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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3390 of 2015
Date of decision: March 03, 2016

Rajesh Kumar

.......Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Sushil Bhardwaj, Advocate
for the appellant.

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SABINA, J

Appellant had filed suit for declaration challenging the orders dated 09.04.2010 and 31.01.2011.

The case of the appellant, in brief, was that he was working as Inspector, Legal Metrology with the respondents-defendants and on 10.03.2009, charge-sheet was issued to him on the basis of alleged act of misconduct. Reply submitted by the appellant was not found satisfactory by defendant No.2 and regular departmental inquiry was initiated against him. The Inquiry Officer exonerated the appellant from the charges levelled against him vide report dated 26.06.2009. However, the competent authority did not agree with the said report and recorded a dissenting note. Appellant submitted his reply to the dissenting note. Defendant No.2 vide order dated 09.04.2010 awarded punishment of stoppage of three annual increments with cumulative effect to the appellant. It was further ordered that the suspension

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period from 28.01.12009 to 19.03.2009 be treated as duty period for the purposes of pensionary benefits. It was further ordered that the appellant would be entitled to the subsistence allowance already paid to him. Appeal filed by the appellant against the said order was partly allowed and the punishment of stoppage of three increments with cumulative effect was reduced to stoppage of two increments with cumulative effect. The case of the appellant further was that the competent authority had not taken in consideration the fact that the complainant had already withdrawn the complaint without any stipulation. Therefore, dissenting note was recorded without any material available on record.

Defendants-respondents in their written statement averred that, although, petitioner had been exonerated by the Inquiry Officer but the competent authority was within its right to disagree with the said report. Dissenting note had been duly served on the appellant by the competent authority and after considering the reply submitted by the appellant, the impugned order was passed. The allegation against the appellant was that he had charged excess Government fee for verification of dispensing unit of petrol pump from the complainant and had demanded money from the complainant for doing his official duty.

On the pleadings of the parties, following issues were framed by the trial Court:-

> "1. Whether order dated 09.04.2010 passed by defendant No.2 is liable to be set-aside?OPP

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2. Whether the order dated 31.01.2011 passed by the defendant No.3 is liable to be set-aside?OPP
3. If issues No.1 & 2 are proved in affirmative then whether the plaintiff is entitled for the relief as prayed for?OPP
4. Whether the present suit is bad for want of notice under Section 80 CPC?OPD
5. Whether the present suit is not maintainable in its present form?OPD
6. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decree dated 01.05.2013 dismissed the suit filed by the appellant-plaintiff. The said judgment/decree passed by the trial Court were upheld in an appeal filed by the appellant-plaintiff by the First Appellate Court vide judgment/decree dated 24.03.2015. Hence, the present appeal by the appellant-plaintiff.

I have heard learned counsel for the appellant and have gone through the record available on the file carefully.

In the present case, admittedly, charge-sheet was issued to the appellant and the Inquiry Officer after conducting inquiry, gave report in favour of the appellant exonerating him of the charges framed against him. The competent authority wrote a dissenting note and the reason for not agreeing with the inquiry report was that the complainant had admitted in his statement that the appellant had returned the excess amount received by him. Since the

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appellant had taken excess money from the complainant, the competent authority opined that the same amounted to grave irregularity. It is a settled preposition of law that when the inquiry report is submitted before the competent authority exonerating an employee from the charges framed against him, the competent authority can accept or differ with the said report. However, in case, competent authority differs with the report submitted by the Inquiry Officer, competent authority is required to record a dissenting note. In the present case, the dissenting note recorded by the competent authority was duly furnished to the appellant and appellant submitted his reply to the same. However, after considering the reply submitted by the appellant, the punishing authority passed the punishment order. The appeal submitted by the appellant against the punishment order was partly accepted by the Appellate Authority and by reducing the punishment it was ordered that two increments of the appellant be stopped with cumulative effect. In the facts and circumstances of the present case, the Courts below had rightly dismissed the suit filed by the appellant.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

(SABINA)
JUDGE

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