

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

**CWP No. 19291 of 2013
Date of Decision:- 18.02.2016**

Didar Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present:- Mr. Nitin Jain, Advocate,
for the petitioner.**

Mr. Ravi Pratap Singh, Asstt. A.G., Haryana.

**Mr. Sanjeev Sharma, Advocate,
for respondent No.2.**

RITU BAHRI, J. (Oral)

Petitioner is seeking direction for quashing of Supplementary Memorandum dated 19.08.2013 (Annexure P-7) and Dissenting Report dated 19.08.2013 (Annexure P-8), vide which respondent No.2 while differing with the Enquiry Report (Annexure P-4) had informed him that Charges No.1 and 3 were proved and has proposed with the punishment of dismissing the petitioner from service.

Petitioner had joined Driver in the Sessions Division, Kurukshetra on 08.02.1995 and was under suspension from 28.08.2011.

Vide Memorandum dated 26.08.2011 (Annexure P-1 (Colly)), the petitioner was served upon a statement of allegation and charges and he was asked to give his reply. The petitioner has filed his reply to the charge-sheet dated 28.10.2011 (Annexure P-2). Vide order dated 22.03.2012, an enquiry was ordered against the petitioner and learned Additional Civil Judge (Senior Division), Kurukshetra was appointed as Enquiry Officer to conduct regular enquiry. Thereafter, enquiry officer gave his enquiry report dated 13.09.2012 (Annexure P-4). The said report was forwarded to the petitioner, vide memorandum dated 10.10.2012 (Annexure P-3).

Learned counsel for the petitioner has argued that as per Memorandum dated 10.10.2012 (Annexure P-3), the disciplinary authority accepted the enquiry report with respect to charges mentioned at Sr. Nos.2, 4, 5 and 6 and giving a notice that penalty of dismissal would be imposed upon the petitioner to enable him to give his reply within 15 days. The petitioner filed his reply/representation dated 05.11.2012 (Annexure P-5). The question for consideration in the present writ petition with regard to the Supplementary Memorandum (Annexure P-7), issued by the Disciplinary authority. While issuing the Supplementary Memorandum, the disciplinary authority has disagreeing with the finding of enquiry officer with regard to charges No.1 and 3. Enquiry Officer has exonerated the petitioner on these charges and the disciplinary authority gave a Dissenting Report dated 19.08.2013 (Annexure P-8) and proposed to impose the penalty of dismissal on charge Nos.1 and 3 as well.

Learned counsel for the petitioner has further argued that Supplementary Memorandum could not be issued to the petitioner by

giving a Dissenting Report (Annexure P-8), as respondent was required to give separate notice before giving the Dissenting note (Annexure P-8).

Learned counsel for respondent No.2 has argued that no order of dismissal has been passed as the representation dated 05.11.2012 (Annexure P-5) filed by the petitioner is still pending for consideration. After filing the Memorandum (Annexure P-3) no final order has been passed by the authority. However, with regard to the Supplementary Memorandum (Annexure P-7), the petitioner had sought some documents from the department, which have been supplied to him but till date he has not filed the reply to the Supplementary Memorandum (Annexure P-7).

In case Lav Nigam Vs. Chairman, M.D., ITI Ltd. and another, 2007(3) S.C.T. 179, the Supreme Court has examined the matter where the disciplinary authority disagreed with the finding of enquiry officer and without giving notice to the delinquent officer had recorded the final conclusion differing with the report of enquiry officer. By referring to the judgments Punjab National Bank Vs. Kunj Behari Misra, 1998(3) SCT 833; Yoginath D. Bagde Vs. State of Maharashtra, 1999(4) SCT 403 and State Bank of India Vs. K.P. Narayanan Kutty, 2003(3), SCT 743, the Supreme Court held that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed. In the absence of any notice given by the disciplinary authority, the final conclusion differing

from the findings of fact of the inquiry officer cannot be sustained and the appeal was accordingly allowed.

The three Judges Bench of Supreme Court in **Punjab National Bank** Vs. **Kunj Behari Misra's case (supra)**, has observed in para No.16 of the judgment, which is as under: -

“The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer:”

The above-said judgment of Supreme Court has been followed till date and the object of giving any notice to the delinquent officer before giving a dissenting note is that no prejudice should be caused to him before imposing a punishment finally upon him. The Supreme Court in **State Bank of India and others** Vs. **N.P. Narayanan Kuttyu case (supra)** was held that the delinquent employee will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer and further while setting aside the order of dismissal the Supreme Court held that in the absence of any notice the prejudice was caused to the employee and an opportunity should have been given to him before recording dissenting note.

In view of above-said judgments of Supreme Court, the Supplementary Memorandum dated 19.08.2013 (Annexure P-7) and Dissenting Report dated 19.08.2013 (Annexure P-8) are hereby set aside and the liberty is granted to respondent No.2 to proceed afresh in accordance with law.

February 18, 2016
naresh.k

(RITU BAHRI)
JUDGE