

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

210

**CWP-6119-2015 (O&M)
Date of decision: 08.02.2017**

N.K.Kansal

....Petitioner

Versus

State of Haryana and others

.... Respondents

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

Present: Mr. D.R.Bansal, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant petition, the petitioner has questioned the validity of the order dated 22.01.2013 and 23.12.2014 vide Annexure P5 and P7 respectively.

2. The petitioner while working as Additional Sub-Divisional Engineer, Kaithal, remained absent from 11.10.2010 to 25.10.2010 on medical ground. The respondents on the presumption that he remained willfully absent from duty proceeded to suspend him and further took disciplinary action. In the disciplinary proceedings, disciplinary authority imposed the penalty of warning and the absence period from 11.10.2010 to 25.10.2010 as leave of the kind due to the petitioner and further suspension period has been regularized by restricting the allowances payable to him

during the suspension period. Feeling aggrieved by the order of the disciplinary authority dated 22.01.2013 he preferred an appeal before the appellate authority. The appellate authority confirmed the order of disciplinary authority on 23.12.2014. Hence, the present petition.

4. Learned counsel for the petitioner submitted that the petitioner has not been provided copy of the inquiring officer's report. Even though, Inquiring officer has held that charges framed against the petitioner were not proved. The disciplinary authority while disagreeing with the Inquiring officer's report provided a personal hearing on 21.01.2013 and proceeded to impose the penalty of warning and treating the suspension period as suspension only. Thus, he has not been provided opportunity of perusal of Inquiring officer's report and no reasons have been assigned as to how the charges were proved against the petitioner. It was further contended that disciplinary authority while concurring with the inquiring officer's report to some extent. At the same time, he has imposed the penalty of warning. Thus, order of the disciplinary authority dated 22.01.2013 is wavering and it is not crystal clear. Therefore, order of disciplinary and appellate authority dated 22.01.2013 and 23.12.2014 are liable to be set aside.

5. On the other hand, learned counsel for the respondents submitted that since the petitioner has been punished by imposing minor penalty of warning therefore, question of providing inquiring officer's report do not arise. Further penalty is only a warning. Therefore, no infirmity is forthcoming from the order of the disciplinary authority so also appellate authority.

6. Heard learned counsel for the parties.

7. Perusal of the disciplinary authority's order it is evident that Inquiring officer has held that charges levelled against the petitioner were not proved. However, the disciplinary authority while disagreeing with the inquiring officer's report and also accepting to some extent proceeded to impose the penalty of warning after giving personal hearing on 21.01.2013. There is no discussion in respect of proving the charge of unauthorized absence by the disciplinary authority while disagreeing with the inquiring officer's report. He has merely quoted reply to the charge-memo submitted by the petitioner and also with reference to communication of Superintending Engineer that the petitioner failed to produce medical certificate etc. On the other hand, learned counsel for the petitioner submitted that petitioner did produce necessary medical certificate to demonstrate that he was suffering from illness during the absence period.

8. Having regard to the disputed fact that whether the petitioner was really suffering from illness or not is required to be examined after going through the medical certificates and examination of author of medical certificates etc. In the absence of that the disciplinary authority who is not a medical professional so as to come to the conclusion that petitioner was not suffering from illness and there is no proof, such a conclusion cannot be appreciated for the reasons that the same has not been discussed in the order of penalty of warning and treat the suspension period as suspension only. Therefore, both the disciplinary and appellate authorities orders dated 22.01.2013 and 23.12.2014 are set aside and the matter is remanded to the

disciplinary authority to proceed with from the defective stage i.e. after providing a copy of the inquiring officer's report and show cause notice of disagreeing. Thereafter proceed in accordance with law. The above exercise shall be completed within a period of 6 months from today.

08.02.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

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