

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

**CWP-16848-2016(O&M)
Date of decision : 02.08.2018**

Rajesh Kumar

..... Petitioner

versus

State of Haryana and others

..... Respondents

BEFORE : HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anurag Goyal, Advocate for the petitioner.

Mr.Kiran Pal Singh, AAG, Haryana.

RITU BAHRI, J. (ORAL)

The petitioner, who is working as T.G.T.(Hindi), has filed the present petition impugning order dated 08.06.2015 (Annexure P-20), whereby major punishment of stoppage of three annual increments with cumulative effect was imposed upon him. Further challenge is to the order dated 15.06.2015 (Annexure P-26) whereby the Appellate Authority has affirmed the imposition of major penalty.

The petitioner was initially appointed as Hindi Teacher on 23.10.2000. On 22.11.2012, he joined at GSSS, Harigarh, Bhaurakh, Kurukshetra. Thereafter he joined at Govt. high School, Beholi, Kurukshetra on 29.1.2013. While posted at Kurukshetra, he was suspended vide order dated 10.7.2013. After a period of four months i.e on 15.2.2014,

the petitioner had received a charge sheet dated 28.1.2014 (Annexure P-17) issued by respondent no.2. On 27.5.2014, the petitioner submitted a detailed reply to the charge sheet and subsequently, a detailed disciplinary enquiry was initiated against him. The petitioner was issued a show cause notice dated 09.03.2015 by DEEO and the petitioner was afforded last opportunity to present his version by appearing in person on 17.3.2015. Thereafter major punishment of stoppage of three annual increments with cumulative effect was passed on 8.6.2015. The impugned order stopping the annual increments of the petitioner dated 8.6.2015 was not supplied to the petitioner and the same was obtained by him under RTI Act 2005. The petitioner filed an appeal (Annexure P-23) against the order dated 8.6.2015 (Annexure P-20) under Rule 14.1, Appendix-C of Haryana School Education (Group-C) State Cadre Service Rules, 2012. Thereafter, he filed CWP No. 3999 of 2016, which was disposed of vide order dated 29.2.2016 (Annexure P-25) with a direction to respondent no.5 to conclude the proceedings in the appeal filed by the petitioner in accordance with law within a period of three months. In pursuance of the above order, appeal of the petitioner was considered and rejected vide order dated 15.6.2016 (Annexure P-26) by Director, Elementary Education Haryana, Panchkula.

Counsel for the petitioner has argued that as per the Enquiry Report (Annexure P-22), the petitioner had never used race pointer words. A perusal of the enquiry report (Annexure P-22) shows the main dispute started between Rajesh Kumar and Peon Man Singh. Man Singh, Peon had made a complaint that Sh. Rajesh Kumar had addressed him with race pointer words. Whereas in the enquiry, it was found that Sh. Rajesh Kumar had in fact never used race pointer words. This fact was also certified by

Principal Smt. Shashi Dhawan and due to this wrong allegation only, Sh. Rajesh Kumar suffered from mental depression. However, this enquiry report was not accepted and vide order dated 8.6.2015 (Annexure P-20), a major punishment of stoppage of three annual increments with cumulative effect was passed against the petitioner.

Counsel for the State has vehemently argued that the punishment order has been passed as per Haryana School Education (Group-C) State Cadre Service Rules-2012.

The point for consideration in the present petition is whether major punishment can be imposed upon a delinquent official after initiating proceedings for imposing minor punishment, meaning thereby that charge sheet was issued to the petitioner under Rule 8 of the Haryana School Education(Group C) State Cadre Service Rules, 2012 for imposing minor penalty whereas major penalty of stoppage of three annual increments with cumulative effect was imposed upon him and that too by the District Elementary Education Officer who was having no jurisdiction to do so.

