

---

**(2000) 03 P&H CK 0080**

**In the Punjab And Haryana At Chandigarh**

**Case No : Regular Second Appeal No. 681 of 1999**

State of Punjab and others

APPELLANT

Vs

Varinder Kumar

RESPONDENT

---

**Date of Decision : 17-03-2000**

**Acts Referred:**

**Citation : (2000) 126 PLR 13**

**Hon'ble Judges : S.S. Sudhakar, J**

**Bench : Single Bench**

**Advocate : Sushant Maini, for the Appellant; Kawaljit Singh, for the Respondent**

---

## **Judgement**

1. The State has filed this appeal challenging the order of the learned Additional District Judge vide which he reversed the judgment of the learned civil Judge and allowed the appeal of the respondent. The respondent has filed a suit challenging the departmental punishment awarded to him viz. the reduction of pay for two years to the initial stage. The charge against the respondent was that he had issued khasra girdawari to one Satpal wherein the said Satpal mentioned Gair Murusi Lagal Ath Guna whereas in the original Khasra Girdawari it was mentioned as Mukbuza Mehkma Janglat.

2. The short question for determination in this appeal is whether the respondent was required to be supplied the copies as required in the rule.

3. The lower appellant Court has relied on rule 9(4)(i) of the punishment and Appeal Rules. It is as under :-

9(4)(i) - If the Punishing authority having regard to its finding on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 5 should be imposed on the Government employee, it shall -

"(a) furnish to the Government employee a copy of the report of the enquiry held by it and its findings on each article of charge or where the enquiry had been

held by an inquiring authority, appointed by him, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the enquiring authority;

(b) give the Government employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry held under Rule 8."

4. According to learned counsel for the respondent, punishment was awarded to him under 5(iv) of the rules and that is covered under the above provision and, therefore, provision should have been complied with. Counsel for the appellants relied on the case of *State of U.P. v. Abhai Kishore Masta* 1995 (3) RSJ 59 : (1995 Lab IC 1401). Their Lordships in the said case observed that the decision in *Mohd. Ramzan Khan (Union of India v. Mohd. Ramzan Khan* 1991 (1) RSJ 397 : (1991 Lab IC 308) has been explained by a Constitution Bench of this Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, wherein it has been held that where the order of punishment is made earlier to the date of the decision in *Ramzan Khan*, non-supply of enquiry report does not vitiate the enquiry. Following the said decision, the order of the High Court quashing the punishment on the said ground was set aside. *Mohd. Ramzan Khan's* case was decided on 20-11-90. Counsel for the appellant has drawn my attention to the plaint in which the orders sought to be quashed are dated 19-6-89 and 10-10-90 and according to learned counsel the principle of *Mohd. Ramzan Khan's* case will not apply to the facts of this case.

5. Learned counsel for the respondent has relied on the case of *Dr. K. K. Sharma v. State of Haryana* 1996 (4) RSJ 721. It has been held by this Court in the said case that it is obligatory upon the authorities concerned to supply the copy of the enquiry report to the delinquent officer if the rules so provided and non-supply of such a report would vitiate the disciplinary enquiry proceedings and consequently the order of punishment. According to the counsel for the respondent, the rules in the present case, do provide for the supply of the copies.

6. *S. K. Sharma's* case relied upon by the trial Court is the case of *State Bank of Patiala v. S. K. Sharma* 1996(2) RSJ 41. Relying on the said judgment, it has been observed that the person challenging the punishment has to show that violation of the procedure has caused prejudice to him.

7. As mentioned earlier, *Mohd. Ramzan Khan's* case (*supra*) was decided on 20-11-1990 and the orders which are sought to be quashed are dated 19-6-1989 and 10-10-1990 and, therefore, they are prior to the decision of *Mohd. Ramzan Khan's* case. The Supreme Court in the case of *Managing Director, ECIL v. B. Karunakar (supra)* has held that the law was in an unsettled condition till at least 20-11-1990 on which date the case of *Mohd. Ramzan Khan* case was decided. It

is also held that decision of the case in Mohd. Ramzan Khan's case is expressly prospective in operation and will apply to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. It deal with the case of R. K. Vashisht v. Union of India AIR 1993 SCC 431. It is observed as under :

"The apparent departure was in R.K. Vashisht case, 1993 Supp.(1) SCC 431 . However, the employee there had made a request for a copy of the inquiry report but it was not furnished to him prior to the issue of the order of dismissal. It is in these circumstances that this Court, relying upon the proposition of law laid down in Union of India and others Vs. Mohd. Ramzan Khan, held that the order of dismissal was vitiated. It is not clear from the decision whether the rules in that case required furnishing of the copy and at what stage.

8. According to the rule (supra) if the punishing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 5 should be imposed on the Government employee, then he has to be furnished with a copy of the report of the inquiry and its finding on each article of charge and a notice is also required to be given stating the penalty proposed to be imposed on the government servant. Therefore, if there was no rule it could have been very well accepted that the present impugned orders being prior to the decision of Mohd. Ramzan Khan's case would not have been affected by the judgment of that case. However, the rule therein is in existence and it has to be complied with.

10. Similar position had arisen in a Haryana matter in the case of Dr. K. K. Sharma v. State of Haryana 1996 (4) RSJ 720. It has been held by this Court in the said case that according to the case of Managing Director, ECIL v. B. Karunakar (supra) there is an exception where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee.

11. In view of the above position, the respondent has a right to be supplied with the copy as mentioned in the rule above and non-supply of the same has led to his success in the Courts below.

12. In view of the above, I find no reason to interfere with the order of the learned appellate authority. This being the position, this appeal deserves to be dismissed.

13. In the result, this appeal is dismissed.

14. Appeal dismissed.