

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

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**CWP No.1486 of 2017 (O&M)
Date of decision: 04.12.2017**

Param Bhushan Arya

....Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Rajiv Atma Ram, Sr.Advocate
with Mr.Jaitej Mittal, Advocate, for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana.

Mr.Kanwar Goyal, Advocate, for respondent No.3.

Mr.Amit Rao, Advocate, for
Mr.Anurag Goyal, Advocate, for respondent No.4.

Mr.Sajjan Singh, Advocate, for the applicant/respondent No.6.

G.S. SANDHAWALIA, J. (Oral)

Petitioner challenges the show cause notice dated 22.12.2016 (Annexure P-48) whereby respondent No.1 has forwarded a copy of the enquiry report dated 13.12.2016 to the petitioner and recorded that he had agreed with the conclusion reached by the Enquiry Officer in respect of the charges mentioned in the charges levelled against him. He has further has gone on to hold that these charges stood proved, while issuing the show cause notice before taking any action under Rule 4 of the Haryana Civil Services (Punishment & Appeal) Rules, 2016 (hereinafter, referred to as "2016 Rules") and giving an opportunity to the petitioner to submit a written representation if he so desires.

The challenge, thus, is based on the ground that the punishing authority has already made up its mind and therefore, only the formality has to be completed. Reliance has been placed upon the judgment of the Apex Court in

H.P.State Electricity Board Ltd. Vs. Mahesh Dahiya 2017 (1) SCT 1.

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Learned Senior Counsel has, accordingly contended that as per Rule 7(C) (1) & (2) of the 2016 Rules to submit that the copy of the enquiry report had to be forwarded to the petitioner and the punishing authority was, thereafter, to record a finding to further proceed in the matter, as specified in Rule 4. It is, accordingly, contended that as per the judgment of the Apex Court, the petitioner, in his representation could point out the defect in the procedure which was of a substantial nature in the appreciation of evidence or any misreading of evidence, both oral and documentary, by the Enquiry Officer. The explanation given by the delinquent was also entitled to be considered before the Disciplinary Authority embarked further as per the statutory rules and thus, he submits that there has been violation of the principles of natural justice.

Relevant observation made in the said judgment reads as under:

“26. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority-cum-Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority-cum-Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the

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delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained.”

Keeping in view the fact that the impugned notice dated 22.12.2016 (Annexure P-48) proceeded on this ground that the charge already stood proved, this Court is of the opinion that the same is liable to be quashed and it is ordered accordingly.

However, it is open to the petitioner to file his representation against the said enquiry report, which will be taken into consideration before issuing any further show cause notice. Needful be done by the petitioner within a period of 4 weeks from today, upon which, it will be open to the respondents, to proceed, in accordance with law.

Writ petition stands disposed of.

04.12.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*