(2012) 09 P&H CK 0225

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5267 of 2002

Ajmer Singh, Forest Ranger/Forest Range Officer		APPELLANT
	Vs	
State of Punjab and Another		RESPONDENT

Date of Decision: Sept. 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 321

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Vipin Mahajan, for the Appellant; Vivek Chauhan, Assistant Advocate General, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Tejinder Singh Dhindsa, J.

Learned counsel for the parties have been heard at length. The petitioner who retired on 31.3.2002 from the post of Forest Ranger has filed the present petition under Article 226 of the Constitution of India impugning the order dated 27.7.2001, Annexure P7, passed by the Principal, Chief Conservator of Forest Punjab, whereby the punishment of reduction in the basic pay by three stages and recovery of Rs. 40,045/- on account of the loss suffered by the Punjab State Forest Development Corporation Ltd. (hereinafter to be referred as ''the Corporation'') has been imposed upon him. Further challenge is to the order dated 15.2.2002, Annexure P11, whereby the appeal preferred by the petitioner against the order passed by the Punishing Authority has been rejected by the State Government.

2. The petitioner joined service with the Punjab Forest Department on the post of Forester on 30.7.1970. Thereafter, he was promoted as Deputy Ranger on 16.5.1978 and further promoted to the post of Forest Ranger with effect from 8.5.1984. The

petitioner retired on 31.3.2002 having attained the age of super-annuation. While holding the post of Forest Ranger/Range Officer, the petitioner was sent on deputation to the Corporation on 20.8.1987 as a Project Officer. The petitioner remained on deputation with the Corporation upto 20.8.1992 whereupon he was repatriated to his parent Department i.e. the Department of Forest, State of Punjab.

3. The petitioner was issued a charge-sheet on 23.2.1993. The articles of charge levelled against the petitioner were pertaining to the period for which the petitioner had remained on deputation with the Corporation. The petitioner having filed reply to the charge-sheet and the same having not been found to be satisfactory, an Enquiry Officer was appointed so as to conduct a regular departmental enquiry in terms of order dated 30.8.1994. In pursuance to the enquiry proceedings having been held, an enquiry report dated 15.12.1997 was furnished. The petitioner was issued a show cause notice dated 22.3.2001 wherein a major punishment of reduction in the basic pay by three stages along with recovery of Rs. 40,045/- was proposed. Along with the show cause notice, the copy of the enquiry report dated 15.12.1997 was also served upon the petitioner. A reply dated 30.3.2001 was submitted by the petitioner in response to the show cause notice. Vide memo order dated 27.7.2001, the punishment as proposed in the show cause notice was imposed upon the petitioner. A statutory appeal dated 22.8.2001 was preferred by the petitioner against the imposition of the punishment and in terms of impugned order dated 15.2.2002. the appeal stands rejected. It is against such factual backdrop that the present writ petition has been filed in this Court.

4. Mr. Vipin Mahajan, learned counsel appearing for the petitioner has raised a two-fold submission. In the first instance, it has been vehemently argued that the Disciplinary/Punishing Authority has mis-construed the enquiry report. It has been contended that the Enquiry Officer had exonerated the petitioner in respect of the alleged charges levelled against him, but the Punishing Authority without furnishing any reasons for disagreement with the findings of the Enquiry Officer had proposed the imposition of a major punishment in terms of issuance of show cause notice dated 22.3.2001. It was urged that if the findings of the Enquiry Officer are in favour of the delinquent official, then it was obligatory upon the Punishing Authority to have indicated the reasons for such disagreement in the form of a disagreement note and the same was required to be communicated to the petitioner so as to give him a right to represent against such reasons for disagreement with the enquiry findings.

5. The second submission raised by learned counsel appearing for the petitioner is that the enquiry report had been furnished to the petitioner along with show cause notice and such action was in clear violation of the principles of natural justice. Learned counsel would contend that the requirement of law would be for the Punishing Authority to have forwarded the enquiry report to the delinquent official so as to enable the petitioner to have submitted his objections in relation to the

findings recorded by the Enquiry Officer and it was only thereafter that the Punishing Authority could have considered the enquiry report along with the objections submitted by the petitioner thereto so as to arrive at a conclusion to either accept the enquiry report or to disagree with the same. The argument raised is that it is only in terms of following such procedure that a show cause notice proposing the major penalty could have been issued to the petitioner. In support of such contention, learned counsel has placed reliance upon two landmark judgments of the Hon''ble Apex Court in Union of India v. Mohammad Ramzan Khan, 1991 (1) SCT 111: and Managing Director, ECIL v. B. Karunakar, 1994 (1) SCT 319.

6. As regards the first submission raised by the learned counsel with respect to the Punishing Authority dis-agreeing with the findings of the Enquiry Officer and having issued a show cause notice proposing the imposition of major penalty without even serving a disagreement note upon the petitioner, it would be apposite to refer to the show cause notice itself dated 22.3.2001. A perusal of the same would reveal that the report dated 15.12.1997 submitted by the Enquiry Officer had been considered by the Punishing Authority and in terms thereof, the following charges were noticed to have been proved against the petitioner:

The report submitted by Enquiry Officer and the charges levelled in the charge sheet have been considered and the following charges are proved against you:

1. Due to your negligence the Government has suffered a loss to the tune of Rs. 40,045/-.

2. You collected Rs. 2,70,295/- from the contractor and did not deposit in the accounts of the Corporation and also made temporary embezzlement of Rs. 1,50,375/- from 1 to 18 months.

3. Negligence in the performance of the duties by not maintaining the Timber farms correctly and by not sending the accounts statement in time.

4. You made adjustment of the amount of advance received from contractor against other contracts without permission of the competent authority.

7. The question as regards the Punishing Authority having mis-construed the enquiry report in relation to holding the aforementioned charges to be proved against the petitioner would require examination of the enquiry report dated 15.12.1997.

8. A minute perusal of the enquiry report reveals that charge No. 1 levelled against the petitioner and dealt with by the Enquiry Officer related to mis-appropriation of the amount of the Corporation. Even though as a conclusion, the charge of misappropriation has been held to be not proved against the petitioner, but the entire finding relating to charge No. 1 would have to be read. In terms thereof, it has been noticed that the petitioner had been specifically asked by the Divisional Manager, Bathinda with respect to not having deposited Rs. 2,70,295/- in the

accounts of the Corporation. In response thereto, the petitioner had submitted his reply dated 10.6.1992 stating that substantial amounts have been adjusted in the accounts of the Corporation and the remaining will be adjusted shortly. The Enquiry Officer has recorded a finding that upon investigating into the matter, an amount of Rs. 40,045/- had not been deposited in the accounts of the Corporation. The charge of mis-appropriation of the aforementioned amount was held to be not proved in the light of the fact that no receipt had been shown or produced indicating such sum to have been received by him, nor the copy of any removal order of such amount had been produced. Clearly, if the finding in relation to charge No. 1 was to be read as whole, even though the charge of mis-appropriation of the amount had been held to be not proved, but an amount of Rs. 40,045/- was found to have not been deposited in the accounts of the Corporation. It is on such basis that the Punishing Authority has noticed in the show cause notice as regards the negligence of the petitioner, on account of which, the Corporation suffered a loss to the tune of Rs. 40,045/- as also having collected Rs. 2,70,295/- from the Contractors and having not deposited such amount in the account of the Corporation. That apart, the recital in the show cause notice pertaining to the petitioner having remained negligent in the performance of the duty by not maintaining the timber farms correctly/not sending the account statements in time and further having made adjustment of the amount of advance received from Contractors against other contracts without permission of the Competent Authority, the same stood proved as would be clear from the findings returned by the Enquiry Officer in the enquiry report relating to charge No. 2A and charge No. 5.

9. Accordingly, from the pleadings on record and from a perusal of the show cause notice as also the enquiry report, the only conclusion that can be arrived at is that the Punishing Authority had issued the show cause notice proposing the major penalty upon the petitioner not on account of any disagreement with the enquiry report, but rather basing the show cause notice dated 22.3.2001 in terms of accepting and agreeing with the findings recorded by the Enquiry Officer particularly in reference to charge No. 1, 2A and 5. Accordingly, I hold that the submission raised by the learned counsel pertaining to a disagreement note having not been recorded by the Punishing Authority in relation to the findings of the Enquiry Officer is wholly misplaced.

10. Learned counsel in support of his second submission placed heavy reliance on the judgment of Hon''ble Supreme Court in Mohammad Ramzan Khan (supra) and Managing Director, ECIL (supra) to contend that when the Enquiring Authority and the Disciplinary Authority are not the same and the Disciplinary Authority appoints an Enquiring Authority to enquire into charges levelled against a delinquent official who holds such enquiry, finds him guilty and submits a report to that effect to the Disciplinary Authority, a copy of such report was required to be supplied by the Disciplinary Authority at the very outset prior to even forming a tentative opinion regarding imposition of any penalty i.e. prior to the stage of issuance of show cause

notice.

11. The undisputed question of fact in the facts of the present case is that the copy of the enquiry report had been supplied and served upon the petitioner along with the show cause notice.

12. The question that would require determination in this case is as to whether in the light of the facts of the present case has there been a violation of principles of natural justice in terms of the enquiry report having been made available to the petitioner at the stage of issuance of the show cause notice?

13. The petitioner had submitted a detailed reply dated 30.3.2001, Annexure P6, to the show cause notice dated 22.3.2001. In the reply, no objection had been taken as regards the enquiry report having not been furnished to him earlier in point of time. The Hon''ble Apex Court in the case of Haryana Financial Corpn. and Anr. v. Kailash Chandra Ahuja, 2008(4) SCT 103 had examined the earlier judgments of the Apex Court in Mohammad Ramzan Khan (supra) and Managing Director, ECIL (supra) and had observed as follows:

21. From the ratio laid down in B.Karunakar1, it is explicitly clear that the doctrine of natural justice requires supply of a copy of the Inquiry Officer''s report to the delinquent if such Inquiry Officer is other than the Disciplinary Authority. It is also clear that non-supply of report of Inquiry Officer is in the breach of natural justice. But it is equally clear that failure to supply a report of Inquiry Officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside.

22. In the instant case, it is not in dispute by and between the parties either before the High Court or before us that a copy of the report of Inquiry Officer was not supplied to the delinquent writ petitioner. While the contention of the writ petitioner is that since failure to supply Inquiry Officer''s report had resulted in violation of natural justice and the order was, therefore, liable to be quashed, the submission on behalf of the Corporation is that no material whatsoever has been placed nor a finding is recorded by the High Court that failure to supply Inquiry Officer''s report had resulted in prejudice to the delinquent and the order of punishment was, therefore, liable to be quashed.

23. The High Court, unfortunately, failed to appreciate and apply in its proper perspective the ratio laid down in B. Karunakar1, though the High Court was conscious of the controversy before it. The Court also noted the submission of the Corporation that there was "no whisper" in the writ petition showing any prejudice to the delinquent as required by B. Karunakar1, but allowed the writ petition and set aside the order of punishment observing that in such cases, prejudice is ''writ

large''."

24. In our considered view, the High Court was wrong in making the above observation and virtually in ignoring the ratio of B. Karunakar1 that prejudice should be shown by the delinquent. To repeat, in B. Karunakar1, this Court stated;

30. (v)... Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case.

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is Audi alteram partem (hear the other side). But it is equally well settled that the concept "natural justice" is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the strait-jacket of a rigid formula.

44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.

14. In terms of the conclusions drawn by the Hon''ble Apex Court even in an eventuality where the report of the Enquiry Officer is not furnished to the delinquent employee, it had been held that the same would not automatically result in quashing or setting aside of the order of the Punishing Authority. In the present case, however, the enquiry report had been furnished even though at the stage of issuance of the show cause notice to the petitioner. The pleadings are totally silent as regards the prejudice that has been caused to the petitioner on account of the enquiry report having been supplied at the stage of issuance of the show cause notice itself. Not only in the present petition but even in the reply submitted by the petitioner to the show cause notice as also in the appeal preferred by him against the order imposing the major penalty, no such plea was raised. On the contrary, the case built up before this Court was in terms of placing reliance upon the enquiry report so as to raise a submission that the enquiry findings were in his favour and he had been exonerated of all the charges. It was for the petitioner to have specifically pleaded and to have proved that the non-supply of the enquiry report even prior to the issuance of the show cause notice had resulted in mis-carriage of justice. Without there being even a whisper in regard thereto, it cannot be held in the light of the facts of the present case that there has been any violation of the

principles of natural justice.

15. At this stage, learned counsel has raised yet another submission that on the same very charges, an FIR had been registered against the petitioner but after the findings of the Enquiry Officer had been furnished, the State Government itself had moved an application u/s 321 of the Code of Criminal Procedure for withdrawal of the prosecution against the petitioner and, accordingly, he had been acquitted of all the charges. Learned counsel would argue that the action of the respondent-authorities in imposition of major penalty was as such arbitrary as the same had been imposed on account of a predetermined mind. Even such submission is being noticed only to be rejected. The mere fact that the State Government had moved an application for withdrawal of the prosecution against the petitioner would not constitute a bar for the respondent-authorities in proceeding with the disciplinary proceedings in accordance with law and which admittedly have culminated in the passing of the impugned orders.

16. Even otherwise, learned counsel has not been able to demonstrate any irregularity and illegality having been committed in the departmental proceedings initiated against the petitioner. The scope of judicial scrutiny by the writ Court in exercise of jurisdiction under Article 226 of the Constitution of India in matters relating to administrative decisions and imposition of penalty upon an employee would be limited to the decision making process and not the decision itself. For the reasons recorded above, I find no merit in the present writ petition and the same is, accordingly, dismissed.