

2025:PHHC:113756



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

RSA-849-1996
RESERVED ON: 09.07.2025
PRONOUNCED ON: 22.08.2025

STATE OF PUNJAB

...APPELLANT

VERSUS

MOHINDER PAUL

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Singh, AAG Punjab
for the appellant

Mr. Sanchit Punia, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. Prayer

The present appeal has been preferred against the judgment and decree dated 22.11.1995 passed by learned Additional District Judge, Gurdaspur whereby, the appeal filed by the respondent was allowed setting aside the well-reasoned judgement and decree of the Trial Court dated 26.04.1990.

2. Facts

The respondent was appointed as a Process Server at the court of Addl. Senior Sub-Judge, Batala and was served with a charge sheet dated 25.10.1983 whereby imputations of negligence in performance of duty and misconduct were levelled against the respondent. After a departmental Enquiry, the services of the respondent were terminated vide order dated

02.01.1985 passed by the Punishing authority qua which he filed an appeal against the appellate authority claiming that the termination was bad in law as he was neither given an opportunity to be heard nor was provided with evidentiary documents for preparation of a defence for submission before the deciding authority. He further claims that the Punjab Civil Services (Punishment and Appeal) Rules (hereinafter referred as Rules) were violated in the process of termination as he was adjudged on his past misconduct and was not given opportunity to seek aid from co-employees. The appellate authority upheld the decision of the punishing authority thereby leading the respondent to file a suit for declaration against the impugned order before the Ld. Trial Court, Batala which was dismissed vide order dated 26.04.1990. Dissatisfied with the dismissal, the Respondent preferred an appeal before the Addl. District Judge, Gurdaspur. The appeal was decided in favour of the respondent, with the learned appellate court setting aside the judgment of the Trial Court through its order dated 22.11.1995. The State of Punjab has now filed the present Regular Second Appeal before this Court, challenging the judgment dated 22.11.1995 rendered by the Additional District Judge, Gurdaspur.

3. Submissions
On behalf of appellant-State

Learned Counsel for the appellant-State vehemently argues that the judgement and decree passed by the Additional District Judge, Gurdaspur is based on conjectures and surmises as the appellate court has erred in its appreciation of facts by wrongly concluding that the punishing authority considered the respondent's previous misconduct as a basis for termination whereas, the past misconduct was referred to solely for the purpose of

determining the quantum of punishment and had no bearing on the decision to terminate the respondent's services. The Counsel further submits that the provisions of Rule 8.11 of the Punjab Civil Services (Punishment and Appeal) Rules, which mandates the Enquiry Officer to afford an opportunity to the delinquent official to inspect documents relied upon in evidence, are merely directory in nature and not mandatory. Therefore, no prejudice has been caused to the respondent in the disciplinary proceedings.

On these grounds, the learned Counsel prays that the impugned judgment dated 22.11.1995 passed by the Additional District Judge, Gurdaspur, be set aside and the judgment of the Trial Court dismissing the respondent's suit be upheld.

On behalf of respondent

Learned Counsel for the respondent submits that the termination of the respondent's services is vitiated by a gross abuse of disciplinary procedure and is in clear violation of the mandatory provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. It is contended that the respondent was not afforded an opportunity to seek assistance from co-employees during the course of the enquiry, in contravention of Rule 8.8 of the rules. Furthermore, the respondent was denied access to the documents relied upon in evidence, in violation of Rule 8.11 of the rules, thereby severely prejudicing his right to prepare an adequate defence.

It is further argued that the respondent was not granted a reasonable opportunity to defend himself against the charges levelled, which amounts to a blatant violation of the principles of natural justice, particularly *audi alteram partem*, which mandates that no person shall be condemned unheard. Additionally, the learned Counsel submits that the punishing authority, while passing the impugned termination order dated 02.01.1985, improperly took

into consideration the respondent's previous record of misconduct without furnishing any opportunity to the respondent to explain or rebut the same.

