

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4552 of 2015

Date of Decision:-19.05.2017.

Chanderkanta

.....Petitioner

Versus

Ptd. B.D. Sharma University of Health Sciences, Rohtak (Haryana) through
its Registrar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Lalit Rishi, Advocate for the petitioner.

Mr. Ramesh Hooda, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

Petitioner has questioned the validity of show cause notice dated 2.4.2012, penalty order dated 5.2.2013 and rejection of memorial dated 23.1.2014 (Annexures P-7, P-10 and P-15, respectively). Petitioner was subjected to disciplinary proceedings. The Inquiry Officer submitted his report. Pursuant to Inquiry Officer's report, disciplinary authority proceeded to issue show cause notice on 2.4.2012 in which there was a proposal to impose the penalty of stoppage of two annual grade increments with cumulative effect. After receipt of petitioner's explanation to show cause notice, disciplinary authority imposed the penalty of stoppage of five annual grade increments with cumulative effect. No reasons have been assigned in the order of disciplinary authority as to why there is alteration in

the proposed penalty. That apart, explanation of petitioner has not been taken into consideration. Feeling aggrieved by the order of disciplinary authority, petitioner submitted a memorial and the same was rejected on 23.1.2014 (Annexure P-15). Hence, the present petition.

Learned counsel for the petitioner submitted that Inquiry Officer has not given positive finding relating to petitioner's misconduct or misdeed and further Inquiry Officer's report do not reveal that charges levelled against the petitioner have been proved. Therefore, the disciplinary authority while issuing show cause notice has come to the conclusion that charges levelled against the petitioner were got proved. Consequently, the disciplinary authority has sent a proposal along with the show cause notice for imposition of penalty. It was further submitted that in the show cause notice, proposal for imposing penalty is for stoppage of two annual grade increments with cumulative effect, whereas, in the final order, disciplinary authority ordered stoppage of five annual grade increments with cumulative effect. Thus, the petitioner has not been provided an opportunity. It was further contended that memorial has not been considered by the disciplinary authority and the same has been rejected vide order dated 23.1.2014 (Annexure P-15). It has merely stated that "*gone through all the facts and record of the case...*" while upholding the decision of the Appellate Authority. Therefore, there is non-consideration of the petitioner's contention in the memorial. Hence, Annexure P-15 dated 23.1.2014 is also liable to be set aside.

Per contra learned counsel for the respondents submitted that after receipt of the petitioner's explanation to show cause notice, disciplinary authority has perused the records and proceeded to impose the

penalty of stoppage of five annual grade increments with cumulative effect. It was further submitted that if the Appellate Authority or higher authority than disciplinary authority is agreeing with the disciplinary authority's order he need not assign the reasons for rejection. Therefore, there is no infirmity in Annexure P-15 dated 23.1.2014.

Heard learned counsel for the parties.

Perusal of Inquiry Officer's report, it is evident that Inquiry Officer has not given his opinion relating to charges levelled against the petitioner whether were proved or not. On the other hand, disciplinary authority proceeded to hold that the Inquiry Officer has already held that charges levelled against the petitioner were got proved and proposed to impose the penalty of stoppage of two annual grade increments with cumulative effect. Thereafter, while considering petitioner's explanation imposed the penalty of stoppage of five annual grade increments with cumulative effect. The above action of the disciplinary authority is contrary to the facts. When the Inquiry Officer has not given finding to the extent that charges levelled against the petitioner were got proved, the disciplinary authority has exceeded his jurisdiction to the extent to hold that Inquiry Officer has held that charges levelled against the petitioner were proved. There is lacuna in the penalty order insofar as imposing the penalty with reference to show cause notice. Proposal is for stoppage of two annual grade increments, whereas, the final order is passed for stoppage five annual increments. Insofar as decision on the petitioner's memorial vide order dated 23.1.2014 is concerned, it is evident that petitioner's each of the contention has not been considered. Whenever a memorial or appeal has been filed by an affected employee, it is bounden duty of the Appellate

Authority or competent authority to consider each of the contention raised in the memorial. Therefore, there is a total non-application of mind in passing the order dated 23.1.2014. In view of the above facts and circumstances, Annexures P-7, P-10 and P-15 are set aside.

Petition stands allowed. Reserving liberty to the disciplinary authority to proceed from the stage of issuance of show cause notice pursuant to the inquiry officer's report. Disciplinary authority has to take decision within a period of 3 months from the receipt of certified copy of this order.

(P.B. BAJANTHRI)
JUDGE

May 19, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.