

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

CWP-1952-2020

Reserved on : 10.02.2023

Pronounced on : 26.04.2023

Vijay Kumar

..... Petitioner

versus

Pepsu Road Transport Corporation and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.K. Arora, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

Petitioner has impugned order dated 25.10.2013 (Annexure P-9) passed by respondent No.3 saddling him with the extreme punishment of dismissal from service and order dated 26.11.2019 (Annexure P-12) passed by the Appellate Authority affirming the order of punishment.

2. Petitioner who was serving respondent-Corporation as Conductor was chargesheeted vide memo No.766/Estt. dated 13.05.1999 for a charge involving suspected fraud of Rs.132/- and for causing indiscipline by violating the rules of the corporation. The petitioner responded to the chargesheet denying the charges. Regular inquiry was ordered. Inquiry Officer vide its report dated 30.08.2001 exonerated the petitioner of the first charge of suspected fraud. However, petitioner was indicted for the charge involving indiscipline. Disciplinary authority dissented with the inquiry report and issued show cause notice to the petitioner dated 24.01.2002.

After affording opportunity of personal hearing to the petitioner, order dated

29.07.2003 (Annexure P-1) was passed dismissing the petitioner from service. Departmental appeal preferred by the petitioner was also dismissed vide order 23.10.2003 (Annexure P-3). Petitioner preferred civil suit impugning order of punishment and the same was dismissed. In appeal preferred by the petitioner, suit was decreed partly. Punishment order dated 29.07.2003 was set aside and the matter was remanded back to the disciplinary authority for passing order afresh either in the light of the findings recorded by the inquiry officer or after seeking fresh report. Same chargesheet was again issued to the petitioner vide communication dated 08.05.2013 and fresh inquiry was ordered. Again petitioner earned exoneration for the charge of fraud of Rs.132/-, but was held guilty for indiscipline. Disciplinary authority once again dissented with the findings recorded by the inquiry officer and issued show cause notice dated 26.09.2013 to the petitioner proposing punishment of dismissal. The petitioner vide communication dated 30.09.2013 requested for further time of 10 days for filing reply. The petitioner was called for personal hearing on 11.10.2013. On 25.10.2013, impugned order was passed imposing extreme penalty of punishment upon the petitioner. Petitioner preferred CWP No.11227 of 2015 challenging the order of punishment.

3. Respondents raised preliminary objections w.r.t. maintainability of the writ petition in the wake of there being an alternate remedy in form of statutory appeal. CWP No.11227 of 2015 preferred by the petitioner was disposed off vide order dated 08.02.2019 and the petitioner was relegated to the remedy of departmental appeal. After the appeal preferred by the petitioner has been dismissed vide order dated 26.11.2019, present writ petition has been filed impugning the order of punishment and further order passed by the Appellate Authority affirming

the same.

4. Counsel for the petitioner submits that the process followed by the disciplinary authority in dissenting with the findings recorded by the inquiry officer without affording any opportunity of hearing to the petitioner is *per se* illegal. It has been contended that before issuing show cause notice proposing punishment on the petitioner, it was incumbent upon the disciplinary authority to record tentative reasons for disagreement with the findings of the inquiry officer and asked the petitioner to respond to the same. It has been thus submitted that before reaching to the conclusion opposed to the conclusions arrived at by the inquiry officer, the petitioner deserved an opportunity of hearing. Reliance has been placed upon ***Punjab National Bank vs. Kunj Behari Misra reported as 1998(3) SCT 833 and further on SBI vs. Arvind K. Shukla reported as 2001(3) SCT 776***. It has been further contended that even in the show cause notice served upon the petitioner, the findings recorded by the inquiry officer have not been dealt with, no evidence has been discussed to sustain the charges. Counsel has asserted that as per regulation applicable, there is no power vested with the punishing authority to dissent with the report of inquiry officer. He further contends that apart from this, disciplinary authority travelled beyond the scope of chargesheet and proposed extreme punishment upon the petitioner by taking into account his previous service record that too without seeking response from the petitioner by putting the said material to him. Reliance has been placed at ***Jagdish Kumar, Assistant Food and Supplies Officer vs. State of Punjab reported as 1994(4) SCT 256***. Last but not the least, counsel submits that the charge on which the disciplinary authority has dissented is too vague and is based upon suspicion. The punishment imposed is not only in violation of procedural lapse, but is also

disproportionate and thus it will be a case for this Court to exercise its writ jurisdiction and to interfere.

