



(119)

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

LPA-1738-2011 (O&M)

Date of decision:- 08.05.2025

Dilshad Ali

...Appellant(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE**
HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Viren Sibal, Advocate,
 Mr. Satyam Sharda, Advocate,
 for the appellant.

Mr. Saurav Verma, Additional Advocate General, Punjab.

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SHEEL NAGU, C.J. (ORAL)

1. This appeal, essentially, challenges the order dated 30.05.2011 passed by learned Single Judge, whereby the petition i.e. CWP-13228-2009 filed by petitioner (appellant herein) was dismissed upholding the order dated 16.12.2008 (Annexure P-2) passed by Secretary to Government of Punjab, Department of Higher Education, Punjab removing the appellant from service on the ground of appellant having been convicted by the Trial Court vide judgement and order dated 28.04.2004 for the offences punishable u/s 406 and 498-A of Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for a period of six months with fine of Rs. 500/- and in case of default to further undergo rigorous imprisonment for seven days for the offence punishable under Section 406 IPC and sentenced to undergo rigorous imprisonment for a period of six months with a fine of Rs. 500/- and in case of default to further undergo rigorous imprisonment for seven days for the offence punishable under Section 498-A IPC and that he

had filed an appeal before the learned Additional Sessions Judge, Ludhiana, which was dismissed vide order dated 04.05.2004 releasing him on probation for a period of one year.

2. After hearing learned counsel for the rival parties, this Court is of the considered view that the only illegality reflected in the order dated 16.12.2008 (Annexure P-2) is that the same is bereft of reasons expressly disclosing the reasons for which disciplinary authority took the decision of removing the petitioner from service.

2.1 No inquiry was held on the following crucial aspects:-

(i) That whether in the given facts and circumstances and for the offences for which the appellant had suffered conviction, the appropriate punishment would be dismissal from service or any other lesser punishment.

(ii) That the order dated 16.12.2008 also does not reflect that any mind was applied by the disciplinary authority to the grounds raised in the appeal/representation dated 26.12.2008 filed by the appellant against the order dated 16.12.2008.

3. To the extent indicated above, the impugned order dated 16.12.2008 of removal from service is vitiated for being non-speaking.

4. The least that is expected of a disciplinary authority, while imposing major penalty, is to disclose that an inquiry was conducted (not a full scale inquiry, as contemplated by Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970), but one which satisfies the fundamental concept of reasonable opportunity coupled with the fact that the order should reflect that mind was applied to the relevant considerations as mentioned in petitioner's appeal/representation dated 26.12.2008.

5. The relevant considerations are the quantum of punishment and also the grounds raised by appellant in his appeal/representation dated 26.12.2008 filed against the impugned order dated 16.12.2008.

5.1 Similar view was taken by a Division Bench of Madhya Pradesh High Court in *Rajendra Prasad Chourey Vs Union of India through General Manager Security Paper Mill (M.P) and others* (Writ Petition No. 1605 of 2018 decided on 27.01.2023) which reads as under:-

“7. It is now well settled that even if the terminology used in Rule 19 did not expressly provide for grant of reasonable opportunity of being heard prior to passing of the penalty order, the principle of natural justice - audi alterem partem, has to be read into the said provision to prevent it from being sacrificed at the alter of [Article 14](#) and [16](#) of the Constitution of India.

8. The cut short of the above said discussion is that since the concept of enquiry is involved in Rule 19, it is obvious that the petitioner before being imposed penalty was required to be afforded opportunity of being heard on the question of quantum of penalty.

8.1 Cases may arise where conviction may be for less grave or more grave offence, but in both such cases, the orders of penalty under Rule 19 cannot be the same. In conviction for graver offence involving moral turpitude, any of the major penalties under Rule 11 of the CCS Rules would suffice. However for less grave offences which are outcome of heated discussion or where the element of mense rea is not palpable, lesser penalty may suffice. Thus, the disciplinary authority has to take into account these attending facts and circumstances while deciding the question of quantum of penalty after hearing delinquent employee.

9. For example, a government servant is sentenced to RI of 3 year/7 years and convicted for offence punishable under Sections 324/325 which are not one of the grave offences and the case is attended with extenuating circumstances of single blow or the assault being outcome of heated discussion or allegation alleged with the aid of Section 149/34 of the IPC or the rival parties being related to each other and having settled their scores during pendency of the criminal prosecution etc., the disciplinary authority has to apply its mind to all these and other extenuating circumstances so as to arrive at the appropriate penalty which can be inflicted upon the government servant under Rule 19 so as to remain within the bounds of proportionality.

