

CWP-26930-2019
DECIDED ON: 17.07.2026

....PETITIONER

....RESPONDENTS

Mr. Siddharth Sandhu, AAG, Punjab.

Prayer

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing of the order dated 02.09.2019 (Annexure P-26) forwarded vide impugned order dated 05.09.2019 (Annexure P-25), wherein, the department has appointed a new Inquiry Officer to hold inquiry against the charge sheets dated 11.09.2014 (Annexure P-1 & P-2 respectively) with a further prayer to issue direction to the respondents to decide the charge sheets dated 11.09.2014

(Annexures P-1 & P-2 respectively) in terms of Inquiry Report already submitted. A further prayer has been made to issue a writ in the nature of *Certiorari* for quashing the order dated 05.08.2019 (Annexure P-23) whereby extension in service has been declined to the petitioner and also to restrain the respondents for giving effect to the order dated 02.09.2019 (Annexure P-26) as well as order dated 05.08.2019 (Annexure P-23).

Brief Facts

2. The petitioner, Rakesh Walia, was serving as a District Programme Officer in the Department of Social Security and Women & Child Development, Punjab. During his service, two charge-sheets dated 11.09.2014 were issued against him in respect of his tenure at Mansa and Ludhiana. The petitioner submitted replies to both charge-sheets, and regular departmental enquiries culminated in enquiry reports dated 11.01.2016, whereby he was exonerated of all the charges.

3. Despite the enquiry reports, the disciplinary authority did not take any final decision for nearly two years and ten months. Thereafter, the department sought the petitioner's explanation while expressing disagreement with the enquiry reports, to which the petitioner duly responded. During this period, the petitioner also applied for extension in service under the applicable Government policy, as he was due to retire on 30.04.2019.

4. The petitioner's request for extension was not considered, and he was retired on 30.04.2019. Subsequently, by order dated 05.08.2019, the respondents rejected his claim for extension on the ground that disciplinary proceedings were pending. Thereafter, vide order dated 02.09.2019, a new Inquiry Officer was appointed to conduct a fresh enquiry into the same charge-sheets. Aggrieved by the

appointment of a fresh Inquiry Officer, the denial of extension in service, and the failure of the authorities to take a final decision on the original enquiry reports, the petitioner instituted the present writ petition challenging the impugned orders and seeking consequential reliefs.

5. Hence, this petition

Contentions

On behalf of the petitioner

6. Learned counsel for the petitioner submits that the respondent-department has appointed Sh. Surjit Singh Dhillon, IAS (Retd.), as the Inquiry Officer to conduct a de novo enquiry in respect of the two charge-sheets dated 11.09.2014 (Annexures P-1 & P-2). It is contended that the impugned action is *ex facie* illegal and *dehors* the provisions of Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which does not empower the disciplinary authority to order a fresh or *de novo* enquiry. Rather, at best, the matter can only be remitted to the same Inquiry Officer for further enquiry. It was further argued that the respondents themselves have admitted in their written statement that the Rules do not contemplate holding of a de novo enquiry. Reliance in this regard was placed upon ***K.R. Deb v. Collector of Central Excise, Shillong, (1971) 2 SCC 102; Subhash Chander Kaushal v. State of Punjab, 2013(1) SCT 606; and Limber Kumar Sandhir v. State of Punjab and others, CWP No.21562 of 2008*** decided on 04.07.2023, wherein it has consistently been held that a *de novo* enquiry is impermissible in the absence of an enabling statutory provision.

7. It is further submitted by learned counsel for the petitioner that two charge-sheets dated 11.09.2014 were issued to the petitioner in relation to his postings at Mansa and Ludhiana. The petitioner submitted detailed replies to both the charge-sheets on 07.10.2014, thereafter regular departmental enquiries were

conducted. The Inquiry Officer submitted separate enquiry reports dated 11.01.2016, categorically holding that none of the charges stood proved and exonerated the petitioner in both enquiries. Despite the petitioner's exoneration, the respondents remained inactive for nearly two years and ten months and did not take any final decision on the enquiry reports.

