

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 11.07.2016****CWP No.27697 of 2013 (O&M)**

Dr. Ashwani Kumar Verma

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanchit Punia, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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

RAJIV NARAIN RAINA, J. (ORAL)**CM No.7627 of 2016**

Application is allowed. Affidavit is taken on record.

CWP No.27697 of 2013

The impugned order dated 05.06.2013 (Annex P-22) endorsed on 07.06.2013 is not sustainable in law and has to be set aside in view of the judgment delivered by the Division Bench of this Court in CWP No.6149 of 2011 titled 'Ashwani Kumar Rohila Vs. State of Haryana & others' on 06.02.2008, after noticing the order passed by the disciplinary authority on 30.04.2003, the relevant extract of which reads as follows:

“Government, after exhaustively and carefully examining and considering the charges alleged against Dr. Ashwani Kumar Rohila, reply of charge-sheet, comments of the Director General, Health Services, Haryana and other

related record of the case, have concluded that the charges leveled against Dr. Ashwani Kumar Rohila are proved partially. Therefore, by taking lenient view, the action under Rule 7 is converted under Rule B, it has been decided to censure and orders are passed to treat the period of absence from 16.07.1998 to 18.08.2002 as leave without pay under Rule 8.16 of CSR Vol. I, Part-I.”

The petitioner filed an application for review of the order, which was allowed on 30.12.2003 and the punishment was further reduced. The petitioner was warned to be careful in future and the period of absence from duty [16.07.1998 to 18.08.2002] was decided to be treated as leave with pay/leave salary. On this condition, the petitioner was taken back in service as a Medical Officer in the Health Department. Once the period of absence from duty has been treated as leave of kind due and the further direction to give the petitioner the notional benefit of increments and to re-fix his pay accordingly, then ex facie the impugned order dated 05.06.2013 (Annex P-22) has to be set aside as suffering from error.

The only relevant consideration which had to be analyzed by the Principal Secretary to Government of Haryana, Health Department, was the earlier concluded litigation between the petitioner and the Department, referred to above, and this vital aspect has not been considered and appears to have escaped notice making the order erroneous in fact and in its supporting reasoning. It is well settled that an administrative order, which has been passed without due regard to relevant considerations has to fall and no further reason can be assigned by the State in defence of the action, other than the material which was used in making the order.

It may be noticed that Ashwani Kumar Rohila [supra] and the present petitioner are one and the same person and there is an application

filed supported by an affidavit confirming the fact. The application is accepted.

Accordingly, while setting aside the impugned order (Annex P-22), the instant petition is allowed with all consequential benefits flowing there from.

11.07.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE