

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

CWP No. 23050 of 2013 (O&M)
Date of decision : May 18, 2017

Dr. Vijay Mehra

..... Petitioner

v.

State of Haryana and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Deepak Sonak, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG Haryana

Ajay Tewari, J (Oral)

On the last date, the following order was passed :-

“ The petitioner was charge-sheeted for having overstayed his leave. An Inquiry Officer was appointed and ultimately, order dated 13.10.2008 (Annexure P-1) was passed whereby the competent authority held as follows :-

On being unsatisfied with the reply of the officer, an Inquiry Officer was appointed. The Inquiry Officer has concluded in his report that Dr. Vijay Mehra has got approved leave for one day. Thereafter, he also gave telegram for extension of leave and had been sending his request for extension of leave from time to time to the office describing the reason of his absence. He has not violated the orders of the higher officers intentionally. Upon considering the inquiry report lenient view, the Government has decided stoppage of one annual increment without cumulative effect under Rule 8 instead of giving punishment under Rule 7 of the disciplinary proceedings.

I hereby ordered accordingly.'

Thereafter, the petitioner moved an application

requesting the respondents to consider how his period of absence was to be treated. On that application, the impugned order, Annexure P-2, was passed in which it was mentioned as follows :-

` On considering the inquiry report and the comment of the Department sympathetically, the Competent Officer ordered punishment of stopping three increments of the defaulting officer without cumulative effect. But due to typing mistake, orders were issued covering the charge sheet under Rule 7 to charge sheet under Rule 8 to the concerned officer. Hence while withdrawing the order issued dated on 13.10.2008, it has been decided stoppage of three increments without cumulative effect in the charge sheet issued under Rule 7 to Dr. Vijay Kumar Mehra, Medical Officer, CHC, Gopi now CHC Khedi Kalan, Faridabad.'

Today, learned AAG Haryana seeks one more opportunity to either produce the record or to file a specific affidavit pointing out how the successor officer came to the conclusion that there was a typing error in the first order and, even if it was so, whether it was not obligatory for the respondents to have atleast issued a notice to the petitioner before passing the said order.

Adjourned to 18.5.2017.”

Today, learned AAG Haryana has shown to the Court a letter dated 16.5.2017 received from the Principal Secretary to Government Haryana, Health Department addressed to the Advocate General Haryana wherein it has been mentioned that in fact after the conclusion of the departmental proceedings against the petitioner, the competent authority had decided to impose a punishment of stoppage of three increments without cumulative effect and this was amply recorded on the file. However, in the letter/order dated 13.10.2008 which was issued to the petitioner it was inadvertently mentioned as stoppage of one increment without cumulative effect, and it was only when the application of the petitioner was received regarding his absence period that this mistake came to light and that is why the order, Annexure P-2, was passed.

Counsel for the petitioner has argued and rightly so that before passing the impugned order for enhancing the punishment (for whatever reason), it was incumbent upon the respondents to have issued a notice to the petitioner bringing to his knowledge the above facts and asking him to show cause against it.

Learned AAG Haryana is not in a position to deny the logic and justice of this argument.

In the circumstances, this writ petition is allowed and the impugned order is set aside. However, that would not result in immediate restoration of increments to the petitioner. The matter is ordered to be revived from the stage of issuance of notice to the petitioner proposing punishment. Let necessary exercise be completed within three months from the receipt of a certified copy of this order.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

May 18, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No