

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

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**CWP-15205-2015 (O&M)
Date of decision: 21.03.2017**

Karnail Singh

....Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.K.Malik, Sr. Advocate with
Mr. Mandeep Singh, Advocate for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the present writ petition, the petitioner has questioned the order dated 10.06.2014 by which his services have been terminated and rejection of the petitioner's appeal dated 30.06.2015 vide Annexures P5 and P7 respectively. The petitioner is stated to have been appointed as a Class IV employee in the Department of Animal Husbandry on 13.04.1977. While he was in service, he acquired matriculation and diploma of Life Stock Development qualification in the year 1980 and 1981-82 respectively. The respondents notified certain vacancies of Veterinary Life Development

Assistant post. The petitioner was candidate for the said post and he was selected and appointed on 03.03.1983. The respondents initiated disciplinary proceedings on 13.11.1992 against the petitioner on the allegations that the petitioner's matriculation certificate obtained from Central Board of Higher Education, New Delhi is not one of the recognized Institution. Such initiation of inquiry is based on a complaint. Only to find out whether certificate of matriculation obtained from Central Board of Higher Education, New Delhi is one of recognized Institute or not, enquiry had been ordered and Inquiring Officer had concluded the inquiry only in the month of March, 2014. Thereafter, the disciplinary authority issued a show cause notice along with the Inquiring Officer's report for removal of petitioner's services. Accordingly, the disciplinary authority removed petitioner from service on 10.06.2014 contending that petitioner has mislead the department and the certificate provided by him is from non-recognized Institution. Consequently, petitioner's appeal has been rejected by the appellate authority on 30.06.2015. Thus, the present petition.

2. Learned counsel for the petitioner vehemently, contended that the petitioner has rendered service from 13.04.1977 to 03.03.1983 in the Class IV post and thereafter in the post of VLDA from 03.03.1983 till 10.10.2014. The respondents have taken more than a decade for initiation of inquiry and further for completion of inquiry more than 2 decades. Having regard to these facts and circumstances, the petitioner is entitled for continuation in the department in the lower post of Class IV. It was further submitted that in identical matters, the respondents have taken a lenient

view while imposing lesser penalty than the removal from service. These contentions have been taken before the appellate authority. The appellate authority has not even considered a single contention as is evident from Annexure P7. Therefore, orders of disciplinary authority and appellate authority are liable to be set aside.

3. Per contra, learned counsel for the respondents-State fairly submitted that Annexure P7, appellate authority's order do not contain consideration of each of the contention raised by the petitioner in his appeal vide Annexure P6.

4. Heard learned counsel for the parties.

5. Petitioner's services have been terminated based on the fact that the petitioner has obtained matriculation certificate of examination from the Central Board of Higher Education, New Delhi which is stated to be non-recognized Board. It is to be noted that petitioner was Class IV employee, semi literate person. He may not be knowing that which is the recognized institution and which is not the recognized Institution. Therefore, there is no fault on the part of the petitioner so as to say that petitioner has mislead the department in obtaining appointment to the post of VLDA as recorded by the disciplinary authority. Employee has mislead the department and the certificate provided by him are from non-recognized Institution is without any basis. That apart it is beyond the control of the petitioner insofar as obtaining matriculation examination from Central Board of Higher Education, New Delhi to the extent that whether it is a recognized or non-recognized. Therefore, the petitioner cannot be penalized by imposing a

major penalty of dismissal from service. Hence it is necessary to remand the matter to the disciplinary authority to re-examine the entire issue including imposition of penalty. That apart, perusal of Annexure P7, the appellate authority's order, there is not even a single contention raised in the appeal has been taken note of. When the Haryana Civil Services (Punishment and Appeal) Rules, in particularly Rule 11 provides that how the appeal by an employee is required to be considered and examined, which reads as under:-

“11. Order which may be passed by appellate authority- (i) in the case of appeal against an order under Rule 9 or any penalty specified in rule 4, the appellate authority shall consider : —

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and after such consideration, shall pass such order as it thinks proper;

Provided that no penalty shall be increased unless opportunity is given to the person concerned to show cause why such penalty may not be increased;”

6. Having regard to these facts and circumstances, order dated 30.06.2015 vide Annexure P7 as well as order of termination dated 10.06.2014 are hereby set aside. CWP is allowed. However, matter is remanded to disciplinary authority to examine the contentions of the petitioner raised before the appellate authority so also the fact that it is

beyond the control of the petitioner to obtain matriculation examination certificate from a recognized or non-recognized university. The said contention be examined by the disciplinary authority while passing the order. So also the length of service rendered by the petitioner. Necessary order be passed within a period of 2 months from today.

21.03.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No