

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

**C.W.P No. 9904 of 1995
Date of decision : 13.01.2016**

Ram Dia

....Petitioner

versus

State of Haryana and anr.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.S. Bains, Advocate
for the petitioner.

Mr. Samarvir Singh, DAG, Haryana

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking quashing of the impugned order dated 26.07.1990 (P-3) and order dated 19.5.1993 passed by respondent No. 2 and order dated 13.01.1993 (P-5) passed by respondent No. 1.

The petitioner was posted as Assistant Jawahar Rojgar Yojna in the office of the Block Development and Panchayat Officer, Thana, Distt. Hissar and was put under suspension by respondent No. 2 vide order dated 30.05.1986 (P-1). He was reinstated vide order dated

30.01.1987, subject to pendency of enquiry (P-2). A charge sheet was thereafter issued to the petitioner under Rule 8 of the Haryana Punishment and Appeal Rules, 1987, vide memo dated 20.09.1989 levelling the following allegations against the petitioner:-

“(i) That when in the year 1986-87, he was working in Block Julana and while carrying out the construction of the school building under matching grant in village quila zafargarh, cement was brought from Jind City in a four wheeler, the amount whereof was Rs.130/-, he issued receipt for Rs.180/- and when this fact came to the knowledge of the Block Development Officer, this amount was got refunded to the school Construction Committee.

(ii) That he remained willfully absent from duty without getting his leave sanctioned and leaving his leave application in the office of the BDO on 31.03.1989.

(iii) That on 28.02.1989 he went to the office to attend the District Level Committee but instead of attending the meeting, he went somewhere else. Thereafter he remained absent on 02 and 03 March, 1989 from the office and he attending the office by consuming liquor about 02 days.

The petitioner could not submit reply to the above show cause notice dated 20.09.1989, as the wife of petitioner was ill. Respondent No. 1 without holding any enquiry passed the punishment order dated 26.07.1990 stopping two grade increments with cumulative effect. An appeal was filed against the aforesaid order, which was

dismissed vide order dated 13.01.1993. Respondent No. 2 inflicted second punishment vide order dated 19.05.1993 holding that the petitioner is not entitled to any payment/salary except the substance allowance already received by him.

The petitioner is seeking quashing of impugned orders on the ground that show cause notice dated 20.09.1989 was issued to the petitioner under Rule 8 of the Haryana Punishment and Rules 1987 (for short 'Rules') wherein a procedure for imposing has been prescribed but respondent No. 2 ordered stoppage of two grade increments with cumulative effect vide order dated 26.07.1990. Further before passing the impugned order, respondent No. 2 should have conducted the regular inquiry and issued second show cause notice to the petitioner.

On notice, a written statement has been filed on behalf of respondents stating therein that the petitioner did not submit reply to the charge sheet and no information was sent by him regarding illness of his wife and even petitioner did not produce the medical certificate regarding illness of his wife. Further vide order dated 19.05.1993, second punishment was not inflicted upon the petitioner, only his suspension period was decided by respondent No. 2 which was not decided inadvertently at the time of decision of the charge sheet.

Before proceeding further, it is necessary to see Rule 7 and 8 of the Rules, which reads as under:-

“7. Inquiry before imposition of certain penalties-(1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1950; no order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(2) The grounds on which it is proposed to take such action shall be reduced to the form of definite charge or charges which shall be communicated in writing to the persons charged together with a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take up into consideration in passing orders on the case and he shall be required within a reasonable time or state in writing whether he admits the truth of all or any, of the charges, what explanation for defence, if any, he has to offer and whether he desires to be heard in person. If the punishing authority is not satisfied with the explanation given by the person charged or there are other reasons to do so shall direct that an enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The persons charged shall, subject to the conditions described in

sub-rule (3) be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the Officer conducting the enquiry may for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds there of provided that-

(a) it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement of allegation made by the person charged in the course of his defence; and

(b) the provisions of the foregoing sub-rule shall not apply where any major penalty is proposed to be imposed upon a person on the ground of conduct which has led to his conviction on a criminal charge; or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reasons to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him or where in the interest of the security of the State it is considered not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity to defend himself under sub-rule (2) the decision thereon of the punishing authority shall be final.

(4) (a) xxx xxx xxx (b) xxx xxx xxx

(5) xxx xxx xxx”

Under Rule 7 an elaborate procedure has been prescribed. Sub rule (1) of Rule 7 provides that no order of imposing a major penalty shall be passed against a person to whom the rules apply, unless he has been given a reasonable opportunity to show cause against the action proposed to be taken. Sub rule (2) requires the ground on which the action is proposed to be taken, to be reduced in the form of a definite charge or charges and to be communicated to the delinquent. The delinquent is to be afforded an opportunity to submit his explanation for defence. If, such explanation is not found to be satisfactory, then, inquiry shall be held and evidence shall be led with regard to the charges as are not admitted. The charge sheeted employee has to be given an opportunity to cross-examine the witnesses. He is further permitted to lead evidence in defence.

"8. Without prejudice to the provisions of rule 7 no order for imposing a minor penalty shall be passed on a Government employee unless he has been given an adequate opportunity of making any

representation that he may desire to make , and such representation has been taken into consideration. Provided that this condition shall not apply in a case where an order based on facts has led to his conviction in a criminal court or an order has been passed superseding him for promotion to a higher post on the grounds of his unfitness for that post on account of the existence of unsatisfactory record: Provided further that the requirements of this rule may, for sufficient reasons to be recorded in writing be waived without injustice to the Government employee concerned ”

This issue has come up for consideration before this Court in a case of ***Smt. Tripta Kumari vs. State of Haryana and another, 2012 (1) S.C.T 455*** wherein the petitioner was punished with stoppage of one increment with cumulative effect without holding any enquiry under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules. The petitioner preferred an appeal, which was also dismissed. This Court allowed the writ petition and held that stoppage of one increment with cumulative effect would amount to major penalty and regular inquiry is must to impose such penalty. Punishment imposed on petitioner without holding any inquiry would be rendered illegal and violative of the procedure established by law. In para 7, it has been observed as under:-

7. *The short question that would arise for consideration is*

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*whether the procedure adopted by the respondents to impose this penalty without holding an enquiry is legal and proper. The answer to this question would depend upon the fact whether the penalty imposed is major or minor penalty. If the penalty of stoppage of one increment with cumulative effect is major penalty, then respondents were under legal obligation to hold the enquiry before imposing this punishment. The issue, in my view, is no more res integra. The Hon'ble Supreme Court in the case of **Kulwant Singh Gill Vs. State of Punjab, 1991(2) SCT 30 (SC) 9** has held that stoppage of two increments with cumulative effect falls within the meaning of 5(v) of the Punishment and Appeals Rules and would amount to major penalty and, thus, regular enquiry would be a must to impose this penalty. Without enquiry, no punishment of stoppage of increment with cumulative effect, as such, could be ordered. Rules 8 and 9 of the Rules clearly envisages the procedure to conduct an enquiry into the misconduct before ordering stoppage of increment with cumulative effect.”*

Reference at this stage can further be made to a judgment of this Court in a case of **Mangal Singh v. Punjab and Haryana High Court and others, 2014(1) S.C.T 492** wherein it was held that a major

penalty of dismissal could not have been imposed upon the petitioner without holding a regular departmental inquiry as the petitioner had specifically denied one charge and only admitted part of the other charge.

In the present case, the respondents issued charge sheet to the petitioner under 8 of the Rules, to which he did not file reply but before punishing the petitioner no inquiry was conducted by the respondents, as admitted by them in the written statement, which was required to be conducted as per Rule 8 of the Rules and further petitioner should not be punished with major penalty.

For the reasons recorded above, the present writ petition is allowed. The impugned order dated 26.07.1990 (P-3) and order dated 19.5.1993 passed by respondent No. 2 and order dated 13.01.1993 (P-5) passed by respondent No. 1 are hereby set aside and petitioner is entitled for all consequential benefits.

(RITU BAHRI)
JUDGE

13.01.2016

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