

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

**CWP No.20044 of 2013
Date of decision: 30.06.2015**

Rajesh Kumar ... Petitioner
Vs.

State of Haryana and others ... Respondents

CWP No.1011 of 2014

Rajesh Kumar ... 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:- Dr. Suresh Kumar Redhu, Advocate
for the petitioner(s).

Mr. Keshav Gupta, AAG, Haryana.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two writ petitions, i.e. CWP No.20044 of 2013 and CWP No.1011 of 2014, both filed by the the same petitioner since common facts and law are involved in the same.

For the sake of brevity, the facts are being taken from CWP No.20044 of 2013.

The brief facts reveals that while petitioner was posted at

PP Model Town, Rohtak, he was assigned duty for verification of passport of Shekhar Chander, resident of Rohtak and the said passport holder made a complaint to SSP Anil Kumar Rao, who was at that time District Chief of Rohtak, regarding mis-behaviour and vide order dated 21.04.2010, the petitioner was placed under suspension and thereafter, regular departmental enquiry was initiated. The enquiry officer vide his report dated 29.12.2010 exonerated the petitioner from the charges leveled against him. The punishing authority recorded a dissenting/disagreement note dated 04.01.2011 (Annexure P-4). However, the punishing authority/disciplinary authority did not record any reasons for disagreement, much less, without giving opportunity of hearing to the petitioner, while recording the dissenting note recommended for imposition of punishment of stoppage of two future annual increments with permanent effect.

Accordingly, the petitioner was issued a show cause notice, which is stated to have been replied vide Annexure P-5. Reply of the petitioner did not find weightage in the mind of authority and accordingly, vide order dated 17.01.2011, Annexure P-6, the petitioner was imposed punishment of stoppage of one future annual increment with permanent effect. On the basis of imposition of punishment, vide order dated 19.09.2011, Annexure P-8, the petitioner was conveyed adverse ACR remarks which has been challenged by filing writ petition, i.e., CWP No.1011 of 2014, but vide order dated 11.11.2013 (Annexure P-14), same was rejected. The

aforesaid order was passed by Anil Kumar Rao, who at the time, when the order of punishment was imposed, was working as officiating Superintendent of Police and had ordered for departmental enquiry and in these circumstances, the petitioner has approached this Court for vindication of his grievance.

Dr. Suresh Kumar Redhu, learned counsel for the petitioner, in support of his contention relied upon the judgments of this Court in P.K.Prashar vs. Union of India and others **2008(6) SLR 202** and Haryana State Agricultural Marketing Board vs. K.L.Ahuja and another **2011(4) S.C.T. 233**, to contend that if the punishing authority disagree with the finding of enquiry officer, the point or points of such disagreement together with a brief statement of the ground thereof was required to be supplied to the petitioner.

Mr. Keshav Gupta, learned Assistant Advocate General, Haryana, submits that during the interregnum, the petitioner was also promoted as ASI on 24.12.2012 and the said order was withdrawn vide order dated 10.09.2013 (Annexure R-8) owing to the interim order dated 13.09.2013 passed by this Court. Thereafter, vide order dated 11.12.2013 (Annexure R-9), the order dated 10.09.2013 (Annexure R-8) was withdrawn.

I have heard learned counsel for the parties and appraised the paper book as well as case law.

The disciplinary authority while recording dissenting note did not serve show cause notice to the petitioner calling upon him to give reply with regard to the alleged disagreement. The position of

law on this particular point is no longer res integra. It is settled proposition of law as has been culled out in the aforementioned judgments that the disciplinary authority is required to hear the delinquent employee before recording dissatisfaction to the enquiry report along with brief report. No opportunity of hearing has been given to the petitioner as all consequential orders imposition of penalty, stoppage of annual increment with cumulative effect and recording of adverse remarks in the ACR would come in the way of the petitioner at the time of further promotion.

Accordingly, impugned orders dated 17.01.2011, Annexure P-6, 10.02.2011, Annexure P-7, 19.09.2011, Annexure P-8 and show cause notice dated 19.08.2013, Annexure P-10 and order dated 10.01.2014, Annexure P-15 in CWP No.1011 of 2014, whereby the representation of the petitioner impugning adverse remarks has been rejected are hereby quashed/set aside and the writ petitions are accordingly allowed.

It is made clear that observations of this Court shall not prevent the authorities to serve a show cause notice to the petitioner along with statement/reasons with regard to the recording of dissenting note/dissatisfaction by punishing authority and order, if any, shall be passed after affording opportunity of hearing.

(AMIT RAWAL)
JUDGE

June 30, 2015
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