



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

CWP-14033-2025

Date of Decision:-28.05.2025

Satnam Singh

...Petitioner

Vs.

State of Punjab and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Pawan Kumar, Senior Advocate with
 Ms. Vidushi Kumar, Advocate and
 Mrs. Seema Rani, Advocate
 for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of charge-sheet dated 17.12.2020 issued under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short '**1970 Rules**') and subsequent proceedings.

2. The petitioner alleging misconduct was issued charge-sheet on 17.12.2020. An Inquiry Officer was appointed who submitted his report on 21.10.2022. The respondent vide communication dated 15.11.2022 supplied copy of inquiry report to the petitioner. He was at liberty to file reply to said report. The petitioner filed reply dated 27.12.2022. On his request, Chief Minister personally heard him on 16.10.2024. The respondent sent inquiry report to Punjab Public Service Commission (for short '**PPSC**') for its approval on 30.01.2025. The said

Commission raised few objections and respondent after removing objections again sent the file on 03.04.2025. The matter is pending before PPSC for approval.

3. Mr. Pawan Kumar, Senior Advocate submits that petitioner was never served show cause notice after completion of inquiry, thus, there was no opportunity with him to file response to punishment which may be awarded by respondent. The respondent was bound to issue show cause notice prior to sending the matter to PPSC. The authorities were also bound to supply copy of report of PPSC before passing any order. The act of respondent amounts to violation of prescribed procedure as well as principle of natural justice. A Division Bench of this Court in ***State of Punjab and others v. G.S. Sidhu (LPA No.383 of 2019, decided on 20.02.2019)*** while dismissing the LPA has clearly held that disciplinary authority must grant opportunity of hearing before passing order of punishment. The said judgment is based upon Apex Court judgment in ***S.N. Narula v. Union of India and Others, (2011) 4 SCC 591***.

4. *Per contra*, Mr. Aman Dhir, DAG, Punjab submits that petitioner was supplied copy of inquiry report and he was at liberty to file response which he filed. As per Rule 9 (4) of 1970 Rules, it is not necessary for the authority to give opportunity of making representation on the penalty proposed to be imposed. The respondent has sent the matter to PPSC and it is factually correct that there were objections by PPSC. The respondent has removed objections and again sent the file on 03.04.2025. As there is no provision to grant opportunity of hearing or issue show cause notice *qua* proposed penalty, the petitioner has not been

issued show cause notice *qua* proposed penalty. The Chief Minister has heard the petitioner on 16.10.2024.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. The conceded position emerging from the record is that the Inquiry Officer completed his inquiry on 21.10.2022 and submitted his report. The petitioner was supplied copy of said report on 15.11.2022 and he filed his response on 27.12.2022. On his request, Chief Minister heard him on 16.10.2024. He was supplied copy of inquiry report, however, he was never issued show cause notice *qua* proposed penalty. The respondent has sent inquiry report to PPSC on 30.01.2025. There were few objections of PPSC and respondent has again forwarded the matter to PPSC on 03.04.2025.

7. The respondent is claiming that there is no requirement of opportunity of hearing and is relying upon Rule 9(4) of 1970 Rules to contend that there is no requirement to issue show cause notice with respect to proposed penalty. Rule 9 is reproduced as below:-

“9. Action on the inquiry report – (1) The punishing authority, if it is not itself the inquiring authority, may for reason to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiring according to the provision of rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on

record is sufficient for the purpose.

(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in rule 10, make an order imposing such penalty;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.

(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 5 should be imposed on the Government employee, it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee.”

8. From the perusal of above cited Rule, it is evident that it does not provide that no notice shall be served upon Government Employee whereas it simply provides that it shall not be necessary to give opportunity of making representation on the penalty proposed to be imposed.

9. The petitioner is claiming that he should be issued show cause notice before awarding any punishment besides opportunity of personal hearing. The claim of the petitioner is misconceived. As per Article 311 of the Constitution of India, the punishment cannot be awarded without conducting inquiry except in exceptional circumstances. Article 311 was amended by Constitution (42nd Amendment) Act, 1976. By said amendment, the portion of Article 311(2) which required a reasonable opportunity of making representation on the proposed penalty was deleted and it was expressly provided that it is not necessary to give to a delinquent Government Servant any opportunity of making representation on the proposed penalty. Amended and unamended Article 311(2) of the Constitution of India in juxtaposition is reproduced as: -

Unamended Article 311(2)	Amended Article 311(2)
<i>No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:</i> <i>Provided that this clause shall not apply—</i> <i>(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;</i> <i>(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or</i> <i>(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.</i>	<i>No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;</i> <i>Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:</i> <i>Provided further that this clause shall not apply-</i> <i>(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or</i> <i>(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that</i>

	<i>authority in writing, it is not reasonably practicable to hold such inquiry; or</i> <i>(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.</i>
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10. A Constitution Bench in ***Union of India v. Tulsi Ram Patel, (1985) 3 SCC 398*** considered the scope and effect of aforesaid amendment. The Court clearly held that after said amendment, there is no requirement of granting opportunity of hearing on the proposed penalty. The relevant extracts of the judgment read as: -

“68. The question which then arises is, “Whether the Constitution (Forty-second Amendment) Act, 1976, which further amended the substituted clause (2) of Article 311 with effect from January 1, 1977, has made any change in the law?” The amendments made by this Act are that in clause (2) that portion which required a reasonable opportunity of making representation on the proposed penalty to be given to a government servant was deleted and in its place the first proviso was inserted, which expressly provides that it is not necessary to give to a delinquent government servant any opportunity of making representation on the proposed penalty. Does this affect the operation of the original proviso which, by the Constitution (Forty-second Amendment) Act, became the second proviso? Such obviously was not and could not have been the intention of Parliament. The opening words of the second proviso remain the same except that the word “further” was inserted after the word “provided”, because the original proviso by reason of the insertion of another proviso before it became the second proviso. It should be borne in mind that the show-cause notice at the punishment stage was originally there as a result of the interpretation placed by the Judicial Committee in Lall case [AIR 1948 PC 121] and by this Court in Khem Chand

case [AIR 1958 SC] upon the phrase “a reasonable opportunity of showing cause against the action proposed to be taken in regard to him”. Clause (2) as substituted by the Constitution (Fifteenth Amendment) Act merely reproduced the substance of what was held in Khem Chand case [AIR 1958 SC 300]. The words which originally found a place in clause (2), “a reasonable opportunity of showing cause against the action proposed to be taken in regard to him”, do not any more feature in clause (2). All that clause (2) now provides is an inquiry in which the government servant is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Clause (2) taken by itself even without the first proviso does not provide, expressly or impliedly, for any opportunity to make a representation against the proposed penalty. After the Constitution (Fifteenth Amendment) Act this second opportunity formed a separate part of clause (2), which part was deleted by the Constitution (Forty-second Amendment) Act. Thus, when the second proviso states in its opening words that “Provided further that this clause shall not apply”, it means that whatever safeguards are to be found in clause (2) are wholly taken away in a case where any of the three clauses of the second proviso is attracted. In this connection, the following observations of this Court in the case of Suresh Koshy George v. University of Kerala [AIR 1969 SC 198] (at pp. 326-27) are pertinent:

“There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course.”

In Associated Cement Companies Ltd. v. T.C. Shrivastava [1984 Supp SCC 87] this Court held that “neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary”. Since a right to such opportunity does not exist in law, it follows that the only right which the government servant had to make a representation on the proposed penalty was to be found in clause (2) of Article 311 prior to its amendment by the Constitution (Forty-second Amendment) Act. This right having been taken away by the Constitution (Forty-second Amendment) Act, there is no provision of law under which a government servant can claim this right.”

In view of afore-cited judgment, the claim of the petitioner that he should be issued show cause notice before imposing penalty cannot be countenanced. Rule 9.4 of 1970 Rules is in consonance with amended Article 311(2) of the Constitution of India. The Rule also provides that there is no requirement of show cause notice for imposing major penalty.

11. The respondent-State, during the course of hearing, produced office notings, communications with PPSC and proceedings before the Chief Minister. From the perusal of office notings, communications with PPSC and record of personal hearing, it is evident that the respondent has granted opportunity of personal hearing before final order which yet is to be passed. The respondent has referred the matter to PPSC for its concurrence. There were few objections of PPSC which the respondent has removed. The PPSC has not called the petitioner. The opinion of PPSC is still awaited. As per judgments cited by the petitioner, he should be supplied copy of opinion of PPSC and he should be further granted

opportunity to make representation. The respondent herein has granted opportunity of personal hearing before remitting the matter to PPSC. In such circumstances especially when the respondent, in the interest of justice, has heard the petitioner, it would be appropriate and in the fitness of things if respondent before passing final order supply copy of opinion of PPSC to the petitioner and grant him opportunity to submit his representation. There is no need to issue show cause notice in view of judgment of Supreme Court in *Tulsi Ram Patel (supra)*, however, in view of order of Apex Court in *S.N. Narula (supra)* and Division Bench of this Court in *G.S. Sidhu (supra)*, the respondent before passing final order would supply copy of opinion of PPSC and thereafter grant opportunity to the petitioner to file his representation. The petitioner may either be permitted to file written representation or be granted another opportunity of hearing by the competent authority.

12. The petition stands disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

28.05.2025

Prince Chawla

Whether Speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No