

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

CWP No.17116 of 2013 (O&M)

Reserved on : 15.09.2016

Date of decision :06.10.2016

Charan Singh

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Dinesh Arora, Advocate for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana.

...

TEJINDER SINGH DHINDSA, J.

Petitioner who is serving as EASI with the Haryana Police impugns the action of the respondent/authorities in imposing upon him punishment of stoppage of one future annual increment with permanent effect.

Brief facts that would require notice are that the petitioner while posted at Police Station Sadar Rohtak was sent on examination duty to Senior Secondary School, Village Dobh on 20.10.2011. Shri Prabhjot Singh, IAS, Assistant Commissioner, Rohtak made a visit to the School in question and observed that around 60-70 outsiders were involved and were facilitating an activity of copying and cheating. Apparently, the officer questioned the boy involving in copying and to which he responded that Rs.500/- and a bottle of cold drink was being given to the policeman on duty. It is also the allegation that Shri Prabhjot Singh, IAS having confronted the petitioner with regard to such situation and having told him that a complaint would be duly forwarded to Superintendent of Police,

Rohtak, the petitioner responded by saying - "*Achcha Ji Kar Dena.*" It is against such brief factual backdrop that a regular departmental inquiry was initiated against the petitioner on 28.10.2011 on two articles of charge i.e. (i) of being in-disciplined and misbehaving with Shri Prabhjot Singh, IAS, Assistant Commissioner, Rohtak and (ii) of not doing the duty assigned properly and thereby having lowered the image of police. Deputy Superintendent of Police (Headquarters), Rohtak was appointed as the Inquiry Officer. Inquiry report was furnished on 28.12.2011 holding the petitioner to be guilty of charges. The Disciplinary/Punishing Authority issued a show cause notice dated 29.12.2011 (Annexure P-8) contemplating the imposition of a departmental punishment. Copy of the inquiry report was furnished to the petitioner along with show cause notice. Vide impugned order dated 25.02.2012 (Annexure P-10), the Superintendent of Police, Rohtak/Disciplinary Authority has imposed upon the petitioner a punishment of stoppage of one future annual increment with permanent effect. Such punishment stands affirmed even by the Appellate and Revisional Authorities.

Counsel for the parties have been heard at length.

The position in law is well settled that when the Disciplinary Authority is not the Inquiring Authority then the dictates of reasonable opportunity as well as principles of natural justice require that before the Disciplinary Authority reaches a conclusion as regards guilt or innocence of a delinquent employee, it is imperative for such delinquent employee to be given an opportunity to represent and file objections to the Inquiry Officer's findings. It is only thereafter that the Disciplinary Authority is required to consider the evidence, report of the Inquiry Officer as also the objections/

representations submitted by the employee, if any, and to form an opinion as regards the contemplated/proposed punishment. A reference with regard to such proposition may be made to the judgment of the Hon'ble Supreme Court of India in the case of **Managing Director, ECIL Versus B. Karunakar, 1994 (1) SCT 319**. In paragraph Nos.29 and 30 (iv) of the judgment, the following observations have been made and which are extracted below:

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer’s report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee’s right to defend himself against the charges levelled against him.

A denial of the enquiry officer’s report before the disciplinary authority takes its decision on the charges, is a denial of breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

xxx	xxx	xxx
xxx	xxx	xxx

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the

furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.”

When the facts of the instant case are examined in the light of the principles laid down by the Hon'ble Supreme Court, no doubt is left that the Disciplinary Authority failed to furnish a copy of the inquiry report to the petitioner so as to given him an opportunity to file objections to the same prior to forming an opinion to impose a departmental punishment. This would be apparent from a perusal of the show cause notice dated 29.12.2011 at Annexure P-8 issued by the Superintendent of Police, Rohtak. Bare reading of the same would demonstrate that the Punishing Authority had already agreed with the findings of the Inquiry Officer and had formed an opinion as regards imposition of a departmental punishment upon the petitioner. It would further be clear that the inquiry report had been furnished to the petitioner not prior in point of time but in fact along with the show cause notice itself. The relevant extract of the show cause notice to bear out such factual aspect is as under:

"SHOW CAUSE NOTICE

I, Vivek Sharma, IPS, Superintendent of Police, Rohtak am to say that a regular departmental enquiry was ordered against you EASI Charan Singh No.548/RTK vide this office order No.45023-25 dt.22.10.11 and DSP(HQ) Rohtak was appointed to enquire into certain charges against you, who has submitted his findings dated 28.12.2011 holding you guilty of charge leveled upon you. A copy of the finds of the Enquiry Officer is enclosed therewith for your information and

necessary action.

I have perused the enquiry file and all other relevant documents and having been agree with the findings report of the Enquiry Officer, I am provisionally of the opinion that as to why a penalty of departmental punishment may not be inflicted upon you EASI Charan Singh No.548/RTK for misbehaved with Shri Prabhjot Singh, IAS AC/UT on 20.10.11 and mass copying in the examination centre of 10th Class at Village Dobh while posted at PS Sadar Rohtak and deputed at examination centre. Before taking the proposed action, I would like to give you an opportunity of showing cause against the proposed action.”

It has also gone uncontroverted that the Inquiry Officer and the Disciplinary Authority/Punishing Authority were two different entities. This Court would have no hesitation in holding that the principle and dictum laid down by the Apex Court in ***B. Karunakar's case (supra)*** has not been followed. There has been a clear negation of the principles of natural justice. Such infirmity and illegality has been overlooked not only by the Punishing Authority but even by the Appellate and Revisional Authorities. Thus, the petition deserves to succeed and the impugned order of punishment cannot sustain.

For the reasons recorded above, the order dated 25.02.2012 (Annexure P-10) passed by the Superintendent of Police, Rohtak imposing upon the petitioner the punishment of stoppage of one future annual increment with permanent effect is quashed. Even the orders dated 12.04.2012 (Annexure P-11) and 14.09.2012 (Annexure P-13) passed by the Appellate and Revisional Authorities are set aside.

It is, however, made clear that setting aside of the order of punishment imposed upon the petitioner would not be an impediment for

the respondent/department to proceed further from the stage of inviting objections against the report of the Inquiry Officer and to adopt further course of action in accordance with law.

Disposed of.

06.10.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |