

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11060 of 2013 (O&M)

Date of decision: 23.01.2023

Sanjeev Kumar

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Salar, Advocate
for the petitioner.

Mr. R.S.Pandher, DAG, Punjab

ANIL KSHETARPAL, J(Oral)

1. The petitioner prays for the issuance of a writ in the nature of certiorari to quash the notice dated 28.04.2013, whereby, a fresh *denovo* departmental inquiry has been ordered against the petitioner.
2. The petitioner was served with a charge sheet and the statement of charges as reproduced in the inquiry report are extracted as under:-

"1. On 19-2-2008 Sh. Gurmit Singh, Assistant Controller (ENG) brought to the knowledge of Sh. Sanjay Popli, Additional Controller, that Sanjeev Kumar clerk, who is working on Diary and Dispatch, was specifically told not to leave the office as some very important official work were pending which were to be completed and Dispatch Numbers were to be entered on said paper but despite this asking by the Assistant Controller (ENG) on 19- 2-2008 at 1.19 o'clock this employee absented from the office and had also switched off his mobile set keeping in mind that the office may not trace him out, therefore, he has depicted a behaviour which is irresponsible, without good intention violations of the order of the superiors, to cause delay and to put hurdled in the working of the office.

2. He kept letter of joint inspection of M/s Tripti Structures Pvt. Ltd. Delhi, to demand money for making entry in the dispatch and diary register of personal inspection notes and also that he did not use to enter the

letters sent by the parties through Fax and that after personal meetings he used to make entries of the letters by taking money, resultantly the purchase Order No. 266 dated 10-9-2008 which was issued by Chief Engineer Patiala and was faxed on 11-9-2008 was not diarized and on personal meeting he placed and put the said letter in the Dak Pad of Additional Controller on 18-9-2008.

3. As this employee was not sitting on his seat therefore on the asking of Additional Controller the annual confidential report prepared by Sh. Surjit Singh Assistant Controller (J) and Store Inspection officer (3) were got entered in the register bearing Dispatch No. 8807-8 dated 30-4-2008 from some one else. Next day on these numbers this employee had put lines which violate the code of cleanliness of the office. This fact was not in the knowledge of Additional Controller on 2.5.2008.

4. In addition Sh. Manoj Kumar Store Inspector (ENG) vide his writing dated 16-5-2008 that when he went to seat of this employee for getting mark Dispatch Number on inspection note and other items regarding installation of Hydrotherapy unit on the residence of Hon'ble Chief Minister Punjab but this employee was not found present at his seat. He was also searched in the adjacent canteen but was not found there even and his mobile set was also found switched off. For non availability of this employee, matter was brought to the knowledge of then Additional Controller by Store Inspection Officer (ENG) through phone and Shri Manoj Kumar Store Inspector (ENG) marked dispatch number on these documents and Sh. Manoj Kumar personally handed over these documents to the person came from the office of Hon'ble Chief Minister. Therefore it was found you lacking in performance of your duties.

5. M/s Alfa Trading Corporation, Jalandhar and M/s Sachdeva Sales Corporation, Jalandhar have vide their letter dated 6.3.2009 have complained that this employee has harassed them and they have also stated that as and when this employee is personally asked to make entry in the diary of any letter but this employee harass them and used to get up from his seat and go somewhere in pretext of to go to adjacent canteen for taking tea and used to demand money for making entries of the letters. If the letter of joint inspection are sent by post then he use to misplace said letter and do no enter the same in the diary register or that used to keep said letter for many days with himself and only thereafter he use to make entry of these letters as a reason thereof they are to face penalties."

3. The disciplinary authority nominated an Enquiry Officer, who after going through the entire procedure submitted a report on 14.07.2011 in favour of the petitioner. The disciplinary authority disagreed with the first report and subsequent thereto ordered a *denovo* inquiry. Once again, after going through the entire evidence produced by the department as well as the petitioner, the same conclusion was arrived at in the report dated 21.09.2012 i.e. the report was in favour of the petitioner. Once again, vide a short order dated 28.04.2013, the disciplinary authority ordered fresh enquiry. This action of the respondents for conducting an enquiry for the third time is the subject matter of challenge before this court.

4. The learned State counsel has admitted that the Enquiry Officer has appreciated the evidence and considered the entire material evidence placed on the file. Undoubtedly, the Disciplinary Authority has the jurisdiction to disagree with the Enquiry Officer, however, in the absence of compelling circumstances, repeated *denovo* enquiries are not justified. If the Disciplinary Authority has justifiable reasons to disagree with the report submitted by the Enquiry Officer, consequent order is required to be passed instead of conducting enquiries time and over again. However, it would not be appropriate to keep the disciplinary proceedings alive for an indefinite period of time. The disciplinary proceedings are required to be concluded expeditiously in order to maintain discipline amongst the subordinate officials and to promote job certainty. However, keeping the enquiry alive cannot be permitted to be used as a tool to harass any of the employee. Moreover, it is evident that the disciplinary proceedings has even ordered that the enquiry officer in the second enquiry should also be given a show

cause notice. There was no justification in ordering *denovo* enquiry.

5. Keeping in view the aforesaid discussion, the order dated 28.04.2013, ordering fresh enquiry is set aside.

6. The Disciplinary Authority is directed to proceed with the matter in accordance with law and conclude the same positively within a period of 3 months, from today, positively.

7. Disposed of accordingly.

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

January 23, 2023
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(ANIL KSHETARPAL)
JUDGE

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