

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17977 of 2014 (O&M)

Date of decision: 06.12.2016

Jaipal Jangra

.... Petitioner

Vs.

State of Haryana & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE NARAIN RAINA

Present: Mr. Kuldeep Khandelwal, Advocate
for the petitioner.

Mr. R.K.Doon, AAG, Haryana.

Rajiv Narain Raina, J.(Oral)

The petitioner lost his eye-sight while in service. He superannuated on 29.02.2016. He made twofold claims in his legal notice served on the department which failed attract attention of the authorities to pass orders thereon. He has approached this Court for directions. His case is for grant of relaxation of rules to avoid qualifying the departmental examination for promotion, which if awarded would bring him the monetary benefit of the Assured Career Progression scheme at its 3rd and last stage. The 3rd ACP was denied to him being ineligible due to non-passing of prescribed departmental test. The further claim is for handicapped allowance, which has been turned down since he did not fulfill the terms and conditions of the government policy vide Standing Instructions dated 21.04.2008 according to the Superintending Engineer, Hisar Circle, PWD B&R Br., Hisar who has furnished paragraph-wise reply to the legal notice

where reasons are given to deny the claims.

A reply to the legal notice is not a substitute for an order passed by the government in writing by the competent authority open to challenge. The officer who may respond to legal notice may not be the competent authority to consider granting or denying the relief claimed by an aggrieved employee. Therefore, no faith can be reposed upon the memo dated 04.08.2014 as a decision of the State Government on policy matters and I would agree with the learned counsel for the petitioner that in the first instance the competent authority should take up both the issues raised in the legal notice and decide them by passing a order in writing, which has binding force, whether the decision is for or against the employee.

Without expressing any opinion on the twin issues, the competent authority amongst the respondents is directed to decide both the issues and in doing so, he would not be influenced by the memo dated 04.08.2014 and take an independent decision and communicate the same to the petitioner. Since no order has been passed in writing in terms of rules of business of the government for deciding legal notices and representations in terms of its litigation policy, this Court cannot take cognizance of the written statement and the defence taken therein as the view of the State Government taken by the person designated by it to act on behalf of the State. The signatory of the reply to a legal notice or presenter of a written statement [where an independent adverse order has not been passed and communicated] may not be the authority empowered to bind the government to a stand unless he discloses himself in the reply as the competent authority

duly authorized to decide upon the rights of the claimant open to judicial review and correction of error by way of writ of certiorari being a writ which goes to the record and normally not to the reply/written statement, which is only the cosmetic part of the record highlighting what government papers speak. Replies filed by the State in Court in defence of litigation conventionally are vetted by the Office of the Advocate General of the State before they are relied upon and trusted coming from sanctioned source. Having explained the position of what the court expects regarding authorized stand of respondents I make no comment on the merits of the defence taken by the Superintending Engineer, Hisar Circle, PWD B&R Br., Hisar whether it is the view of the State Government/department concerned on the subject matter.

The competent authority would hear the petitioner before passing a speaking order on the legal notice within 6 weeks of supply of the present order from court or the petitioner in certified copy, whichever is earlier.

This writ petition is partially allowed. Order dasti.

(RAJIV NARAIN RAINA)
JUDGE

06.12.2016
sonia

1. Whether speaking/reasoned?

Yes

2. Whether reportable?

No