

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**C.M.No.6760 of 2015 in/and
CWP No.2551 of 2008
Date of decision: 06.08.2015**

Azad Singh Hooda

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Suneel Ranga, Advocate, for
Mr. Gaurav Singh Hooda, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G.Haryana.

AMIT RAWAL J. (Oral)

Reply on behalf of respondents No.1 and 2 has been filed in the Court. The same is taken on record.

Vide application, i.e., C.M.No.6760 of 2015, a prayer has been made for fixing the actual date and dispose of the main writ petition in terms of order dated 23.01.2014 passed in CWP No.16451 of 2011 titled as Ms. Pritam Mehta vs. State of Haryana and others.

I have gone through the aforementioned judgment, as well as, pleadings of the present case and found that the matter is squarely covered, therefore, allow the application. Annexure P-13 is

taken on record and main writ petition is taken on board for hearing today itself.

Challenge in the present writ petition is to the order dated 08.07.2005, Annexure P-6, whereby, punishment of withholding two increments with cumulative effect has been imposed and order dated 21.02.2007, Annexure P-11 and order dated 20.12.2007, Annexure P-13, whereby, statutory appeal and revision filed by the petitioner has been rejected.

Mr. Suneel Ranga, learned counsel appearing on behalf the petitioner submits that the petitioner was served with a charge sheet dated 03.10.2002 (Annexure P-2), which was duly replied on 28.10.2002 (Annexure P-3). He further submits that charge sheet was served under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (hereinafter referred to as 'the Rules 1987'). The department after taking into consideration the reply, without conducting any inquiry, stopped two annual increments with cumulative effect, which is not in consonance with the ratio decidendi culled out in the judgment dated 23.01.2014, Annexure P-13, *ibid*, which has granted identical relief by relying upon the judgment rendered by the Full Bench of this Court in *Dr. K.G.Tiwari vs. State of Haryana* **2002 (4) SLR 329**. He further submits that aforementioned impugned orders are illegal, arbitrary and liable to be set aside.

Mr. Hitesh Pandit, learned Additional Advocate General, Haryana submits that since the disciplinary authority/appointing

authority on going through the reply, filed in response to the charge sheet, found that the petitioner had unequivocally admitted his lapse and therefore, dispensed with enquiry by relying upon Rule 4(4) of Guidelines on Disciplinary Cases and dispensed with holding of an inquiry, thus, contention of the petitioner is not sustainable and the aforementioned impugned orders are liable to be upheld.

I have heard learned counsel for the parties and appraised the paper book with their able assistance.

It would be apt to reproduce the Rule 7 of the Rules, 1987:-

"7. Inquiry before imposition of certain penalties. (1) Without prejudice to the provisions of the Public Servants Enquiries) Act, 1950, no order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he has given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(2) The grounds on which it is proposed to take such action shall be reduced to the form of definite charge or charges which shall be communicated in writing to be persons charged together with a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take up into consideration in passing orders on the case and he shall

be required within a reasonable time to state in writing whether he admits the truth of all or any, of the charges what explanation of defence, if any, he has to offer and whether he desires to be heard in person. If the punishing authority is not satisfied with the explanation given by the person charged or there are other reasons to do so shall direct that an enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The persons charged shall, subject to the conditions described in Sub-Rule (3), be entitled to cross-examine the witnesses, to given evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the enquiry may for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient record or the evidence and statement of the findings and the grounds thereof provided that -

(a) it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement of allegation made by the person charged in the course of his defence; and

(b) the provisions of the foregoing sub-rule shall not apply where any major penalty is proposed to be imposed upon a person on the ground of conduct which has led to his

conviction on a criminal charge; or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reasons to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him, or where in the interest of the security of the State it is considered not expedient to give to that person such an opportunity."

On going through the provisions of Rule 7 of the Rules, 1987, it is crystal clear that after giving of the reasonable opportunity to show cause the action proposed to be taken against the concerned employee. Sub rule (2) of Rule 7 requires the ground on which action is proposed to be taken and for that a definite charge or charges are to be communicated in writing to the person charged with statement of allegations. The concerned charge-sheeted employee is called upon to give explanation in defence, if any. In case, the explanation is not found satisfactory, the enquiry is required to be conducted, therefore, the management was required to prove the charges. In the instant case, respondent-employer has not applied merit of the rules extracted (supra) and dispensed with the enquiry by taking into consideration the reply.

I have gone through the reply Annexure P-3 which does not in clear terms amount the admission of charges/guilt. Disciplinary authority/appointing authority *dehor* of the fact that reply was not

proper, rather vaguely drafted could not have been dispensed with holding of inquiry. In case, department was not satisfied with the reply and it was obliged to initiate the action, as contemplated, in the rules, *ibid*, in view of the Full Bench judgment of this Court in Dr. K.G.Tiwari's case (*supra*), wherein, it has been held that once the charge sheet has been issued for imposition of a major penalty and merely by examining reply and without conducting any regular inquiry, even a minor punishment cannot be imposed.

In the instant case, the punishing authority intends to or proposed to impose minor punishment, even then enquiry is inevitable. Since the department has not chosen to hold enquiry by appointing the enquiry officer, aforementioned impugned orders are set aside.

Writ petition stands allowed.

However, this order of mine shall not preclude the respondents-authorities, in case, the rules framed permits them to initiate the enquiry in order to prove the charges.

**(AMIT RAWAL)
JUDGE**

August 06, 2015
savita