the submissions of CWP No. 6858 of 2015 and the challenge to the charge sheet dated 19.11.2014 and thereafter had discussed the facts of M/s. Pankaj Motors, which was pertaining to the charge sheet dated 21.03.2012, which was thus different than the issue involved in the charge sheet dated 19.11.2014, which was pertaining to the assessment of three cases done of M/s. Ashoka Enterprises and Himalaya Chemicals.

Accordingly, it was argued that the averments made in CWP No. 20607 of 2016 challenging the dismissal order dated 17.06.2016 were not taken into consideration but the facts of the first charge sheet dated 21.03.2012 had been taken into consideration. It is thus pointed out that RA-CW-183-2020 was also filed in CWP No. 20607 of 2016, which was dismissed on 15.02.2021 on merits, by giving the reasoning that the facts had to be read in entirety and all the 4 writ petitions were disposed of vide common order and judgment and also on the ground of delay and laches. The relevant order reads thus:-

“Learned counsel for the applicant strenuously argues that in the judgment under review, the reasoning contained therein, qua CWP No. 20607 of 2016, neither reflects the arguments addressed on behalf of the petitioner at the time of hearing the main petition, nor even otherwise there is any specific discussion

pertaining to the charge-sheet dated 19.11.2014, which led to passing of impugned dismissal order dated 17.06.2016.

Having heard the rival arguments of learned counsel for applicant and learned State counsel, which are nothing but repetitive, it seems that a feeble attempt is once again being made to reopen the case. The facts, reasoning and discussion in common judgment/ order dated 03.12.2019 is not to be read in isolation. The same are to be read in entirety as all four writ petitions were disposed of by common order and judgment.

In any case there is no error apparent on the face of the record, warranting interference under review jurisdiction. Even otherwise, review application suffers from delay and laches. Dismissed.”

Thus, a remand as such is prayed for that the matter should be sent back to the learned Single Judge for fresh consideration. Apart from that, the argument raised was that the order of dismissal dated 17.06.2016 was an order passed by the Deputy Chief Minister, who had given an alleged personal hearing on 22.04.2016. The Additional Chief Commissioner (Taxation and Excise) and Taxation Commissioner, Punjab was also stated to be present. The competent authority had, therefore, passed the order of dismissal on account of the assessment of the three cases and while noting that she had been compulsorily retired, which was subject matter of consideration before this Court. The dismissal order had then been passed by the Additional Chief Secretary (Taxation), Punjab Excise and Taxation Department. Accordingly, it was contended that personal hearing was never given by the competent authority, the Financial Commissioner Excise and Taxation Department and a major penalty had

been inflicted and thereafter the matter was referred to the Punjab Public Service Commission and the recommendations of the Commission were never communicated to the petitioner. Reliance is accordingly placed upon Rule 9(4) of the 1970 Rules that the necessary advice and response of the Commission was only asked on 06.05.2016 and which had been received on 24.05.2016. In essence, it is pointed out that the competent authority had already taken a decision on 22.04.2016 and it is submitted that in similar circumstances, order of dismissal dated 29.08.2016 was set aside while placing reliance upon the judgment in CWP No. 21052 of 2017, G.S. Sidhu vs. State of Punjab decided on 21.09.2018 (Annexure RA/3).

LPA No. 383 of 2019 filed by the State in the said case was dismissed on 20.02.2019 (Annexure RA/4 and the issue that the dismissal order was passed with a pre-determined mind and without the necessary approval of the Commission would be also applicable in the present facts and circumstances.

Accordingly, it is contended that though the effort had been made to bring it to the notice of the learned Single Judge, the said aspect had not been taken into consideration though the judgments had been duly noticed in para no.36 of the impugned order but no discussion regarding the legal issue had taken place.

Counsel for the State, on the other hand, while producing the record, also vehemently defended the said order and submitted that the writ petitioner as such had faulted on several occasions and her performance was not upto the mark. In the first charge sheet dated 21.03.2012, it had been noticed that she had not deposited the amounts collected as penalties and thus, there was a financial loss of Rs.2,74,000/- caused to the Government.

Regarding the second charge sheet also, she had made assessment in spite of the fact that her powers had been withdrawn and thus, committed negligence, carelessness and default while performing her duties and huge financial amounts were involved and she had made assessment of cases in which revenue of crores of rupees was involved and important facts had been ignored. Reference was made to her ACRs reproduced in para No.4 of the judgment of the learned Single Judge to submit that she was an average officer and, therefore, the learned Single Judge as such was correct in upholding the dismissal order. It was submitted that there is no such pre-condition as such under Rule 9(4) of the 1997 Rules to give another opportunity of hearing and the necessary opportunity had been granted on 22.04.2016 and the Commission as such had, vide communication dated 24.05.2016, approved the proposal of the Government which had been sent on 06.05.2016.

We have called for the records of the case also to satisfy us on the issue whether the petitioner was actually heard and by which authority. The file would go on to show that the show cause notice was issued on 07.04.2016 and the petitioner was called for personal hearing on 22.04.2016 before the Deputy Chief Minister, Punjab. The same reads as under:-

To

*Smt. Urvashi Goel,
Excise and Taxation Officer, (VAT)
Office of Excise and Taxation
Commissioner, Punjab, Patiala.*

*Memo No. 2/48/2014/ET1(2)/7609
Chandigarh Dated 07.04.2016*

*Sub: Regarding initiating the disciplinary proceedings
against Smt. Urvashi Goel, Excise and Taxation
Officer.*

Ref: This Office letter No. 2/48/2014/ETI (2)/ 2832
Dated 11.02.2016.

In the above case before taking any decision on Departmental Inquiry conducted against you, the Hon'ble Deputy Chief Minister, Punjab has granted you an opportunity of personal hearing on 22.04.2016 at 11:00. Therefore, you are hereby directed that you may reach on the prescribed date in his official room in Punjab Civil Secretariat-1, Chandigarh and produce your part.

2. If you will not appear on the prescribed date well in time for personal hearing then the ex parte decision will be taken."

The file was also put up on the said date by the Special Principal Secretary to the Deputy Chief Minister. There is nothing on record to show that on 22.04.2016, the Deputy Chief Minister handled the file as the noting was made by him on the file dated 26.04.2016, which is part of the termination order, which reads thus:-

"Smt. Urvashi Goel, Excise and Taxation Officer was given personal hearing on 22.04.2016 in the presence of ACS(E & T) AND ETC. After hearing the version of the delinquent officer and perusal of record on the file including the findings of the enquiry officer, it has been found that she had made assessment in 03 cases on 31.03.2014 inspite of the facts that the powers were withdrawn from her. She had also passed a sketchy orders in these cases. Keeping in view the facts of the case and findings of enquiry officer. I, order to impose the punishment of 'Dismissal' of service to Smt. Urvashi Goel, Excise and Taxation Officer under the relevant provisions of Punjab Civil Services

(Punishment and Appeal), rules 1970. Detailed speaking order be issued accordingly after observing all necessary formalities.”

The same was in pursuance to the report of the inquiry officer dated 22.01.2016. The termination order passed by the Additional Chief Secretary refers to the fact that he was present when the matter was heard by the competent authority and a portion of the order, which is reproduced above of the Deputy Chief Minister dated 26.04.2016, was so reproduced and by holding that the personal hearing had been granted. The relevant part reads as under:-

“6. Before taking any decision the competent authority granted an opportunity of personal hearing on 22.04.2016 in this officer and this officer was intimated vide this office Memo No. 2/48/2014/ EC1 (2)/ 7609 dated 07.04.2016.

7. This officer appeared for personal hearing on 22.04.2016. This officer was heard personally by the competent authority. During personal hearing the Additional Chief Secretary (Taxation) and excise and Taxation Commissioner, Punjab were also present. During the personal hearing, after considering the pleas, perusal of record of this case, findings submitted by the Inquiry Officer and on the basis of facts, the competent authority passed the following orders.”

Thus, it is apparent that the personal hearing was to be given by the Deputy Chief Minister though there is no record available of the file being handled by him on the 22nd of April, 2016. The formal order, thus, was being passed by the Additional Chief Secretary only in compliance of the said orders which would, thus, be alien to the principles of natural

justice that an order of dismissal had been passed by one authority but the hearing was given by another authority. The factum of hearing also has not been given as had also been strenuously argued but from the record also, we find that the State could not demonstrate that the hearing was given on 22.04.2016 by the Deputy Chief Minister, though the petitioner had been called for the same.

The perusal of the said order would go on to show that after the mind had been made up on 26.04.2016, communication was addressed to the Commission on 06.05.2016 that it had been decided to dismiss the employee from the government service as per the 1970 Rules and, thus, approval was sought at the earliest for issuance of necessary orders. The said approval was thus received on 24.05.2016, which reads thus:-

From

*The Secretary,
Punjab Public Service Commission,
Patiala*

To

*The Secretary, Government of Punjab,
Excise and Taxation Department,
(Excise and Taxation-1 Branch)
Chandigarh*

No. DS650/16/E-7/2044 Dated 24.05.16

*Subject: Regarding dismissal of Smt. Urvashi
Goyal, Excise and Taxation Officer
from Government service.*

*The Punjab Public Service Commission has
considered the proposal sent vide your Office Letter
2/48/2014/ET(2)/8998, Dated 06.05.2016 regarding
dismissal of Smt. Urvashi Goyal, Excise and Taxation*

Officer from government service and while expressing consent with your approval, the Commission gives its approval.

*sd/-
Secretary,”*

Thus, it is apparent that the Commission only did a formality as such and never applied its mind to the facts and circumstances which have come on record that the file had not been handled by the Deputy Chief Minister on 22.04.2016 and the alleged hearing was by the Deputy Chief Minister in the presence of the Additional Chief Secretary, who eventually passed the termination order. In similar circumstances in ***Dr. Vijay Khariwal vs. State of Punjab and another, 2013 (4) SCT 302***, a co-ordinate Bench of which one of us G.S. Sandhawalia, J. was a member, had set aside the punishment of removal on the ground that the advise of the Public Service Commission had to be taken into consideration and put to the employer before passing the order of penalty. The petitioner had never been put to notice of the said advice and was unaware that there was a recommendation of the dismissal order which had to be passed against him, which would be clear from the notice issued to her which has been reproduced above. The relevant provision i.e. Rule 9(4) which was under consideration reads thus:-

“Rule 9 (4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in clauses (v) to (ix) of Rule 5 should be imposed on the Government employee, it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making

representation on the penalty proposed to be imposed; Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee.”

The reasoning given in the *Dr. Vijay Khariwals case (supra)* reads thus:-

*“20. As noticed above, the petitioner was not even aware that he was to be dismissed from service since from the communication dated 12.09.1996, there was not a whisper as to what was the proposed punishment and on the advice of the Commission, he was dismissed on 09.05.1997. The petitioner had already served from 03.01.1983 till the date of dismissal and it was for respondent No.1 to examine, at that point of time, the length of service of the petitioner also and as to whether the extreme order of punishment was commensurate with the alleged misconduct of absence which was not of any misappropriation or of moral misdemeanor. The petitioner had also been agitating his rights against the newspaper items, in accordance with law and had filed a criminal complaint also for defamation which he eventually withdrew on 06.04.1996 on account of the fact that the Reporter had left the services of the newspaper. In *S.N.Narula Vs. Union of India & others* 2011 (4) SCC 591, the Hon'ble Apex Court held that where an employee was not communicated the advisory opinion of the Union Public Service Commission and neither heard by the disciplinary authority but was only communicated the same advice along with the final*

order would lead to violation of principles of natural justice. Accordingly, it was held that the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed. The present case also is of such a situation since the show cause notice dated 12.09.1996 does not talk about any advice received by the PPSC and the order of dismissal, similarly, talks about the concurrence of the proposal of dismissal vide the order dated 22.04.1997 of the PPSC which was subsequent to the show cause notice sent to the petitioner. Thus, the action of respondent No.1, while passing the order, was prejudicial to the petitioner.”

The consideration as such of the law laid down in ***Union of India vs. Tulsi Ram Patel (1985) 3 SCC 398*** and ***S.N. Narula vs. Union of India and others, (2011) 4 SCC 591*** were kept in mind. The relevant observations in *S.N. Narula (supra)* reads thus:-

“4. We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in

Paragraph 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter.

