

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19299-2016 (O&M)
Date of decision: 22.12.2016

Rajesh Kumar Gupta

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.K.Malik, Senior Advocate with
Mr.Mandeep Singh, Advocate for the petitioner
Mr.Naveen Sheoran, DAG Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner, who was working as Executive Engineer, seeks quashing of the order dated 28.7.2016 (Annexure P7), vide which, a cut of 100% in the pension has been imposed upon the petitioner.

The short facts which are required to be considered while passing the present order are that the petitioner while working as Executive Engineer was issued a charge sheet on 4.7.2013. Inquiry officer was appointed who submitted the inquiry report. Thereafter, the petitioner was issued a show cause notice dated 10.11.2014 (Annexure P5) and after obtaining the reply of the petitioner, the impugned order of punishment was passed. The short prayer pressed before this Court is that while issuing show cause notice, the inquiry report was accepted by the competent authority, which is contrary to the law. The decision whether to accept or not should have been taken after obtaining the reply .

I have heard learned counsel for the parties and have also carefully gone through the file.

The show cause notice (Annexure P5) is reproduced as under:-

“No.6/46/2012-21E Dated, the Chandigarh 10.11.2014

The inquiry officer appointed to enquiry into the charges leveled against you vide Government Memo No.6/46/2012-21E dated 09.04.2014 has submitted his report. A copy of inquiry report is enclosed for your consideration.

On careful consideration of the report, the Governor of Haryana agrees with the conclusion reached by the inquiry officer in respect of the charges leveled against you and is of the opinion that these charges stand proved. However, he desired to give you an opportunity to make a representation, if any, which you may like to make in this connection, will be considered by him before proceeding further in the matter. Such representation, if any should be made, in writing, and submitted to the undersigned so as to reach not later than one month from the date of issue of this Memo. It is further clarified that no extension of time shall be granted to you to submit your representation and you shall be required to submit the same within the mandatory one month's time as provided in sub-rule (6) of Rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 amended from time to time, failing which further action as per rules will be taken against you.”

It comes out that thereafter, the petitioner submitted the reply (Annexure P6) and thereafter, the punishment order (Annexure P7) was passed on 28.7.2016, which was conveyed vide endorsements dated 8.8.2016 and 12.8.2016.

The short question raised before this court at this stage is that while issuing show cause notice dated 10.11.2014 (Annexure P-5), the authority recorded that they are fully agreed with the conclusion reached by

inquiry officer and after making the provisions opinion regarding punishment, the petitioner was asked to show cause against the action proposed to be taken. Learned counsel for petitioner contends that such show cause notice dated 10.11.2014 (Annexure P-5) is contrary to the judgment of the Hon'ble Apex Court rendered in ***Managing Director, ECIL, Hyderabad vs. B. Karunakar, 1994 (1) SCT 319***, which was later on followed by the Division Bench of this Court in ***Ramesh Kumar vs. State of Haryana and others, 2006 (3) SCT 799***. According to which firstly inquiry report has to be supplied and thereafter after recording of the comments of the employee, the authorities shall make up its mind whether the inquiry report is to be accepted or not and if the authorities decide that inquiry report is to be accepted, then the show cause notice is to be issued and thereafter punishment orders are to be passed. In ***Managing Director, ECIL, Hyderabad (supra)***, case the Apex Court while considering the question laid down and observed as under: -

“Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt of innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him.

A denial of the Inquiry Officer's report before the disciplinary authority take its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

The Apex Court also answered the questions raised before it and in *para 30*

(iv) it was observed as under: -

(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 inquiry 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 Khan's case (AIR 1991 SC 471) (*supra*) 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 Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

The said authority was followed by this Court in ***Ramesh Kumar (supra)*** case. The perusal of present show cause notice show that while issuing the said show cause notice and before supplying the report of the inquiry officer, the authorities had already accepted the report of the inquiry officer holding the petitioner guilty of the charges leveled against him. In view of the law laid down by the Hon'ble Apex Court and the Division Bench of this Court, the impugned order suffers from illegality. As such, the impugned show cause notice dated 10.11.2014 (Annexure P5) and the impugned order of punishment dated 28.7.2016 (Annexure P7) are hereby quashed.

Respondent-State was to first supply copy of inquiry report which has already been supplied to the petitioner. Petitioner shall first submit his comments/explanation to the said inquiry report. Thereafter, authorities shall consider the inquiry report and the comments of the petitioner. Thereafter, the authority shall make up its mind whether the inquiry report is to be accepted or not? The follow up action will follow thereafter.

Allowed in the above terms.

It is also made clear that till the passing of the final order, cut imposed in pension vide impugned order dated 28.7.2016 (Annexure P7) will be kept in abeyance. However, the pension already recovered on account of cut in pension shall be retained by respondent which shall be subject to final outcome of the inquiry.

22.12.2016
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
No