

Mehar Singh, Sarpanch v. The Director of Panchayats etc. (Tuli, J.)

which has not found favour with us. The learned Judge had observed that in view of his finding on that point he was not dealing with the other contentions of the writ-petitioner. That being the case, we allow Khem Singh's appeal, set aside the judgment and order of the learned Single Judge on the point which has been disposed of therein, and direct that the writ petition shall now be heard by any Single Bench on the other contentions sought to be raised by the writ-petitioner-respondents. We leave the parties in all the three appeals to bear their own costs throughout.

B. S. G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MEHAR SINGH, SARPANCH,—Petitioner.

versus

THE DIRECTOR OF PANCHAYATS ETC.,—Respondents.

**Civil Writ No. 4692 of 1971.**

March 8, 1972.

*Punjab Gram Panchayat Act (IV of 1953)—Section 102(2)—Enquiry under—Enquiry Officer submitting report—Director Panchayats without taking any disciplinary action ordering fresh inquiry on the same charges—Such fresh inquiry—Whether barred.*

*Held*, that a disciplinary proceeding is not complete till some action is taken by the punishing authority on the basis of the Enquiry Officer's report. The mere submission of the report by the Enquiry Officer is not enough to hold that the enquiry is complete. Until disciplinary action is taken by the punishing authority, either by imposing punishment or by exonerating the person proceeded against, another inquiry can be held. Hence where an inquiry is held against a sarpanch under section 102(2) of Punjab Gram Panchayat Act, 1952, and the Enquiry Officer submits his report but the Director of Panchayat is not satisfied with the enquiry, he can order a fresh inquiry on the same charges. Such an inquiry is not barred under section 102(2) of the Act. The likely harassment by successive inquiries is not conclusive to hold that the Director is not competent to hold the second inquiry.

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued restraining respondent No. 4 from conducting the enquiry in pursuance of the orders of respondent No. 1, dated 8th September, 1971 intimated by respondent No. 4, dated 21st October, 1971 (Annexure 'C').*

R. N. Narula, Advocate, for the petitioners.

P. K. Gulati, Advocate for Advocate-General (Punjab) for Respondents Nos. 1 to 4.

M. R. Agnihotri, Advocate for Ashok Bhan, Advocate for Respondents Nos. 5 and 6.

### JUDGMENT

TULLI, J.—The petitioner was elected as Sarpanch of Gram Panchayat, Chutehra, in December, 1963. There were certain complaints against him on the basis of which the Director of Panchayats ordered an enquiry under section 102(2) of the Punjab Gram Panchayat Act, 1952, hereinafter called 'the Act', against the petitioner on July 3, 1970. In pursuance of that order, respondent 2 issued a charge-sheet to the petitioner on September 10, 1970, in which seven charges were stated. The petitioner was directed to submit his reply to the charge-sheet to the Sub-Divisional Officer (Civil) Patiala, who had been appointed as Enquiry Officer, within ten days of the receipt of the charge-sheet. An enquiry was held by the Sub-Divisional Officer who submitted his report to the Director of Panchayats through the Deputy Commissioner. Before action could be taken on the report of the Enquiry Officer by the Director of Panchayats, Smt. Gulab Kaur and Shri Ram Chand, Panches, submitted a memorandum to him in which various allegations were made against the petitioner. The Director of Panchayats then directed another enquiry to be held against the petitioner on the charges previously communicated to him by the Deputy Commissioner, Patiala, and also the fresh charges levelled against him on the basis of the allegations received from Smt. Gulab Kaur and Shri Ram Chand. Shri Hardip Singh, Divisional Agricultural Production Officer, Patiala, was appointed Enquiry Officer who issued the charge-sheet to the petitioner, copy of which is Annexure 'C—1' to the writ petition. This charge-sheet was issued to the petitioner on October 21, 1971, with a direction that he should file his reply in writing within ten days from the date of receipt of the charge-sheet and that the enquiry would be held at his village on November 11, 1971, at 10.30 a.m. The petitioner has filed this petition challenging the competence of the Director of Panchayats to hold a second enquiry against him. Written statements have been filed on behalf of respondents 1, 2, 4 and 5, in which the holding of the second enquiry has been justified.

(2) The learned counsel for the petitioner submits that the Enquiry Officer, who held the enquiry into the seven charges previously, had exonerated the petitioner of all the charges except one, and on those charges no second enquiry could be held. He has referred to the provisions of section 102 of the Act and has laid emphasis on the words "after such enquiry" in sub-section (2) thereof. The argument is that only one enquiry is contemplated on the basis of which the Government has to take action and no further enquiry can be made. I regret I cannot agree with this submission. Unless action is taken on the report of the Enquiry Officer, disciplinary proceedings cannot be said to have been completed and, until disciplinary action was taken either by imposing punishment or by exonerating the petitioner of those charges, another enquiry could be held if the Director of Panchayats was not satisfied with the first enquiry. The argument that by successive enquiries unnecessary harassment will be caused to the Sarpanch against whom the enquiries are ordered, is not conclusive to hold that it is not competent to the Director of Panchayats to hold a second enquiry. In various disciplinary proceedings and criminal cases more than one trial is possible particularly when a retrial is ordered by the Court of appeal or revision. If the power is abused by the officer, the exercise of that power will be struck down, but it cannot be held that there is no power in the Director of Panchayats to hold a fresh enquiry if he is not satisfied with the first enquiry. In the present case it has been stated in the return that the Enquiry Officer had not examined the records of the Panchayat, which were necessary to be examined in order to arrive at the truth or otherwise of the charges which had been levelled against the petitioner. Moreover, further allegations were made against the petitioner which, in the opinion of the Director of Panchayats, required to be enquired into. He, therefore, ordered a fresh enquiry on all the charges including the earlier seven charges. The argument that the petitioner had been exonerated of six charges out of seven by the Enquiry Officer is not tenable, because the Enquiry Officer merely made his report in which he gave his findings, and it was for the Director of Panchayats to accept or not to accept those findings. Until the Director of Panchayats accepted those findings by passing an order to that effect, it cannot be said that the petitioner had been exonerated of those six charges. The exoneration has to be made by the punishing authority and not by the Enquiry Officer. Admittedly no order of exoneration was passed by the Director of Panchayats on the basis of the Enquiry Officer's report in this case, and, therefore, it cannot

be said that the earlier enquiry against the petitioner was complete which debarred the holding of a second enquiry.

(3) The learned counsel for the petitioner has relied on certain observations made by a Division Bench of the Mysore High Court in *C. D. Prabhu v. The Deputy Commissioner South Kanara District Bangalore and another* (1), in support of his submission. In that case disciplinary proceedings were taken against 'P' who was a Second Division Clerk on the basis of certain charges. The enquiry was held on the basis of the enquiry report a show-cause notice was issued to 'P' on May 30, 1959, in which he was intimated that it was proposed to impose a punishment in the form of stoppage of five increments, and that if he had any representation to make, he should do so. 'P' made a representation in reply to the show-cause notice on June 16, 1959, and he received no further communication in that behalf from the punishing authority. A fresh enquiry was ordered against him on November 26, 1960, and after the completion of that enquiry by the Assistant Commissioner, 'P' was dismissed from service and that punishment was challenged in the writ petition. On these facts the learned Judges observed as under:—

“If it could be said that the second disciplinary proceeding also pertains to the charges which formed the subject-matter of the first disciplinary proceeding, it is obvious that the commencement of the second disciplinary proceeding was plainly impermissible. If a disciplinary proceeding is commenced with respect to an accusation and that disciplinary proceeding has reached the stage when an enquiry has been completed, that disciplinary proceeding must be continued and must end either in the imposition of a punishment or in exoneration. If that disciplinary proceeding has not been terminated in that way, the commencement of another disciplinary proceeding with respect to those charges is plainly incompetent.”

With great respect to the learned Judges, I am unable to agree with the observations made by them. The disciplinary proceeding is not complete till some action is taken by the punishing authority on the basis of the Enquiry Officer's report. The mere submission of the report by the Enquiry Officer is not enough to hold that the enquiry is complete. Cases can be visualised in which the punishing authority after perusal of the enquiry report comes to the conclusion

(1) 1969 S.L.R. 362.

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that the enquiry was not fair or complete or that proper opportunity had not been afforded to one party or the other, in such circumstances it cannot be held that another enquiry will not be competent. However, on facts the Mysore case is distinguishable. In that case the punishing authority had accepted the Enquiry Officer's report and had issued a show-cause notice to 'P' proposing the punishment to be inflicted on him. But after receiving his reply to the show-cause notice, no further order was passed, which led to the belief that his explanation had been accepted and he was exonerated. No such thing has happened in the present case.

(4) The learned counsel has then referred to a judgment of a Division Bench of the Rajasthan High Court in *Dwarkachand v. State of Rajasthan* (2). In that case 'D' was a clerk working in Tehsil Sanchore in 1954. A report was made by the Tahsildar Sanchore on August 30, 1954, that 'D' was alleged to have accepted illegal gratification from Kaluram Khatri of Sanchore. 'D' was arrested by the Deputy Superintendent of Police (Anti-Corruption Branch) and the matter was referred to the Collector on August 31, 1954, for sanction to prosecute 'D'. The Collector held a departmental enquiry immediately after the report of the Tahsildar reached him, which was in accordance with a circular of the Rajasthan Government wherein it was provided that a departmental enquiry should be first held as expeditiously as possible and after the result of that enquiry the sanction for prosecution should be accorded only in such cases in which there is reasonable chance of conviction. As a result of the departmental enquiry held by the Collector, he came to the conclusion on July 19, 1955, that no case had been made out against 'D'. The Collector, therefore, reinstated him and refused to sanction prosecution. Thereafter the matter was taken up by the Anti-Corruption Officer, Jaipur, and the Collector was asked, for various reasons, to reopen the matter and hold a fresh departmental enquiry. Thereupon the Collector framed a charge against 'D' on July 6, 1956, under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1950, and asked 'D' to give his explanation, to cross-examine witnesses, and to produce defence. The writ petition was filed by 'D' to challenge the holding of the second departmental enquiry. The learned Judges held that there was no provision for a second enquiry in such circumstances in any of the Civil Service Rules, nor was there any provision in those rules where under the punishing authority could review his previous order of exoneration.

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(2) A.I.R. 1958 Raj. 38.

(5) If I may say so, with respect, I whole-heartedly agree with the observations of the learned Judges in that case, but they are not applicable to the facts of the present case. In that case the punishing authority had not only held the enquiry but had also taken action on the basis of the enquiry report by exonerating 'D' and reinstating him in service, so that the disciplinary proceedings were complete. In the instant case only the Enquiry Officer submitted his report on which action had yet to be taken by the Director of Panchayats and before taking action on that report, the Director came to the conclusion that the enquiry was not complete inasmuch as the Enquiry Officer had not examined all the relevant evidence particularly the records of the Panchayat and, therefore, a fuller enquiry was necessary. In these circumstances, the law laid down by the learned Judges of the Rajasthan High Court does not apply to the present case and, therefore, the learned counsel for the petitioner can derive no assistance from the reform.

(6) Lastly the learned counsel for the petitioner submitted that the petitioner should have been afforded an opportunity of showing cause against the holding of the second enquiry since in the first enquiry report the petitioner had been exonerated on six charges out of seven. I find no substance in this submission. While ordering the second enquiry, the Director of Panchayats was acting in an administrative capacity and not in a quasi-judicial capacity. He had only to satisfy himself whether a case for enquiry had been made out or not. It was not that the petitioner was being condemned unheard. Only an enquiry was being ordered against him, and he would have been afforded full opportunity to meet the charges levelled against him at the enquiry, and the witnesses against him would have been examined in his presence, affording him a right to cross-examine them, and an opportunity of producing his defence. That stage had yet to arrive. Only the charge-sheet had been issued to the petitioner when he filed the present writ petition. As I have held above, the mere issuance of the second charge-sheet in order to hold a fresh enquiry cannot be said to have afforded a cause of action to the petitioner for filing this writ petition as the second enquiry ordered by the Director of Panchayats was not against any law or without jurisdiction.

(7) For the reasons given above, I find no merit in this petition, which is dismissed, but as the point was not free from difficulty, the parties are left to bear their own costs.

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B.S.G.