

2024:PHHC:078840-DB



Neutral Citation No.

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

(107)

LPA-1381-2024 (O&M)

Decided on : 31.05.2024

Punjab State Warehousing Corporation & others

.....Appellant(s)

Versus

Dilbag Singh & others

.....Respondent(s)

CORAM : HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr. D.V.Sharma, Senior Advocate
with Ms.Shivani Sharma, Advocate and
Ms.Sunder Kumari, Advocate for the appellant (s).

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-3297-LPA-2024

1. Application for condoning the delay of 65 days in filing the appeal is allowed in view of the averments made in the application duly supported by affidavit of the official. Delay of 65 days in filing the appeal is hereby condoned.

2. CM stands disposed of.

LPA-1381-2024 (O&M)

3. Consideration in the present appeal is to the judgment dated 22.02.2024 passed by the Learned Single Judge in CWP-933-2016 whereby the innocuous relief was granted to the writ petitioner remanding the matter to the appellants to hold a fresh enquiry in accordance with law and the same to be concluded within 6 months from the date of receipt of

quashed the enquiry report dated 01.04.2013 (Annexure P-8) including the show cause notice dated 27.06.2013 (Annexure P-7) which had led to passing of the order of punishment of removal from service dated 17.09.2013 (Annexure P-10) and the order dated 17.11.2015 (Annexure P-13) passed by the Appellate Authority.

4. The reason which weighed with the Learned Single Judge was that the Enquiry Officer had relied upon the statement made by five persons, namely, Tanu Saini-T.A., Kuldeep Singh-T.A., Dev Raj-JE, Jaswant Singh-Helper and Ram Sharan, who had deposed in the preliminary enquiry and on the basis of the said depositions of witnesses who had never appeared during the impugned enquiry after the charge-sheet had been served, the Enquiry Officer had come to the conclusion that the charge stood proved. It was also noticed that names of those witnesses had not been mentioned in the charge-sheet and the petitioner never got opportunity as such to cross-examine the said witnesses in the regular enquiry. Thus, the Learned Single Judge relied upon the judgments of the Apex Court in **Nirmala J. Jhala Vs. State of Gujarat & others, 2013 (4) SCC 301** and **Roop Singh Negi Vs. Punjab National Bank & others, 2009 (2) SCC 570** to come to the conclusion that the evidence which was recorded in the preliminary enquiry cannot be used in a regular enquiry as the employees had never been associated with the same and opportunity to cross-examine the persons having not been given, principles of natural justice had been violated.

5. Mr.D.V.Sharma, Sr.Advocate, appearing for the appellant-Corporation, has vehemently submitted that in the charge-sheet which was served on 16.01.2012 (Annexure P-3), there was a mention of name of

Shri S.P.Joshi, District Manager, Ferozepur, who had to prove the charges and of Smt.Lakhwinder Kaur, Accounts Clerk, Head Office, who had to produce the relevant records. A perusal of the preliminary enquiry which was conducted (Annexure P-2) would go on to show that the said officer took into account the complaint by Ms.Tanu Saini, T.A., Kuldeep Singh, T.A. and Dev Raj, JE. Reference was also made to the statements of Dev Raj, JE and Jaswant Singh, Helper that on instructions of the charged employee, he had delivered 540 bags of rice in excess to M/s Star Food International and brought 540 empty bags from outside. The said officer has also recorded the statement of the charged employee who had denied all the allegations and taken the plea that the complaint had been given intentionally due to personal enmity. The officer, thus, was of the opinion that the Committee which he was heading had come to the conclusion that 540 bags of rice had been delivered to M/s Star Food International by the charged employee and by not making the entries of the price of the 1620 bags in the record, the misconduct stood proved.

6. Apparently, on the basis of the preliminary enquiry, the charge-sheet had been served on 16.01.2012 (Annexure P-3). The charge-sheet talks about the two officers, S.P.Joshi and Lakhwinder Kaur, Accounts Clerk alongwith the list of documents which refers to the letters of Tanu Saini, Kuldeep Singh and Dev Raj dated 02.12.2011 and also the enquiry report given by S.P.Joshi and the other Members constituting the Committee. The Enquiry Officer was thereafter appointed vide letter dated 27.07.2012 and he served notice upon the charged officer on 06.08.2012 (Annexure P-4) asking the Charged Officer to appear on 17.08.2012 when proceedings were firstly taken up and charges were read

out (Annexure P-6) and thereafter, the matter was fixed for 07.09.2012 and 21.09.2012. The only witness was S.P.Joshi, District Manager who had headed the preliminary enquiry Committee and his statement was recorded and he was duly cross-examined and the defence had been closed by the Presenting Officer. At that point of time, the Charged Officer said that he did not want to produce any defence witness and only wants to produce his defence statement dated 21.11.2012 which was produced on 23.11.2012. In his defence statement, it was specifically stated that Ms.Tanu Saini was one of the complainants whose signatures had been obtained on the rough calculations of counting at his back and could not be taken into account to prove the allegations leveled against him and that the physical verification report was signed by her and Kuldeep Singh, TA. He also took various other defences.

7. The Enquiry Officer, as noticed by the Learned Single Judge, relied upon the exhibits of Tanu Saini regarding the lifting of the bags and the version of Kuldeep Singh, Dev Raj including the statement of Jaswant Singh, Helper regarding the fact that empty bags were brought from outside. It was in such circumstances the Learned Single Judge came to the valid conclusion that without giving opportunity of cross-examining the persons on whose statements the Enquiry Officer was relying upon, the findings recorded were not tenable. If that is so, then the resultant order cannot but be sustained.

8. Apparently, after the enquiry report, the employee had filed reply to the show cause notice dated 27.06.2013 (Annexure P-7) wherein same plea was taken on 03.08.2013 (Annexure P-9) that the statement made by Ms.Tanu Saini who was one of the complainant could not be

taken into account for the allegations leveled against him. Regarding the statement of Jaswant Singh, Helper, it was mentioned that he was not produced as witness in the departmental proceedings and he could not be cross-examined.

9. It was always thus the case of the employee that all the witnesses who had been relied upon, opportunity had not been granted to cross-examine them. The Managing Director, vide order dated 17.09.2013 (Annexure P-10) heard the Charged Officer and came to the conclusion that opportunity of personal hearing had been afforded to him to lead his defence and enquiry report had been perused. Therefore, without examining this aspect that the witnesses examined in the preliminary enquiry had never appeared in the main enquiry, ordered the removal of the writ petitioner from service of the Corporation and after adjustment of the amount of Rs.5,94,000/- on the ground that there was misappropriation of 540 bags and the remaining amount be recovered from him by filing recovery suit.

10. In appeal filed also, allegations were raised against Tanu Saini who had taken over the physical charge and the fact that no opportunity had been given to the Charged Officer to cross-examine as she had never been produced by the Department in the witness box. The Appellate Authority, while dismissing the appeal on 17.11.2015 (Annexure P-13), also failed to take this aspect into consideration.

11. Thus, the above discussion would go on to show that at all stages the employee was dealing with the uphill task of trying to controvert the statement of the witnesses who were never produced before the Enquiry Officer and the employee had never been given an opportunity

to cross-examine them. It was in such circumstances the Learned Single Judge has set aside the enquiry report and the consequential orders and directed that the matter be looked into and a fresh enquiry be held in accordance with law by fixing a time period of 6 months. No objection can be taken to the said course of action as the consequential order would necessarily have to be quashed on account of the methodology adopted by the Enquiry Officer. The Apex Court in **Champaklal Chimanlal Shah Vs. Union of India, AIR 1964 SC 1854** elaborated the difference between the preliminary enquiry and the regular departmental enquiry. It was accordingly noticed that the preliminary enquiry usually makes out a prima-facie case against the servant concerned for framing charges against him and to show cause why disciplinary action be not taken against him and the same should not be confused with the departmental enquiry. The preliminary enquiry can be held *ex parte* and merely for the satisfaction of the Government an explanation can be taken from the servant concerned but he has no right to be heard. In the formal departmental enquiry both documentary and the oral evidence may be led in his defence, if he thinks necessary to do so and he has a right to cross examine the witnesses tendered against him.

12. Similarly, in ***Narayan Dattatraya Ramteerthakhar vs. State of Maharashtra and others 1997(1) SCC 299***, a three Judges Bench of the Apex Court has held that whether a preliminary enquiry was not properly conducted or was vitiated by the principle of natural justice was of no consequence once the regular departmental enquiry had been done.

13. Thus the preliminary enquiry is conducted only for the purposes whether the disciplinary enquiry is to be initiated against the employee and once a full fledged enquiry has been held, the earlier enquiry loses its importance. It is in such circumstances, the learned Single Judge had rightly relied upon the observations made in *Nirmala J.Jhala vs. State of Gujarat and others (supra)* wherein punishment of compulsory retirement has been imposed by the High Court while relying upon the statements made by the witnesses and the complainant in the preliminary enquiry before the Vigilance Officer which had been held behind the back of the employee and she had not been given any opportunity to cross examine either of them and the said order was accordingly set aside. Similarly, in the present case also, the five witnesses as such apart from the District Manager were never produced in the regular departmental enquiry but reliance was placed upon their statements by the Enquiry Officer.

14. Accordingly, in view of the above discussion, finding no merit in the present appeal, the same is hereby dismissed. All pending application(s) also stand dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

31.05.2024
Sailesh/ravinder

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	√Yes	No
Whether Reportable :	√Yes	No