

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

MUKESH KUMAR SALUJA
2015.01.29 17:14
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**CWP No.1794 of 2013
Date of decision:27.01.2015**

M.P.Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Brijender Kaushik, Advocate for the applicant-petitioner.

Mr.Sudharshan Goel, Advocate and
Mr.Pankaj Gupta, Advocate for respondents No. 2 and 3.

RAMESHWAR SINGH MALIK, J. (Oral)

Learned counsel for the petitioner, at the very outset, submits that the instant writ petition is squarely covered in favour of the petitioner by a Constitution Bench judgment of the Hon'ble Supreme Court in **K.R.Dev v. The Collector of Central Excise, Shillong, AIR 1971 SC 1447** and numerous later judgments rendered by the Hon'ble Supreme Court as well as by this Court.

Faced with the above, learned counsel for the respondents, despite their best efforts, could not distinguish the judgment of the Hon'ble Supreme Court in **K.R.Dev's** case (**supra**) and rightly so, because it was a matter of record.

In view of the above-said respective stands taken by learned counsel for the parties, the present writ petition deserves to be allowed. It is so said, because it is not disputed on record that enquiry report dated 18.7.2011 (Annexure P-2) was duly accepted by the competent authority

without any kind of reservation. In such a situation, the Board of Directors of the respondent-Corporation would have no jurisdiction to order the second enquiry by passing the impugned order dated 31.12.2012 (Annexure P-10), because the impugned order runs counter to the law laid down by the Constitution Bench judgment of the Hon'ble Supreme Court in **K.R.Dev's** case (**supra**).

The relevant observations made by the Hon'ble Supreme Court in paras 11, 13 and 14 of **K.R.Dev's** judgment, which can be gainfully followed in the present case, read as under:-

“A number of points have been raised before us but we need only mention one point, viz, that the Collector had no authority to appoint Shri K. P. Patnaik to inquire into the charge after the Inquiry Officers had reported in his favour. it was urged before us that such an inquiry is not contemplated by the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was contended that Rule 15 of the Classification and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated, successive inquiries there was no provision for setting aside earlier inquiries without giving any reason whatsoever. It was further contended that the order dated Feb 13, 1962 was mala fide.

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It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But

there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of, the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.

In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant."

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order dated 31.12.2012 (Annexure P-10) has been found to be an order without jurisdiction and contrary to the law laid down by the Hon'ble Supreme Court in **K.R.Dev's case (supra)**, the same is hereby set aside.

Consequently, respondents No. 2 and 3 are directed to do the needful in compliance of the order dated 20.9.2011 (Annexure P-3) granting and releasing all the consequential service benefits to the petitioner, if any, at an early date but in any case within a period of three months from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, the instant writ petition stands allowed, however, with no order as to costs.

27.01.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE