

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

CWP No.23339 of 2013
Date of decision : 30.04.2015

Ex-ASI No.211, Dinesh Kumar

...Petitioner

Versus

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

Mr. Keshav Gupta, AAG, Haryana.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the Disagreement Note-Cum-Show Cause Notice dated 13.04.2012 (Annexure P-5) and as well as orders dated 22.05.2012 (Annexure P-7) and 19/20.03.2013 (Annexure P-9) passed by the Appellate Authority dismissing the statutory appeal/revision of the petitioner.

The petitioner was served a charge-sheet on 25.08.2011 which was duly replied by the petitioner. Dissatisfied with the reply, the Department appointed Enquiry Officer. The Enquiry Officer vide

his report dated 09.11.2011 found that the charges have not been proved against the petitioner. The Commissioner of Police, Faridabad while dealing with the report of the Enquiry Officer gave a disagreement note. While giving Disagreement Note, Commissioner of Police, Faridabad found a provisional opinion that the punishment of the dismissal need not be inflicted upon the petitioner. The relevant portion of the order of Disagreement Note of the Police, Faridabad is reads as under:-

*"The undersigned is not in agreement with the order passed by the disciplinary authority, the Deputy Commissioner of Police, Headquarters, Faridabad in the said departmental enquiry and accordingly it is decided to review the departmental proceedings. I am of the view that misconduct on your part is grave and is required to be viewed seriously. The punishing authority has shown extra leniency and poor appreciation of evidence while deciding aforesaid departmental enquiry. Hence, I disagree with the said order. I, therefore, in exercise of powers vested in me under Rule 16.28 of PPR 1934, am provisionally of the view that why a **punishment of dismissal of service may** not be inflicted upon you ASI Dinesh Kumar No.211/FBD for the above said misconduct.*

*However, before taking the proposed action, I desire to give you an opportunity to show cause as to why the proposed action may not be taken against you. If you have anything to submit in this regard, you should submit the same **in writing within 15 days***

of receipt of this notice by you. In case, no reply is received within the stipulated period, it will be presumed that you have nothing to submit and final orders will be passed ex-parte."

Thereafter, vide order dated 22.05.2012 (Annexure P-7), Commissioner of Police, Faridabad dismissed the petitioner from service with immediate effect. The said order was assailed by the petitioner by filing an appeal and the Appellate Authority vide order dated 19/20.03.2003 (Annexure P-9) dismissed the appeal.

Mr. R.K. Malik, Learned Senior Counsel for the petitioner contends that the petitioner was not given an opportunity of hearing by the Competent Authority before giving a disagreement note. In support of his argument, he has relied upon judgment of Hon'ble Supreme Court in *Punjab National Bank Vs. Kunj Behari, Misra 1998(3), SCT 833*.

Mr. Keshav Gupta, AAG, Haryana submits that the opinion formed by the Commissioner of Police was provisional and, therefore, principle of natural justice has not been violated, for, the petitioner was thereafter served show cause notice. The order dated 22.05.2012 (Annexure P-7) was passed, and, therefore the same is legal and justified and is in consonance with the provisions of Punjab Police Rules as applicable to Haryana.

I have heard learned counsel for the parties and appraised the paper book.

As per the operative part of the Disagreement Note, it is not

clear that the Competent Authority has given any opportunity of hearing to delinquent/petitioner or not and formed a different opinion than what has already been formed by the Enquiry Officer.

In support of my aforementioned observations, I draw support from the ratio descendi culled out from the Hon'ble Supreme Court in Punjab National Bank's case (Supra). Paragraph No.16 of the same is extracted hereinbelow:-

"16. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Inquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

It is a matter of record that no opportunity of hearing has been given to the Delinquent Officer by the Competent Authority before forming the opinion of imposing a gravest punishment of dismissal.

In view of what has been observed above, orders dated 22.05.2012 (Annexure P-7) and 19/20.03.2013 (Annexure P-9) are hereby quashed.

The Competent Authority shall be at a liberty to comply with the principles of natural justice in view of what has been observed above by giving an opportunity of hearing to the petitioner for the purpose of disagreeing with the report of the Enquiry Officer.

With the aforementioned observation, writ petition stands allowed.

30.04.2015

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**(AMIT RAWAL)
JUDGE**