

---

**R.N.R.**

*Before Ajai Lamba, J.*

**JASBIR SINGH—Petitioner**

*versus*

**STATE OF PUNJAB—Respondents**

**CWP No. 9957 of 2009**

1st September, 2010

*Constitution of India, 1950—Art. 226—Punjab Civil Services (Punishment & Appeal) Rules, 1970—Rl 9(2)— Enquiry Officer exonerating petitioner—Punishing authority differing with inquiry report and imposing a minor punishment—Neither copy of inquiry report supplied nor opportunity of hearing given to petitioner—Violation of principles of natural justice—Petition allowed, order imposing minor penalty on petitioner quashed while granting liberty to respondents to proceed against petitioner in accordance with law.*

*Held*, that while exercising authority under Rule 9 of the Rules, the punishing authority appointed an Inquiry Officer while choosing not to hold the inquiry itself. The Inquiry Officer furnished the report exonerating the petitioner. It is the admitted position that even copy of the inquiry report

was not supplied to the petitioner. The punishing authority, however, without hearing the petitioner, has imposed the penalty on the petitioner, although minor. Since the impugned order is punitive in nature, the petitioner was required to be given a hearing before passing of the said order. The Inquiry Officer exonerated the petitioner, as is evident from the inquiry report. The punishing authority has not agreed with the findings recorded by the Inquiry Officer. There was no requirement of giving an opportunity of hearing if the findings of exoneration recorded in the inquiry report were to be accepted. However, if the punishing authority chooses to disagree with the findings recorded by the Inquiry Officer, the petitioner, who is the affected person, was required to be given to enable the delinquent to convince the punishing authority to accept the findings recorded in the inquiry report. This having not been done, the principle of natural justice has been violated, rendering the impugned order to be arbitrary and injudicious and, therefore, illegal.

(Paras 7 & 8)

M. S. Ballianwali, Advocate, *for the petitioner.*

Ms. Charu Tuli, Sr. DAG, Punjab.

### **AJAI LAMBA, J. (ORAL)**

(1) Jasbir Singh (petitioner) has approached this Court in this petition under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 15th January, 2007 (Annexure P-3).

(2) The facts of the case are not in dispute.

(3) The petitioner was proceeded against in departmental proceedings. The Inquiry Officer was appointed for inquiring into three charges. In the context of each of the charge, the petitioner has been exonerated with the observations of the Inquiry Officer that the allegations against the petitioner are not proved. The inquiry report has been placed on record as Annexure P-2. When the inquiry report was furnished to the punishing authority, the punishing authority,—*vide* order (Annexure P-3), without hearing the petitioner, imposed a minor punishment on the petitioner.

(4) The contention of the learned counsel for the petitioner, in brief, is that if the punishing authority was to differ with the inquiry report, opportunity of hearing was required to be given to the petitioner under Rule 9(2) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short 'the Rules').

(5) Learned counsel for the respondent-State has not been able to controvert the legal position. It has, however, been argued that because the petitioner did not furnish the reply to the charge-sheet, minor punishment of stoppage of one annual increment for four years, without cumulative effect, has been imposed. It is, however the admitted case that neither the inquiry report was supplied to the petitioner nor the petitioner was given an opportunity of being heard.

(6) Sub Rules (1) and (2) of Rule 9 read as under :—

“9. **Action on the inquiring report.**—(1) The punishing authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry 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.”

(7) In the case in hand, while exercising authority under Rule 8 of the Rules, the punishing authority appointed an Inquiry Officer while choosing not to hold the inquiry itself. The Inquiry Officer furnished the report (Annexure P-2) exonerating the petitioner. It is the admitted position that even copy of the inquiry report was not supplied to the petitioner. The punishing authority, however, without hearing the petitioner, has imposed the penalty on the petitioner, although minor.

(8) Since the impugned order is punitive in nature, the petitioner was required to be given a hearing before passing of the said order. The Inquiry Officer exonerated the petitioner, as is evident from the inquiry

report. The punishing authority has not agreed with the findings recorded by the Inquiry Officer. There was no requirement of giving an opportunity of hearing if the findings of exoneration recorded in the inquiry report were to be accepted. However, if the punishing authority chooses to disagree with the findings recorded by the Inquiry Officer, the petitioner, who is the affected person, was required to be heard. In such circumstances, hearing is required to be given to enable the delinquent to convince the punishing authority to accept the findings recorded in the inquiry report. This having not been done, in my considered opinion, the principle of natural justice has been violated, rendering the impugned order (Annexure P-3) to be arbitrary and injudicious and, therefore, illegal.

(9) In view of the above, this petition is allowed. The order (Annexure P-3) is hereby quashed.

(10) It is, however, made clear that the respondents would be at liberty to proceed against the petitioner after supplying the inquiry report and giving opportunity of hearing to the petitioner.

---