9.1 The punishment under Rule 19 need not be always removal or dismissal but can be any of the lesser major penalties.

*10. **In view of the above discussion,** it is vivid that the concept of enquiry is inherently contained in Rule 19. An enquiry inheres the concept of affording of reasonable opportunity. Thus, the petitioner ought to have been afforded reasonable opportunity of responding to the question of quantum of penalty before the disciplinary authority passed the penalty.”*

5.2 The aforesaid view is bolstered by similar view of the Apex Court in *Khem Chand Vs Union of India and others* AIR 1958 SC 300.

6. Reasons are the heart-beat of every order passed not only by judicial or quasi-judicial, but also administrative authority. (Please see : *Kranti Associates Private Limited and another Vs Masood Ahmed Khan and others*

(2010) 9 SCC 496 and *Yadwinder Singh Vs Lakhi alias Lakhwinder Singh and another*, 2025 SCC Online SC 686).

7. Learned counsel for the appellant has relied upon various judgements rendered by Apex Court as well as the High Court of Madhya Pradesh at Jabalpur and this Court in *Pawan Kumar Vs State of Haryana*, 1996(4) SCC 17; *State Bank of India and another Vs Mohammed Abdul Rahim*, 2013(11) SCC 67; *Rajendra Prasad Chourey Vs Union of India through General Manager Security Paper Mill (M.P) and others* (Writ Petition No. 1605 of 2018 decided on 27.01.2023); *Hari Ram Vs Dakshin Haryana Bijli Vitran Nigam Ltd. and another*, 2006(2) S.C.T. 112; *Kulwant Singh Vs State of Punjab and others*, 2012(3) S.C.T. 587; *Navjit Singh Vs State of Punjab and others* (Writ Petition No. 8877 of 2015 decided on 03.07.2019) and *Kaur Singh and another Vs Punjab State Electricity Board and others*, 2007(4) S.C.T. 426.

8. On the contrary, learned State counsel has also relied upon various judgements of Apex Court in *Sushil Kumar Singhal Vs The Regional Manager, Punjab National Bank*, 2010(8) SCC 573; *Harichand Vs Director of School Education*, 1998(2) SCC 383; *Punjab Water Supply and Sewerage Board and another Vs Ram Sajivan and another*, 2007(9) SCC 86; *Deputy Director of Collegiate Edu. (Admn.), Madras Vs S. Nagoor Meera*, 1995(3) SCC 377 and *State Bank of India and another Vs Mohammed Abdul Rahim*, 2013(11) SCC 67.

9. This Court, therefore, without entering into the merits of the allegations, as the jurisdiction of Writ Court is limited to the decision making process and not to the decision itself, deems it appropriate to set aside the order of removal from service dated 16.12.2008 only on the ground that the competent/disciplinary authority has not passed a speaking order.

10. The appeal is, accordingly, allowed to the extent indicated below:-

- (i) The impugned order dated 16.12.2008 (Annexure P-2) is set aside.

- (ii) Since the appellant has already attained the age of superannuation, the question of passing any order on the aspect of his re-instatement or otherwise does not arise.
- (iii) The competent/disciplinary authority is at liberty to re-consider the matter in the light of the aforesaid after affording reasonable opportunity to the appellant and thereafter pass a speaking order.
- (iv) This Court refrains from passing any order as regards the consequential benefits which may flow out of this order since the entitlement or otherwise of the same shall depend upon the order that is passed by the competent authority while executing this order.

11. This Court hastens to add that since we have not entered into the merits of the allegations and have only dealt with the aspect of the decision making process, the competent/disciplinary authority is free to take its own view in the given facts and circumstances while passing a speaking order, but in accordance with law.

12. The competent/disciplinary authority, while applying its mind afresh in passing a speaking order, shall not be influenced by the fact of the appellant having approached this Court and this Court having passed the present order.

13. There is no order as to costs.

(SHEEL NAGU)
CHIEF JUSTICE

(SUMEET GOEL)
JUDGE

08.05.2025
Amodh Sharma

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