

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

CWP No.1723 of 2013  
Date of decision : 25.03.2015

Satish Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. R.K. Malik, Sr. Advocate with  
Mr. Tejpal Dhull, Advocate  
for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

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**AMIT RAWAL, J. (Oral)**

Prayer in the present writ petition is for quashing of order dated 30.12.2011 (Annexure P-6), whereby the petitioner has been dismissed from the service and as well for quashing of order dated 11.10.2012 (Annexure P-9), whereby the appeal filed against the order of dismissal has also been dismissed.

In nutshell, the petitioner was served with the charge-sheet and in view thereof Enquiry Officer was appointed. Witnesses of the Department though deposed one line charges but did not offer themselves for cross-examination which fact is evident from Annexure P-3 (Collectively). Despite the fact that witnesses refused for cross-examination, the Enquiry Officer submitted his report dated 29.08.2011, whereby

charges/allegations levelled against the petitioner were found to have been established. The petitioner is stated to have made a representation dated 12.10.2011 (Annexure P-5) to Director, who is Punishing Authority, for disagreed with the enquiry report and as well as for exoneration on the point that all the witnesses have failed to offer for cross-examination and even the copy of documents were not provided, much less, reasonable opportunity was also not granted and, therefore, there was a violation of principles of natural justice.

The Punishing Authority vide order dated 30.12.2011 (Annexure P-6) while discussing the point, raised by the petitioner, qua non-compliance of the principle of natural justice, much less, non-proving of all the charges by the Department, as the witnesses had not offered for cross-examination, yet found that since there is no provision in the Rules or Instructions to hold enquiry de novo, invoked the provision of Article 311(2) of the Constitution of India and dismissed the petitioner from the service.

It is the said order which was assailed/challenged by the petitioner by filing statutory appeal. The grounds of appeal is at Annexure P-7. The appeal has been filed by taking a comprehensive grounds. Even ground regarding the imposing of a major punishment had also been taken. The Financial Commissioner, vide order dated 11.10.2012 (Annexure P-9) dismissed the appeal. It is in these circumstances, the petitioner approached this Hon'ble Court for quashing of the aforementioned orders.

Mr. R.K. Malik, learned Sr. Counsel for the petitioner in support of his grounds raised the following submissions:-

- i) The Punishing Authority in paragraph Nos.26, 30, 44, 45, 51, 52 and 53 while imposing the punishment by invoking the provision of Article 311(2) of Constitution of India has also noticed the previous conduct of the petitioner which according to him is totally illegal and arbitrary as the petitioner had not been put to any charge qua previous conduct and, therefore, there was no occasion to rebut the same. In regard to the submission, he has relied upon the judgment of Hon'ble Supreme Court of India in *Indu Bhushan Dwivedi Vs. State of Jharkhand and another* 2010 (3) SCT 343 to contend that Punishing Authority has considered the past adverse record but had not given any opportunity to the delinquent which has caused a serious prejudice, thus the impugned orders are not sustainable in law.
- ii) He further submitted that once the Punishing Authority had found that enquiry was vitiated in law as the witnesses of the Department did not offer for cross-examination instead of ordering for a fresh enquiry, the Punishing Authority suo motu invoked the provisions of Article 311(2) of Constitution of India.
- iii) While invoking the powers under Article 311(2)(B) authority which has power to dismiss or remove the person has to record in writing, reasons of exercising

such powers, no such reasons have been recorded, therefore, the order Annexure 30.12.2011 (Annexure P-6) is not sustainable in law.

Mr. Ravi Partap Singh, Assistant Advocate General, Haryana in support of his arguments has contended that the petitioner has not challenged the enquiry report dated 29.08.2011 (Annexure P-4) and only challenge is of the order of the dismissal and order passed in appeal, therefore the present writ petition is not maintainable. He further submitted that the petitioner has not sought any personal hearing from the Punishing Authority before passing of the dismissal order, and, therefore, the order passed by the Punishing Authority and as well as Appellate Authority are fair, legal and justified, much less, sustainable.

I have heard learned counsel for the parties and appraised the paper book and as well as the impugned order.

On going through the impugned of the order dated 30.12.2011 (Annexure P-6), it is evident that Punishing Authority had formed an opinion that enquiry was vitiated in law but felt incapacitated in not ordering the de novo enquiry without referring to any of provision or instruction, much less, principle of natural justice and instead invoked the powers of Article 311 (2) of the Constitution of India. The Punishing Authority without realizing the fact that enquiry was vitiated in law ought to have appointed the fresh Enquiry Officer and remitted back the matter to him for *de novo* powers. Even for exercising power under Article 311(2), there is no such order on record or reflected in the impugned order that the Punishing Authority, before invoking such powers, had recorded the

reasons as enshrined under Article 311(2)(b), as language of the aforesaid permission is clear and unambiguous. In the absence of any satisfaction recorded, the order of dismissing the petitioner from service is thus bad in law. There is another legal aspect by virtue of which order of the dismissal cannot be sustained, inasmuch, as the Punishing Authority in paragraph Nos.26, 30, 44, 45, 51, 52 and 53 has taken into consideration the previous conduct of the petitioner.

Para Nos. 26, 30, 44, 45, 51, 52 and 53 are extracted hereinbelow:-

*“26. As per a letter dated 25.03.2003, Shri Satish Kumar was seen writing direct to the Director against the Conduct Rules that he had not received the charge-sheet under Rule 8, yet simultaneously demanded copies of such documents which had no relevance to the said charge-sheet. In his aggression, it appears, Shri Satish Kumar had gone blind on his own contradictions. It appears that he could always say or write anything as dictated by his whims and fancy without any accountability and sense of responsibility. Still he was invited to inspect the relevant record on any working day within seven days of the receipt of the same by the Directorate office. An extension of time to file reply was also granted to him vide the then Joint Director orders dated 28.4.2003 even as he was not authorized under Rules so to do.*

*30. A report was also received from the Principal, Govt. ITI, Yamunanagar on 29.4.2003 that the respondent-employee had been refusing to accept an official letter and further went on to enclose the messenger sewadar's report in this regard. On 5.5.2003, Shri Satish Kumar by way of reply to the charge-sheet under Rule 8 alleged malafide and conspiracy on the part of said Smt. Tripta Kumari, Group Instructor while terming the allegation leveled against him as fantastic and baseless. He*

*further threatened in writing administrative/defamation proceedings against his superior Smt. Tripta Kumari for making the complaint of misbehavior on her part against him in her official capacity. He demanded from the Director that (even when there was no provision in any Rules) a high-level inquiry be ordered in the matter. It is not known whether he implemented his threat of launching defamation proceedings, etc. in any sincerity. He went on to brazenly allege a policy of discrimination against him on the part of both the Directorate as well as the Principal of the Govt. ITI where he was employed. However, he was heard in person vide the Director orders dated 28.7.2003. A penalty of warning to be careful in future was imposed upon him. It is obvious that such penalties had no effect. So far as any improvement in behavior of the respondent-employee is concerned. On the other hand, the record bears it out, the kind of rascalization of the respondent-employee in the process has only been accentuated.*

*44. On 17.7.2008/29.7.2008, a complaint was received against Shri Satish Kumar from some hapless parents of the trainees at Yamunanagar that for one full year he had not taught the trainees under him anything at all, and when asked to perform his duty as an Instructor, he abused them using foul words about their fathers and mothers. The superior officers of Shri Satish Kumar was also under terror of Shri Satish Kumar. Shri Satish Kumar was also blackmailing the trainees and demanding illegal money under the threat of disqualifying them from sitting in examinations/test. It was alleged that all officers and all the employees were afraid of Shri Satish Kumar because he is habitual die-hard nuisance who is given to making all sorts of complaints against all and sundry to harass them. He loved to level allegations. Not only his place of work, i.e. the Govt ITI, Yamunanagar, he had created terror in his neighborhood as well that he would cause or arrange for income tax raid, electricity raid ad infinitum, according to the*

*complaint.*

45. *There was another complaint dated 29.7.2008 that when the respondent-employee was transferred from Yamunanagar he refused to hand over his charge to his successor and no one dare touch him with the result that the trainees were not able to make use of the machinery and equipment and the trained suffered because of the acts of omission and commission on the part of said Shri Satish Kumar. Shri Satish Kumar was used to making rounds of the Haryana Civil Secretariat, the proof of which with his photograph is available in the records of the Secretariat, instead of paying any attention to his appointed duties as an Instructor.*

51. *Another complaint was received from one Shri Shashi Kant Sharma of Yamunanagar on 10.12.2009 that Shri Satish Kumar has misappropriated lakhs of rupees by showing purchases of assets/properties from fictitious companies by keeping one Shri Shamsher Singh Sihag, the Principal of the Govt ITI, in the dark. It is well-recorded fact that when the respondent-employee was away from duty and even when he was out of India, with or without any permission from the Govt. he forged documents to the effect that he had checked and certified on record the material received in the ITI to be correct and in order to those dates. It was also alleged that he does not even fulfill the qualifications prescribed for the post of Radio and T.V. Instructor and he has wrongly been appointed on that post. The record in this regard has also not been forthcoming.*

52. *He was praying with the future of the trainees in Govt ITI, Yamunanagar according to the complainant. Such is his reputation that only 20-21 trainees take admission in his class and almost everybody fails in the final test. He is also used to make anonymous complaints in the name of some organizations/associations of his own creation, etc. He is also used to manhandle the trainees and get physical with them.*

*53. According to the complaint, a criminal FIR was also lodged against Shri Satish Kumar in Yamunanagar, and a court case is also pending against him. The Department did not take any action as per law in this regard also, after verifying facts and as per law. He also fights with his wife and children, the complainant added. He had implicated someone posted as Assistant Treasury Officer Yamunanagar in false criminal case and later on changed his evidence after receiving illegal gratification from the said ATO. He also paid rupees 5000 to the dealing assistant Shri Niranjana Singh of the Directorate alongwith Shri Joginder Pal, Group Instructor. He manages complaints against him to be dealt with in the Directorate office on separate files which are then not allowed to be put up to the Director in the name of seeking advice/comments from irrelevant quarters with the help of those Assistants. Shri Satish Kumar had also approached one Shri P.S. Narwal, presently a Joint Director, at his residence in Panchkula, whose father was also in the same Department, with a view to enlisting his support in manipulating the inquiry in his favour and asking him to help him in causing delay in the same. A fact finding inquiry in these complaints was ordered on 2.3.2010 to be conducted by one Shri Luthra, Assistant Director.”*

It is admitted case that the petitioner had not been put to the charges of the past conduct as the charges pertained to the different period. In this regard, I draw support from the judgment of Hon'ble Supreme Court of India in Indu Bhushan (Supra) case, wherein Hon'ble Supreme Court after noticing the fact and law while culling out in ratio *descendi* held that order of dismissal by noticing the previous conduct without giving any opportunity to the delinquent is not sustainable in law.

Thus, Appellate Authority has failed to notice the

aforementioned legal points which comprehensively had been raised in the grounds of appeal (Annexure P-7) and as well as in written arguments (Annexure P-8). Thus, in view of the aforesaid observations, the order dated 30.12.2011 (Annexure P-6) and order dated 11.10.2012 (Annexure P-9) are not sustainable in law and are hereby set aside and the matter is remitted back to the Punishing Authority to pass fresh order while taking into consideration the observations of this Court. The Disciplinary Authority is directed to pass a order within a reasonable period in accordance with law preferably within a period of four months from the date of receipt of certified copy of this order.

With the aforementioned observations, the present writ petition stands disposed of.

**25.03.2015**

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**(AMIT RAWAL)  
JUDGE**