

(9) It is true that clause 8 of the letter provides that all disputes arising out of the appointment shall be subject to Jaipur jurisdiction but I do not intend to decide the question of territorial jurisdiction at this stage because that would require some evidence which the parties are yet to lead. Of course, it would be for the trial Court to frame issue regarding territorial jurisdiction of the Court on which decision would be given before determining any other issue arising out of the pleadings of the parties.

(10) For the reasons recorded above, this civil revision is allowed with costs. Orders of the Courts below are set aside and application for *ad interim* injunction stands dismissed. Costs are assessed at Rs. 2,000.

J.S.T.

Before Hon'ble H. S. Bedi, J.

KEHAR DIN,—Petitioner.

*versus*

THE PRESIDING OFFICER, LABOUR COURT, CHANDIGARH  
AND ANOTHER,—Respondents.

Civil Writ Petition No. 6652 of 1991

January 22, 1992

*Central Civil Service (Classification, Conduct and Appeal) Rules 1965—Rules 3(1)(i) & (iii), 14(8)(a), 14(14) and 15—Constitution of India, 1950—Art. 226/227—Domestic enquiry—Validity of—Dismissal from service—Duty to inform delinquent official of entitlement to services of a Presenting Officer—Violation of rule 14(8)(a) would cause prejudice and vitiate enquiry—Denial of right of cross examination of material witnesses will cause prejudice to delinquent official—Non supply of enquiry report alongwith the opinion recorded by enquiry officer being mandatory the enquiry would stand vitiated—However, since punishment was imposed long before Mohd. Ramzan Khan case, punishment shall not be open to challenge on the ground of non-supply of enquiry report—Delinquent official entitled to reinstatement with full backwages and continuity of service—Labour Court award set aside.*

*Held.* that the petitioner who is admittedly a Class IV employee, and as per the record was suffering from some kind of depression, was definitely prejudiced in not being made aware of the fact that he was entitled to be assisted in the enquiry by another Government servant belonging to the department particularly when the P.G.I. itself was represented by its Presenting Officer. The enquiry against the petitioner, therefore, stands vitiated on this short ground.

(Para 3)

*Held*, that admittedly, the opportunity to cross-examine the witnesses was not given and the finding of the Labour Court that their evidence could well be ignored is contrary to the well settled principle of law that the first informant who is the best witness of the incident must be put up for cross-examination so that the truth might be elicited. It is possible that had these two witnesses been cross-examined, a story favourable to the petitioner could well have come out. I am, therefore, of the view that non-compliance with this rule, once again vitiates the domestic enquiry.

(Para 4)

*Held*, that the Supreme Court in the Mohd. Ramzan Khan's case has held that the rules of natural justice require the issuance of such a notice and the consideration of the reply received thereto. Admittedly, this has not been done in the present case. The Court also held in *Mohd. Ramzan's* case that the supply of the enquiry officer was a mandatory requirement under the Rules and its non-compliance would vitiate the enquiry. However, keeping in view the fact that the law on this aspect had remained unsettled for sometime it was stated in para No. 17 of the judgement that this part of the judgement would have prospective application and no punishment shall be open to challenge on this ground. Admittedly, the punishment was imposed in this case long before the judgement aforesaid was rendered and as such on this particular score the petitioner cannot succeed.

(Para 5)

J. C. Verma, Sr. Advocate with Dinesh Kumar, Advocate and Harinder Sharma, Advocate, for the Petitioner.

D. S. Nehra, Sr. Advocate with Arun Nehra, Advocate, for the Respondents.

#### JUDGMENT

*H. S. Bedi, J.*

(1) Petitioner Kehar Din who was working as an Attendant in the Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter referred to as the P.G.) was charge-sheeted under Rule 3 (1) (i) and (ii) of the Central Civil Service (Classification, Conduct and Appeal) Rules, 1965 (hereinafter referred to as the Rules) on the ground that on 26th September, 1985 he had stolen certain injections and medicines from the P.G.I. A regular enquiry was held on the allegations given in the charge-sheet and the Enquiry Officer recommended dismissal of the petitioner from the service of the P.G.I. The matter was thereafter referred to the punishing authority i.e. Director of the P.G.I. who,—*vide* order dated 31st May, 1986 Annexure P-6 removed the petitioner from service with immediate effect. The removal was

thereafter confirmed by the Minister of Health and Family Welfare, Government of India as required by the Rules, Aggrieved by the action that had been taken against him, the petitioner sought and secured a reference to the Labour Court, Union Territory, Chandigarh who,—*vide* its Award Annexure P-8 declined to interfere and held that the services of the petitioner had not been terminated illegally and as such he was not entitled to any relief. The Labour Court weighed the evidence adduced by the P.G.I. before the Enquiry Officer and on appreciation thereof came to this conclusion. The primary fact that weighted with the Court was that when the matter of theft was reported by the staff nurses to the Security Officer, the petitioner admitted his guilt and begged forgiveness. The Labour Court was also impressed by the fact that when the petitioner was produced before Dr. Kalra, one of the Senior Officers of the P.G.I., he once again confessed his guilt. The present petition has been filed against the award Annexure P-8 on the allegations that the report of the Enquiry Officer was biased and based on mere suspicion and the proper procedure as provided by the Rules had not been followed. Pointed attention has been focussed on the fact that the two material witnesses i.e. Miss Alekutty and Mrs. Meena Masih, Staff Nurses, who were first informants of the incident and whose statements are appended Annexures P-2 and P-3 with the writ petition were not allowed to be cross-examined by the petition and the Labour Court brushed aside this fact by stating that even if the evidence of these two witnesses was to be ignored, there was adequate evidence on the record to hold the petitioner guilty. It was also contended that non-compliance with the provisions of Rule 14(8) (a) which stipulated that the delinquent government servant was entitled to the assistance of a Presenting Officer, Rule 14 (14) which provided for an opportunity to cross-examine the witnesses and Rule 15 which provided that the copy of the enquiry report, as also service of a second show cause notice before imposition of penalty, had vitiated the enquiry.

(2) In answer to the various contentions raised in the writ petition, the respondents in the written statement as also in the course of arguments by their learned counsel have relied on the findings of fact recorded by the Labour Court as also by the Enquiry Officer and have further argued that these concurrent findings of fact should not be interfered with by the High Court on a re-appraisal of the evidence adduced.

(3) After hearing the learned counsel for the parties, I find that the petition deserves to succeed. It will be apparent from a reading

of Rule 14(8) (a) already referred to above, that a delinquent official is entitled to the services of a Presenting Officer and it has been urged by Mr. Verma learned counsel for the petitioner that it was incumbent upon the enquiry officer to make the petitioner aware of this fact and the omission to do so would itself vitiate the enquiry. He has relied upon *Bhagat Ram v. State of Himachal Pradesh and others* (1), which bears out the arguments of the learned counsel. This is what the Supreme Court had to say :

“The principle deducible from the provision contained in sub-rule (5) of Rule 15 upon its true construction is that where the department is represented by a Presenting Officer, it would be the duty of the delinquent officer, more particularly when he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another Government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the inquiry shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and as in the present case, a superior officer, co-delinquent, is also represented by an officer of his choice to defend him the absence of any one to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the Inquiry.”

Viewed in the light of the above, it is clear that the petitioner who is admittedly a Class IV employee, and as per the record, was suffering from some kind of depression, was definitely prejudiced in not being made aware of the fact that he was entitled to be assisted in the enquiry by another Government servant belonging to the department particularly when the P.G.J. itself was represented by its Presenting Officer Amar Singh by name. The enquiry against the petitioner, therefore, stands vitiated on this short ground.

(4) It has been additionally argued by the learned counsel for the petitioner that sub-clause (4) of Rule 14 of the Rules provided

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(1) A.I.R. 1983 S.C. 454.

that the petitioner was entitled to cross-examine the witnesses produced by the P.G.I. and admittedly this was not done in the case of the two material witnesses, namely, Miss Alekuty and Mrs. Meena Mashih. He has urged that even these two witnesses had not seen the petitioner actually stealing the medicines in question and they had come to the spot after the theft had in fact taken place. On this reasoning Mr. Verma argued, that had the petitioner been allowed to cross-examine these witnesses, some facts in favour of the petitioner could well have been elicited. Denial of the opportunity to cross-examine the above said witnesses was thus said to have caused prejudice to the petitioner and accordingly vitiated the enquiry. This argument too, to my mind, is unexceptionable. Admittedly, the opportunity to cross-examine the witnesses was not given and the finding of the Labour Court that their evidence could well be ignored is contrary to the well settled principle of law that the first informant who is the best witness of the incident must be put up for cross-examination so that the truth might be elicited. It is possible that had these two witnesses been cross-examined, a story favourable to the petitioner could well have come out. I am, therefore, of the view that non-compliance with this rule, once again vitiates the domestic enquiry.

(5) It has next been argued by the learned counsel for the petitioner that the provisions of Rule 15 of the Rules which provide for the supply of the report of the enquiry officer to the delinquent and the issuance of a show cause notice before the imposition of a penalty, has also not been admittedly complied with which yet again vitiates the enquiry. For this purpose reliance has been placed on *Union of India and others v. Mohd. Ramzan Khan* (2). This argument too, has some force. Admittedly, the rules which are applicable to the P.G.I. do provide for the issuance of second show cause notice before the imposition of a penalty, although the rules have been amended in their applicability to other organizations. Even if the Rules did not so provide, the Supreme Court in the aforesaid case has held that the rules of natural justice require the issuance of such a notice and the consideration of the reply received thereto. Admittedly, this has not been done in the present case. The Court also held in *Mohd. Ramzans's* case that the supply of the enquiry report along with the opinion recorded by the Enquiry Officer was a mandatory requirement under the Rules and its non-compliance would vitiate the enquiry. However, keeping in view the fact that the law on this aspect had remained unsettled for sometime it was stated in

para No. 17 of the judgment that this part of the judgment would have prospective application and no punishment shall be open to challenge on this ground. Admittedly, the punishment was imposed in this case long before the judgment aforesaid was rendered and as such on this particular score the petitioner cannot succeed.

(6) Mr. Nehra learned counsel for the P.G.I. has urged that even if the petition be allowed, the management should be permitted to hold a fresh enquiry against the petitioner and as he has lost confidence of the management, he should not in any case be reinstated in service. In support of his contention he has relied upon Bhagat Ram's case supra. I think this argument is also of no avail. The petitioner is admittedly a Class IV employee belonging to the poorest sections of the Society. He has undergone the agony of a domestic enquiry, proceedings before the Labour Court and also now before this Court for more than five years and as such has been adequately punished for what he may or may not have done. In this view of the matter, it would be inappropriate to remand the case for fresh enquiry or to deny the petitioner the benefit of reinstatement in service.

(6) For the reasons recorded above, the petition is allowed. Annexure P-8 is quashed with no order as to costs. The petitioner is directed to be reinstated in service with full back wages and with continuity in service. He shall be put back in service forthwith and given his arrears etc. within a period of two months of the receipt of a copy of this order, by the respondents.

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R.N.R.

Before Hon'ble K. P. Bhandari & Amarjeet Chaudhary, JJ.

M. L. PURI, ADVOCATE,—Petitioner.

versus

THE PUNJAB AND HARYANA HIGH COURT, THROUGH ITS  
REGISTRAR AND OTHERS,—Respondents.  
Civil Writ Petition No. 2019 of 1993

March 24, 1993

*Constitution of India, 1950—Art. 226/227—High Court Judges (Condition of Service) Act 1954—Section 22B—Public Interest Litigation—Staff cars placed at disposal of High Court Judges not of adequate standard—Old cars to be replaced.*