

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on 10.08.2023
Date of Decision:04.12.2023

1. **CWP No. 9750 of 1996 (O&M)**

Jagdip Singh ChowhanPetitioner
vs.
State of Punjab and othersRespondents

2. **CWP No. 15900 of 2001 (O&M)**

Jagdip Singh ChowhanPetitioner
vs.
State of Punjab and othersRespondents

3. **CR No. 1942 of 2002 (O&M)**

Jagdip Singh ChowhanPetitioner
vs.
State of Punjab and othersRespondents

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present Mr.G.S. Bal, Senior Advocate, assisted by
Mr. Dilshad Singh Gill, Advocate, for the petitioner.

Mr. R.K. Kapoor, Additional Advocate General, Punjab.

SANJEEV PRAKASH SHARMA, J.

1. All three cases have been preferred by the petitioner who has expired during the pendency of the Writ Petition and is being represented by his LRs.

2. In **CWP-9750-1996**, the petitioner has prayed for issuance of directions to the respondents to promote him to the post of Joint Director w.e.f. 08.01.1991 and so on when his juniors were promoted.

3. In CWP-15900-2001, the petitioner has prayed for a Writ in the nature of *certiorari* for quashing the illegal *ex parte* enquiry report dated 19.02.2001 conducted by respondent No.6 without notice to the petitioner in violation of principles of natural justice and for quashing the consequential order dated 14.06.2001 whereby his services were dismissed. It is further prayed to quash the charge-sheets dated 28.07.2000 (Annexure P-8) and 16.07.2001 (Annexure P-17). Further prayer is for directing the respondents to reinstate him in service with all consequential benefits.

4. In CR-1942-2002, the petitioner/plaintiff has challenged the order dated 20.02.2002 passed by the Learned Civil Judge (Senior Division), Chandigarh, whereby application filed by defendant No.3 (P.S. Aujala, IAS) striking of his name from the array of parties was allowed in a suit for declaration to the effect that order dated 13.09.1999 extending the probation of the plaintiff for one year and further order dated 05.05.2020 ordering his reversion are illegal.

The facts as stated in CWP-9750-1996

5. The petitioner states that he had joined as the District Public Relation Officer on 06.08.1974, and on 03.10.1986, he was suspended and a charge-sheet was served upon him on 31.12.1986.

6. The petitioner was reinstated during the pendency of the departmental enquiry on 09.08.1988 and in the enquiry report, he was exonerated as no allegation could be proved against him. The entire period of suspension was considered on duty for all purposes vide order dated 07.10.1994.

7. During the pendency of the enquiry, several persons junior to the petitioner were promoted as Deputy Director between the period 21.01.1988 and 02.07.1990. Thereafter, two persons amongst them, were further promoted as Joint Directors on 08.01.1991.

8. On account of the charges and the departmental enquiry and of being placed under suspension, adverse remarks were entered into ACR of the petitioner for the year 1985-86 and 1988-89 which were conveyed to the petitioner on 16.02.1987 and 04.07.1989 respectively. He had demanded certain documents for submitting his representation, but as alleged by him, the Government refused to make available the documents and in the absence, he submitted his representation on 04.12.1989. Upon his representation, wherein he has made allegations against his immediate superiors regarding their personal animosity with him, both the adverse remarks of 1985-86 and 1988-89 were expunged vide order dated 21.11.1990 and 20.02.1991.

9. The petitioner was promoted on provisional basis as Deputy Director vide order dated 21.06.1991 as the departmental enquiry was being delayed. The petitioner was further informed that retrospective promotion from the date his juniors were promoted as Deputy Director and Joint Director would be considered after the final outcome of the enquiry proceedings. However, it is submitted that after the petitioner was exonerated, he was not granted promotion to the post of Joint Director, though retrospective promotion to the post of Deputy Director was granted to him w.e.f. 21.08.1988.

10. The petitioner preferred the Writ Petition seeking suitable directions for promoting him to the post of Joint Director w.e.f. 08.01.1991

and for further considering him for promotion to the post of Joint Director and Additional Director which would be available on subsequent dates.

11. The reply has been filed and the facts as noticed above are not denied. It is further submitted that the case of the petitioner for further promotion as Joint Director was considered and the result was kept in a sealed cover on account of the vigilance enquiry initiated against the petitioner vide FIR No.8 of 1995.

12. It is the case of the petitioner that Mr. P.S. Aujla, IAS, the then Director, Information and Public Relations, Punjab-respondent No.5 (in CWP -15900-2001) wanted one of his known person one B.I.S. Chahal to be promoted to the post of Joint Director and as the petitioner was senior to B.I.S. Chahal, respondent No.5 asked the petitioner to forego his promotion to the post of Additional Director which was politely refused by the petitioner. Resultantly, respondent No.5 proceeded to cancel the DPC meeting convened on 17.12.1990 for making promotions on the post of Additional Director to which the petitioner was entitled to.

13. The petitioner also submitted a representation highlighting action of respondent No.5 in forcing the petitioner to forego his promotion and also highlighted that respondent No.5 had given a false certificate that there was no departmental enquiry or vigilance enquiry pending against Mr. BIS Chahal. Resultantly, BIS Chahal could not be promoted as an Additional Director and petitioner was promoted as an Additional Director on 14.08.1998. Respondent No.5 did not clear the probation period and petitioner was therefore reverted as a Joint Director. He challenged the said

action in a Civil Suit No.64 dated 06.10.2001 impleading Mr. P. S. Aujala, IAS, as defendant No.3.

14. Learned Civil Judge allowed the application of defendant No.3 (respondent No.5 in CWP No. 15900 of 2001) for being deleted from the array of respondents and the same is under challenge before this Court in Civil Revision No.1942 of 2002.

15. The petitioner further submits that due to aforesaid reasons respondent No.5 managed to get a false charge-sheet dated 28.07.2000, Annexure P-8 served upon the petitioner inter-alia levelling allegations that while the petitioner was working as General Manager (Punjab Mandi Board in the year 1995 as Head of Publicity Branch) he got published a Public Notice in the newspaper for printing of 5000 Office Calendars @ Rs.21/- per calendar. Later on it is alleged that petitioner prepared the proposal in connivance with the Firm, to whom printing of 5000 Calendars was given, for printing additional 2,80,000 Calendars for other Market Committees of Punjab, allegedly without following any purchase procedure.

16. It is further alleged that even though the petitioner denied these charges, one Sh. K.C.Maini, IAS (Retd.) was appointed as Inquiry Officer to conduct regular enquiry against the petitioner vide order-Annexure P-9. Since the aforesaid Inquiry Officer had close relations with respondent No.5, petitioner moved an application dated 20.11.2000-Annexure P-10 seeking to change the Inquiry Officer, but said request was rejected vide order dated 04.01.2001-Annexure P-11. It was under these circumstances, petitioner further submitted representation dated 08.01.2001-Annexure P-12, but the needful was not done.

17. It is further submitted that with a view to circumvent the prescribed procedure for enquiry, aforesaid Inquiry Officer got published a Public Notice in the newspapers inter-alia mentioning that petitioner is not receiving the summons sent by him in respect of two charge-sheets, other than the charge-sheet-Annexure P-8. Thus, petitioner submitted representation dated 24.01.2001-Annexure P-14 followed by representation dated 25.01.2001-Annexure P-15 seeking supply of 2 charge-sheets mentioned in Public Notice-Annexure P-13 and certain other documents so as to defend himself properly in the departmental enquiry.

18. It is stated that without providing the information demanded by the petitioner and giving any further notice to the petitioner, the Inquiry Officer-respondent No.6 held an ex-parte enquiry and submitted the impugned Inquiry Report dated 19.02.2001 at an electrifying speed (Annexure P-1) holding the petitioner guilty of charges. Upon receipt of the Inquiry Report-Annexure P-1, petitioner submitted a detailed representation dated 14.04.2001-Annexure P-16, but totally overlooking the same, respondent No.3-Disciplinary Authority, passed the impugned order of dismissal-Annexure P-2.

19. Learned counsel for the petitioner submits that the charge leveled against the petitioner was wholly contrary to the facts. As per the information received under the Right to Information Act, 2005, the Chairman of the Punjab Mandi Board had approved the printing of actual 2,47,500 calendars, and the respondent No.5, who was the Secretary of the Marketing Committee at that relevant time, had mentioned that there was no violation of any Rule and that there was no financial loss caused to the Mandi board.

20. Learned counsel for the petitioner submits that the allegations on the petitioner of having ordered printing of 5000 calendars was found to be factually incorrect on the information received under the RTI Act, 2005 as the order of printing was given at the level of the Chairman while the petitioner has been held guilty of the same and has been dismissed on the said basis.

21. Learned counsel for the petitioner submits that the order passed by the Enquiry Officer suffers from malice in law as well as on facts. The Enquiry Officer was personally biased and the petitioner had already moved an application for changing the Enquiry Officer which was not acceded to. He, therefore, submits that the petitioner was not given a fair opportunity to defend himself and the enquiry officer was prejudiced and his report suffers from bias. The said enquiry report could not have been looked into for reaching to the conclusion as arrived at by the disciplinary authority, and the punishment of the dismissal deserves to be quashed and set aside.

22. It is submitted that the entire proceedings had been initiated on account of his annoyance and the ex-parte enquiry was also conducted by manipulating, maneuvering and by publishing a false public notice in an inconsequential paper. The petitioner was always ready to participate in the enquiry. Learned counsel for the petitioner submits that such findings are perverse and are not based on evidence and therefore, the same be quashed.

23. It is submitted that after the ACR had been expunged, he was entitled to receive all consequential benefits. In the enquiry also the petitioner was exonerated, but he was not given further promotion except as Deputy

Director. The respondents deliberately initiated a vigilance enquiry with a purpose to deprive the petitioner promotion to the post of Joint Director.

24. Learned counsel for the petitioner submits that in the vigilance enquiry, no case was made out against the petitioner but with a view to deprive the petitioner to his original claim, respondent No.5, being Head of the Vigilance Department at that relevant time in a malafide manner, sent the matter for further departmental action and on the basis of such directions enquiry was once again initiated at the instance of the Minister In-charge although the Secretary had closed the matter on 30.05.1999 with an observation to the petitioner to remain careful in future.

25. Per contra, respondents have filed their reply stating that the DPC was held on 12.03.1996 for considering the case of the petitioner for promotion to the post of Joint Director but its recommendations were kept in a sealed cover and one post of the Joint Director had been kept vacant for him. The allegations against the petitioner were examined by the Vigilance Department and the Vigilance Department reported that a regular enquiry be conducted against the petitioner.

26. In the reply, it is further stated that as per the clarification issued by the State Government, if prima facie case is established and charge-sheet is yet to be issued then also promotion recommendations can be kept in a sealed cover.

27. It is stated that after the Secretary, Information and Public Relation, Department decided the enquiry after receiving the reply of the petitioner, a letter was received from the Punjab Mandi Board demanding status and it came to the notice that the departmental action against the

petitioner was to be taken at the level of the minister and therefore, the case was reopened. It is stated that the petitioner got published a tender for printing 500 calendars and the rate per calendar was mentioned as ₹21 per calendar, but later on the number of calendars was increased to 2,47,500 and therefore, the rate ought to have been reduced but which was not reduced and thus, it was alleged that the petitioner had caused loss to the State Government. The respondents alleged that the petitioner had issued directions to the Market Committees for making direct payments to the Firms. However, the payments to the firm were stopped. The firm dragged the Mandi Board and the Marketing Committees into unnecessary litigation involving lot of expenses in engaging counsel to defend the case. A charge-sheet was issued on 28.07.2000 and the petitioner submitted his reply on 04.09.2000 which was found to be unsatisfactory and the enquiry officer was appointed. As the petitioner failed to appear before the Enquiry Officer, a public notice was published on 23.12.2000 directing him to appear on 30.01.2001. The petitioner again failed to appear and the Enquiry Officer submitted his report holding the petitioner guilty of the charges. On the basis of the said enquiry report and approval of the competent authority, the petitioner was dismissed from service on 14.06.2001.

28. I have considered the submissions of learned counsel for the parties.

29. Having considered the aforesaid facts, this court finds that respondents have not denied in their reply the contents of the petition regarding the sanction for publication of the calendar. Respondent No.3 is the Minister In-Charge of the Public Relation Department, Respondent No.4 is

the secretary of the Information and Public Relation and Respondent No.5 is the Director, Information and Public Relation Department. Respondents No.4 and 5 are the IAS officers. Respondent No.6 who is the Enquiry Officer is also a retired IAS officer and is stated to be very close of respondent No.5 and is stated to be the uncle of Sh. P.S. Aujla.

30. The petitioner was served with the charge-sheet vide memo dated 08.09.1998 to which he submitted a detailed reply and the Disciplinary Authority/the Secretary of the Department after examining his reply closed the proceedings observing that the petitioner should be careful in future.

31. On the same charges, a fresh charge-sheet was again issued vide memo dated 28.07.2000 wherein the enquiry officer submitted an ex-parte report and the petitioner was punished with dismissal from service.

32. The issues which arise for adjudication (1) as to whether the petitioner could be punished again relating to the same charges for which the petitioner was served with a charge-sheet earlier and after considering his reply, he was directed by the Secretary to remain careful in future and the proceedings were dropped; (2) whether the action of initiating a fresh enquiry relating to the self made charges was suffering from malice on facts as well as on law; (3) whether the report submitted by the Enquiry Officer can be accepted by the disciplinary authority once the petitioner had objected to his appointment on account of his personal bias; (4) whether the entire proceedings undertaken against the petitioner deserve to be quashed on account of malice, prejudice and bias. Moreover respondent No.5 could not have challenged the action of the Head of the Department, namely, the

Secretary in dropping the enquiry proceedings. Merely because he was the Vigilance Officer he could not have again directed for conducting of enquiry.

33. This Court notices that the petitioner was earlier suspended and made to face the departmental enquiry by his superior Officers. The suspension was revoked and in the enquiry, he was exonerated, but the adverse remarks were entered in his ACRs. The petitioner alleged malice and prejudice of his superior officers which was accepted by the authority and the said adverse remarks in the ACRs were expunged. The petitioner was denied promotion to the post of Joint Director although he was denied earlier promotion solely based on the pendency of the departmental enquiry wherein he had been exonerated. All this has been done allegedly at the behest of the respondents. The DPC meeting was cancelled at the instance of respondent No.5.

34. The tenor of the reply filed by the respondents also reflects that respondent No. 5 who was an IAS Officer and was posted in the Vigilance Department had initiated a fresh enquiry although the petitioner had been earlier served a charge-sheet under Rule 8 of the Rules to which he submitted a detailed reply and after being satisfied with the reply, the enquiry proceedings were dropped and the petitioner was asked to be careful in future by the Secretary. The contention of the respondents that such an order could not have been passed and the concerned Minister was the competent person, who had to give his final consent, is not found to be supported by the Rules. The Secretary, in terms of the Rules, is the disciplinary authority and the Head of the Department and therefore, once he had dropped the charges and

given an oral warning to remain careful in future, initiating departmental enquiry afresh by issuing a fresh charge-sheet is not open to the respondents.

35. Thus, once the petitioner had faced the departmental enquiry which starts upon issuing of a charge-sheet and ends with the final order of punishment, the respondents were not authorized to again serve a charge-sheet to the petitioner under Rule 8 of the Rules relating to the same charges for which the petitioner had already been directed to remain careful in future which itself is a punishment. It is, thus, a case of a dual prosecution with reference to same charges.

36. Subsequently, enquiry proceedings initiated with regard to the same charges are found to be vitiated in law. A person cannot be subjected to enquiry relating to the same charges afresh unless the earlier enquiry proceedings have been quashed by a Court or by the Appellate Authority.

37. While this Court is satisfied that the departmental proceedings itself could not be initiated, this Court also finds that the petitioner had submitted his objections relating to appointment of an Enquiry Officer as he had a reasonable apprehension of the Enquiry Officer being very close to respondent no.5 who had shown his animosity to the petitioner.

38. The respondent No.5 in his reply has admitted of the respondent-Enquiry Officer close to his father as a teacher having taught the respondent Enquiry Officer. Hence, it is sufficient to infer malafide and bias of the Enquiry Officer against the delinquent petitioner. The inference is further buttressed from the action of the Enquiry Officer in not giving a fair opportunity to the petitioner to defend himself.

39. The scope of interference in the judicial enquiry in departmental proceedings has been examined by the apex Court in various cases i.e. Roop Singh Negi Vs. Punjab National Bank and Others; 2009 (2) SCC 570, Jashir Singh Vs. Punjab & Sind Bank and Others; 2007(1) SCC 566, Bindeshwari Chaudhary Vs. State of Bihar and Others; 2017 (13) SCC 277, State of Uttar Pradesh Vs. J.P. Saraswat ; 2011 (4) SCC 545, R.S. Garg Vs. State of U.P. and Others; 2006 (6) SCC 430, Gulam Mustafa and Others Vs. The State of Maharashtra and Others; 1976 (1) SCC 800, E.P. Royappa Vs. State of Tamil Nadu and Another; 1974 (4) SCC 3, Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corporation Ltd. Haldia and Others; 2005(7) SCC 764 and Ratnagiri Gas and Power Private Limited Vs. RDS Projects Limited and Others; 2013 (1) SCC 524.

40. The denial of promotion to the petitioner on the post of Joint Director is also found to be unjustified. Admittedly, at the time of conducting promotions for the post of Deputy Director and Joint Director, the petitioner was not considered on account of suspension and the departmental enquiry. Once, he was exonerated in the said enquiry, he was to be considered for promotion for both the posts. The adverse remarks, having been expunged, could not have been looked into. The petitioner therefore was entitled for promotion to the post of Deputy Director and also to the post of Joint Director. While the petitioner was given benefit to the post of Deputy Director, he was denied consideration for promotion to the post of Joint Director on account of intervention of respondent No.5. This is a classic case where an IAS Officer has used his authority to deprive a person from his due

promotion and benefits solely because he has developed an adversarial attitude towards the petitioner.

