Before M. Jeyapaul, J.

MANJIT SINGH,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

CWP No. 6552 of 1990

22nd November, 2010

Constitution of India, 1950—Art. 226—Punjab Civil Services (Punishment and Appeal) Rules, 1952—Rl.4—Enquiry Officer finding Driver guilty of charges of rash and negligent in driving bus at a high speed—Disciplinary authority accepting report of inquiry officer and awarding punishment restricting salary for suspension period to that of amount which petitioner drawn towards subsistence allowance—Such a penalty is not contemplated under Rl.4 of 1952 Rules—No opportunity given to petitioner to put forth his defence—Order passed by Disciplinary Authority is arbitrary, against 1952 Rules and not sustainable in law—Petition allowed, order of Disciplinary Authority quashed while holding petitioner entitled to remaining amount of salary during period of suspension.

Held, that the entire inquiry as conducted against the petitioner without giving an opportunity to the petitioner as to the documents relied upon by the Enquiry Officer is completely vitiated. The Enquiry Officer having collected certain material behind the back of the delinquent relied upon the same and found the petitioner guilty of the charge. The Disciplinary Authority cannot blindly go by the finding of the Inquiry Officer. Having weighed the report submitted by the Enquiry Officer, he is supposed to impose penalty only for good and sufficient reasons. Therefore, the order passed by the Disciplinary Authority of course based on the finding given by the Enquiry Officer shall reflect the good and sufficient reasons which weighed in his mind to give a decision that the delinquent was found guilty of the charge framed as against him. But, unfortunately, the order passed by the Disciplinary Authority is found to be cryptic and it does not reflect good and sufficient reason which should form part of the final order passed by him. On this ground also, the order passed by the Disciplinary Authority does not stand legal scrutiny.

(Paras 13 & 14)

Further held, that the respondents have failed to pass a separate order giving an opportunity to the petitioner regarding withholding the payment in excess of the subsistence allowance already paid to him during the period of suspension. Therefore, the second limb of the penalty which is not contemplated under Rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 passed by the Disciplinary Authority in the order under challenge with respect to withholding of the payment in excess of the subsistence allowance already paid during the period of suspension without affording any opportunity to the petitioner is bad in law. The order under challenge has been passed by the Disciplinary Authority arbitrarily without giving sufficient opportunity to the petitioner and also as against the Rules in vague. Therefore, the impugned order cannot be sustained.

(Paras 17 & 18)

Gopi Chand, Advocate, *for the petitioner.*

Sukhvinder Singh Nara, Senior DAG Haryana, *for the respondent-State.*

M. JEYAPAUL, J. (ORAL)

CM No. 15203 of 2010

Heard.

The application is allowed. Written statement on behalf of respondents No. 1 to 3 is taken on record.

Application stands disposed of.

C.W.P. No. 6552 of 1990

(1) Aggrieved by the punishment imposed by the Disciplinary Authority directing recovery of a sum of Rs. 12,000 in 30 equal installments at the rate of Rs. 400 per month and also restricting the wages of the petitioner for the period of suspension, the petitioner has straight away filed the present writ petition.

(2) The petitioner was working as a Driver in the Haryana Roadways, Ambala, which is an undertaking of the first respondent being managed and controlled by the respondents No. 2 and 3.

(3) During the course of employment of the petitioner, an accident took place on 23rd November, 1986 near Bhambholi. The petitioner was charged as follows :—

> *"You Shri Manjit Singh driver No. 5 were on duty with vehicle No. 2369 on 23rd November, 1986 on Jagadhri—Ambala route. You were driving the vehicle rashly and negligently at a high speed. When your vehicle reached near a place Bhamboli, a Tractor-trolley was going ahead of your vehicle. You struck your vehicle behind the trolley due to which the vehicle dashed against a KEEKAR tree on the right side whereas the trolley was turned turtle causing injuries to the persons sitting on it. Vehicle was damaged on which an expenditure to the tune of Rs. 12,320–43 Ps was incurred.*
>
> *In this way you by driving your vehicle rashly and negligently at a high speed caused the accident for which the Govt. had to incur a financial loss. It was due to your carelessness and indiscipline in the discharge of the duty".*

(4) The substance of the charge would disclose two major allegations as against the petitioner ; first is that he was rash and negligent in driving the vehicle at a high speed ; and second is that he caused damage to the vehicle of the first respondent and thereby the first respondent had to incur a sum of Rs. 12,320-43 to repair the vehicle.

(5) The Inspector attached to the Haryana Roadways was examined as PW1 and an official who was on Checking Duty was examined as PW2 before the Enquiry Officer. The Enquiry Officer having gone through the material produced in the background of the evidence of PW1 and PW2 returned a finding that the petitioner drove the vehicle in a rash and negligent manner at a high speed and caused the accident and as a result of which the first respondent incurred a loss of Rs. 12,320-43.

(6) The Disciplinary Authority having gone through the finding of the Enquiry Officer and after giving final opportunity to the petitioner, found the petitioner guilty and awarded the aforesaid punishment to the petitioner.

(7) The learned counsel appearing for the petitioner would contend as follows :—

The charge framed as assigned to the petitioner was defective inasmuch as the details of the damages and the expenditure spent by the respondents were not specifically shown. The documents which were not produced during the course of inquiry were relied upon by the Enquiry Officer behind the back of the petitioner. The order passed by the Disciplinary Authority is not a speaking order. It is a case of finding the petitioner guilty in the absence of any evidence before the Enquiry Officer. Neither rash and negligent driving nor loss suffered by the respondents were established by the respondents before the Enquiry Officer. The punishment of restricting the salary to that of the subsistence allowance given by the respondents to the petitioner during the suspension period does not stand legal scrutiny as separate inquiry ought to have been conducted.

(8) The learned Senior Deputy Advocate General appearing for the respondents would submit as follows :—

The petitioner chose not to exhaust the alternative remedy of appeal available under the statute. The evidence of PW1 and PW2 would go to show that the petitioner was negligent in driving the vehicle and as a result of which the accident took place. The details of the damages and the expenditure spent by the respondents need not be shown in the charge framed against the petitioner. The Disciplinary Authority passed the order only after considering the entire report submitted by the Enquiry Officer. The Disciplinary Authority is well within the powers to pass an order restricting the salary of the petitioner during the period of suspension, when imposing an order of punishment for the charges proved against the petitioner.

(9) The charge would contain only the summary of allegations so as to enable the delinquent to understand what actually has been alleged against him in order to properly defend himself. In other words, the delinquent should understand on a perusal of the charge framed as against him what actually was the allegation put as against him in order to set up his defence.

The materials which is required for the purpose of leading evidence shall not be crowded in the charge framed as against a delinquent. In other words, the evidence part of the case need not to be projected in the charge framed as against a delinquent.

(10) On a careful perusal of the charge as framed against the petitioner, it is found that the petitioner has been clearly put on notice that he had been rash and negligent in driving the vehicle at a high speed and caused the accident. Secondly, it has also been made clear to him that the respondents had to incur an expenditure of Rs. 12,320-43 to salvage the vehicle which met with an accident on account of rash and negligent driving of the petitioner. These two limbs of the charge are found to be in order. Therefore, the submission made by the learned counsel appearing for the petitioner that the charge is found to be defective does not appeal to me.

(11) The charge would read that the respondents had to incur a sum of Rs. 12,320-43 to repair the vehicle which got damaged on account of accident. In all fairness, the respondents should have examined the Workshop Officer, who actually assessed the damage and should have also produced the documents relevant to the expenditure incurred by the respondent for repairing the damaged vehicle. The inquiry report would read that the damage could be assessed by the Workshop Officer. The expenditure details which were not produced before the Enquiry Officer or shown to the petitioner for defending himself had been unfortunately relied upon by the Enquiry Officer. The Enquiry Officer is not supposed to collect the material from the delinquent and relied upon the same to give a finding that the delinquent was found guilty. A delinquent is entitled to an opportunity to put forth his defence as to the materials relied upon by the Enquiry Officer.

(12) In this context, it is relevant to refer to the following observations made by the Hon'ble Supreme Court in the **State of Assam and another** *versus* **Mahendra Kumar Das and others, (1)** :—

> "22. ....But, we have to state that it is highly improper for an Enquiry Officer during the conduct of an enquiry to attempt to collect any materials from outside sources and not make that information, so collected, available to the delinquent officer and further make use of the same in the enquiry proceedings. There may also be cases where a very clever and astute Enquiry Officer

(1) 1970 S.L.R. 444

may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusions recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the Enquiry Officer, without its having been disclosed to the delinquent officer, it can be stated that the enquiry proceedings are vitiated."

(13) Applying the ratio laid down by the Hon'ble Supreme Court in the above decision, I find that the entire inquiry as conducted against the petitioner without giving an opportunity to the petitioner as to the documents relied upon by the Enquiry Officer is completely vitiated.

(14) As already pointed out by me the Enquiry Officer having collected certain material behind the back of the delinquent relied upon the same and found the petitioner guilty of the charge. The Disciplinary Authority cannot blindly go by the finding of the Inquiry Officer. Having weighed the report submitted by the Enquiry Officer, he is supposed to impose penalty only for good and sufficient reasons. Therefore, the order passed by the Disciplinary Authority of course based on the finding given by the Enquiry Officer shall reflect the good and sufficient reasons which weighed in his mind to give a decision that the delinquent was found guilty of the charge framed as against him. But, unfortunately, the order passed by the Disciplinary Authority is found to be cryptic and it does not reflect good and sufficient reason which should form part of the final order passed by him. On this ground also, the order passed by the Disciplinary Authority does not stand legal scrutiny.

(15) As already pointed out by me there are two limbs in the charge framed as against the petitioner/delinquent. In all fairness, the department should have examined at least one of the eye-witnesses to the accident to establish that the petitioner was rash and negligent in his driving. Likewise, the department should have examined the official concerned *qua* the damage and the official concerned who made the expenditure to salvage the vehicle. But, in this case very strangely PW1 Inspector of the Haryana Roadways and PW2 official who was on checking duty alone were examined on the side of the department. Admittedly, both of them reached the scene of accident only after accident had taken place. So, it is clear that both of them

were not the eye-witnesses to the accident. To say the least, they are not at all competent to speak about the alleged rash and negligent driving of the petitioner or the actual loss suffered by the department on account of the damage caused to the vehicle. The hearsay evidence of PW1 and PW2 had been taken serious note of by the Enquiry Officer to render a finding that the petitioner was guilty of the charge.

(16) The Disciplinary Authority while passing the impugned order restricted the salary for the suspension period to that of the amount which the petitioner had already drawn towards subsistence allowance. The Disciplinary Authority for the charges established could impose only the penalty contemplated under Rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. Censure, withholding of increment or promotion, reduction to lower rank, recovery from pay towards pecuniary loss caused to the Government, suspension, removal from the service and dismissal from the service alone can be imposed as a penalty by the Disciplinary Authority as per the aforesaid provisions of the aforesaid Rules. Restricting the salary of the delinquent to that of the amount already drawn towards subsistence allowance during the period of suspension period is not one of the penalties contemplated under the aforesaid Rules. The Hon'ble Supreme Court in **Shri B.D. Gupta** *versus* **State of Haryana (2),** has held referring to the relevant order passed by the Government under Rule 7.3 of the Punjab Civil Services Rules (Vol.-I, Part-I) that before passing any order under Rule 7(3) withholding the pay of delinquent in excess of the subsistence allowance he has already received during the period of suspension shall give an opportunity to the delinquent to make his representation.

(17) The respondents have failed to pass a separate order giving an opportunity to the petitioner regarding withholding the payment in excess of the subsistence allowance already paid to him during the period of suspension. Therefore, the second limb of the panalty which is not contemplated under Rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 passed by the Disciplinary Authority in the order under challenge with respect to withholding of the payment in excess of the subsistence allowance already paid during the period of suspension without affording any opportunity to the petitioner is bad in law.

(2) 1972 S.L.R. 845

(18) In view of the above facts and circumstances, I find that the order under challenge has been passed by the Disciplinary Authority arbitrarily without giving sufficient opportunity to the petitioner and also as against the Rules in vague. Therefore, the impugned order cannot be sustained.

(19) Coming to the submission made by the learned Senior Deputy Advocate General appearing for the respondents that the writ petition has been filed by the petitioner when alternative remedy of appeal is available, I find that 20 years has already lapsed from the date when the petitioner has approached this Court seeking remedy. The petitioner has contended that he infact submitted an appeal before the Appellate Authority, but the same was not disposed of. But the respondents have filed the reply to the writ petition only after a lapse of about 20 years informing the Court that no appeal was preferred by the petitioner.

(20) At the time when the matter was admitted by this Court, no preliminary objection was raised by the respondents as to the availability of the alternative remedy which was not exhausted by the petitioner before approaching this Court by invoking the writ jurisdiction. I find that this is an extra ordinary case where the petitioner cannot be directed to go before the Appellate Forum after a lapse of about 20 years to seek a remedy, more especially when the impugned order is found to be not sustainable, as principles of natural justice was not adhered to in this case.

(21) Of course, the learned counsel appearing for the petitioner referred to a decision of this Court in **Sukhdip Singh Maan** *versus* **Union of India, (3)** to bring home the point that once the petition is admitted for adjudication on merit by the Division Bench of the Court, the main petition will be decided on merit.

(22) It appears that the preliminary objection was raised in that particular case as to the maintainability of the writ petition on the ground that there was an alternative remedy of appeal available, but considering that preliminary objection, it appears that the Division Bench chose to admit the writ petition for the purpose of final adjudication of the matter on merits. But the facts and circumstances of the case in hand is totally different. No preliminary objection was raised in the present case as to the maintainability of the writ petition on the ground that there was an alternative remedy

(3) AIR 1998 (1) S.C. 296

available for the petitioner. Therefore, the aforesaid ratio would not apply to the facts and circumstances of this case. At any rate, I find that it will be unjust to direct the petitioner to go before the Appellate Authority for the purpose of redressing his grievance after a lapse of 20 long years.

(23) In view of the above facts and circumstances, I find that the impugned order is not found sustainable in the eye of law. Therefore, the impugned order under challenge stands quashed and the present writ petition is allowed. As the impugned order passed by the Disciplinary Authority is quashed, the petitioner is entitled to receive the remaining amount of salary during the period of suspension. It is made clear that the amount, if any, recovered from the petitioner pursuant to the impugned order shall be returned to him. However, it is made clear that the above order passed by this Court shall have no bearing upon the other disciplinary proceedings initiated against the petitioner by the department.