Moreover, it is asserted that the present Regular Second Appeal, filed after due adjudication by the First Appellate Court in favour of the respondent, is not only devoid of merit but also amounts to an unnecessary harassment of the respondent and a wasteful exercise of judicial time.

4. Analysis

Heard counsel for both parties.

Having perused the material placed on record, this Court is of the opinion that the core issues for determination in the present appeal are:

- Whether the termination of the respondent was in compliance with the principles of natural justice and statutory service rules?
- Whether the findings of the First Appellate Court suffer from any legal infirmity warranting interference under Section 100 of the Code Civil Procedure?

It is not disputed that the contentions submitted by the Appellant require legal scrutiny as they blatantly claim the judgement by the appellate court to be erroneous and illegal. The foremost contention advanced by the appellant-state is that the statutory framework was not violated as the procedure was directory and not mandatory in nature, cannot be sustained in law and attract rejection since the court is of the view that the statutes have been framed keeping in mind the principles of natural justice and procedural rights of employees of the State to ensure fairness and non compliance with the same is fatal to the entire enquiry proceedings. Reliance can be placed upon the Supreme Court judgement in "**K. I. SHEPHARD & ORS. VS. UNION OF INDIA & ORS. AIR 1988 SC 686**" wherein it was held that even administrative acts have to be in accordance with natural justice if they have

civil consequences. It was also held that natural justice has various facets and acting fairly is one of them.

Moreover, by virtue of Article 311(2) of the Constitution of India, the departmental enquiry had to be conducted in accordance with the rules of natural justice wherein it is a basic requirement that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee and the just procedure as laid down in the statutes concerned be complied with. From the facts and circumstances of the present case, it is evident that the actions of the Punishing authority consequently stripped the respondent of core procedural rights, i.e. to examine documents under Rule 8.11 of the Rules and to seek assistance of co-employees in departmental enquiry under Rule 8.8 of the Rules. Both of these rules have been reproduced as below:

Rule 8.11 of the Rules:

(11) The inquiring 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 an order that the Government employee may for the purpose of preparing his defence- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Rule 8.8 of the Rules:

The Government employee may take the assistance of any other Government employee [or a retired Government employee] to present the case on his behalf, but may not engage a legal practitioner, or the punishing authority having regard to the circumstances of the case, so permits.*

These rules are not mere technicalities but procedural pillars that ensure the inquiry is conducted in a fair, transparent, and legally sustainable manner. It is trite law that in disciplinary proceedings, the delinquent official must be afforded a reasonable and meaningful opportunity to defend himself. The assistance of a co-worker, where permitted by rules, is an integral part of that defence and denial of such assistance severely compromises the fairness of the process.

Further, under Rule 8.11 of the Rules, it is the duty of the Enquiry Officer to furnish copies of all documents that are proposed to be relied upon in support of the charges but the respondent was neither provided such documents, nor given an opportunity to inspect them infringing his right to an effective rebuttal. A delinquent official cannot be expected to contest allegations or cross-examine witnesses effectively unless the evidentiary material against him is disclosed in advance as has been unequivocally held by the Hon'ble Supreme Court in ***Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588***, that denial of supply of enquiry report or documents relied upon during disciplinary proceedings constitutes a violation of the principles of natural justice and renders the order of punishment invalid. Similarly, in ***State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364***, the Court emphasised that procedural safeguards under service rules must be scrupulously observed where the livelihood of an individual is at stake.

The effect of non-disclosure of relevant documents has

also been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, 5th Edn., p. 442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

While dealing with the second contention raised by the respondent pertaining to the previous mis-conduct, it clearly emerges from the record that while passing the impugned order of termination dated 02.01.1985, the punishing authority took into consideration the respondent's previous record of misconduct. Crucially, this was done without affording the respondent any notice or opportunity to explain or rebut such past allegations, which were neither the subject matter of the charge-sheet nor part of the formal enquiry proceedings.

The appellant seeks to justify this action by contending that the respondent's past record was referred to merely for the limited purpose of determining the quantum of punishment. However, upon perusal of the material placed on record, particularly paragraph 6 of the termination order

dated 02.01.1985, this Court finds that the reference to past misconduct was not incidental or peripheral. Rather, the observations made therein demonstrate that the punishing authority placed significant, if not exclusive, reliance on the respondent's past conduct as a substantive ground for the decision to terminate his services.

Thus, the present case is not one where the respondent's past record was used merely to fine-tune the severity of punishment amounting to a serious procedural irregularity which vitiates the enquiry and renders the termination order contrary to law. Accordingly, the impugned action of the punishing authority is found to be in flagrant violation of statutory rules, and established principles of administrative fairness. The disciplinary proceedings, as conducted, stand irredeemably tainted by procedural impropriety.

In light of the above the court is of the considered opinion that bearing in mind the aforesaid observations non-disclosure of documents having a potential to cause prejudice to the respondent in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

Coming to the question as to whether the findings of the First Appellate Court suffer from any legal infirmity warranting interference under Section 100 of the Code Civil Procedure, this Court is of the view that the findings rendered by the First Appellate Court do not suffer from any legal infirmity, perversity, or misapplication of law so as to warrant interference in the limited jurisdiction of a second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC). It is well-settled that the scope of interference under Section 100 CPC is confined strictly to cases where a substantial question of law arises from the judgment of the First Appellate Court. The

High Court does not function as a third court of facts, nor is it empowered to reappreciate evidence or substitute its own view on facts unless the findings are perverse, based on no evidence, or have been arrived at by ignoring settled principles of law.

In the case at hand, the Additional District Judge, Gurdaspur vide judgement dated 22.11.1995, has meticulously examined the entire record, duly considered the evidence on file, and correctly applied the relevant provisions of law including Rules 8.8 and 8.11 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, as well as constitutional principles under Article 311(2) and Article 14 of the Constitution of India whereby the termination order was found to be vitiated by procedural impropriety, including denial of opportunity to inspect evidence, refusal of assistance from co-employees during inquiry, and reliance on past misconduct without notice, each of which constitutes a clear breach of the principles of natural justice.

At the heart of the "rule of law" lies a foundational tenet that no individual shall be condemned without being afforded a reasonable opportunity to be heard. This principle, enshrined in the maxim *audi alteram partem*, forms the bedrock of procedural justice and finds recognition not merely in statutory or constitutional provisions, but in the very fabric of civilised jurisprudence across democratic societies. The right to a fair hearing is not a privilege, it is an indispensable facet of justice, which extends equally to citizens and non-citizens alike, particularly when punitive or adverse consequences are at stake. It is well-settled that procedural fairness is not an empty formality but a substantive safeguard, ensuring that the process of adjudication is conducted with transparency, impartiality, and respect for the rights of the parties involved.

This Court is mindful that when a person is deprived of the

opportunity to present their case effectively, the resulting decision however reasoned stands vitiated. Adjudication, in its true sense, must follow only after a party's case has been fully and fairly presented and considered. Any departure from this standard strikes at the very core of justice. Wherever there is a breach of such fairness be it in administrative, quasi-judicial, or judicial proceedings, the courts are not only empowered but duty-bound to intervene. To permit injustice to cloak itself in the garb of procedure is to erode public confidence in the justice system itself.

In view of the foregoing discussion, this Court finds no substantial question of law arising in the present second appeal. The judgment and decree passed by the Additional District Judge, Gurdaspur are based on sound reasoning and do not suffer from any legal infirmity.

5. Conclusion

Accordingly, the present regular second appeal is **dismissed**. The judgment and decree passed by the Additional District Judge, Gurdaspur are hereby upheld.

No order as to costs.

22.08.2025
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>