

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

266 (1 & 2)

CWP-889-2021 (O&M)
Date of decision: 29.04.2024

Anamika
Versus
...Petitioner

State of Punjab and Others
...Respondents

CWP-1909-2021 (O&M)

Harpal Singh
Versus
...Petitioner

State of Punjab and Others
...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. P.K. Goklaney, Advocate for the petitioners

Mr. Satnam Preet Singh, DAG Punjab

AMAN CHAUDHARY, J. (ORAL)

1. These cases involve similar issues and therefore, are being disposed of together by this common judgment.
2. The present petitions have been filed for quashing the order dated 22.12.2020 issued by the respondents whereby de-novo enquiry was ordered, alongwith all subsequent proceedings arising thereof.
3. Learned counsel submits that the petitioners, working as ETT teachers since 27.10.2008 and 16.10.1998, respectively, were promoted to Science Mistress/Master on 10.11.2017 and 23.05.2006, respectively, however,

chargesheet was issued against them dated 04.06.2020, Annexure P-7, whereafter the Enquiry Officer, namely Ranbir Singh, Principal Government Girls Senior Secondary School, Abul Khurana, vide orders dated 24.09.2020 and 28.09.2020, Annexure P-6, disproved the charges and exonerated them. However, the disciplinary authority dissented with the decision vide a note to that effect and that too by appointing a different Enquiry Officer, namely Ashok Kumar, Superintendent Grade-I, to conduct another enquiry, which is also an objection of the petitioners. He further submits that the issue of de novo enquiry stands covered in his favour by the judgment in case of **Karnail Singh, Kanungo Agrarian vs. State of Punjab and Others** in CWP-7393-1990, decided on 29.10.1991, Annexure P-30, following which this Court in **Subhash Chander Kaushal vs. State of Punjab and Others** in CWP-16252-2010, decided on 16.08.2012, Annexure P-31, held that the punishing authority could only record dissenting note, not remit the matter for further enquiry to different authority which would amount to de-novo enquiry, as is contrary to law, relevant paras whereof read thus:

“9. A perusal of the above Rule clearly reveals that the Punishing Authority after recording reasons in writing may remit the case to the enquiring authority for further enquiry and report.

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12. Such issue of holding of a de-novo enquiry in the light of Rule 9 of the 1970 Rules came up for consideration before a Co-ordinate Bench of this Court in **Karnail Singh v. State of Punjab reported as 1992 (2) Service Cases Today 27**. In Karnail Singh's case (supra), this Court while placing reliance upon a judgment of the Hon'ble Apex Court in *K.R.Deb v. Collector of Central Excise, Shillong*, 1971 (1) SLR 29 (SC) had held as under:

"Learned counsel for the petitioner submitted that there is no power with the Deputy Commissioner (the appointing authority of the petitioner) to order de novo inquiry against the petitioner. He further argued that under rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (hereinafter called the

'Punishment and Appeal Rules'), the punishing authority can for the reasons to be recorded by it in writing remit the case to the inquiry authority for further inquiry or it has the power to record a finding itself when it disagrees with the finding of the inquiry officer and that too after recording reasons. The case of the petitioner is that even if the punishing authority had the power to order de novo inquiry, no reasons have been recorded for doing the same by the punishing authority. In support of his contention, the learned counsel has cited K.R.Deb v. Collector of Central Excise, Shillong, 1971 (1) SLR 29 (SC): (AIR 1971 Supreme Court 1447).

On the other hand, learned counsel for the respondents submitted that in fact benefit of doubt had been given to the petitioner by the inquiry officer to exonerate the petitioner and this was a sufficient reason, which was recorded by the Additional Deputy Commissioner, to order de novo inquiry into the same charges.

I find force in the contention of the learned counsel for the petitioner. Rule 9 of the Punishment and Appeal Rules is in the following terms :-

(Relevant extract)

"9. Action on the inquiry report - (1) The punishing authority if it is not itself the inquiry authority may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 5 should be imposed on the Government, it shall, notwithstanding anything contained in rule 10 make an order imposing such penalty."

From the above rule, it will be evident that the only power which the punishing authority has is to remit the case to the same inquiry officer for further inquiry and that too after recording reasons. In the present case, the case has not been remitted for further inquiry. Rather

a de novo inquiry has been ordered and that too by a different inquiry officer. The rule does not envisage ordering of a de novo enquiry into the same charges but enables the punishing authority to remit the case for further inquiry by the same inquiring authority. I may not be understood to hold that in no case further inquiry can be held by another inquiring authority but that would be under very special circumstances where the previous inquiring authority is unable for any reason to hold further inquiry. Further in the present case, I find that the punishing authority itself has not recorded any reasons whatsoever even for holding de novo inquiry. It is only the Additional Deputy Commissioner who has recorded the reason that the petitioner was given the benefit of doubt by the inquiring authority. He, therefore, suggested that de novo inquiry should be held. The punishing authority has not even recorded that he is agreeing with the reasons record by the Additional Deputy Commissioner. I have already held that rule 9 does not envisage ordering of a de novo inquiry on the same charges. If such a power is held to be there, then it would be left to the whims of the punishing authority that if he does not agree with the findings of the inquiry authority, he may depute another inquiry officer to go into the same charges and even if the second inquiry officer exonerates the delinquent officer, yet the third inquiry officer may be appointed. The Supreme Court in the case supra while dealing with similar rule observed as under :-

"It seems to us that Rule 15, on the face of it, really provides for the inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect that crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the inquiry officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

Apart from the fact that there is no provision to order de novo inquiry into the same charges, I also find that even the reasons given by Additional Deputy Commissioner that benefit of doubt had been given to

the petitioner by the inquiring authority has no legs to stand. Firstly, even if the inquiring authority has given benefit of doubt, it is no ground to order de novo inquiry or even further inquiry into the matter. Factually also I find that it was only in one inquiry that benefit of doubt was given to the petitioner and not in the other enquiries.”

13. Accordingly, it is held that the Punishing Authority could have recorded a dissenting note disagreeing with the Enquiry Officer and could have remitted the matter for further enquiry, but could not have ordered re-enquiry which amounts to holding a de-novo enquiry and which is impermissible in law. The decision of the Excise and Taxation Commissioner, Punjab to have appointed Shri Rahul Bhandari, IAS to conduct a re-enquiry, is in flagrant violation of rule 9(1) of the 1970 Rules. It would also be apposite to notice that while directing a re-enquiry, no reasons whatsoever were assigned to have dis-agreed with the enquiry report submitted by the Vigilance Department. Accordingly, I hold the enquiry report dated 2.12.2004, Annexure P24, to be without any sanction in law.

14. Having held the action of the respondent-authorities in ordering the re- enquiry/de-novo enquiry to be in violation of Rule 9(1) of the 1970 Rules, I do not deem it appropriate to examine the findings of such de-novo enquiry on merits.

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16. Since the very initiation of proceedings i.e. ordering of a re-enquiry and de-novo enquiry has been held to be bad, accordingly, the pursuant enquiry findings contained in the enquiry report dated 2.12.2004, Annexure P24, cannot be sustained as the same are without any sanction in law and, in fact, in contravention of the statutory proceedings regulating the subject.

17. Accordingly, the present writ petition is allowed. Enquiry report dated 2.12.2004, Annexure P24, order dated 19.4.2005, Annexure P25, order dated 2.1.2006, Annexure P27, order dated 20.1.2006, Annexure P28 and order dated 13.5.2010, Annexure P34 are quashed. Accordingly, the petitioner is even held entitled to all consequential benefits emanating on account of setting aside of the impugned orders as mentioned hereinabove.”

4. Learned State counsel though despite his best efforts was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law, however, in terms of Rule 9 as interpreted above, prays that the Department may be permitted to conduct further

enquiry into the charges, *albeit* by the same enquiry officer, in case it decides to proceed in the matter.

5. In wake of the above, the present petitions are disposed of in terms of the judgments passed in **Karnail Singh** and **Subhash Chander Kaushal** (supra) with liberty aforesaid.

6. A photocopy of this order be placed on file of the connected case.

(AMAN CHAUDHARY)
JUDGE

29.04.2024
M.Kamra

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