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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.44 of 1999 (O&M)

Date of Decision: 22nd August, 2024

Ajaib Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Ms. Aashna Gill, Advocate for the petitioner.

Mr. Brijesh, AAG Punjab.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for setting aside the impugned charge-sheet dated 08.09.1995 (P-2); Inquiry report dated 13.05.1997 (P-4) and; the punishment order dated 11.12.1998 (P-6) whereby petitioner was dismissed from the post of Sub-Divisional Officer (for short “SDO”) by the Principal Secretary, Department of Irrigation, Government of Punjab (here-in-after referred as “the Punishing Authority”).

Petitioner has also sought issuance of a direction to the respondents to reinstate him in service with back wages and other consequential benefits.

2. Facts are not in dispute.

3. Petitioner was inducted as a Junior Engineer. Later on, he was promoted to the post of SDO on 22.02.1978. In November, 1985, he was posted as SDO, Mukerian Hydel Project Civil Construction Sub Division No.1, PSEB,



Talwara Township. On account of accident of one Sukhpal Bir Singh J.E., in-charge of the Store, the responsibility of the said Store was entrusted to one Surjit Singh J.E. Shri S.K. Dogra was deputed for handing over the charge to said Surjit Singh. Since 05.10.1991, double lock of the store was being operated by the aforesaid J.Es viz. Surjit Singh and S.K. Dogra.

4. Thereafter, theft of material took place in the said store on 10.02.1992. Mool Chand, Chowkidar reported the incident to Surjit Singh, J.E, who further passed on the information to the petitioner. On 11.02.1992, locks of the said store were opened by J.Es in the presence of the petitioner and considerable quantity of material was found to be missing. Matter was further brought to the notice of Executive Engineer In-charge and in this regard, a written complaint dated 11.02.1992 (P-1) was moved by both the J.Es and the petitioner before the concerned Police Station, Hajipur.

5. Investigation ensued which resulted into closure of the case. As a result, no action was taken against any of the officials.

6. Thereafter, a charge-sheet dated 08.09.1995 (P-2) containing allegations of embezzlement of material worth Rs.1,52,030/- was served upon the petitioner.

7. In response to the aforesaid charge-sheet, petitioner filed reply dated 29.09.1995, but the competent authority was not satisfied with the explanation and as a result thereof, Director, Hydrel Designs Organization was appointed as Inquiry Officer in the matter. The Inquiry Officer submitted his report dated 13.05.1997 (P-4); thereby proving the charges levelled against petitioner. A copy of inquiry report was supplied to the petitioner on 03.08.1997. Petitioner filed written response praying to conduct a fresh inquiry in his presence. His request was accepted by the Punishing Authority and the matter was remitted to the



Inquiry Officer for making a fresh report after associating the petitioner.

Thereafter, the Inquiry Officer insisted on taking action on the basis of his earlier inquiry report as the concerned officer had already been given full opportunity to defend himself.

Petitioner was given an opportunity of personal hearing by the Punishing Authority; but it was not convinced which resulted into passing of the impugned order of dismissal from service. Hence, present writ petition.

8. Learned counsel for the petitioner contended that the Inquiry Officer did not follow the procedure prescribed under Sub-rule 11 and 23(i) of Rule 8 the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short “the Rules of 1970”). Further contended that inquiry report has been passed on an assumption of guilt drawn on the fact that since petitioner failed to appear before the Inquiry Officer; therefore, he was proved to be guilty; hence, the impugned orders are not legally sustainable.

Also contends that impugned inquiry report along with consequential proceedings are in violation of sub-Rule 9 of the Rules of 1970 as despite the matter having been remitted to the Inquiry Officer for making a fresh inquiry, no fresh inquiry was conducted as per rule 8 (*ibid*).

9. On the other hand, learned State counsel opposed the prayer while submitting that petitioner embezzled material worth Rs.1,52,030/- in the form of bolts, pick axe, aluminum scrap etc.; therefore, he has been rightly held guilty and inflicted punishment of dismissal from service.

Also submitted that a number of notices were sent to the petitioner; however, he chose not to join the inquiry proceedings and as such, the Inquiry Officer had no option, except to proceed in the absence of petitioner; thus no



interference is warranted by this Court while exercising jurisdiction under Article 226 of the Constitution.

10. Heard learned counsel for the parties and perused the paper book.
11. It is not in dispute that petitioner was charge-sheeted under Rule 8 of the Rules of 1970 and gist of the charge can be recapitulated from the paper-book as under:-

“Shri Ajaib Singh, SDO is charged that while posted at Main Store, Power House-II, Hajipur, the following material valued at Rs.1,52,030.51 had been embezzled through his connivance:-

1. C- Bolts	837 Nos.
2. Pick Axe	430 Nos.
3. Stainless Steel Flat	1.420 MT
4. C-Bolts 25 mm	162 Nos.
5. Aluminum Scrap	650 Kgs.
6. Aluminum lead	520 kgs.
7. Weights 20 kg.	55 No.”

12. Rule 8 (*ibid*) deals with procedure for imposing major penalties and sub rules (11) & (23) thereof, being relevant are reproduced as under:-

“Rule 8.-Procedure for imposing major penalties

- (1) to (10)
- (11) *The inquiry authority shall if the Government employee fails to appear within the specified time or refuses or omits to plead, require the Officer to produce the evidence by which he proposes to prove the articles of charges, and shall adjourn the case to a later date not exceeding thirty days, after recording and that order the Government employee may for the purpose of preparing his defence.....*
- (12) to (22).....
- (23) (i) *After the conclusion of the inquiry, a report shall be prepared and it shall contain:-*

- (a) the articles of charge and the statement of the imputations of*



- misconduct or misbehaviour;*
- (b) the defence of the Government employee in respect of each article of charge:*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) the findings on each article of charge and the reasons therefore.*

Explanation:- *If in the opinion of the inquiry authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its finding on such article of charge.*

Proved that the findings on such article of charges shall not be recorded less the Government employee has either admitted the facts on which article of charge is based or has had a reasonable opportunity of defending himself against such articles of charge.

(ii).....”

From perusal of sub-rule (11) (*ibid*), it is apparently clear that the Inquiry Officer is under an obligation to “*require the Officer to produce the evidence by which he proposes to prove the articles of charges*”.

13. The penultimate paragraph of the inquiry report (P-4) is reproduced as under:-

“From the above it is clear that, it is not possible to call Sh. Ajaib Singh SDO in the ordinary manner. The only way to serve the necessary enquiry notice is through press. Accordingly, we have approached the Public Relations Deptt. to get the notice published in the leading newspapers i.e. The Tribune (English), The Tribune (Punjabi) and Indian Express which was published in the newspapers dated 05.04.1997, 04.04.1997 and 04.04.1997, respectively (Photo copies of the newspapers are attached for reference) so that Sh. Ajaib Singh SDO may be accorded a last



opportunity to attend the next enquiry on 07.05.1997.

It is for your information that on 07.05.1997 Sh. Ajaib Singh SDO did not attend the meeting which clearly indicates that he is guilty and the charges framed on him are proved to be true. Accordingly, it is recommended that ex-parte Departmental action as per rule may be taken against him.”

A bare perusal of the above extract clearly reveals that no evidence worth the name was led during the inquiry proceedings. The Inquiry Officer equated the “*absence of petitioner*” with “*proof*”. This Court is of the opinion that the approach of the Inquiry Officer is lopsided and indefensible in law.

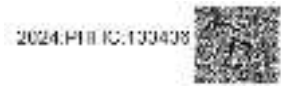
14. *A fortiori*, a caveat was issued by the Punishing Authority to the Inquiry Officer to hold inquiry proceedings afresh after associating the petitioner. However, that did not augur well with the Inquiry Officer and he reiterated his earlier stand by insisting that action be taken on the basis of his inquiry report.

15. In considered opinion of this Court, “*the absence*” cannot be treated as “*proof*”. The Inquiry Officer has failed to allow the Presenting Officer to lead evidence in terms of sub rule (11) of rule 8 of the rules of 1970. That apart, the inquiry officer has not adhered to the provisions of sub-rule 23 (*ibid*) and has failed to give findings on each article of charges and reasons thereof; thus, the orders impugned are found to be indefensible in law.

16. In view of the above, there is no option except, to allow the writ petition.

17. Ordered accordingly.

18. Consequently, the impugned inquiry report dated 13.05.1997 (P-4) and; the punishment order dated 11.12.1998 (P-6) are set aside. The matter is



remitted back to conduct a fresh inquiry in the matter on the basis of charge-sheet dated 08.09.1995 (P-2) and take a final decision, expeditiously.

19. A copy of the inquiry report as well as final decision taken by the competent authority, be supplied to the petitioner, at an appropriate stage, without any delay.

Pending application(s), if any, shall also stand disposed off.

22nd August, 2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No