

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

**CWP No.22581 of 2015
Decided on :22.12.2015**

Krishan Kumar

... Petitioner

Versus

District & Sessions Judge, Rohtak and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. N.K. Malhotra, Advocate
for the petitioner.

Mr. Alok Mittal, Advocate
for the respondents.

G.S. Sandhawalia , J. (Oral)

The petitioner seeks the quashing of the order dated 09.09.2015 and 14.09.2015, Annexure P-7 and P-9, respectively.

Vide order dated 09.09.2015, the application filed by the petitioner for cross-examination of Shri Amit Grover, who was earlier posted as Judicial Magistrate 1st Class, Rohtak, has been dismissed. The reasoning given by respondent No.3 is that no cross-examination was conducted when the said officer was present and the application which has been filed is an afterthought. Reference has also been made to the contents of the application that it is not happily worded.

It has further been mentioned that the entire evidence of the said officer was recorded in the presence of the petitioner

and, therefore, there was no ground to recall the said officer for cross-examination.

Vide the subsequent order dated 14.09.2015, the appeal has been dismissed as not maintainable, as per the provisions of the Haryana Subordinate Courts Establishment (Recruitment & General Conditions of Service) Rules 1997.

The petitioner who is working as a Peon was issued show cause notice on various occasions and in pursuance of the same he was charge-sheeted on 27.07.2015 for not performing his duties responsibly and not attending the camp office etc. There was non-obedience of the directions of the Presiding Officer on the basis of which an Enquiry Officer was appointed. The said Presiding Officer was examined on 01.09.2015 (Annexure P-11) and a perusal of the statement would go on to show that an opportunity was also given to the petitioner to cross-examine, but he did not do so and the cross-examination was recorded as 'NIL' (opportunity) given to delinquent official.

Thereafter, an application was filed on 09.09.2015 by his counsel alleging that the statement had been recorded but cross-examination had not been done and he be allowed to cross-examine the complainant. The said application as noticed has been dismissed by the Enquiry Officer and the appeal has also been dismissed on the ground of non-maintainability.

It is not disputed that at the time of cross-examination, no counsel had been engaged by the petitioner and the statement of the officer was recorded in his presence. Though an averment has now been made in the application that he was not aware, but the record shows otherwise. The application for cross-examination was immediately filed within a period of little over a week through an Advocate, thereafter.

In such circumstances, keeping in view the said fact that the main substance of the allegation regarding the misbehaviour and the non-compliance of the orders would revolve around the statement of Shri Amit Grover, the then Judicial Magistrate 1st Class, Rohtak. Accordingly, this Court is of the opinion that the principle that not only justice has to be done, but it has to be seem to be done has to be kept in mind. The petitioner is a Class-IV Employee and admittedly did not have legal help at that point of time. Though the application has not been very happily worded, it would be in the interest of justice, if the petitioner is given one opportunity to cross-examine the said officer, so that he can put forward his defence. If the same is not permitted the resultant conclusion will be obvious.

In such circumstances, the order dated 09.09.2015 (Annexure P-7) is set aside. The Enquiry Officer shall fix a date for summoning Shri Amit Grover, the then Judicial Magistrate 1st

Class, Rohtak, for cross-examination by the petitioner counsel. It is made clear that the petitioner's counsel will be given only one opportunity to cross-examine the said officer on the date of his appearance.

Accordingly, with the abovesaid observations the present petition is allowed, subject to payment of ₹ 2,500/- as costs to be deposited with District Legal Services Authority, Rohtak.

DECEMBER 22, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE