

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

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**CWP-20369-2014 (O&M)
Date of decision: 23.01.2017**

Rajbir Singh

....Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.K.Malik, Sr. Advocate with
Mr. Kuldeep Sheoran, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of order dated 12.08.2014 vide Annexure P8 by which appellate authority has confirmed the order of punishment dated 27.02.2012 vide Annexure P6 to the extent of imposing the punishment of stoppage of 3 increments with cumulative effect.

2. The petitioner was subjected to disciplinary proceedings on the allegations that he was entering office under intoxication and the disciplinary proceedings were concluded in imposing penalty of reduction to the lowest pay in the time scale of pay/pay band to the petitioner. Thereafter, the petitioner preferred an appeal before the appellate authority. Appellate authority modified the penalty of imposing lesser punishment of

stoppage of 3 increment with cumulative effect. Still aggrieved by the order of appellate authority, petitioner preferred a writ petition before this court. On 14.08.2013 CWP No. 7235 of 2012 was disposed of while quashing the order of appellate authority as well as order appealed against disciplinary authority's order and further directed for reconsideration with the following observation:-

“To this end the punishing authority may also consider issuing a warning to the petitioner to be careful in future. However, the impugned order to the extent it inflicts, for the period the petitioner remained out of service, a further onerous condition for that period to be treated as leave of the kind due is not legally sustainable and that part of the order would stand quashed with all consequential benefits attaching thereto. Resultantly, the period of five years and one month would be considered as duty period for all intents and purposes including preservation of accrued prior seniority etc. However, the arrears of salary would become due and payable from only from 9.12.2010, the date of judgment of the learned Single Judge, as the best serviceable cause of action for payment of arrears of salary since the removal order was quashed and a new right declared but the petitioner was not exonerated by court on the remaining charge.

Accordingly, the impugned appellate order and the order appealed against stand quashed and it is directed that the reconsideration exercise as ordered above be now completed within three months from the date of receipt of a certified copy of this order. The monetary benefits which would become available be

calculated and made over to the petitioner within one month after final order on remand is passed and communicated to the petitioner. The writ petition is partly allowed in the above terms with no order as to costs.”

3. Thereafter, the appellate authority passed an order while holding that earlier punishment passed by the disciplinary authority is in order. It was further stated that “ I am of the view that such punishments should be imposed on the employees as offers them an opportunity to improve in future and may not act as a constant sore point affecting his morale” Learned counsel for the petitioner submitted that this court observed that punishing authority may also consider to issue a warning to be careful in future, has not been taken into consideration and not discussed in the order dated 12.08.2014. It was further contended that there is a protection in respect of seniority and insofar as monetary benefits also there is a direction. Merely, there is an observation that the petitioner was not exonerated by court. Why remaining charge cannot be taken into consideration for imposing of penalty of stoppage of 3 increments, when this court has specifically directed the punishing authority to consider issue a warning to the petitioner to be careful in future. It was also contended that direction is for punishing authority and not for appellate authority. On the other hand, appellate authority exercised power and passed an impugned order dated 12.08.2014.

4. On the other hand, learned counsel for the respondents submitted that when the appellate authority's order is set aside, the matter is required

to be considered by the appellate authority and in the disciplinary authority.

5. Heard learned counsel for the parties.

6. Having regard to the directions issued in CWP No. 7235 of 2012, and also observation made “to this end the punishing authority may also consider issuing warning to the petitioner to be careful in future” read with quashing of the appellate order and the order appealed against mean to say that order of the disciplinary authority are set aside. Consequently, disciplinary authority is required to pass a fresh order with reference to observation made in CWP No. 7235 of 2012 and not the appellate authority. Thus, the appellate authority exceeded his jurisdiction. In other words, he has stepped up into the shoe of disciplinary authority which is not permissible. Hence, Annexure P8 dated 12.08.2014 is set aside and the matter is remanded to the disciplinary authority to take fresh decision having regard to the observation made in CWP No. 7235 of 2012 and pass a suitable order after giving due opportunity to the petitioner. Such exercise shall be completed by the disciplinary authority within a period of 3 months from today.

23.01.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No