5. Per contra, counsel for the respondent submits that the petitioner had a chequered history and was repeatedly punished for continuous misconduct. The competent authority was well within its right to not agree with the findings of the inquiry officer. Valid and cogent reasons have been recorded and the same were put across to the petitioner by way of show cause notice before imposing punishment. Thus, the petitioner cannot cry fool as he has been dealt fairly. There being no procedural infirmity, this Court should not exercise writ jurisdiction in the light of settled proposition of law to the effect that the Writ Court cannot sit over as a Court of Appeal in the disciplinary proceedings. He further relies upon regulation 29 to submit that the punishing authority was well within its right to have taken into account the previous record of the petitioner while imposing punishment.

6. I have heard counsel for the parties and have gone through the records of the case.

7. Coming on to the first arguments raised by counsel for the petitioner regarding the power of disciplinary authority to disagree with the inquiry officer, it needs to be pointed out that when the inquiry officer is not a disciplinary authority, the disciplinary authority has every right to concur or not to concur with the findings recorded by the inquiry officer. Thus, the question raised by counsel for the petitioner regarding lack of power vested in the disciplinary authority is misplaced and the same is rejected. Now the question arises:-

- (i) where a disciplinary authority opts not to concur with the findings recorded by the inquiry officer, what

is the procedure that needs to be followed and whether such procedure was adhered to in the present case?

8. Constitution bench in the case of *Managing Director ECIL, Hyderabad vs. B. Karunakar and others reported as 1993(4) SCC 727* deliberated in detail upon the rights of delinquent employee facing disciplinary proceedings when the inquiry officer was other than the disciplinary authority. The constitution bench observed as under:-

“xx xx xx

The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into

consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary, authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary, authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.”

9. The aforesaid observation made by Constitution Bench in ***B. Karunakar’s case (supra)*** was further interpreted by three Judges Bench in ***Punjab National Bank vs. Kunj Behari Misra reported as 1998(7) SCC 84*** to observe as under:-

“xx xx xx

These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an

adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

15. Under Regulation - 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the

disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case(supra).

16. 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.”

10. The said ratio was further clarified by Apex Court in the case of ***SBI vs. Arvind K. Shukla reported as 2004(13) SCC 797*** to hold as under:-

“xx xx xx

The only question that arises for our consideration is whether in a case where disciplinary authority disagrees with the enquiring officer on certain articles of charges, then before it records its findings of such charge, is it duty bound to record its tentative reasons for such disagreement and give the same to the delinquent officer an opportunity to represent before it ultimately records its findings?

2. Mr. Sundravardan, the learned senior counsel appearing for the State Bank of India contended before us that in the case in hand, in fact, there has been no disagreement with the findings of the enquiring officer by the disciplinary authority, and on the other hand, the disciplinary authority on the accepted findings of the enquiring officer has recorded his conclusion differently on the basis of the relevant provisions of the rules, and therefore the question of giving an opportunity to the delinquent at that stage does not arise. To appreciate this contention, we have been taken through the findings of the enquiring officer and charges 1 (a) and 1(d) as well as the reasonings and ultimate conclusion of the disciplinary authority on those two charges. On examining the same, we are not persuaded to accept the submission of the learned counsel and in our view, the disciplinary authority has disagreed with the conclusion and findings arrived at by the enquiring officer. The next question therefore is, as has been formulated earlier, whether the disciplinary authority was required to record its tentative reasons for disagreement and give to the delinquent officer an opportunity to represent before it recorded its ultimate findings. This question is

concluded by a 3-Judge Bench decision of this Court in the case of Punjab National Bank v. Kunj Behari Misra, 1998(3) SCT 833 (SC): JT 1998(5) SC 548. The Bench in the aforesaid case relied upon the earlier decision in the Institute of Chartered Accountant case as well as the Ram Kishan case and came to hold that the view expressed in S. S. Kaushal 1995(5) SLR 18 and M. C. Saxena cases do not lay down the correct law. Mr. Sundravardan, however, brought to our notice yet another 3-Judge Bench decision in the case of Union Bank of India v. Vishwa Mohan, 1998(2) SCT 382 (SC) : JT 1998(3) SC 118, and contended that a different view has been taken in the aforesaid cases. But on examining the aforesaid decision in Union Bank of India case, we find that the question which arose for consideration in the Punjab National Bank case was not really there before the Court and the Court was examining the question as to what would be the effect, if copy of the enquiry report is not furnished to the delinquent employee. The Court obviously relied upon the Constitution Bench decision of this Court in Managing Director, ECIL v. B. Karunakar, 1994(1) SCT 319 (SC) : JT 1993(6) SC 1. In the absence of any contrary decision of a 3-Judge Bench decision on the question in issue, we are bound by the earlier Judgment of this Court in Punjab National Bank case, necessarily, therefore we do not find any merit in this appeal, which stands dismissed.”

11. The said ratio was further followed in the case of ***S.P. Malhotra vs. Punjab National Bank and others reported as 2013(7) SCC 251*** to observe as under:-

“xx xx xx

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.*, 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 Supreme Court 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 Supreme Court 2064 : JT 2006 (5) SC 235; and *Ranjit*

Singh v. Union of India & Ors., 2006(2) S.C.T. 437 : JT 2006 (4) SC 376.

10. *In Canara Bank & Ors. v. Shri Debasis Das & Ors.*, AIR 2003 Supreme Court 2041 : JT 2003 (3) SC 183, this Court explained the ratio of the judgment in Kunj Behari Misra (supra), observing that it was a case where the disciplinary authority differed from the view of the Inquiry Officer. “In that context, it was held that denial of opportunity of hearing was per se violative of the principles of natural justice.”

11. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL (supra).”

12. Applying the aforesaid principle, it goes without saying that show cause notice dated 26.09.2013 served upon the petitioner proposing punishment of dismissal and subsequent proceedings thereto cannot be sustained as the petitioner was not granted any opportunity of hearing by the disciplinary authority before reaching at a finding against the employee. Another reason to hold show cause notice dated 26.09.2013 bad in law is that in whole of the show cause notice, no reference has been given to the findings recorded by the inquiry officer. The disciplinary authority has merely substituted its conclusions without recording any reason as to why the finding recorded by the inquiry officer cannot be sustained and was to be discarded.

13. Trite it is that when in the order, no reference is made to the finding of the inquiry officer, the same is defective. Reference can be made to *Ramanna S. vs. State of Karnatka 1980(1) SCR 834*.

14. In the light of settled proposition of law it can be said that where the disciplinary authority does not accept the finding of the inquiry officer and opts to dissent, it must record its provisional conclusion and put the same to the delinquent by way of a show cause notice. In the absence of such procedure followed in this case, the findings recorded against the employee are held to be in violation of Article 311(2) and thus cannot be sustained.

15. Keeping in view the aforesaid fact, this Court does not need to go further into the other arguments raised by counsel for the petitioner.

16. As a sequel of discussion held hereinabove, show cause notice dated 26.09.2013 and all proceedings subsequent thereto are held to be unsustainable. Resultantly, the present writ petition is allowed. Impugned orders dated 25.10.2013 (Annexure P-9) and 26.11.2019 (Annexure P-12) are hereby ordered to be set aside. Petitioner is ordered to be reinstated alongwith all consequential benefits. However, the disciplinary authority shall be at liberty to proceed from the stage prior to issuance of show cause notice dated 26.09.2013.

17. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

26.04.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes