

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

Date of decision: 24.08.2016

CWP No.17864 of 1995

Som Nath

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

RAJIV NARAIN RAINA, J.

Mr. W.R.Dua, Advocate, who filed the writ petition, passed away in 2008. When notice was issued, due to long absence of counsel for the petitioner, without knowledge of death, the office note records that Late Mr. Dua's son, namely, Mr. Sanjeev Dua, Advocate was contacted telephonically, who informed that he practices in the District Courts and not in the High Court and has no instructions, therefore, the petitioner remains unrepresented today. However, his presence is not necessary either personally or through fresh counsel since he has a good case, which has to be allowed and he would not be prejudiced for want of hearing.

The facts briefly are that the petitioner was issued charge-sheet for major misconduct under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. He filed a reply to the charge-sheet which was considered and not found satisfactory and instead of major, minor punishment was awarded to him without holding a regular inquiry. This was not legally permissible in view of the law laid down by the Full Bench of

this Court in Dr. K.G. Tiwari Vs. State of Haryana, 2002 (4) SLR 329; 2002 (2) SCT 915. The Full Bench has held that once charge-sheet is issued for imposition of a major penalty which envisages holding of a regular enquiry, the disciplinary authority cannot by merely examining the reply to the charge-sheet inflict even a minor punishment without holding a complete departmental enquiry. The object of prescribing rules of procedure of holding an enquiry is to protect the employee from arbitrary and capricious exercise of power by the authority and from unjust and illegal punishments inflicted in breach of principles of natural justice. The only departure ably pointed out by Ms. Shruti Jain Goel through her research on the point is where the rule itself speaks about this power to award minor punishment is conferred in the face of charge-sheet for major misconduct and disciplinary proceeding started, in which case she rightly submits the principle of law laid down by the Full Bench may not be applicable. She refers to the Supreme Court decision in D.H.B.V.N.L. Vidyut Nagar, Hisar & others Vs. Yashvir Singh Gulia, (2013) 11 SCC 173, where the Supreme Court dealt with a specific provision of the rules & regulations provided in the Haryana State Electricity Board Employees (Punishment & Appeal) Regulations, 1990 and specifically sub-Regulation (8) of Regulation 7 thereof, which reads as follows:

“7 (8). Where an employee has been charge-sheeted under this regulation and the Competent Authority, on receipt of his reply to the charge-sheet is of the opinion that no major punishment as laid down in Regulation -4 (vi to x) is called for, it may dispense with the holding of enquiry and inflict straight-away any of the minor penalties as laid down in Clause (i) to (v) of the *ibid* Regulation by a speaking order.”

In the face of empowering rule, the Supreme Court came to the view that this regulation indicates that the Competent Authority has got the power to dispense with the procedure of holding a departmental inquiry even though it had contemplated major penalty proceedings, on being satisfied with the reply submitted by the delinquent officer holding the allegations demand lesser punishment from the prescribed range of major punishments in the rules. In such a case, the authority can always follow the procedure stipulated in the above rule for imposing minor penalty. Minor penalty, as per the Regulation, can be inflicted without holding any departmental inquiry, by serving only a show cause notice and offering a reasonable opportunity to the delinquent to make a representation to the show cause notice pleading innocence and exoneration from the charge levelled.

In the present case, we are not dealing with a provision like Regulation 7(8) of the Haryana State Electricity Board Employees (Punishment & Appeal) Regulations, 1990 and will remain guided by the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and the Punjab Civil Services Rules, as applicable to Haryana and as dealt with by the Full Bench.

Consequently, the present writ petition is allowed and the impugned order dated 11.02.1987 (Annex P-2) is set aside with all consequential benefits. The benefits be determined and paid to the petitioner within a period of three months from the date of receipt of certified copy of this order. Order be sent to the petitioner by the office at the address mentioned in the judicial file.

24.08.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes