

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIAGRH

Civil Writ Petition No.8231 of 2023(O&M)
Reserved On: 11.05.2023
Decided on: 17.05.2023

Rajinder Chopra

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. D.S.Patwalia, Senior Advocate, with
Mr. Gaurav Rana, Advocate,
for the petitioner.**

Mr. R.K.Kapoor, Addl. A.G., Punjab.

ANIL KSHETARPAL, J.

1. By this order, four connected writ petitions (details whereof are on the foot of judgment) shall stand disposed of. As conceded by the learned counsel representing the parties, these writ petitions are being disposed of by a common order.

2. The learned Additional Advocate General, Punjab, has prayed for the grant of some time to file a formal reply. However, in the facts and circumstances of the present case, it is considered appropriate, at this stage, to dispose of the writ petitions, particularly when the matter is required to be remitted back and the impugned order dismissing the employees from the government service, passed by the Minister-in-Charge, which was reiterated by the Principal Secretary, does not fulfill the requirement of reasoned decision.

3. In fact, one of the petitioners, Sh. Rajinder Chopra, was already retired from the service. However, the Minister-in-Charge, without noticing the aforesaid distinction between the cases of the remaining petitioners and that of Sh. Rajinder Chopra, passed the order of dismissal from the service.

4. After having heard the learned counsels representing the parties at length, the following issue requires adjudication:-

“Whether the order of dismissal of the delinquent employees from the regular government service passed by the Minister-in-Charge on assuming the role of the punishing authority while granting an opportunity of hearing, is required to be a reasoned speaking order after analyzing all the material/evidence produced including the charge-sheet, its reply, report of the Enquiry Officer, comments of the officers pursuant to second show cause notice and arguments/contentions, if any?”

5. Since, this court proposes to dispose of the writ petition only on the aforesaid legal issue, hence, it is not considered appropriate to notice the detailed facts. However, to complete the narration, bare minimum facts are being noticed.

6. There are allegations of impropriety in the distribution of scholarship amount to the various institutions in a wrongful manner under

the Post-Matric Scholarship Scheme for the students belonging to the Scheduled Caste and the Backward Class Categories. After holding the preliminary inquiries, separate charge-sheets were issued to all the petitioners. After the comments of the petitioners, a common Enquiry Officer was appointed, who gave a joint report on 13.06.2022. After personally hearing the petitioners on 10.02.2023, the Minister-in-Charge decided to dismiss all the petitioners from service which shall ordinarily be a disqualification for any future employment under the Government, by passing a brief order on 15.02.2023 which, as translated by the petitioners, reads as under:-

“The Inquiry Officer has proved the charges levelled in the charge sheet under Post Matric Scholarship for S.C. Scheme against the charged officers Sh.Parminder Singh Gill, Incharge Post Matric Scholarship for S.C.S., Sh.Charanjit Singh, DCFA (Retd), Sh.Mukesh Bhatia, Section officer, PMHC Branch, Sh.Rajinder Chopra, Superintendent (Retd), Scheme Branch, Sh.Rakesh Arora, Senior Assistant and Sh.Baldev Singh, Senior Assistant. In view of the Principal of natural justice, the undersigned has given an opportunity of personal hearing to the above officers on 07.02.2023 at 12.00 Noon. These officers submitted their defence before the undersigned. The undersigned has minutely considered the facts on record and I decide to award the following punishment under Rule 8

of Punjab Civil Services (Punishment & Appeal) Rules, 1970 to St.Parminder Singh Gill, Incharge Post Matric Scholarship for S.Cs., Sh.Rajinder Chopra, Superintendent (Retd), Scheme Branch, Sh.Rakesh Arora, Senior Assistant and Sh.Baldev Singh, Senior Assistant:-

Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

2. *Since Sh.Charanjit Singh, DCFA (Retd), Sh.Mukesh Bhatla, Section Officer, PMHC Branch are the officers of Finance Department, as such, the case be sent to the Department of Finance for taking decision against them.*

15.02.2023 5.16 PM *Dr.Baljit Kaur*
Cabinet Minister Social Justice E&M”

7. After the decision was taken by the Minister-in-Charge, a formal order was passed by the Additional Chief Secretary, Department of Social Justice Empowerment and Minorities vide order dated 15.03.2022.

The operative part of the order reads as under:-

“6. In view of the principal of natural justice, a personal hearing of the charged officers/officials Parminder Singh Gill, Deputy Director, Incharge, PMS-SC. Sh.Charanjit Singh, DCFA, Sh.Mukesh Bhatia,

Section officer, PMHC Branch, Sh.Rajinder Chopra, Superintendent Scheme Branch, Sh.Rakesh Arora, Senior Assistant and Sh.Baldev Singh, Senior Assistant, was held on 07.02.2023 to submit their defence in this matter. But in view of the representation dated 05.02.2023 of the said charged officers/officials, the competent authority afforded an opportunity of personal hearing on 10.02.2023 at 12.00 Noon and heard the defence of the concerned officers/ officials. In view of the defence submitted by the charged officers during the hearing and the facts on record, the competent authority considered this case minutely and In view thereof, announced the decision of "dismissal from service which shall ordinarily be a disqualification for future employment under the Government" of Sh.Parminster Singh Gill, Deputy Director, Incharge, PMS-SC, Sh.Rajinder Chopra, Superintendent Scheme Branch, Sh.Rakesh Arora, Senior Assistant and Sh.Baldev Singh, Senior Assistant.

7. Besides this, the competent authority has decided that the case be sent to the Department of Finance for taking the decision against the charged officers of S.A.S. cadre related to the Finance Department, Sh.Charanjit Singh, DCFA (Retd), Sh.Mukesh Bhatia, Section Officer.

8. In view of the above, I, G.Ramesh Kumar, IAS, Additional Chief Secretary, Department of Social Justice, Empowerment & Minorities, award the following punishment in respect of the charge sheet dated 28.09.2020, under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 to Sh.Parminder Singh Gill, Deputy Director, Incharge, PMS-SC, Sh.Rajinder Chopra, Superintendent Scheme Branch, Sh.Rakesh Arora, Senior Assistant and Sh.Baldev Singh, Senior Assistant:-

"Dismissal from service which shall ordinarily be a disqualification for future employment under the Government".

8. The learned counsel representing the parties have filed their respective synopsis along with the written note of arguments while addressing the court in detail. However, as already noticed, this court does not find it appropriate to go into the details, particularly when it has been found that the matter is required to be remitted back to the competent authority. It may be noted that the learned senior counsel representing the petitioners has also made an attempt to assert that the Minister-in-Charge is not the disciplinary/punishing authority as per the Punjab Welfare Department Class III Service Rules 1962 and the Punjab Welfare of Schedule Castes and Backward Classes (Group 'A') Non Ministerial Service Rules, 2016. However, this issue is left open, to be examined by the competent authority in the context of Article 311(2) of the Constitution of

India read with the provisions of Punjab Civil Service (Punishment & Appeal) Rules, 1970 (hereinafter referred to as 'the 1970 Rules') and with the applicable service rules because the disciplinary authority may be different for all the 4 petitioners.

9. The learned State counsel has produced a brief note in order to defend the impugned order which reads as under:-

“1. Under Article 311 of the Constitution of India, it is provided that "No person who is a member of Civil Service..... shall be dismissed..... by an authority subordinate to the appointing authority".

Note:-In the present case the appointing authority is government and the decision for dismissal from service is taken by the Minister-in-charge, who is not subordinate to the appointing authority. Therefore, the decision for dismissal from service is taken by the competent authority (Minister- in-charge).

2. That before passing an order of punishment (Major penalty) "It shall not be necessary to give an opportunity of hearing as has been provided under Proviso to Article 311 (2) of the Constitution.

3. Under Rule 9(4) of The Punjab Civil Services (Punishment and Appeal) Rules, 1970, it is provided that "It shall not be necessary" to give the government

employee any opportunity of making representation on the penalty proposed to be imposed.

Note:- It is thus, clear that opportunity of hearing is not required to be given by the punishing authority before passing the order of major penalty

4. That the Minister-in-charge is a competent authority to take a decision for imposing the "major penalty" in the light of the standing orders (Annexure-II), which provided as follows:-

"Cases to be disposed off by the Minister-in-charge of the department of the Social Justice, Empowerment and

Minorities, Puniab" where it has been provided in clause no 17 as follows:-

17. "All cases of serious financial irregularities"

Note:-Since the present case is of very serious financial irregularities, and therefore, the Minister-in-charge, who have the power to dispose if such cases, end decide to impose the punishment of dismissal from service, and this is what, he has precisely decided to do so.

5. That as far as passing of order by the Additional Chief Secretary is concerned, it has been provided under the allocation of business rules, dated 25.02.1992

that "Every order or instrument of the Government of the State of Punjab shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary or an Under Secretary or such other officer as may be specifically empowered by the Governor in that behalf and the signature so made shall be deemed to be the proper authentication of such order or instrument. Therefore, the order passed by the Additional Chief Secretary dated 15/16.02.2023 is a valid and legal order.

6. That in case the departmental proceeding are instituted after the retirement, then the same can be instituted with the sanction of the Government as provided under proviso (2) (i) of the Rule 2.2 (b) of Civil Service Rule Volume 2.

Note:- Since the order of the Government ie. the order dated 10.12.2020 passed by the then Principal Secretary, S.J.E.M. Department, would amount to sanction of the Government whereby, with reference to serious financial irregularities, and, reference to charge-sheet, the inquiry officer was appointed. Thus, it is clear that sanction of the Government was there, with reference to institution of departmental proceedings. For the sake of reference, Rule 2.2 (proviso 1 and 2 are quoted below (relevant extract):-

"Provided that-

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it. was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government".

7. That the show cause notice was already issued to all the delinquent officers including Rajinder Chopra, vide order dated 25.06.2020, whereby there is a clear reference of initiation of appropriate proceedings, therefore it is clear that all the delinquent officers including Rajinder Chopra were put to notice for departmental proceedings. That even in the order of retirement passed by the case of Rajinder Chopra dated 31.08.2020, it was specifically mentioned that "against this employee, if in future, any matter came to the notice for initiating criminal, civil or departmental proceedings, then action will be taken in accordance

with Rule 2.2 of Civil Service Rules, Volume 2. Apart from this, if any recovery is made against the employee then. It will be recovered from gratuity/pension". Therefore, the petitioner was already put to notice for any departmental proceedings, which could be instituted against him with reference to rule 2.2 (b) of the Punjab Civil Service Rule Volume 2."

10. He has also submitted an additional note which reads as under:-

"That the petitioner has an alternative remedy available to them under Rule 21 of Punjabi Civil Services (Punishment and Appeal) Rules, 1970, and, therefore, they could have approached the Hon'ble Governor by filing appropriate review petition in the form of memorial to the Hon'ble Governor. For the sake of relevance said Rule 21 is reproduced below:

Review (1) Notwithstanding anything contained in these Rules-

(i) the Governor, or

(ii) the appellate authority, within six months of the date of the order proposed to be reviewed; or

(iii) any other authority, specified in this behalf by the Governor by a general or special orders, and within such time as may be prescribed in such general or special orders:

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules

repealed by Rule 25 from which on appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order. Or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed, or

(c) remit the case to authority which made the order or to any other authority directing such authority to make such further inquiry it may consider proper in the circumstances of the case: or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 5 or to enhance the penalty Imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after on inquiry in the manner laid down in Rule 8 and except after consultation with the Commission, where such consultation is necessary.”

11. The order dismissing a government employee from service entails severe consequences. Though, usually these orders are passed by the

officers posted in the administration who may not be judicially trained to record reasons, after critically analyzing the material produced, like a judicial officer, however, such orders are passed by the authorities which affects the rights of the delinquent employees. Hence, the disciplinary authority is required to act judicially as a Tribunal. Recording of reasons is an important facet of the principles of natural justice. Apart from the various benefits, it ensures transparency and fairness in decision making. Even the person, who is adversely affected, comes to know as to why his request has been declined. Such orders passed by the administrative officers are amenable to judicial review by the courts. In the absence of reasons, the courts do not have the benefit of the reasons for arriving at a particular conclusion. Therefore, the recording of reasons is an indispensable part of a sound judicial review. It introduces clarity, ensures objectivity and impartiality on the part of the decision maker and minimizes the chances of unfairness and arbitrariness. The Supreme Court in **Roop Singh Negi vs. Punjab National Bank and others, 2009 (2) SCC 570** held that the administrative authorities are working as quasi-judicial tribunals while passing such orders of punishment which affects the rights of the delinquent employees. Hence, such orders are required to be supported by cogent reasons.

12. In that context, the arguments of the learned State counsel is required to be examined.

13. As regards argument no.1, it may be noticed that in the previous part of the order, this court has already expressed the undesirability of discussing the issue of competency of the Minister-in-Charge.

14. As regards argument no.2, it may be noticed that in the present case, an opportunity of hearing was given to the petitioners, hence, the aforesaid issue also does not need detailed examination.

15. Argument no.3 is also a facet of argument no.2, hence, it needs no detailed deliberation.

16. With regards to argument no.4, as already noticed, this court does not wish to enter into the aforesaid arena.

17. As regards argument no.5, Rule 10 of the Rules of Business of the Government of Punjab, 1992, as notified by the State Government in the exercise of power under Article 166 of the Constitution of India reads as under:-

“18. Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the 'Minister-in-charge, who may, with the prior approval of the Chief Minister or, by means of standing orders, give such directions as he thinks fit for the disposal of the cases in the Department and copies of such standing orders shall be sent to the Chief Minister and the Governor.

Provided that if the Minister-in-charge is unable to dispose of the business of his department for some time due to any reason, the Chief Minister may direct the Chief Secretary to modify the existing standing orders of the department or formulate fresh standing orders as the Chief Minister may consider appropriate.”

18. The attention of the court has also been drawn to the fact that a standing order passed in pursuance of the provisions of Rules 18 and 19 of the Rules of Business of the Government of Punjab, 1992 (hereinafter referred to as 'the 1992 Rules') which enable the Minister-in-Charge of the Department of Social Justice Empowerment and Minorities, to dispose of the cases involving serious financial irregularities. On careful reading of the order passed by the Minister-in-Charge, it is evident that the Minister-in-Charge neither herself recorded the reasons nor has the Additional Chief Secretary examined the matter in detail. Rule 18 of the 1992 Rules only enables the Minister-in-Charge to give such directions as he thinks fit for the disposal of cases in the department by issuing general directions. Once the Minister-in-Charge has assumed the role of punishing/disciplinary authority, then there is no escape from following the requirement of recording the reasons after analyzing the material produced on record including the reply/material produced in evidence, the report submitted by the Enquiry Officer and the comments and contentions of the delinquent employees pursuant to the second show cause notice. It is not the case of the State Government that the Additional Chief Secretary was present at the time when the Minister-in-Charge heard the petitioners. The order passed

by the Additional Chief Secretary only confirmed the fact that the decision to dismiss the employees from service was already taken by the Minister-in-Charge. In such circumstances, both the impugned orders are bereft of reasons. The orders passed by the authorities neither disclose the application of mind nor give any reasons for not accepting the explanation furnished by the employees. The application of judicial mind must be discernible from the records. The defect of want of reasoning in the order of quasi-judicial authority could not be remedied by looking into the files maintained by the government and constructing reasons in support of the order.

19. Sh. R.K.Kapoor, learned Additional Advocate General, Punjab, has very strongly submitted that the Minister-in-Charge under Rule 18 of the 1992 Rules can hear the delinquent officials and decide the nature of the punishment while directing the Additional Chief Secretary to pass a formal order. He submits that, at the most, the order passed by the Additional Chief Secretary on 15.02.2023, should be set aside.

20. On careful reading of Rule 18 of the 1992 Rules, it is evident that the Minister-in-Charge can give directions for disposal of the cases. Proviso to Rule 18 envisages that if the Minister-in-Charge is unable to dispose of the business of his department, he may, upon modification of the existing standing orders of the department, issue necessary directions to the officers for disposal of the business. However, this rule does not lay down that the Minister-in-Charge will grant hearing to the delinquent employees and decide the nature of punishment while directing the Additional Chief Secretary to pass a detailed order. During the personal hearing, the

punishing authority has the benefit of watching the demeanor of delinquent official and clear up his doubts while asking questions. Hence, the divided responsibility of one person hearing and deciding the case while another person writing the order, is neither envisaged in the Rule 18 nor it will be in consonance with the basic principles of judicial procedure. Such eventuality would render the personal hearing empty formality which would not be in the interest of justice.

21. On careful reading of the order passed by the Minister-in-Charge, it is evident that no cogent reasons have been given in the order. The order, after noticing that an opportunity of personal hearing has been given, concludes that the decision has been taken to award punishment of dismissal. Neither the impugned order shows an application of mind regarding the nature of charges, the reply of the delinquent official, the conclusion drawn in the report submitted by the Enquiry Officer nor it deals with the contentions which were put forth while furnishing comments to the 2nd show cause notice and arguments made, if any, during the personal hearing. The reading of the order does not prove that any critical analysis of the defence, put forth by the delinquent officials, was made while passing the impugned order. Hence, this court in exercise of judicial review does not have the benefit of examining the correctness of a speaking and reasoned order. Once the departmental inquiry has been equated with a quasi-judicial tribunal, the order passed by the punishing authority is required to reflect an application of mind because it affects the rights of the delinquent officials. In the impugned order, none of the contentions of the delinquent officials has been analyzed and evaluated before passing the impugned order. After

the submission of the report by the Enquiry Officer, the petitioners submitted their detailed reply which is available at page 135 in the form of their comments. Thereafter, they also submitted a detailed representation at the time of personal hearing. The impugned order does not even advert to the aforesaid documents. Hence, there is no substance in this argument.

22. The argument no.6 is with regard to the competence of the government to initiate proceeding after retirement which was never pressed by the learned counsel representing the petitioners. Hence, it is not appropriate to deal with the aforesaid argument. Even argument no.7 does not arise for adjudication in the present case.

23. In additional brief note, the learned State counsel has made an attempt to dissuade the court from interfering due to the presence of an alternative remedy. On careful reading of Rule 20 of the 1970 Rules, it is evident that the aforesaid rule is not applicable. Moreover, the power of review is not available as the order under challenge is not appealable. The Minister-in-Charge has acted on behalf of State government while assuming the role of disciplinary authority. Rule 21 of the 1970 Rules would become applicable only if the order is appealable, but no appeal has been filed. Moreover, this is not a regular remedy.

24. Hence, the impugned orders, being non-speaking apart from being without reasons, are set aside. While remitting the matter back to the Minister-in-Charge, the petitioners through their counsels are directed to appear before the Minister-in-Charge on 24.05.2023 at 11.00 a.m which

shall be subject to change at the convenience of the Minister with prior intimation to the petitioners.

25. Keeping in view the aforesaid discussion, the result is inevitable. While setting aside the orders passed by the Minister-in-Charge as well as the Additional Chief Secretary, the matter is remitted back to the Minister-in-Charge to initially decide about her desirability of passing the order at the first instance while assuming the role of disciplinary authority keeping in view the objection of the petitioners and thereafter proceed with the matter in accordance with the law.

26. Since, there are serious imputations, hence, this court is not passing an order of reinstatement of the petitioners except Mr. Rajinder Chopra who is a retired employee. However, the competent authority is requested to finally pass an appropriate order within a period of two months, from today.

27. All the pending miscellaneous applications, if any, are also disposed of.

17th May, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO