

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.3616 of 2019 (O&M)
Date of Decision.12.07.2019

Birender Singh and others

...Petitioners

Vs

The State of Haryana and others

...Respondents

Present: Mr. Suresh Kumar Redhu, Advocate
for petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Notice of motion.

Ms. Shruti Jain Goyal, DAG, Haryana accepts notice for
respondents.

The short point involved in the present case is that in
pursuance of charges levelled against the petitioner and other
delinquent employees, Enquiry Officer vide his report dated
24.11.2016 exonerated them, however, the punishing authority i.e.
Superintendent of Police, Tele Communication, Haryana, Panchkula
vide show cause notice dated 4.1.2017 called upon petitioner for
imposition of punishment of stoppage of five annual increments with
permanent effect by recording alleged disagreement. The relevant
content of show cause notice reads as under:-

*“...The undersigned has gone through the departmental
enquiry files and other relevant documents found that
the Enquiry Officer not considered the facts properly,
hence, disagree with the findings of the Enquiry
Officer....”*

Learned counsel for petitioners submitted that there are neither separate reasons assigned for disagreement nor any opportunity of hearing granted, which is against the law laid down by Hon'ble Supreme Court in **Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84** and unreported judgment of this Court rendered in CWP No.20044 of 2013 titled as '*Rajesh Kumar Vs. State of Haryana and others*' decided on 30.06.2015.

However, in appeal and revision preferred by petitioners, punishment was reduced to only censure. He further submitted that entire process is vitiated in law, which is not in tandem with principles of natural justice and relevant Rules. Had aforementioned requirement been complied with, there would not have been an occasion for censuring petitioners.

Per contra, Ms. Shruti Jain Goyal, DAG, Haryana submits that as per contents of writ petition, she does not dispute position of law regarding recording of disagreement as held by Hon'ble Supreme Court in **Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84**.

I am of the view that it would be a farcical exercise in keeping writ pending, as I deem it appropriate to remit matter to Superintendent of Police, Tele Communication, Haryana, Panchkula or any other punishing authority to comply with requirements of law as extracted in para 16 of judgment rendered by Hon'ble Supreme Court in **Kunj Behari Misra's case** (supra), which reads as under:-

“16. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the

disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

In view of aforementioned facts, impugned orders (Anneuxre P-11, P-13, P-15, P-17 and P-20) are set aside. Let entire exercise be undertaken within a period of three months from the date of receipt of certified copy of this order from the stage of receipt of enquiry report.

Writ petition stands disposed of in above terms.

(AMIT RAWAL)
JUDGE

July 12, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No