(1991) 04 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16478 of 1990

S. Amarjit Singh Bhatnagar		APPELLANT
	Vs	
The State of Punjab and Another		RESPONDENT

Date of Decision: April 4, 1991

Acts Referred:

- Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rule 8

Citation: (1993) 1 ILR (P&H) 87

Hon'ble Judges: Jawahar Lal Gupta, J

Bench: Single Bench

Advocate: V.G. Dogra, for the Appellant; H.S. Riar, Addl. A.G., for the Respondent

Judgement

Jawahar Lal Gupta, J.

The Petitioner was working as a Sub-Divisional Engineer when disciplinary proceedings were contemplated against him and by an order of 3rd May, 1983 he was placed under suspension. The order of suspension was revoked on 7th November, 1983 and the departmental enquiry finally culminated in an order of removal on 26th July, 1988. The enquiry was conducted by Shri Gurmail Bhatwa who was then posted as Superintending Engineer, Ludhiana. Learned Counsel for the parties have informed me that Mr. Bhatwa has since been promoted as Chief Engineer. Mr. R.C. Tandon was appointed as the Presenting Officer. It is the claim of the Petitioner that during the course of enquiry, he was not allowed to cross-examine the witnesses. The Petitioner then appears to have filed a memorial on 12th October, 1988,-vide Annexure P-6. Since the Respondents did not decide his memorial expeditiously he approached this Court in C.W.P. No. 9703 of 1990 which was disposed of by the Motion Bench on 23rd July, 1990 with a direction that the memorial be decided within two months. By an order of 26th October, 1990 the Government who was considering the memorial submitted by the Petitioner observed that "the enquiry conducted by Shri Gurmail Bhatwa, the then S.E., Ludhiana Circle, PWD, B

and R, Ludhiana (now C.E. Rural Roads) has not been conducted strictly as per procedure laid down under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 and the Inquiry needs to be continued by giving the representationist an opportunity to cross-examine Shri R.C. Tandon, Executive Engineer, the presenting Officer in this Inquiry."" Pending the final result of the enquiry, the Petitioner was ordered to be reinstated. By another order of the same date, the Petitioner was placed under suspension "with immediate effect".

2. In the writ petition, the Petitioner has impugned the two orders of 26th October. 1990. He has challenged the order of suspension on the ground that it was wholly arbitrary and also claimed that once it was held that the enquiry was not in accordance with the rules, then de novo enquiry should be held. The Petitioner has claimed a right to cross-examine all those persons who are authors of the documents being relied upon by the department. He has also claimed that Mr. Gurmail Bhatwa had already expressed his opinion while giving the original enquiry report which has been set aside by the Government on the ground that it was not in accordance with the rules. That being so, Petitioner claims that the enquiry should now be conducted by an independent officer. He has further challenged the continuance of Shri R.C. Tandon as the presenting officer.

3. In response to the notice of writ petition the Respondents have filed a written statement in which the averments of the Petitioner have been broadlt controverted and an effort has been made to support the impugned orders. In paragraph 8(g) it has been stated that Shri T.S. Chawla, Executive Engineer has been substituted as presenting officer in place of Shri R.C. Tandon to meet the ends of justice.

4. I have heard Shri V.G. Dogra learned Counsel for the Petitioner and Mr. H.S. Riar, learned Additional Advocate-General for the Respondents. It has been stated by Mr. Dogra at the bar that at the time of the initial enouiry. presenting Officer had merely produced certain documents without any thing more. He submitted that even though the strict rules of evidence may not be applicable to the departmental enquiries, but if the documents containing opinions or observations expressed by different officials/officers were to be treated as substantive evidence, then he had a right to cross-examine the authors of those documents. While permitting the Petitioner to cross-examine the then presenting officer, the Government should have also given him an opportunity to cross-examine the authors of documents who had recorded opinions on the basis of which the charges were sought to be established" against the Petitioner. Mr. Riar on the other hand contended that it was the prerogative of the department to produce any witness and in case the Petitioner wants to produce any person in defence, he may do so. Mr. Riar contended that the Respondents could not be forced to produce persons for the cross-examination of the Petitioner.

5. It is no doubt true that the strict rules of evidence are not applicable to departmental enquiries. Formal proof of execution of documents as required in Courts of law is not to be insisted upon in departmental enquiries. Still, the fact remains that the rules of

procedure are only hand-maid of justice. In fact, the rules of procedure are calculated to ensure fair play. In a case where the opinion expressed by an officer either in a note or in a letter is sought to be used as substantive evidence for proceeding against an officer and proving a charge against him, it may not be necessary to prove the document by following the procedure envisaged under the Indian Evidence Act. However, the officer who is facing the charge, is entitled to have an opportunity to prove that the opinion expressed by the officer concerned in the document relied upon on behalf of the department, is not correct. For that purpose, it would be only fair and proper that the officer whose opinion is sought to be relied upon, is produced in the enquiry, so that he can be cross-examined and a challenge, if possible, be made to the correctness of the view expressed by him. If such an opportunity is not granted, the opinion would be taken on record as evidence given by the concerned officer without the accused person getting a chance to establish its false-hood. Further, in my view, the accused person is also entitled to an opportunity to lead evidence in defence to controvert the opinion. As such, I am of the view that every officer whose opinion is sought to be relied upon, has to be produced during the enquiry proceedings if so demanded by the delinquent. Otherwise the document cannot be relied upon. Further, an opportunity should also be given to the delinquent to controvert the evidence by adducing such evidence in defence as he may like to produce. Of course, this would be subject to the condition that the evidence sought to be adduced is relevant and not calculated to delay the proceedings. I think, the claim on behalf of the Petitioner that all persons whose opinions etc. are sought to be relied upon by the department by producing the various documents shall have to be produced during the enquiry if those documents have to be taken into consideration is valid. Otherwise, the action would be unfair and violative of principles of natural justice. The Petitioner shall also be entitled to an opportunity to lead evidence in defence.

6. Further, the grievance of the Petitioner in regard to the continuance of Mr. Bhatwa as the enquiry officer also appears to be well-founded. Mr. Bhatwa has already expressed his opinion. The procedure adopted by Mr. Bhatwa has been found wanting by the Government. The officer may not have been actuated by any bias. The fact still remains that he has already expressed his opinion. It is well settled that justice should not only be done but it should even appear to be done. That being so, I think it would only be fair that Government appoints another officer to conduct the enquiry. Since the presenting officer has been changed by the Government itself, I think it would also be proper that even a new enquiry officer be appointed. No arguments were addressed to challenge the order of suspension. However, a request was made for expeditious disposal of the enquiry proceedings.

7. Having heard the learned Counsel in detail I order as under:

(1) the Government shall appoint an enquiry officer other than Mr. Gurmail Bhatwa immediately;

(2) the Petitioner shall be entitled to an opportunity to not only cross-examine the former presenting officer Mr. R.C. Tandon, but also the authors of documents that may have been produced by the department. He shall also be entitled to lead such evidence in defence as may be necessary for the purpose of controverting such evidence as may be led against him; and

(3) the enquiry proceedings shall be concluded within a period of three months.

The writ petition is accordingly disposed of. There shall be no order as to costs.