Heard counsel for the parties and gone through the records of the case. A perusal of the enquiry report (Annexure P-22) shows that the petitioner had not used the race pointer words and this fact has been certified by the Principal Smt. Shashi Dhawan as well. In the present case, no regular enquiry had been conducted for imposing major punishment of imposition of stoppage of three annual increments with cumulative effect. This aspect has been considered by a Full Bench of this Court in the judgment in **Dr.K.G.Tiwari vs. State of Haryana, 2002(4) SLR 329** and followed in **Randhir Singh v. Haryana State Electricity Board, 2003(6)**

SLR 588. In the case of **Dr. K.G Tiwari (supra)**, it has been held that once

charge sheet is issued for imposition of a major penalty which envisages holding of a regular enquiry, the disciplinary authority cannot by merely examining the reply to the charge sheet inflict even a minor punishment without holding a complete departmental enquiry. In paragraph 22 of the judgment in the case of **Dr. K.G Tiwari (supra)**, it has been observed as under:

22. After having heard the learned counsel for both the sides and carefully perusing the decisions relied upon by the respondents, we are unable to agree with the contentions put forward by the learned counsel for the respondents. The question is as to whether and if so, why the procedure of holding a regular enquiry should be adopted in a case where the chargesheet is issued under Rule 7 for imposing a major penalty, but ultimately a minor punishment is imposed. If we go through the Scheme for holding an enquiry under Rule 7, we find that elaborate procedure has been prescribed by Rule 7. Sub-rule (1) of rule 7 provides that no order of imposing a major penalty shall be passed against a person to whom the rules apply, unless he has been given a reasonable opportunity to show cause against the action proposed to be taken in regard to him. Sub-rule (2) requires the grounds, on which the action is proposed to be taken, shall be reduced to the form of a definite

charge or charges and it should be communicated in writing to the persons charged together with a statement of allegations. He should also be called upon to submit his explanation for defence, if any. If the explanations are not found to be satisfactory, then enquiry shall be held at which the evidence shall be heard with regard to the charges as are not admitted. The chargesheeted employee has to be given an opportunity to cross-examine the witnesses. He should be permitted to give evidence and also to examine witnesses on his side.

Therefore, we find from this elaborate procedure that the chargesheeted employee will have an opportunity to explain at the initial stage itself when he submits the reply to the chargesheet as to why no action is necessary to be taken against him. Only if his explanation is not accepted, then an enquiry has to be held by giving him opportunity to take part in the enquiry as provided for in the rules. A copy of the report of the Enquiry Officer has to be furnished to the chargesheeted employee, if he is found guilty, and if the disciplinary authority accepts it and proposes to impose the punishment on him, then, the

chargesheeted employee will get a further opportunity to urge that the finding of guilt on one or more of charges is not warranted by the evidence on record, and therefore, he should not be held guilty on such of those charge, on the basis of the enquiry report for the reasons to be mentioned by him, and also to plead that a particular punishment should not be awarded to him. Whereas, in a case where the chargesheet is served under Rule 8 for the imposition of only minor penalty, the chargesheeted employee will be served with the chargesheet, and will get an opportunity to make his representations or submit his explanation against the same. He will have only one opportunity not only to say that he should not be held guilty by accepting his explanation, and that a particular punishment should not be imposed upon him. The chargesheeted employee has to anticipate the likelihood of his being punished with one of the penalties and also to make the written representation with regard to the same, as he will not get any further opportunity to make any further written representation in writing. It may be that he can be given a personal hearing also, but that will not be an effective substitute for a written representation. But, in a case where

the chargesheet is issued under Rule 7 for imposition of a major penalty, the petitioner need not assume while replying to the chargesheet that he will be held guilty, and can await the receipt of the copy of the enquiry report, to make his further submissions. Therefore, if a chargesheet is issued under Rule 7 for the imposition of a major penalty, but after receiving the explanation from the chargesheeted employee and considering the same, the disciplinary authority imposes a minor punishment, the petitioner will be deprived of the opportunity to make further representation as mentioned above, and will thus be prejudiced, unless the disciplinary enquiry, as contemplated under Rule 7 is held and completed.

The controversy involved in the present petition is squarely covered by the aforesaid decision of this Court in **Dr.K.G.Tiwari's** case (supra).

In view thereof, the present petition is allowed and the impugned order Annexure P-20 is quashed.

(RITU BAHRI)
JUDGE

02.08.2018

sunita/ritu

Whether speaking/reasoned	Yes
Whether Reportable	No