5. The appeal is disposed of.”

Another co-ordinate Bench in ***Union of India and another vs. Maya Ram and others, 2016 (1) SCT 275***, while dealing with the similar issue held that the advise is to be received from the Commission firstly and to be communicated to the employee to make further representation and then only the disciplinary authority could impose the appropriate penalty. The relevant portion reads thus:-

“13. We want to clarify that proviso to Article 311(2) of the Constitution enables the disciplinary Authority to impose penalty without giving an opportunity of making a representation. As per the above provision of law, of course, the disciplinary Authority is not bound to give any opportunity to the delinquent to make a representation on the penalty proposed. But it is to be noted that there is a stage in the disciplinary proceedings prior to the imposition of penalty by the disciplinary Authority. At that crucial stage, the disciplinary Authority as per the above official memorandum is bound to furnish a copy of the Inquiry report to the delinquent giving him an opportunity to make a representation. The Inquiry report alongwith his representation shall be consigned to the UPSC for its advice. The moment the advice is received, it shall also be communicated to the delinquent to enable him to make further representation. Only thereupon, could the disciplinary Authority impose appropriate penalty. In other words,

though the disciplinary Authority is not bound to give any opportunity to make representation on the penalty proposed in compliance of the principles of natural justice, the disciplinary Authority is bound to adhere to the above Instructions found in the official memorandum to well inform the delinquent of the advice that has been received from the UPSC in connection with the disciplinary proceedings initiated as against him.

14. In view of the above, the final order passed by the writ petitioners in the disciplinary proceedings initiated against the 1st respondent stands set aside. The writ petitioners shall furnish a copy of the advice received from the UPSC to 1st respondent to enable him to make further representation within 15 days from the date of receipt of communication and thereafter, the disciplinary Authority shall consider the Inquiry report, advice of the Commission and the representation, if any, made by 1st respondent and pass a final order in the disciplinary proceedings initiated as against the 1st respondent.

15. The order passed by the Tribunal is accordingly modified and the writ petition stands disposed of.”

It is also pertinent to notice that a similar order passed on 29.10.2016 by the Deputy Chief Minister and in the same terms in the case of Gurtej Singh Sidhu, who was also working as Excise and Taxation Inspector like the petitioner, was set aside by the learned Single Judge in CWP No. 21052 of 2017 on 21.09.2018 keeping in view the law which has been discussed above. The State was unsuccessful and LPA No. 383 of 2019 was dismissed by noting that it was an order passed with a pre-

determined mind and the approval was obtained subsequently. The relevant part reads thus:-

“10. Learned Single Judge while recording the findings that the Punishing Authority had pre-determined imposition of punishment has not only relied upon but reproduced the relevant part of the order dated 22.04.2016. We also find it expedient to extract the relevant part which reads as under:-

“Keeping in view the facts of the case and findings of enquiry officer, I order to impose the punishment of dismissal from service to Shri Gurtej Singh, Excise and Taxation Officer and stoppage of 04 increments with cumulative effect from Smt. Dipka, Excise & Taxation Inspector under the relevant provisions of Punjab Civil Services (Punishment and Appeal) Rules, 1970.”

11. It is an undisputed factual position that after the order dated 22.04.2016 was passed by the Punishing Authority the matter was referred to Punjab Public Service Commission for approval which was granted on 24.08.2016. When there is a requirement of prior approval and the authority with a pre-determined mind passed the punishment order and the approval was obtained subsequently, it will vitiate the dismissal order and thus has been rightly set aside by the learned Single Judge.”

Keeping in view the above, we are of the considered opinion that the matter stands squarely covered against the State and the record also shows that the petitioner was not heard by the Deputy Chief Minister on 22.04.2016. Resultantly, we are of the considered opinion that the learned Single Judge did not take these facts into consideration which went to the root of the matter even though the precedents had been cited before him.

The lack of discussion on the relevant Rule thus would constraint us to

interfere in the order, which has adversely effected the appellant.

Resultantly, we allow the appeal to the extent that the dismissal order dated 17.06.2016 passed by the State is set aside. We need not comment upon the other aspects since the compulsory retirement order has already been set aside. Similarly, the second dismissal order dated 28.02.2018 was also rightly set aside by the learned Single Judge which could not have been passed since the writ petitioner had already been dismissed on an earlier occasion on 17.06.2016. However, since there is a technical flaw as such, we grant liberty to the State to issue a fresh show cause notice to the appellant bringing to her notice the advice which has now been received from the Commission and asking her to file her response and give her an opportunity of hearing before proceeding further on the charge sheet dated 19.11.2014. Needless to say, the petitioner shall be entitled for all her monetary benefits from the date of dismissal.

(G.S. SANDHAWALIA)
JUDGE

08.07.2022
shivani/sailesh

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No