

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CWP-1891-2024
Date of Decision: 30.01.2024

Mohinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rakesh Gupta, Advocate for the petitioner
Mr. Inderpreet Singh Kang, AAG, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking:

- i. setting aside of order dated 09.11.2021 (Annexure P-3) passed by respondent whereby petitioner has been dismissed from service;
- ii. setting aside of order dated 31.03.2022 (Annexure P-4) and order dated 14.08.2023 (Annexure P-5) whereby appeals of the petitioner have been dismissed; and
- iii. direction to the respondents to reinstate him.

2. The petitioner retired from Indian Army on 31.07.2010 after completing service of 15 years and 11 months. The petitioner on 19.10.2011 joined Punjab Police as Constable. The Senior Superintendent of Police,

Ludhiana (Rural) vide order dated 09.11.2021 (Annexure P-3) dismissed the petitioner from service. The petitioner unsuccessfully preferred appeal before the higher authorities.

3. Mr. Rakesh Gupta, learned counsel for the petitioner submits that petitioner has been dismissed from service without even issuing show cause notice and granting opportunity of personal hearing leaving aside compliance of mandate of Article 311(2) of the Constitution of India. The act of respondent amounts to gross violation of principles of natural justice.

4. Faced with this, learned State counsel concedes that impugned order was passed without issuing show cause notice and opportunity of hearing, however, he submits that if this Court sets aside impugned orders, the respondent-State be granted an opportunity to pass fresh order in accordance with law.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. A Five Judge Bench of Apex Court in ***State of Punjab v. E.R. Erry and Sobhag Rai Mehta, (1973) 1 SCC 120***, while dealing with the question of cut in the amount of pension and gratuity of employees had occasion to consider question of need of issuing show cause notice and opportunity of personal hearing. The Court has held that where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provisions, the principle of natural justice are required to be complied with. The Court has held:

“20. The question for our consideration is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show-cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi alteram partem applies. See: Province of Bombay v. Kusaldas S. Advani, [1950 SCC 551 : AIR 1950 SC 222 : 1950 SCR 621, 725] and Board of High School and Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta [AIR 1962 SC 1110 : 1962 Supp 3 SCR 36 : (1963) 2 SCJ 599] . With the proliferation of administrative decisions in the Welfare State it is now further recognised by courts both in England and in this country, (especially after the decision of House of Lords in Ridge v. Baldwin), that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights or interests, and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See: State of Orissa v. Dr (Ms) Binapani Das, [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 SCJ 339 : (1967) 2 LLJ 266] and in re: H.K. (An Infant). [(1967) 2 QBD 617] In the former case it was observed at p. 628 as follows:

“An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is

sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.”

These observations were made with reference to an authority which could be described as characteristically administrative. At p. 630 it was observed:

“It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.”

7. In ***Khem Chand Versus Union of India; 1958 SCR 1080*** while dealing with question of compliance of principles of natural justice, in case of

an inquiry against civil servant in terms of Article 311 of the Constitution of India, Hon'ble Supreme Court has concluded:

“18. In our judgment neither of the two views can be accepted as a completely correct exposition of the intendment of the provisions of Section 240(3) of the Government of India Act, 1935, now embodied in Article 311(2) of the Constitution. Indeed the learned Solicitor-General does not contend that this provision is confined to guaranteeing to the government servant an opportunity to be given to him only at the later stage of showing cause against the punishment proposed to be imposed on him. We think that the learned Solicitor-General is entirely right in not pressing for such a limited construction of the provisions under consideration. It is true that the provision does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says is that the government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the government servant should have the opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. Both these pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against the proposed punishment. If this is the correct meaning of the clause, as we think it is, what consequences follow? If it is open to the government servant under this provision to contend, if that be the fact, that he is not guilty of any misconduct then how can he take that plea unless he is told what misconduct is alleged against him? If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the

charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.

19. To summarise : the reasonable opportunity envisaged by the provision under consideration includes—

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively

proposes to inflict one of the three punishments and communicates the same to the government servant.”

8. A three Judge Bench of the Hon’ble Supreme Court in ***Sahara India (Firm) Lucknow Versus Commissioner of Income Tax, Centra-I and Another; (2008) 14 SCC 151***, while dealing with special audit under Income Tax Act, 1961 has held that order of special audit cannot be passed without granting opportunity of hearing. The relevant extracts of the said judgment read as under:-

“15. Rules of “natural justice” are not embodied rules. The phrase “natural justice” is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. As observed by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see ITO v. Madnani Engg. Works Ltd. (1979) 2 SCC 455.

16. In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664] R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of “natural justice”. Referring to several decisions, His Lordship observed thus: (SCC p. 666)

“Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b)

opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principles distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

17. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in *State of Orissa v. Dr. Binapani Dei* [AIR 1967 SC 1269 : (1967) 2 SCR 625] the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was

held that even an administrative order or decision in matters involving civil consequences, has to be made consistent with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

18. Recently, in Canara Bank v. V.K. Awasthy (2005) 6 SCC 321 the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights, the Court said: (SCC pp. 331-32, para 14)

“14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression ‘civil consequences’ encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.”

19. *Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.*

20. *We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha (1970) 2 SCC 458.*

21. *In Mohinder Singh Gill v. Chief Election Commr. (1978) 1 SCC 405 explaining as to what is meant by expression “civil consequence”, Krishna Iyer, J., speaking for the majority said: (SCC p. 440, para 66)*

“66. ... ‘Civil consequences’ undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

9. In the case in hand, the petitioner being part of Punjab Police was entitled to protection of Article 311(2) of the Constitution of India. As per second proviso to Article 311(2), the respondent may dispense with inquiry subject to compliance of conditions contemplated therein, however, respondent cannot dispense with fundamental requirement of show cause notice coupled with opportunity of personal hearing. The respondent, concededly, has passed impugned order without issuing show cause notice as well as granting opportunity of personal hearing to the petitioner. The case of the petitioner is squarely covered by afore-cited judgments.

10. In the wake of above discussions and findings, this Court is of the considered opinion that impugned order dated 09.11.2021 (Annexure P-3), order dated 31.03.2022 (Annexure P-4) and order dated 14.08.2023 (Annexure P-5) deserve to be set aside and accordingly are hereby set aside. The petitioner be reinstated henceforth.

11. It is made clear that petitioner for the intervening period shall not be entitled to salary on the principle of ‘no work no pay’. The respondent would be at liberty to pass fresh order after compliance of mandate of law.

12. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

30.01.2024
Mohit Kumar

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