
P.S. Bajwa

Before Tejinder Singh Dhindsa, J.

SUBHASH CHANDER KAUSHAL—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.16252 of 2010

August, 16 2012

Constitution of India - Art. 226 - Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rls. 8 & 9(1) - Petitioner joined Excise and Taxation Department as Clerk in 1963 - Petitioner applied for permission to appear in B.A. Examination from Magadh University, Bodh Gaya - Thereafter promoted as Senior Assistant on passing of B.A. Examination w.e.f. 2.11.1992 - Promoted and appointed as Taxation Inspector - Petitioner was later placed under suspension on ground that he was not found to be a graduate and wrongly obtained appointment of Taxation Inspector - Inquiry Officer appointed but such inquiry could not be completed over a period of 3 years on account that staff of Magadh University was not cooperating

- Inquiry Officer furnished report stating that inquiry could not be completed on account of lack of cooperation - Inquiry conducted through Vigilance Department - Thereafter Vigilance Department submitted that charges could not be proved - Fresh Inquiry ordered - Held that de novo inquiry into same charges and that too by a different inquiry officer cannot be sustained.

Held, that that from the above rule, it will be evident that the only power which the punishing authority has is to remit the case to the same enquiry officer for further inquiry and that too after recording reasons. In the present case, the case has not been remitted for further enquiry. Rather a de novo inquiry has been ordered and that too by a different inquiry officer. The rule does not envisage ordering of a de novo enquiry into the same charges but enables the punishing authority to remit the case for further enquiry by the same inquiring authority.

(Para 12)

MP Goswami, Advocate with Ajay Goswami, Advocate, *for the petitioner.*

Suvir Sehgal, Additional Advocate General, Punjab.

TEJINDER SINGH DHINDSA, J.

(1) The petitioner has filed the present petition under Article 226 of the Constitution of India impugning the enquiry report dated 2.12.2004, Annexure P24, as also the consequential order dated 19.4.2005, Annexure P25, cancelling the promotion order of the petitioner as Taxation Inspector. The petitioner has also challenged the order dated 2.1.2006, Annexure P27, imposing a cut in his pension and order dated 20.1.2006 whereby his suspension period has been treated as non-duty period. Still further, the petitioner is aggrieved of the order dated 13.5.2010, Annexure P34, whereby the appeal preferred by him has been dismissed vide order dated 13.5.2010 passed by the Financial Commissioner, Government of Punjab, Excise and Taxation Department.

(2) The petitioner joined the Excise and Taxation Department, State of Punjab as a Clerk on 7.11.1963. In the year 1991, the petitioner applied for permission to appear in the B.A. examination of Magadh University,

Bodh Gaya. It has been asserted that the petitioner qualified such B.A. examination and, accordingly, a request had been made to the Excise and Taxation Commissioner, Ludhiana-III for incorporating the petitioner's qualification in the seniority list of the ministerial establishment. The petitioner, vide order dated 29.6.1994, was promoted as Senior Assistant w.e.f. 2.11.1992. Thereafter, he was promoted and appointed as Taxation Inspector vide order dated 25.10.1994. The petitioner was placed under suspension vide order dated 25.7.2000 on account of contemplated disciplinary action. He was issued a charge sheet on 17.8.2000 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter to be referred as '1970 Rules') and the following article of charge was framed against him:

"1. You informed the Deputy Excise and Taxation Commission, Patiala Division Patiala about your being Graduate, on the basis of which you were promoted as Taxation Inspector on 25.10.1994 through posting by transfer.

2. On scrutiny of the BA Pass documents submitted by you, it is found that you have been admitted to BA Pass degree after passing two year BA Pass of the 3 year BA Course conducted by Magadh University Patna and you were to be awarded the degree of BA after passing the third year. In this regard, the following is found recorded in BA part 2 certificate submitted by you.

Certified that Subhash Chander Kaushal has passed two year B.A. (Pass) degree BA of 3 year BA (Pass) course in September 1994 from Vallabh Bhai Patel College in second division, today admitted to BA (Pass) degree.

From this, it is clear that you are not graduate and have wrongly got yourself entered as graduate and obtained the appointment of Taxation Inspector whereas you were not awarded the degree of Gradation. In this way, you have made yourself liable for disciplinary action under rule 8 of Punjab Civil Services (Punishment and appeal) Rules, 1970."

(3) The petitioner submitted his reply to the charge sheet on 28.8.2000 denying the allegations raised in the charge sheet. The petitioner took a categorical stand that the two year's degree certificate submitted by him is distinct from a three year's (Honours) Course. The petitioner also asserted that the Excise and Taxation Commissioner, Punjab, Patiala had written a letter dated 8.8.2000 to the University Grant Commission, New Delhi to clarify as to whether the 2nd year examination of three years' Bachelor pass degree course can be treated as graduate. University Grant Commission had responded in terms of letter dated 28.11.2000 wherein it was clearly reflected that the candidates who have passed the two years' examination of three years' Bachelor of Arts course are graduate of Magadh University, Bodh Gaya and as such, are at par with the graduates with the other Universities in terms of the regulations of Magadh University. The petitioner had even made certain enquiries from Panjab University, Chandigarh and in pursuance thereto, Panjab University vide letter dated 4.8.2000 had informed the petitioner that the B.A. Pass examination conducted by Magadh University, Bodh Gaya stands recognized as equivalent to B.A. Examination of Panjab University for purposes of admission to higher courses.

(4) Mr.P.S.Shergil, Assistant Excise and Taxation Commissioner (Mobile Wing), Chandigarh was appointed as the Enquiry Officer on 25.1.2001. However, such enquiry could not be completed even over a period of three years on the ground that the staff of Magadh University, Bodh Gaya was not cooperating fully in the matter. Meanwhile, the petitioner was reinstated on 1.1.2002 and thereafter retired from service on 31.10.2003 upon attaining the age of superannuation under Rule 3.26 of the Punjab Civil Service (Punishment & Appeal), Vol.I, Part-1, Rules 1970 without prejudice to the pending disciplinary proceedings.

(5) Mr. P.S. Shergil, the Enquiry Officer so appointed had furnished a report on 29.8.2003 stating therein that the enquiry could not be completed on account of lack of co-operation from the officials of Magadh University, Bodh Gaya and upon examining such report, the Government was requested vide letter dated 12.1.2004 to get the enquiry in the matter conducted through the Vigilance Department. Accordingly, the Vigilance Department registered Enquiry No.7 dated 1.4.2004 against the petitioner. Undisputedly, the Chief Director, Vigilance Bureau, vide letter dated 4.8.2004, intimated the respondent-Department that the enquiry had been got conducted through

the Senior Superintendent of Police, Vigilance Bureau, Patiala and such enquiry had since been filed as the charges could not be proved. Apparently, the Excise and Taxation Commissioner, Punjab having dis-agreed with such report submitted by the Vigilance Department appointed Shri Rahul Bhandari, IAS, Additional Excise and Taxation Commissioner-I for a regular re-enquiry in terms of letter dated 16.8.2004. It is upon such fresh enquiry having been conducted and the impugned enquiry report dated 2.12.2004, Annexure P24, having been submitted wherein the findings were returned against the petitioner holding him not to be a graduate and having submitted in-genuine documents, the Excise and Taxation Commissioner in terms of passing order dated 19.4.2005, Annexure P25, cancelled the order dated 25.10.1994 appointing the petitioner as Taxation Inspector. Still further, recommendation was furnished to the Government for imposition of 5% permanent cut from his pension. Accordingly, in terms of order dated 2.1.2006, Annexure P27, a 5% permanent cut in the pension of the petitioner was imposed. Furthermore, based on the impugned enquiry, order dated 20.1.2006, Annexure P28, was also passed by treating the suspension period of the petitioner from 25.7.2000 to 1.1.2002 to be not the duty period. Even the appeal preferred by the petitioner against the aforementioned impugned orders had been rejected vide order dated 19.5.2000, Annexure P24.

(6) Learned counsel appearing for the petitioner has vehemently argued that an enquiry having been entrusted to the Vigilance Department and the charge against the petitioner having been held to be not proved, a de-novo enquiry on the same charge could not have been ordered. Learned counsel has further raised an argument, in the alternative, that even if this Court was not to agree with the first contention, even then the impugned enquiry report dated 2.12.2004, Annexure P24, could not be sustained as the same suffers from patent irregularity as evidence was collected behind the back of the petitioner. Learned counsel would even refer to the enquiry report to submit that while returning findings against the petitioner, the clarification granted by the University Grant Commission as also Panjab University, Chandigarh on the subject had been discarded without any basis. Learned counsel for the petitioner has even raised the plea of discrimination in terms of submitting that in the case of one Shri R.C. Garg who was identically situated in all respects and against whom also

the same very re-enquiry had been ordered at the hands of Shri Rahul Bhandari, IAS, no cut in pension has been imposed, and even his suspension period has been treated to be as on duty.

(7) Per contra, Mr. Suvir Sehgal, learned Additional Advocate General, Punjab has taken a stand that after the initial enquiry entrusted to Mr. P.S. Shergil had not been concluded, thereafter, it was a mere report that had been furnished from the Chief Director, Vigilance Bureau, Punjab, Chandigarh, and as such, the re-enquiry entrusted in the hands of Shri Rahul Bhandari, IAS, Additional Excise and Taxation Commissioner, was fully justified. Learned State counsel would further submit that the petitioner having been held guilty of furnishing wrong information and wrong documents about his being a graduate, no interference is warranted in the order dated 14.1.2005, whereby the initial orders dated 25.10.1994 promoting the petitioner to the post of Taxation Inspector have been cancelled. On the strength of the findings recorded in the enquiry report dated 2.12.2004, Annexure P24, learned State counsel would contend that even the decision to impose a 5% permanent cut in the pension of the petitioner as also to treat his suspension period as non-duty period was justified in law.

(8) The legal question that arises in the present petition is as to whether fresh departmental proceedings could be ordered by the Punishing Authority in the facts and circumstances of the present case. Rule 9(1) of the 1970 Rules would hold the field and the same reads as under:

“9 – Action on the enquiry report - (1) The Punishing Authority if it is not itself the enquiry authority may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Rule 8 as far as may be.”

(9) A perusal of the above Rule clearly reveals that the Punishing Authority after recording reasons in writing may remit the case to the enquiring authority for further enquiry and report.

(10) In the facts of the present case, the enquiry in the first instance entrusted to Mr. P.S. Shergil had remained inconclusive. Accordingly, a decision had been taken to have the enquiry conducted from the Vigilance

Department. The Vigilance Department, in turn, having enquired into the matter returned findings in terms of exonerating the petitioner from the charge levelled. The Excise and Taxation Commissioner, Punjab vide order dated 11.8.2004 recorded as follows:

“But, I being the competent authority do not agree with the enquiry report of Vigilance Department as the departmental enquiry by Shri P.S.Shergil was incomplete”.

(11) It is on such purported dis-agreement/dissenting note that Rahul Bhandari, IAS, Additional Excise and Taxation Commissioner, Punjab was appointed as Enquiry Officer to conduct a re-enquiry. The submission raised on behalf of the State, that it was a mere report that had been sent by the Chief Director, Vigilance Bureau, Punjab and not an enquiry report and, as such, the fresh enquiry could have been ordered at the hands of Shri Rahul Bhandari, suffers from a mis-conception. Not only does the order dated 11.8.2004 passed by the Excise and Taxation Commissioner, Punjab while appointing Shri Rahul Bhandari, IAS, as Enquiry Officer refer to an enquiry report of the Vigilance Department but even impugned enquiry report dated 2.12.2004, Annexure P24, refers extensively to such enquiry report submitted by the Vigilance Bureau.

(12) Such issue of holding of a de-novo enquiry in the light of Rule 9 of the 1970 Rules came up for consideration before a Co-ordinate Bench of this Court in *Karnail Singh* versus *State of Punjab (1)*. In *Karnail Singh's* case (supra), this Court while placing reliance upon a judgment of the Hon'ble Apex Court in *K.R. Deb* versus *Collector of Central Excise, Shillong (2)*, had held as under:

“Learned counsel for the petitioner submitted that there is no power with the Deputy Commissioner (the appointing authority of the petitioner) to order de novo inquiry against the petitioner. He further argued that under rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (hereinafter called the ‘Punishment and Appeal Rules’), the punishing authority can for the reasons to be recorded by it in writing remit the case to the inquiry authority for further inquiry

(1) 1992 (2) Service Cases Today 27

(2) 1971 (1) SLR 29 SC

or it has the power to record a finding itself when it disagrees with the finding of the inquiry officer and that too after recording reasons. The case of the petitioner is that even if the punishing authority had the power to order de novo inquiry, no reasons have been recorded for doing the same by the punishing authority. In support of his contention, the learned counsel has cited **K.R. Deb v. Collector of Central Excise, Shillong, 1971 (1) SLR 29 (SC)**.

On the other hand, learned counsel for the respondents submitted that in fact benefit of doubt had been given to the petitioner by the inquiry officer to exonerate the petitioner and this was a sufficient reason, which was recorded by the Additional Deputy Commissioner, to order de novo inquiry into the same charges.

I find force in the contention of the learned counsel for the petitioner. Rule 9 of the Punishment and Appeal Rules is in the following terms:-
(Relevant extract)

“9. Action on the inquiry report – (1) The Punishing Authority if it is not itself the enquiring authority may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such 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, it shall, notwithstanding anything contained in rule 10 make an order imposing such penalty.”

From the above rule, it will be evident that the only power which the punishing authority has is to remit the case to the same inquiry officer for further inquiry and that too after recording reasons. In the present case, the case has not been remitted for further inquiry. Rather a de novo inquiry has been ordered and that too by a different inquiry officer. The rule does not envisage ordering of a de novo enquiry into the same charges but enables the punishing authority to remit the case for further inquiry by the same inquiring authority. I may not be understood to hold that in no case further inquiry can be held by another inquiring authority but that would be under very special circumstances where the previous inquiring authority is unable for any reason to hold further inquiry. Further in the present case, I find that the punishing authority itself has not recorded any reasons whatsoever even for holding de novo inquiry. It is only the Additional Deputy Commissioner who has recorded the reason that the petitioner was given the benefit of doubt by the inquiring authority. He, therefore, suggested that de novo inquiry should be held. The punishing authority has not even recorded that he is agreeing with the reasons recorded by the Additional Deputy Commissioner. I have already held that rule 9 does not envisage ordering of a de novo inquiry on the same charges. If such a power is held to be there, then it would be left to the whims of the punishing authority that if he does not agree with the findings of the inquiry authority, he may depute another inquiry officer to go into the same charges and even if the second inquiry officer exonerates the delinquent officer, yet the third inquiry officer may be appointed. The Supreme Court in the case supra while dealing with similar rule observed as under:-

“It seems to us that Rule 15, on the face of it, really provides for the inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect that crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the inquiry officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous

inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.”

Apart from the fact that there is no provision to order de novo inquiry into the same charges, I also find that even the reasons given by Additional Deputy Commissioner that benefit of doubt had been given to the petitioner by the inquiring authority has no legs to stand. Firstly, even if the inquiring authority has given benefit of doubt, it is no ground to order de novo inquiry or even further inquiry into the matter. Factually also I find that it was only in one inquiry that benefit of doubt was given to the petitioner and not in the other enquiries.”

(13) Accordingly, it is held that the Punishing Authority could have recorded a dissenting note dis-agreeing with the Enquiry Officer and could have remitted the matter for further enquiry, but could not have ordered re-enquiry which amounts to holding a de-novo enquiry and which is impermissible in law. The decision of the Excise and Taxation Commissioner, Punjab to have appointed Shri Rahul Bhandari, IAS to conduct a re-enquiry, is in flagrant violation of rule 9(1) of the 1970 Rules. It would also be apposite to notice that while directing a re-enquiry, no reasons whatsoever were assigned to have dis-agreed with the enquiry report submitted by the Vigilance Department. Accordingly, I hold the enquiry report dated 2.12.2004, Annexure P24, to be without any sanction in law.

(14) Having held the action of the respondent-authorities in ordering the re-enquiry/de-novo enquiry to be in violation of Rule 9(1) of the 1970 Rules, I do not deem it appropriate to examine the findings of such de-novo enquiry on merits.

(15) As the enquiry report dated 2.12.2004, Annexure P24, formed the very basis of passing of the consequential orders dated 19.4.2005, Annexure P25, cancelling the order of promotion of the petitioner to the post of Taxation Inspector as also for imposing a 5% permanent cut in his

pension and for treating his suspension period to be not on duty, I hold even such consequential orders dated 19.4.2005, Annexure P25, order dated 2.1.2006, Annexure P27, order dated 20.1.2006, Annexure P28, as also order dated 30.5.2010 dismissing the appeal of the petitioner, Annexure P34, to be bad in law. In taking such view, I place reliance upon the judgment of the Hon'ble Supreme Court in *Badri Nath versus Government of Tamil Naidu (3)*, wherein it had been held in the following terms:

“This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being re-considered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall to the ground the moment the superior authority has set aside the primary order.”

(16) Since the very initiation of proceedings i.e. ordering of a re-enquiry and de-novo enquiry has been held to be bad, accordingly, the pursuant enquiry findings contained in the enquiry report dated 2.12.2004, Annexure P24, cannot be sustained as the same are without any sanction in law and, in fact, in contravention of the statutory proceedings regulating the subject.

(17) Accordingly, the present writ petition is allowed. Enquiry report dated 2.12.2004, Annexure P24, order dated 19.4.2005, Annexure P25, order dated 2.1.2006, Annexure P27, order dated 20.1.2006, Annexure P28 and order dated 13.5.2010, Annexure P34 are quashed. Accordingly, the petitioner is even held entitled to all consequential benefits emanating on account of setting aside of the impugned orders as mentioned hereinabove.

(18) Petition allowed.

S. Sandhu