

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8287-2014 (O&M)
Date of decision: 22.11.2016

Vipan Kumar

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.R.K.Arora, Advocate for the petitioner
Mr.R.S.Pathania, DAG Punjab

- 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?*

Kuldeep Singh, J. (Oral)

Petitioner, who was working as a Medical Laboratory Technician and posted at PHC Khuikhera, District Ferozepur, was charge sheeted by Director, Health and Family Welfare Department, Punjab, Chandigarh vide letter dated 7.12.1998 (Annexure P1). After issuing the charge sheet, the inquiry officer was appointed vide letter dated 18.1.2007. The Inquiry Officer submitted the report Annexure P9, wherein the petitioner was exonerated of the charges levelled against him. However, the punishing authority, which in this case is Director, Health and Family Welfare Punjab, without recording the reasons for disagreement with the inquiry report and after giving personal hearing to the petitioner, passed the punishment order dated 23.11.2007 (Annexure P10), whereby two increments of the petitioner were stopped with cumulative effect and his absence period from 27.10.1997 to 22.1.2006 was ordered to be treated as

dias-non. Appeal against the said order was also dismissed vide order dated 15.5.2009 (Annexure P11). The petitioner then moved this Court by filing CWP No.13986-2009, which was decided on 17.1.2011. This Court reproduced Rule 9 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short, 'the Rules') as under:-

“9. Action on the inquiry report -

(1) The punishment authority, if it is not itself the inquiring authority may, for reason to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provision of rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.”

It was found that the compliance of sub-rule 2 of Rule 9 has not been made. Therefore, the impugned order of punishment and order passed by the appellate authority were set aside and the case was remanded to the disciplinary authority to pass fresh order. Thereafter, vide letter dated 7.5.2011 (Annexure P13), personal hearing was given to the petitioner and again the punishment order endorsed on 26.7.2013 (Annexure P14) was passed, this time ordering stoppage of three annaul increments of the petitioner with cumulative effect and period from 27.10.1997 to 30.6.1998 was ordered to be treated as leave of kind due and period from 1.7.1998 to

22.1.2006 was ordered to be treated as dias-non. Departmental appeal against the said order was ordered to be filed.

After hearing learned counsel for the parties, I am of the view that the impugned order of punishment dated 26.7.2013 (Annexure P14), followed by the order of the appellate authority dated 7.2.2014 (Annexure P16) are liable to be quashed on the ground that the order passed by this Court on 17.1.2011 in CWP No.13986 of 2009 has not been complied with in letter and spirit. The order dated 17.1.2011 clearly shows that the compliance of sub-rule 2 of Rule 9 was to be made which means that the punishing authority was required to record the reasons for each disagreement and record its own findings on such charges if the evidence on record is sufficient for the purpose. What the punishing authority has done is, again called the petitioner for personal hearing and again passed even more harsh order against the petitioner.

Consequently, the present petition stands allowed. Impugned orders endorsed on 26.7.2013 (Annexure P14) and letter dated 7.2.2014 (Annexure P16) are hereby quashed. The matter is again remanded to the punishing authority with a direction to comply with Rule 2 of Rule 9 of the Rules as directed vide judgment dated 17.1.2011 and then pass a fresh order in accordance with law after giving fresh personal hearing to the petitioner. It is made clear that if the direction of this Court is not complied with, a strict view will be taken.

Since, the petitioner has unnecessarily been dragged into litigation due to non-compliance of the order dated 17.1.2011 earlier passed by this Court in CWP No.13986 of 2009, therefore, State is burdened with cost of Rs.25,000/- payable to the petitioner, which can be recovered from

the officer, who passed the punishment order endorsed on 26.7.2013
(Annexure P14), if the State so desire.

22.11.2016
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:
Whether Reportable:

Yes
No