

Before Tejinder Singh Dhindsa, J.

STATE OF PUNJAB,—Appellant

versus

SARUP SINGH,—Respondents

RSA No.1800 of 1989

8th December, 2011

Code of Civil Procedure, 1908 - Constitution of India 1950 - 42nd amendment - Punjab Civil Service (Punishment and Appeal) Rules 1970 - Part IV RL. 8- Non Supply of a copy of charge and statement of imputations of mis-conduct/ misbehavior - Whether causes prejudice - 42nd Amendment regarding no requirement to supply copy of inquiry report to delinquent - Only opportunity to make representation on penalty proposed dispensed with, and not opportunity to make representation on the report of Inquiry Officer -Prejudice by non-supplying of inquiry report - Whether caused - To be considered in facts and circumstances of each case.

Held, That a perusal of Rule 8 would make it clear that the mandate contained therein is for the punishing authority to deliver to the Government employee concerned not only a copy of the article of charge but also the statement of imputations of mis-conduct/ misbehavior and further the list of documents and witnesses by which each article of charge is proposed to be sustained. Further more, under Rule 8, sub-rule 6, the punishing authority is cast upon a duty to forward to the enquiring authority, the evidence of proving the delivery of documents required to be furnished to the Government employee as mentioned hereinabove. The action of the State Government in not supplying to the delinquent Sarup Singh even the copy of the complaint which formed the basis of formulation of the charge sheet against him is in clear violation of the statutory provisions of the 1970 Rules.

(Para 8)

Held, That it would be appropriate to even deal with a view that mere non-supplying of an enquiry report would not ipso facto vitiate the order of punishment in the absence of prejudice to the delinquent. Whether

in fact prejudice has been caused to the employee or not on account of denial to him of the enquiry report has to be considered in the facts and circumstances of each case. The question of prejudice being caused to an employee, as also of any bias against such employee, can be inferred from various facts and circumstances. All such facts need to be collated together.

(Para 9)

Vivek Chauhan, Assistant Advocate General, Punjab *for the appellant.*

Vipin Mahajan, Advocate, *for the respondent.*

TEJINDER SINGH DHINDSA, J.

The instant regular second appeal is directed against the judgment and decree dated 27.1.1989 passed by the Additional District Judge, Jalandhar whereby the appeal of the plaintiff-respondent has been accepted and the judgment and decree dated 22.1.1987 passed by the Sub Judge Ist Class, Jalandhar dismissing the suit of the plaintiff-respondent has been set aside.

(2) Briefly stated, the plaintiff-respondent, namely, Sarup Singh was working as a Driver with Punjab Roadways, Jalandhar Depot which is a State Government Undertaking. On the basis of an alleged complaint made by some students of Lyalpur Khalsa College, Jalandhar, he was placed under suspension on 23.8.1985 and charge-sheeted on 28.8.1985. The allegations raised against the plaintiff-respondent were in relation to misbehaviour with some students under the influence of liquor. Enquiry proceedings were initiated which resulted in the passing of the order dated 21.10.1985 imposing upon the plaintiff-respondent the major penalty of termination from service. The plaintiff-respondent instituted a suit for declaration to the effect that the order dated 21.10.1985 passed by the General Manager, Punjab Roadways was illegal, void, inoperative and as such, he be deemed to be continuing in service with all consequential benefits. The suit was dismissed by the trial Court vide order dated 22.1.1987. Being dissatisfied, the plaintiff-respondent filed an appeal, and vide judgment and decree dated 27.1.1989, the Additional District Judge has accepted

the appeal and the suit has been ordered to be decreed thereby granting a declaration to the effect that the order of termination dated 21.10.1985 was illegal and void. The plaintiff-respondent has been granted consequential benefits in terms of continuity of service etc. It is under such circumstances that the State of Punjab through Secretary, Transport is in second appeal before this Court against the judgment and decree dated 27.1.1989 passed by the Additional District Judge, Jalandhar.

(3) I have heard learned counsel for the parties at length.

(4) Learned counsel appearing for the State has vehemently argued that the fact of non-supply of the copy of the enquiry report has not caused any prejudice to the delinquent. The second limb of the argument is that in terms of the 42nd amendment to the Constitution of India, there was no necessity to supply the copy of the enquiry report to the plaintiff-respondent.

(5) The issue with regard to the right of a delinquent to be supplied with the findings of the Enquiry Officer as also the right of being served with a show cause notice has been a matter of debate for a considerable time. It is by now well settled that where the Enquiry Officer is other than the disciplinary authority, the disciplinary proceedings are to be viewed in two stages. The right to represent against the findings returned by the Enquiry Officer is part of the reasonable opportunity available at the first stage i.e. before the disciplinary authority takes into consideration the findings contained in the enquiry report. The right to show cause against the penalty proposed is the second stage wherein the disciplinary authority has considered the findings contained in the enquiry report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. In other words, the first right is the right to prove innocence, whereas the second right is to plead for either a lesser penalty or no penalty. It is the second right exercisable at the second stage which was taken away by the 42nd amendment to the Constitution of India. What has been dispensed with is the opportunity of making representation on the penalty proposed and not of the opportunity of making representation on the report of the Enquiry Officer, the latter right was always there and would even subsist today.

(6) Admittedly, the copy of the enquiry report was not supplied to the plaintiff-respondent. In the matter of **State of Uttranchal and others versus Kharak Singh (1)**, the Hon'ble Supreme Court has held in the following terms:

“(11) From the above decisions, the following principles would emerge:

- (i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
- (ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.
- (iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.
- (iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/ punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

(7) It is, thus, held that the delinquent-Sarup Singh was clearly vested with a right to be supplied a copy of the enquiry report on the basis of which the punishing authority has proceeded to pass the order of termination.

(8) It is also apparent from the enquiry file and the pleadings on record that even the copy of the complaint which formed the very initiation of proceedings against the plaintiff-respondent was not furnished to him. In the written statement filed to the plaint, it was pleaded that the employee never raised any such demand. It may be noticed that the procedure for imposition of minor and major penalties upon Punjab Government employees including the plaintiff-respondent is covered by the Punjab Civil Service (Punishment and appeal) Rules 1970 (hereinafter to be referred as '1970 Rules'). Rule 8 contained in Part IV of the 1970 Rules regulates the procedure for imposition of major penalties. The relevant extract of Rule 8 reads as under:

- “8. Procedure for imposing major penalties - (1) No order imposing any of the penalties specified in clauses (v) to (ix) of rule 5 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and rule 9 or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.
- (2) Whenever the punishing authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government employee, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation – Where the punishing authority itself holds the inquiry, any reference in sub-rules (7) to (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the punishing authority.

- (3) Where it is proposed to hold an inquiry against a Government employee under this rule and rule 9, the punishing authority shall draw up or cause to be drawn up;
- (i) the substance of the imputations of misconduct and misbehaviour into definite and distinct articles of charges;

- (ii) a statement of imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-
 - (a) a statement of all relevant facts including any admission or confession made by the Government employee;
 - (b) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained.
- (4) The punishing authority shall deliver or cause to be delivered to the Government employee a copy of the articles of charge, the statement of the imputations of misconduct of misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.
- (5) (a) On receipt of the written statement of defence, the punishing authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint under sub-rule (2) an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government employee in his written statement of defence, the punishing authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 9.
- (b) If no written statement of defence is submitted by the Government employee, the punishing authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint under sub-rule (2), inquiring authority for the purpose.
- (c) Where the punishing authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order appoint a Government employee or a legal practitioner, to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

- (6) The punishing authority shall, where it is not the inquiring authority, forward to the inquiring authority -
- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
 - (ii) a copy of the written statement of defence, if any submitted by the Government employees;
 - (iii) a copy of the statement of witnesses, if any, referred to in sub-rule (3);
 - (iv) evidence proving the delivery of documents required to be delivered to the Government employee under sub-rule(4);
 - (v) a copy of the order appointing the “Presenting Officer”.

A perusal of Rule 8 would make it clear that the mandate contained therein is for the punishing authority to deliver to the Government employee concerned not only a copy of the article of charge but also the statement of imputations of mis-conduct/misbehaviour and further the list of documents and witnesses by which each article of charge is proposed to be sustained. Further more, under Rule 8, sub-rule 6, the punishing authority is cast upon a duty to forward to the enquiring authority, the evidence of proving the delivery of documents required to be furnished to the Government employee as mentioned hereinabove. The action of the State Government in not supplying to the delinquent Sarup Singh even the copy of the complaint which formed the basis of formulation of the charge sheet against him is in clear violation of the statutory provisions of the 1970 Rules.

(9) It would be appropriate to even deal with a view that mere non-supplying of an enquiry report would not *ipso facto* vitiate the order of punishment in the absence of prejudice to the delinquent. Whether in fact prejudice has been caused to the employee or not on account of denial to him of the enquiry report has to be considered in the facts

and circumstances of each case. The question of prejudice being caused to an employee, as also of any bias against such employee, can be inferred from various facts and circumstances. All such facts need to be collated together. In the facts of the present case, a copy of the complaint which formed the basis of the issuance of a charge memo, was not supplied to him. Thereafter, upon enquiry proceedings having been initiated a request of the plaintiff-respondent for an assistance of a co-worker before the Enquiry Officer was turned down. After the conclusion of the enquiry proceedings even the copy of the enquiry report was not made available to him. That apart, the undue haste with which the authorities proceeded against him also needs to be noticed. The alleged complaint is dated 17.8.1985. The plaintiff-respondent was suspended on 23.8.1985 and he was charge-sheeted on 28.8.1985. The enquiry proceedings commenced immediately thereafter. The enquiry report was submitted on 17.10.1985 and the order of termination was passed on 21.10.1985. The chain of events is merely reflective of a pre-determined mind.

(10) The trial Court has dealt with the matter in a most casual and perfunctory manner. There has been no discussion whatsoever on the issues raised. The lower appellate Court has passed a reasoned order and has returned a clear finding of prejudice having been caused to the plaintiff-respondent on account of the non-supply of the enquiry report.

(11) No question of law, much less substantial question of law arises for determination in the present second appeal.

(12) The present regular second appeal being without merit must fail and is accordingly dismissed.

(13) Appeal dismissed.

S. Gupta