

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2441-2003 (O&M)

Decided on 02.09.2023

DC Chauhan

... Petitioner

VS.

Haryana Tourism Corp. Ltd. & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Sumit Sinha, Advocate for the petitioner.

Mr. DS Nalwa, Addl. AG Haryana

Sandeep Moudgil, J.

(1). The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of certiorari to quash the order dated 30.06.2000 (Annexure P23); order dated 21.11.2001 (Annexure P26); and enquiry report dated 01.11.1999 (Annexure P17) and to direct the respondents to reinstate the petitioner into service by withdrawing the dismissal order dated 30.06.2000 (Annexure P23).

(2). The petitioner was appointed as Manager-cum-Accountant with the respondent-Corporation in the year 1974 and thereafter earned promotions with his record unblemished throughout service until 29.05.1997 when vide notice under Section 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, the petitioner was show caused for transferring funds from petrol pump and not remitting the funds of L-2 to HO on its closing; dereliction of duty; misuse of power and embezzlement etc. Initially Mr. Deepak Ambwani, Deputy General Manager of the Corporation was appointed as the Enquiry Officer who was suddenly replaced with Mr. HS Diwan. Learned counsel for the petitioner contends that since the petitioner had earlier written against Mr.

HS Diwan that he be sent back as his continuation in the Corporation would mar the chances of his promotion, therefore, his report would be prejudicial and this fact was time and again brought to the notice of the Managing Director vide affidavit dated 08.03.2003.

(3). It is further averred that the enquiry officer asked the petitioner or his advocate, who are based at Ambala, to appear before him at Surajkund and as such a request was made to hold the enquiry at Chandigarh. However, an ex parte report has been prepared by the enquiry officer dated 01.11.1999 (Annexure P17) and ultimately, the petitioner was dismissed from service on 30.06.2000. The appeal filed by him was also dismissed on 15.11.2001 by the Board of Directors - Appellate Committee.

(4). On the other hand, learned counsel for the respondents submits that the request of the petitioner for change of enquiry officer was not considered as any such request by the delinquent must be supported by valid reason and as such, the prayer for change of enquiry officer is not an absolute right of a delinquent and fanciful allegation to avoid a particular officer has no basis. Reliance has been placed on *Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant (2000) 1 SCC 182*, wherein the Supreme Court mere allegation of ill-will and bias will not be sufficient to prove ill-will and there must be cogent evidence available on record to come to the conclusion of existing of a bias resulting in miscarriage of justice.

(5). It is also asserted that the petitioner cannot allege prejudice as he himself did not associate in the enquiry despite various opportunities as a result of which the report was submitted based on the record and statement of witnesses as he disappeared from the proceedings. He further submits that no

rule or provision has been cited by the petitioner under which he can ask for assistance of and advocate in the departmental proceedings. In this regard, reliance has been placed on **DG Railway Protection Force & Ors. vs. K. Raghuram Babu (2008) 4 SCC 406**, according to which, refusal to grant representation through an agent does not violate the principles of natural justice and in a domestic/departmental enquiry, the person accused of misconduct has to conduct his own case as such an enquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer.

(6). When this writ petition was filed in the year 2003 came up for preliminary consideration on 13.02.2003 before a Division Bench of this Court and was dismissed. This led to the petitioner to approach the Hon'ble Supreme Court vide Civil Appeal No.6571 of 2004 wherein the following order was passed on 10.10.2006:-

“Before the High Court Appellant herein inter alia has raised the question of bias as against Mr. Diwan. He was also arrayed as a party in his personal capacity. We are of the opinion that at least a rule should have been issued by the High Court so as to enable Respondent No.4 to controvert the allegations of bias made against him. We are, therefore, of the opinion that those aspects of the matter having not been considered by the High Court, interest of justice would be subserved if the impugned judgment is set aside and the matter is remitted to it with a direction to issue rule. We direct accordingly. Respondents herein would be entitled to file their counter affidavits. Respondent-Corporation, if it so desires, may also place on record the inquiry proceedings before the High Court.

Keeping in view the fact that the matter is pending for a long time, we would request the High Court to consider the

desirability of disposing of the matter as expeditiously as possible, preferably within a period of six months from the date of communication of this order.

We may also observe that we have not expressed any opinion on the merit of the matter.

The appeal is disposed of with the aforesaid observations and directions.”

(7). Thereafter, the matter was innumerable adjourned for the purpose of completion of service until it was admitted by a Coordinate Bench of this Court on 11.02.2009. Subsequently, also the case was adjourned for one or the other reason.

(8). It is now when this matter came up for consideration before this Court, after having gone through the record passed the following order on 21.08.2023:-

“Learned counsel for the respondents No.1 to 3 prays for time to produce the record to establish as to why the Inquiry Officer was changed mid-way vide order dated 14.01.1998 (Annexure P-8) and any reply considering the request of the petitioner i.e., Annexure P-10 was given to the petitioner for change of the Inquiry Officer subsequently against whom aspirations have been raised of being biased.

Adjourned to 02.09.2023.”

(9). Vide order dated 14.01.1998, the earlier enquiry officer Deepak Ambwani, DGM was withdrawn and in his place, HS Dewan, DGM, HRH was appointed to conduct the enquiry without assigning any reason for taking such step mid-way of that enquiry, which was soon thereafter objected to by the petitioner vide letter dated 12.02.1998 (Annexure P9) followed by his representation dated 17.06.1998 alleging aspersions against Sh. HS Dewan,

Enquiry Officer. The said representation was never answered by the respondent nor in the present proceedings, learned State counsel has any tangible reply to state as was pointed out by this Court vide order dated 21.08.2024, reproduced above.

(10). On the question as to what will be the position in a case, where a person against whom certain allegations of mala fides are made, though made a party, kept quiet without refuting the same, the Supreme Court held in a ruling reported in **Express Newspapers Pvt. v. Union of India, 1986 (1) SCC 133**, the Supreme Court observed thus:

*"In **C.S. Rowjee v. A.P State Road Transport Corporation**¹, the Court in a matter arising out of the Motor Vehicles Act, 1939 where certain allegations against the Minister went uncontroverted, had occasion to administer a word of caution. Where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refilling or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. That precisely is the position in the present case, in the absence of any counter-affidavit by any of the respondents. One should have thought that the Minister for Works & Housing should have sworn an affidavit accepting or denying the allegations made by the petitioners..... Mala fides on the part of the Government in power or its functionaries would be sufficient to invalidate the impugned order if they were not exercised bona fide for the purpose for which the power was conferred."*

(emphasis applied)

(11). The Supreme Court in **Board Of Trustees Of The Port Of Bombay vs Dilipkumar Raghavendranath Nadkarni, AIR 1983 SUPREME**

COURT 109, dwelled upon the aspect as to whether where in a disciplinary enquiry by a domestic tribunal, the employer complaining misconduct appoints legally trained person as Presenting-cum- Prosecuting Officer, the denial or refusal of a request by the delinquent employee seeking permission to engage a legal practitioner would violate one of the essential principles of natural justice and answered it in the following words:-

“The time honoured and traditional approach in regard to a domestic enquiry in industrial disputes is that it is a managerial function which would be best left to the management without the intervention of persons belonging to the legal profession. This approach was based on the ground that a domestic enquiry should not be unduly inhibited by strict rules of evidence and procedural laws and that in the informal atmosphere in which the enquiry is conducted the delinquent would be able to defend himself. Whatever justification there might have been in the past for holding this view, the position today is altogether different. Industrial establishments employ on their rolls an impressive array of labour officers and legal advisors in the garb of employees. These officers are appointed as presenting and prosecuting officers for conducting the management's case in a domestic enquiry. The enquiry officer, more often than not, is a man of the establishment donning the robes of a judge. The enquiry is held in the establishment's office or part of it. It does not bear any comparison to an adjudication by an impartial arbitrator or a Court presided over by an unbiased judge. Witnesses are generally employees of the management which orders the enquiry. In short the scales are weighted in favour of the management and against the workman...

...The aphorism that "justice must not only be done but must be seen to be done" is not a euphemism applicable to courts alone; it should apply with equal vigour to all those responsible for fairplay in action. A quasi-judicial tribunal cannot view the situation with equanimity where there is inequality of representation..."

(12). Whenever an employee is sought to be dismissed or punished, it is usual for the employer to conduct departmental enquiries for the purpose of finding out whether the proposed action of dismissal or punishment is warranted.

(13). According to Article 311 of the Constitution of India, no employee can be dismissed unless he/she has been given reasonable opportunity to show cause. The reasonable opportunity, in legal parlance, should also include opportunity to defend in a fair and transparent manner which has been well defined and procrastinated by the Apex Court in **Board Of Trustees Of The Port Of Bombay's** case (supra).

(14). Taking into consideration the totality of the circumstances, this Court, in no uncertain terms, holds that the enquiry proceeding is vitiated as it was not in sync with the basic principle of natural justice and equal playfield so as to fairly and unambiguously give an opportunity to the petitioner to defend his case moreso when the aspersions casted by the petitioner on the appointment of the subsequent enquiry officer was unrebutted or unresponded by the respondents at the very inception and also before this Court.

(15). That being so, the dismissal of the petitioner from service is held to be illegal, unfair and arbitrary as it does not meet with the requirement of Article 311 of the Constitution of India and principle of natural justice.

(16). In view of the above discussion, the writ petition is allowed and the order dated 30.06.2000 (Annexure P23); order dated 21.11.2001 (Annexure P26); and enquiry report dated 01.11.1999 (Annexure P17) and consequential orders/proceedings, if any, in relation thereto, are hereby quashed. The respondents are directed to reinstate the petitioner in service. The petitioner is also held entitled to all service/retiral benefits including pension, gratuity etc. along with interest @ 6% p.a. from the date it became due till the date of its realization.

02.09.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No