

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

527

CWP-18160-2003 (O&M)
Decided on :15.12.2023

Inder Singh . .Petitioner
Versus
State of Haryana and others . . . Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Amit Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate and
Mr. Anupam Mathur, Advocate for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance of petitioner is that the petitioner was compulsorily retired by the respondents by passing an order dated 20.08.1996 and at the time when the petitioner was compulsorily retired his basic pay was fixed at Rs. 3400/-

After the imposition of the punishment of compulsory retirement, the respondents vide order dated 18.08.1997 (Annexure P-5) reduced the basic pay of the petitioner from Rs.3400/- to Rs. 2800/- which action was challenged by the petitioner by filing CWP No. 17023 of 1998 which was decided by this Court while passing the order dated 02.11.2000 (Annexure P-6) and the impugned order dated 18.08.1997 was set aside on the ground that the same was passed by violating the rules of principle of natural justice as no show cause notice was served or opportunity to defend was given to the petitioner before reducing his basic pay. However, the respondents were given the liberty to pass a fresh order in accordance with law.

Keeping in view the order passed by this Court dated 02.11.2000 after giving a show cause notice to the petitioner, an order was passed again reducing the salary of the petitioner from Rs 3400/- to Rs. 2800/-.

The said action was challenged by the petitioner in COCP No. 1421 of 2021 wherein the grievance was raised that a fresh order dated 27.07.2001 was to be passed after giving an opportunity personal hearing to the petitioner which was not given and hence, the fresh order was passed on 27.07.2001 which is contrary to the direction given by the division Bench of this Court vide order dated 02.11.2000. The order dated 27.07.2001 was withdrawn by the State with liberty to pass another fresh order by giving personal hearing to the petitioner. The relevant order was passed on 10.01.2003 is as under:

*"Present : Mr. Arun Jain, Advocate
for the petitioner.
Mr. Rajesh Bhardwaj, AAG, Haryana.*

*It is made clear that Mr. Budh Ram Fansal,
Retired Director General of Police need not appear.*

*Grievance of the petitioner is that inspite of
the orders dated 02.11.2000, the petitioner has not been
heard in person, though order dated 27.07.2001 has been
passed pursuant to directions of this Court. Let the
petitioner appear in persons before the Home Secretary,
Haryana on 10.03.2003 when the Home Secretary will
hear the petitioner has passed a fresh order. If the
petitioner is aggrieved of the said order, he will be free
to take his remedies in accordance with law.*

Petition is disposed of.

January 10, 2003

Sd/- Adarsh Kumar Goel,

Judge."

In pursuance to the undertaking given by the State to pass a fresh order, the petitioner was given personal hearing by Sh. B. D. Dhalia, the then Secretary to Government of Haryana, Jails Department, Civil Secretariat, Chandigarh. The petitioner appeared before Sh. B. D. Dhalia and explained his position in the personal hearing but before any order could be passed, the said officer was transferred and another officer namely Ms. Promila Issar joined on the post of Secretary to Government of Haryana, Jails Department, Civil Secretariat, Chandigarh.

Without giving any fresh personal hearing to the petitioner, Ms. Promila Issar passed the impugned order reducing the basic pay of the petitioner from Rs. 3400/- to Rs. 2800/-. Prior to the said impugned order, some other orders were passed by Ms. Promila Issar copies of which has been appended as Annexures P-11 to P-17 by which, petitioner was declined the benefit of crossing of the efficiency bar so that the pay of the petitioner could be fixed at Rs. 2800/- instead of Rs. 3400/- which was to be adjudged by the respondents after giving personal hearing to the petitioner.

Learned counsel for the petitioner argues that keeping in view the order passed by the Contempt Court, the petitioner was to be given personal hearing and then only a fresh order was to be passed whereas in the present case, the opportunity of personal hearing was given by the particular officer and impugned order has been passed by another officer which is not permissible keeping in view the settled principle of law. Hence, impugned order Annexure P-10 as well as the others orders passed by the same officer which have a bearing upon the issue concerned are liable to be set aside.

Learned counsel for the respondents concedes the factum that as per the order passed by the contempt Court, the petitioner was to be

given personal hearing and then a fresh order was to be passed as to whether the basic pay of the petitioner needs to be reduced from Rs. 3400/- to Rs. 2800/- or not. Further, learned counsel for the respondents submits that the basic pay of the petitioner from Rs. 3400/- to Rs. 2800/- can only be reduced in case there is an order declining the crossing of the efficiency bar.

Learned counsel for the respondents concedes the factum that all these orders have been passed by Ms. Promila Issar and she never gave personal hearing to the petitioner as the same was given by her predecessor namely Sh. B. D. Dhalia. Learned counsel for the respondents submits that the said fact stands conceded in the reply filed.

Learned counsel for the respondents further submits that though Ms. Promila Issar had not given the personal hearing to the petitioner, but the impugned orders were passed by her on the basis of record available with her.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the facts which have been stated herein before it is clear that the order dated 27.07.2001 passed by the respondents was set aside by the Contempt Court that the same has been passed without giving opportunity of personal hearing to the petitioner and the respondents were directed to pass a fresh order after giving due opportunity of personal hearing to the petitioner, hence, it was incumbent upon the respondents to give personal hearing to the petitioner before passing the impugned order.

From the facts it is conceded that though the personal hearing was given to the petitioner after the contempt petition was disposed of and the order dated 27.07.2001 was withdrawn but the same was given by Mr. B .D. Dhalia, whereas, the actual order mentioned in the petition which is

causing prejudice to the petitioner by which his basic pay has been reduced from Rs. 3400/- to Rs. 2800/- has been passed by another officer namely, Promila Issar.

It is a settled principle of law that once the petitioner appeared for personal hearing before a particular officer, the said officer was required to pass an order and in case, the said officer was transferred the successor in the office concerned was required to give a fresh personal hearing to the petitioner before passing an order so that, the said office should know as to what the petitioner says in his defence in the personal hearing.

The said principle of law has been settled by this Court while passing order in CWP No. 10626 of 1992 titled as **Jagdish Kumar, Assistance Food & Supplies Officer v. State of Punjab**, decided on 05.07.1994.

The relevant paragraph of the judgment is as under:-

"4. First and the fore most argument advanced by learned counsel for the petitioner is that the order of punishment is vitiated on account of patent violation of the rule of natural justice namely audi altrem partem. The submission is that the disciplinary authority/punishing authority had not afforded the real opportunity of hearing to him because the person who ultimately passed the order of punishment had not heard him. Shn C.M Chopra argued that Shri Rajesh Chhabra who had heard the petitioner in response to the notice issued by him did not pass the order of punishment because he stood transferred and

the his successor-in-office Smt. Romila Dubey did not give any opportunity of personal hearing to the petitioner. Learned Asstt. Advocate-General appearing for the respondents submitted that under the rules there is no provision for giving two personal hearings to a delinquent before the disciplinary authority passed an order of punishment and, therefore, even if Smt. Romila Dubey did not hear the petitioner personally, the impugned order cannot be negated on account of violation of rules of natural justice. In my opinion, the contention of the learned counsel for the petitioner merits acceptance. A perusal of the report submitted by the Inquiry Officer shows that after considering the evidence produced by the department, the Inquiry Officer recorded a categorical finding that the charges levelled against the petitioner have not been proved. If the disciplinary authority had accepted the report of the Inquiry Officer, that would have naturally resulted in exoneration of the petitioner. In that eventuality the petitioner could have made no grievance with the finding recorded by the Inquiry Officer or the action taken by the disciplinary authority. However, that did not happen. Apparently the disciplinary authority disagreed with the Inquiry Report. For this reason it

called upon the petitioner to appear for personal hearing. The petitioner was heard by Shri Rajesh Chhabra. If Shri Chhabra had passed the order of punishment, perhaps no exception could have been taken by the petitioner on the ground of violation of rules of natural justice. However in stead of Mr. Chhabra his successor-in-office made the order of punishment and that officer namely Smt. Romila Dubey did not hear the petitioner. Once the disciplinary authority decided to comply with the rule of natural justice, it was not open to it to go back from it, and it was not open to the successor-in-office of Shri Chhabra to have ignored the rules of natural justice and to pass the order of punishment without giving a personal hearing to the petitioner. Even in the absence of rules, it is an obligation on the quasi-judicial authority to comply with the minimum requirement of principles of natural justice. Therefore, before the disciplinary authority could rely on its disagreement with the report of Inquiry Officer and pass an order adverse to the petitioner, it was necessary for it to hear the petitioner. Only an effective and real opportunity of hearing could have enabled the petitioner to convince the disciplinary authority, who made the order of punishment, that the

finding recorded by the Inquiry Officer was correct. Thus in passing the order of punishment without giving a personal hearing to the petitioner, the disciplinary authority will be deemed to have violated the principles of natural justice, and on that ground its order is liable to be declared as void. Another submission advanced by learned counsel for the petitioner, which too merits acceptance is that the disciplinary authority has punished the petitioner de hors the charge levelled against him. A look at the charge-sheet Annexure P/1 shows that the petitioner was charged with the allegations of carelessness, irresponsibilities and not being trust worthy. These allegations were levelled against the petitioner in the context of the fact that the petitioner had recommended the grant of licences to M/s. Sehgal Sales, Phillaur Punjab Coal Traders, Phillaur, Mehra Sales, Phillaur and Surinder Coal Traders, Phillaur without making proper physical verification. In the statement of allegations, it has been recorded that the Deputy Director (Fields), Jalandhar had found that Mehra Sales, Phillaur and Surinder Coal Traders, Phillaur were benami parties. While the Inquiry Officer recorded his specific finding that all the four parties in whose favour recommendations were made

by the petitioner were not benami, the disciplinary authority recorded that it was not agreeing with the report of the Inquiry Officer because the delinquent had not produced any proof to show that after obtaining licences the four parties had done right work. The disciplinary authority has also recorded that no proof of fortnightly or monthly coal distribution returns were produced and, therefore, these four parties have not done properly coal business after receiving coal licences and it indicates the involvement of the petitioner. A comprehensive reading of order of punishment shows that the disciplinary authority had nowhere found any infirmity in the report of physical verification or recommendation made by the petitioner. It has not recorded a conclusion that the petitioner had submitted fake report or that his action in making recommendations in favour of the four parties suffered from lack of bona fide. May be that after grant of licences to these four parties, all of them or any one of them, may have not done their business properly, but for that, the petitioner could hardly be blamed. Above all, failure of the parties to submit fortnightly or monthly coal distribution returns could not lead to an inference that the petitioner was

involved with the parties in any manner. Clearly the disciplinary authority has travelled beyond the scope of charges in recording a conclusion that the petitioner was involved with the parties. No such allegation was levelled against the petitioner namely that he was involved with the parties. In the absence of such allegation having been levelled against the petitioner, he had no opportunity to meet that allegation. It is trite to say that no man can be condemned unheard."

Further the judgment in **Jagdish Kumar's case (Supra)** has been relied upon by this Court while deciding the same question of law while passing order in CWP No. 10626 of 1992.

Relying upon the said judgment, another claim before this Court raised in CWP No. 357 of 2018, titled as **Prabh Dayal Gabha v. Principal Secretary, State of Punjab, Food Civil Supplies and Consumer Affairs Department and Another**, decided on 28.01.2020 has also been decided in same terms, hence, the order passed by a successor in office who had not given the personal hearing, was found to be invalid.

Keeping in view the settled principle of law noticed herein before once, an order is to be passed by the same authority which have granted the personal hearing to the petitioner and the successor in office cannot pass the order unitarily without giving opportunity of personal hearing to the petitioner, the claim of the petitioner qua the impugned order is covered by the said settled principle of law as concededly in the present case, the personal hearing to the petitioner was given by Sh. B. D. Dhalia

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whereas the order has been passed by Promila Issar. The said order passed is contrary to the undertaking given through the Contempt Court hence, the orders Annexure P-10 to P-17 are set aside, the respondents are directed to pass a fresh order after giving due opportunity of personal hearing to the petitioner. The respondents will be at liberty to pass the order qua the clearing of the efficiency bar by the petitioner also. Let an appropriate order, if the respondents intend to pass, be passed withing within a period of **eight weeks** of the receipt of certified copy of this order.

It is made clear that any benefit for which the petitioner will be found entitled for will be based upon the fresh order passed by the respondents.

The present petition is disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

15.12.2023

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