41. Thus, this Court finds that the scope of interference in departmental enquires is only with respect to cases where the same is found to be perverse, contrary to law and where the provisions relating to conduct of enquiry are found to have been ignored. It is settled law that the enquiry has to be conducted strictly in terms of the Rules. This Court finds that the Secretary had taken a decision in terms of Rule 8(3) of the Punjab Civil Service Rules, 1970 and reached to the conclusion to drop the enquiry proceedings. He did not appoint an enquiry officer and only observed that the petitioner/delinquent should be careful in future, whereafter there is no provision in law to restart the enquiry by issuing a fresh charge-sheet for the same charges to the delinquent. Change of officer holding the post of Disciplinary Authority would not result in issuing a fresh charge-sheet. Such an action could amount to arbitrariness and would be an unending process. The action, therefore, suffers from malice in law.

42. Having noticed above, this Court, therefore, finds that after the petitioner was directed to remain careful in future, the seal of his promotion to the post of Joint Director was required to be opened. The seal cover was exercised at the time when the charge-sheet dated 08.09.1998 was issued to him and the same ended with observations of the Secretary. The seal cover was required to be opened and petitioner was required to be granted his due promotion on the post of Joint Director. Even the issuance of a fresh charge-sheet should not have come in way for his promotion. Moreover, as already observed above, further enquiry proceedings conducted were without

authority and required to be declared to be nonest. Punishment of dismissal awarded based on such charge-sheet, ex-parte proceedings is held to be illegal and arbitrary and misuse of exercise of power. It is held that enquiry report and the consequent order of dismissal of the petitioner from service are illegal and are quashed and set aside.

43. The petitioner would be entitled for reinstatement and all consequential benefits from the date on which he was dismissed from service, he would be also entitled for promotion to the post of Joint Director and his salary would be accordingly re-fixed of the higher post. Arrears of salary shall be paid to him till his retirement and his retiral benefits shall also be released and paid along with interest on all arrears including salary and pensionary benefits @ 9% per annum.

44. The entire exercise for above shall be conducted within a period of **three** months.

45. In view of the aforesaid observations, the Writ Petitions stand **allowed.**

Civil Revision No. 1942 of 2002

46. The petitioner has submitted that the Civil Judge (Senior Division), Chandigarh has erred in law in deleting the name of defendant no. 3 (P. S. Aujla) from the array of parties. Since petitioner while challenging his ACR and extension of probation period has alleged bias against defendant no. 3, he was a necessary party and the learned Court below should not have deleted the name of defendant no. 3.

47. I have considered the submissions of the petitioner that plaintiff is the *dominus litus* of his case. It is for him to take a decision whether the

party impleaded is necessary or not. A person who is not a proper party can always plead that he is not a proper party and on that account he may move an application under Order VII Rule 11 CPC for rejecting the case on the ground of improper party. However, at his asking his name in a suit cannot be deleted by the Court on his own. The Court may grant such a person, who is impleaded unnecessary, compensation facing unnecessary litigation but there is no provision to delete his name on his own. In **Asian Hotels (North) Limited vs Alok Kumar Lodha and others 2022 (8) SCC 145**, Hon'ble the Supreme Court has held as under:-

“37. From the impugned order passed by the High Court, it appears that what has weighed with the High Court is that the plaintiffs, is the dominus litis and heavy reliance is placed in Kasturi. However, the principle that the plaintiffs is the dominus litis shall be applicable only in a case where parties sought to be added as defendants are necessary and/ or proper parties. The plaintiffs cannot be permitted to join any party as a defendant who may not be necessary and/ or proper parties at all on the ground that the plaintiffs is the dominus litis.”

48. Moreover where there are allegations of malice or prejudice or bias against any person, the aspect can only be examined by the Court providing such a person by giving opportunity to put up his defence as to whether he had any personal malice or prejudice against the concerned plaintiff/ petitioner. The Court, therefore, examined the said aspect.

49. In view of the above, the action of the plaintiff/ petitioner in impleading defendant no. 3 as party was justified and legal. He was a proper and necessary party to decide the issue regarding allegations of malafide, prejudice and bias raised by the petitioner. It is also to be noticed that such an issue could not have been decided by making it a preliminary issue as the

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and CR-1942-2002 (O&M)

allegations of malafide, prejudice and bias are to be considered on the bundle of facts and also the evidence which is to be proved on record. Keeping in view of the above, Civil Revision also stands allowed and the decision of the learned Court below is set aside.

- 50. No costs.
- 51. All Pending applications also stand disposed of accordingly.

December 04, 2023

Ess Kay/vs

[SANJEEV PRAKASH SHARMA]
JUDGE

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