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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1190-2024

Date of Decision: 19.01.2024

Rajesh Sharma

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. A.P.S. Sandhu, for the petitioner.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Learned counsel for the petitioner by way of this writ petition has prayed to set aside the charge-sheet dated 10.05.2023 and the enquiry proceedings initiated vide charge-sheet dated 10.05.2023.
2. Learned counsel submits that the copy of the charge-sheet was not served upon the petitioner, and without providing him a chance to file a reply to the charge-sheet, the disciplinary authority appointed the enquiry officer to conduct an enquiry. The petitioner appeared before the enquiry officer and demanded a copy of the charge-sheet and was thereafter supplied the copy of the charge-sheet.
3. However, learned counsel submits that supplying copy of the charge-sheet to the petitioner while conducting enquiry would be in violation of Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 as the chance to examine the reply of the petitioner to the charge-sheet by the disciplinary authority has not been provided. It is submitted that the Rule has to be followed strictly and the disciplinary authority could not have appointed enquiry officer to conduct the

enquiry before giving him an opportunity to file reply to the charge-sheet. Learned counsel submits that the petitioner has been left to face enquiry without putting up his defence.

4. Learned counsel has relied on judgment passed by the Supreme Court in ***Uttar Pradesh Government and others vs. Sabir Hussain, 1975(4) SCC 703***, wherein he has taken this Court to para 10 as under:

“10. It is to be noted that the section requires not only the giving of an opportunity to show cause, but further enjoins that the opportunity should be "reasonable". What then is "reasonable opportunity" within the contemplation of Section 240(3)? How is it distinguished from an opportunity which is not reasonable? The question has to be answered in the context of each case, keeping in view the object of this provision and the fundamental principle of natural justice subserved by it. As pointed out by this Court in State of Gujarat v. Teredesai (supra), "the entire object of supplying a copy of the report of the enquiring officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. If the enquiry officer had also made recommendations in the matter of punishment, that is likely to affect the mind of the punishing authority even with regard to penalty or punishment to be imposed on such officer. The requirement of reasonable opportunity, therefore would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the 'delinquent servant". Thus the broad test of "reasonable opportunity" is, whether in the given case, the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage, or, in the alternative, to show that the penalty proposed was much too harsh and disproportionate to the nature of the charge established against him.”

5. Learned counsel has also relied on judgment of this Court in ***Dr. Ved Parkash Pathak vs. State of Punjab, 2004(1) PLR 663***, wherein he has taken this Court to para 9 as under:

“9. In my opinion, there is no merit in the submission of the learned Deputy Advocate General. The procedure prescribed under Rules 8 and 9 of the Rules for holding enquiry which constitutes a condition precedent for imposition of any of the major penalties specified in Rule 5 of the Rules is mandatory and represents the statutory embodiment of the rules of natural justice and concept of reasonable opportunity enshrined in Article 311 of the Constitution. Therefore, the wholesale infraction of the procedure laid down by the rule-making authority has the effect of vitiating the order of punishment. A trivial violation of one or the other steps envisaged under Rules 8 and 9 of the Rules may not be sufficient to invalidate the order of punishment, but where the procedure is vitiated at every stage and results in prejudice to the delinquent, as has happened in the present case, there is no choice left with the Court except to nullify the order of punishment.”

6. He has also relied on the judgment of this Court in ***Hans Raj Gupta vs. State of Punjab, 1992 SCT 258***, wherein he has taken this Court to para 6 as under:

“6. Coming to the next point of violation of rules of natural justice, learned counsel took me through the enquiry report. As observed earlier, only Charanpal Singh Bawa was cited as a witness in the list of witnesses. Bhag Singh and Kishan Gopal, two officials of the Food and Supplies Department were also examined by the enquiry officer. Rules 8 (3) and (4) of the Punishment and Appeal Rules require that the list of witnesses and the list of reliance of documents is to be supplied to the delinquent officer. The purpose of this Rule is that the delinquent officer should not be taken by surprise and he should know as to who are the witnesses who are to appear against him and what documents will be produced to prove a particular charge. It is not clear from the record as to whether

any previous statements of these two witnesses were ever recorded. None of the previous statements, if any, which may have been recorded earlier were supplied to the petitioner. Examining of witnesses beyond the list of witnesses certainly prejudiced the petitioner. Even if it is assumed that there was no previous statement of Charanpal Singh Bawa, who had held the preliminary enquiry, the preliminary enquiry itself should be treated to be the previous statement of Charanpal Singh Bawa and it ought to have been supplied to the petitioner so that he should effectively cross-examine the said witness. As observed above, the report of the preliminary enquiry was not supplied to the petitioner. That being so, enquiry on this point also stands vitiated.”

7. He has also relied on the judgment of this Court in ***Gurdip Singh vs. State of Punjab and another, 2005(3) SCT 271***, wherein he has taken this Court to para 6 as under:

*“6. It is true that for imposition of a minor punishment, regular enquiry is not envisaged by the 1970 Rules. However, the Rules mandate issuance of a charge-sheet, consideration of the reply thereto and a discretion to the competent authority to hold an enquiry, if so required, to resolve some disputed questions of fact. Of course, the competent authority is not precluded from taking a decision only on consideration of reply to the charge-sheet. In my view, there is a basic distinction between the issuance of a charge-sheet and then to give an opportunity to an employee to tender his explanation on one hand and affording a post-decisional hearing to such an employee on the other hand. If, on the basis of the material on record, the competent authority has already formed an opinion with regard to commission of a misconduct by the petitioner, show-cause notice under Rule 10 of the Rules was merely a post-decisional hearing which does not satisfy the rules of natural justice as held by the Hon'ble Supreme Court in *Shri H.L. Trehan and others v. Union of India and others, 1989(1) SLR 7*. It is not disputed that the complaint was entertained and enquiry thereupon was conducted behind the back of the petitioner and no copy thereof was supplied to him. It is also*

evident that the said enquiry report is based upon statements of various persons, to whom the petitioner could never cross-examine.”

8. From perusal, this Court finds that departmental proceedings were initiated against the petitioner and when the enquiry officer summoned the petitioner, he appeared before the enquiry officer and informed the enquiry officer that he has not been provided copy of the charge-sheet. The petitioner was therefore provided with the copy of the charge-sheet whereafter he was required to submit a reply to the charge-sheet before the enquiry officer, which he has not done. Instead, his submission is that the reply could have been filed by him to the disciplinary authority alone i.e. Principal Secretary, and thereafter the Principal Secretary was required to examine his reply and then appoint the enquiry officer.
9. Rule 8 of the Rules provide that if there is a delinquency alleged against any government servant, the disciplinary authority shall issue a show cause and after considering the reply, may close the case against the concerned delinquent or may appoint enquiry officer or conduct the enquiry himself. However, the provision does not bar the disciplinary authority to issue a charge-sheet and appoint enquiry officer at the same time. In the judgment passed by the Supreme Court in the case of ***Sabir Hussain*** (supra), the Supreme Court has taken a similar view. The petitioner is not prevented from submitting a reply to the charge-sheet before the enquiry officer, as it is the enquiry officer who has to examine his defence. Therefore, the contention of the learned

counsel that the petitioner has been left defenceless is also found to be without any basis.

10. At this stage, merely because the charge-sheet was not served upon the petitioner, as alleged by the petitioner, before appointing of enquiry officer, it cannot be said that the contents of the charge-sheet are baseless, and therefore no case is made out to set aside the charge-sheet dated 10.05.2023 or the enquiry proceedings initiated on the basis of the charge-sheet dated 10.05.2023.
11. The judgments which have been cited by the petitioner are not relevant for the disposal of the issue raised by him in the present case.
12. In view thereof, writ petition is found to be wholly misconceived and is accordingly *dismissed*.

(SANJEEV PRAKASH SHARMA)
JUDGE

January 19, 2024
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |