

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

**CWP-26844-2014 (O&M)  
Date of decision: -9.12.2016**

**K.K.Singal**

**.....Petitioner.**

**Versus**

**State of Haryana**

**.....Respondent.**

**CORAM: - HON'BLE MR. JUSTICE KULDIP SINGH.**

Present: - Mr. R.K.Malik, Sr. Advocate with  
Mr. Bhupinder Malik, Advocate for petitioner.

Mr. Naveen Sheoran, AAG, Haryana

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**Kuldip Singh, J. (Oral)**

Petitioner was working as Chief Engineer (now retired) in Public Works (B&R) Department, Haryana. He was served with a charge sheet dated 24.3.2003 (Annexure P-8) leveling certain allegations against him. Petitioner had retired from service on 31.7.2003 on attaining the age of superannuation. After conducting the inquiry, inquiry report dated (Annexure P-12) was submitted. Thereafter, a show cause notice dated 15.3.2012 (Annexure P-13) was issued to the petitioner which is reproduced as under: -

“The Inquiry Officer appointed to enquire into the charges leveled against Sh. K.K.Singal, Chief Engineer (Now Retd.) by Inquiry Officer, Vigilance, Haryana vide No. IOV/H/2010-576 dated 28.12.2010 has submitted his report. A copy of the report is enclosed for your information.

2. On careful consideration of the report, the Governor of Haryana fully agrees with the conclusions reached by Inquiry Officer, in report of the charges leveled against Sh. K.K.Singal and holds that these charges stand proved.

3. On a further careful conclusion the Governor of Haryana is provisionally of the opinion that the appropriate punishment under the rules needs to be imposed upon Sh. K.K.Singal (Now Retd.). Before the action is taken against Sh. K.K.Singal the Governor of Haryana desires to give him an opportunity of showing cause of against the action proposed to be taken.

4. Any representation, which you may like to take in that connection will be considered before the proposed action is taken. Such representation, if any, should be made in writing and submitted to Government so as to reach not later than 15 days from the receipt of this communication by you.

Dated Chandigarh  
The 15-03-2012

Sd/S.C.Chaudhary  
Financial Commissioner & Principal Secretary  
to Government of Haryana Public Works  
(B&R) Department.”

It comes out from the punishment order dated 9.6.2014 (Annexure P-17) that after issuance of show cause note of 15.3.2012 (Annexure P-13) another show cause notice dated 16.5.2012 was served and after hearing the petitioner in person on 22.1.2014, the abovesaid punishment order dated 9.6.2014 (Annexure P-17) was passed whereby a cut of 2.5% in pension was imposed. Factually, the said position is not disputed.

The short question raised before this court at this stage is that while issuing show cause notice dated 15.3.2012 (Annexure P-13), 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 15.3.2012 (Annexure P-13) 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 first 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 issued, 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 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 15.3.2012 (Annexure P-13) followed by subsequent notice dated 16.5.2012 (Annexure P-14) and the impugned order of punishment dated 9.6.2014 (Annexure P17) 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 in pension as impugned vide order dated 9.6.2014 (Annexure P-17) will not be made. 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.

9.12.2016  
preeti

(KULDIP SINGH)  
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No