8. It is urged that the petitioner was due to superannuate on 30.04.2019 on attaining the age of 58 years and duly applied for an extension by submitting his option on 07.12.2018 in terms of the Government Instructions dated 08.10.2012, read with the clarification dated 30.04.2015, since the petitioner already stood exonerated in the departmental enquiries, which was thereafter forwarded by the department on 13.03.2019. However, instead of considering his claim on the basis of the prevailing factual position, mainly his exoneration, the respondents issued dissent notes and sought explanations from him while disagreeing with the enquiry reports.

9. Counsel argues that on the date when the claim of the petitioner for extension in service fell for consideration, there existed no finding of guilt against him and, therefore, the respondents were legally obliged to consider his claim on the basis of the facts existing on that date.

10. It is further submitted that notwithstanding the petitioner's exoneration and pendency of his application for extension in service, the respondents passed the order dated 30.04.2019 directing his superannuation and thereafter rejected his claim for extension vide order dated 05.08.2019. Such action, according to learned counsel, is contrary to the Government Instructions dated 08.10.2012 and the clarification dated 30.04.2015, as the petitioner satisfied all the eligibility conditions on the relevant date. In support of the said submission,

reliance is placed upon “*Jawahar Lal v. State of Punjab and another*,” CWP No.5267 of 2019 decided on 22.04.2019, wherein this Court held that pendency of disciplinary proceedings, by itself, cannot deprive an employee of consideration for extension in service.

On behalf of respondents

11. Learned State counsel submits that the writ petition is devoid of merit and deserves to be dismissed. It is contended that the petitioner has challenged the order dated 02.09.2019 (Annexure P-26) appointing a new Inquiry Officer as well as the order dated 05.08.2019 (Annexure P-23) declining extension in service. According to the respondents, the appointment of the Inquiry Officer was made in accordance with law and the competent authority was justified in directing further proceedings in respect of the pending disciplinary matters.

12. It is further submitted that the petitioner was not entitled to extension in service as, on the date of his superannuation, two departmental charge-sheets issued under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 were still pending consideration before the disciplinary authority. In terms of the Government instructions governing grant of extension in service, an employee against whom disciplinary proceedings are pending or who is facing proceedings for a major penalty is not eligible for extension beyond the age of superannuation.

13. Learned counsel argues that although the Inquiry Officer had submitted reports exonerating the petitioner, the disciplinary authority is not bound by the findings recorded therein and is competent to disagree with the enquiry reports after following the prescribed procedure. It is submitted that the matter had not attained finality, as the disciplinary authority had recorded its disagreement with the enquiry reports and further proceedings were pending. Therefore, the

petitioner could not claim any vested right either to extension in service or to closure of the disciplinary proceedings merely on the basis of the enquiry reports.

14. It is also submitted that, pursuant to the interim order passed by this Court on 20.09.2019, further proceedings in the disciplinary enquiry remained adjourned and, therefore, no final decision could be taken by the respondents during the pendency of the writ petition.

15. Learned State counsel maintained that the respondents have acted strictly in accordance with the applicable service rules and Government instructions and that no arbitrariness or illegality can be attributed to the impugned orders. Accordingly, he prays for dismissal of the present writ petition.

16. Heard.

Analysis

17. Having heard and considered the rival submissions advanced by learned counsel for the parties and have perused the pleadings and the documents placed on record, the undisputed factual position before this Court is that the petitioner was served with two charge-sheets dated 11.09.2014 (Annexures P-1 & P-2 respectively) pertaining to his postings at Mansa and Ludhiana. Pursuant thereto, regular departmental enquiries were conducted and the Inquiry Officer submitted separate enquiry reports dated 11.01.2016 (Annexures P-5 & P-6 respectively), wherein the charges levelled against the petitioner were held to be not proved. The respondents did not pass any final order on the said enquiry reports for almost two years and ten months. Thereafter, instead of taking a decision in accordance with Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, the respondents issued dissent notes and ultimately passed

the impugned order dated 02.09.2019 (Annexure P-26) appointing another Inquiry Officer for holding a fresh enquiry in respect of the very same charge-sheets.

18. The principal question which arises for consideration is whether, after submission of the enquiry reports exonerating the petitioner, the disciplinary authority could appoint a fresh Inquiry Officer and order a *de novo* enquiry.

19. This Court finds it apposite to refer to the relevant provision at this stage. The Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 confers no such power upon the disciplinary authority. The Rule permits the disciplinary authority, if dissatisfied with the enquiry, to remit the matter for further enquiry, but it does not authorize the appointment of a new Inquiry Officer for conducting a fresh or *de novo* enquiry on the same charges.

20. The issue is no longer *res integra*. The Supreme Court in the case of *K.R. Deb (Supra)*, categorically held that once an enquiry has been concluded, the disciplinary authority cannot direct a fresh enquiry merely because it is dissatisfied with the findings recorded by the Inquiry Officer. The same principle has been reiterated by the Apex Court in Subhash Chander Kaushal's case (*Supra*) and recently by this Court in Limber Kumar Sandhir's case (*Supra*), decided on 04.07.2023. The impugned action of the respondents is, therefore, clearly contrary to the Rule 9 of PCS Rules 1970 and the settled position of law.

21. This Court also finds merit in the submission of learned counsel for the petitioner that on the date his case for extension in service fell for consideration, the petitioner stood exonerated by virtue of the enquiry reports dated 11.01.2016 and no order of punishment had been passed against him. The respondents cannot be permitted to rely upon subsequent proceedings initiated vide letter dated 09.09.2019, which is contrary to law to deny him consideration

for extension in service. The law is well settled that an employee's entitlement has to be examined on the basis of the facts existing on the date of consideration and not on the basis of subsequent events. The case law relied upon by the counsel for the petitioner in the cases of “*Bank of India v. Degala Suryanarayana*,” 1999 (5) SCC 762 and “*Nirmal Singh v. Food Corporation of India*,” 2000 (4) SCT 1009 fully support the said proposition.

22. Another aspect which cannot escape the notice of this Court is that several material averments made in the writ petition have either not been specifically denied or have been admitted by the respondents. The respondents have admitted that the enquiry reports exonerated the petitioner and that there was considerable delay in taking a decision on the enquiry reports, and that no specific provision exists under the Rules authorising a *de novo* enquiry. These admissions substantially fortify the case of the petitioner

23. The order dated 05.08.2019 (Annexure P-23), whereby the petitioner's claim for extension in service was rejected solely on the premise that two charge-sheets were pending, is equally unsustainable. Once the very continuation of the disciplinary proceedings through the impugned *de novo* enquiry is found to be contrary to law, the consequential denial of extension in service cannot survive. The respondents were required to consider the case of the petitioner in accordance with the Government Instructions dated 08.10.2012 and the clarification dated 30.04.2015, keeping in view the factual position prevailing on the date of consideration.

Conclusion

24. Accordingly, the present writ petition is allowed. The impugned order dated 02.09.2019 (Annexure P-26), whereby a new Inquiry Officer was appointed

for holding a *de novo* enquiry, and the consequential communication dated 05.09.2019 (Annexure P-25) are hereby quashed. As a result thereof, the order dated 05.08.2019 (Annexure P-23), declining the petitioner the benefit of extension in service solely on the basis that two charge-sheets is also set aside.

25. The respondents are directed to consider the petitioner's claim for extension in service and all consequential service benefits on the basis of the enquiry reports dated 11.01.2016, in accordance with the applicable Government instructions and the observations made herein. The consequential monetary benefits, if found admissible, shall be released to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

26. The petition stands allowed in afore-said terms.

27. Pending application(s), if any, also stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

17.07.2026

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*