

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

**CWP No. 11043 of 2016
Date of Decision : 13.11.2019**

Surjit Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- None for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

The grievance which is being raised by the petitioner in the present writ petition is that vide order dated 31.03 2016 (Annexure P-9), he has been imposed with punishment of recovery of the financial loss caused by him to the Gram Panchayat, Bamiyal to be done from his pensionary benefits and further his suspension period from 19.11.2012 to 29.04.2013 has been ordered to be treated as leave of a kind due, though petitioner has been exonerated in the disciplinary proceedings.

The facts which have been mentioned in the writ petition are that while the petitioner was working as a Gram Sewak, he was suspended from service vide order dated 16.11.2012 (Annexure P-2). Alongwith the order of suspension, a charge-sheet was served upon him with the allegations of causing loss to the Gram Panchayat. Petitioner filed his reply dated 14.02.2013 (Annexure P-3) to the said charge-sheet and denied all the

allegations leveled against him. During the pendency of the enquiry proceedings, petitioner was reinstated on 30.04.2013 without prejudice to the enquiry which was being conducted against him.

A regular enquiry was conducted against the petitioner in respect of the allegations of causing loss to the Gram Panchayat and the Enquiry Officer i.e. Deputy Chief Executive Officer, Zila Parishad, Pathankot, who conducted the enquiry, found the petitioner innocent as none of the charge alleged against the petitioner was proved. This report of the Enquiry Officer dated 13.09.2013 has been appended as Annexure P-5 with the writ petition. The Punishing Authority being dissatisfied with the enquiry report, but without informing the petitioner that the Punishing Authority is not accepting the enquiry report, called the petitioner for personal hearing and after affording personal hearing, an order of punishment was passed on 31.03.2016 by which, the financial loss, which was caused to the Gram Panchayat, Bamiyal, was ordered to be recovered from the pensionary benefits of the petitioner, who had already retired by the said date. Further, the suspension period of the petitioner was ordered to be treated as a leave of kind due. The challenge in the present writ petition is to the said order on the ground that the disagreement note of the Punishing Authority, disagreeing with the recommendations of the Enquiry Officer, was never supplied to the petitioner at any stage before imposing the punishment and, therefore, the punishment is bad in the eyes of law as rules of natural justice have been violated.

Though in the reply, the respondents have stated that the personal hearing was afforded to the petitioner but it was not clear as to

whether, the enquiry report and the disagreement note of the Punishing Authority was ever supplied to the petitioner before passing the said order of punishment or not. The respondents were asked to file a specific affidavit as to whether the dissenting note of the Punishing Authority, disagreeing with the recommendations of the Enquiry Officer alongwith the enquiry report, was supplied to the petitioner or not.

Today, a short affidavit has been filed by the Director, Rural Development and Panchayat in which, it has been stated by the respondents that before passing the impugned order of punishment, the objections, which were raised by the competent authority to the enquiry report, were not supplied to the petitioner in writing. The relevant paragraph of the affidavit is as under :-

“2. That in compliance of the aforesaid order, it is submitted that before personal hearing the petitioner was submitted the application for personal hearing in the office of the deponent. The petitioner was heard by the respondent No. 2. Before passing the punishing order the petitioner has failed to submit the satisfactory reply at the time of personal hearing before the respondent No. 2. Thereafter, impugned order dated 31.03.2016 (Annexure P-9) passed by the deponent. It is brought to the notice of this Hon'ble Court that before passing the impugned order the objections which were raised by the competent authority were not supplied to the petitioner in writing before passing the impugned order.”

I have heard the learned counsel for the respondents and have gone through the record with his able assistance.

The only question which is raised in the present writ petition for consideration of this Court is whether, it was incumbent upon the

respondents to supply the dissent note of the Punishing Authority along with the enquiry report so as to seek the comments of the petitioner before any action is taken on the basis of the said enquiry report or not. This question of law has been settled more than once by the competent court of law. Once, an employee has been exonerated by the Enquiry Officer, he gets a right to know as to whether the said enquiry report has been accepted by the Punishing Authority or not. In case the Punishing Authority has any reason to differ/disagree with the enquiry report, the said reasons have to be supplied to the delinquent so as to make him/her aware as to on what basis, the Punishing Authority is disagreeing with the recommendations of the Enquiry Officer where the charged employee has been exonerated. This is must so that the employee can raise his/her plea with regard to those points, which has been raised by the Punishing Authority to differ with the findings of the Enquiry Officer. In the absence of the dissent note being supplied to the delinquent officer, he/she does not know as to on what basis, the Punishing authority has, prima-facie, made up mind to prove the charge against him/her. Non supplying the dissent note, is contrary to the principle of natural justice. Rules of natural justice demand that all the material, which is against any charged officer, has to be put to him/her before taking action. In the present case, though the petitioner had already been exonerated by the Enquiry Officer but till the time of imposing the punishment, the petitioner was not supplied with the enquiry report as well as the dissent note of the Punishing Authority, disagreeing with the findings of the Enquiry Officer. Therefore, it is clear that the rules of natural justice have been violated, which is impermissible.

Hon'ble Supreme Court of India while deciding Civil Appeal No. 5128 of 2013 titled as ***S.P. Malhotra Vs. Punjab National Bank and others***, on 04.07.2013 held that the principle of natural justice will be violated in case the reasons recorded for disagreement note in the enquiry report are not furnished to a delinquent official, the principle of natural justice are violated and the order passed cannot be sustained. The relevant paragraphs of the said judgment are as under :-

“11. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL (supra).

12. The learned Single Judge has concluded the case observing as under:

“The whole process that resulted in dismissal of the petitioner is flawed from his inception and the order of dismissal cannot be sustained. I am examining this case after nearly 23 years after its institution and the petitioner has also attained the age of superannuation. The issue of reinstatement or giving him the benefit of his wages for during the time when he did not serve will not be appropriate. The impugned orders of dismissal are set aside and the petitioner shall be taken to have retired on the date when he would have superannuated and all the terminal benefits shall be worked out and paid to him in 12 weeks on such basis. There shall be, however, no direction for payment of any salary for the period when he did not work.”

13. As the case is squarely covered by the judgment of this court in Kunj Behari Misra (supra), we do not see any reason to approve the impugned judgment rendered by the Division Bench.

Thus, in view of the above, the appeal is allowed. The judgment and order of the Division Bench is set aside and that of the learned Single Judge is restored. No costs."

The same question also has been decided by the this Court more than once. The Division Bench of this Court in LPA No. 370 of 2011 titled as ***Haryana State Agricultural Marketing Board Vs. K.L. Ahuja and another***, decided on 01.03.2011 again held that if the Punishing Authority disagrees with any part or whole of the findings of the Enquiry Officer, the point/points of such disagreement alongwith the brief statement are required to be supplied to the Government employee and failure to do so will render the enquiry proceedings illegally. The relevant paragraphs 6 and 9 of the said judgment are as under

"6. Having heard learned counsel for the appellant Board we see no legal infirmity in the view taken by the learned Single Judge. It is pertinent to notice that departmental proceedings against the petitioner-respondent No. 1 were initiated under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for brevity, 'the Punishment Rules'). Proviso to sub-rule (6) of Rule 7 of the Punishment Rules contemplates that if the punishing authority disagrees with any part or whole of the findings of the enquiring authority, the point or points of such disagreement together with a brief statement of the ground thereof are required to be supplied to the Government employee. Sub-rule (6) of Rule 7 of the Punishment Rules reads thus:

"7. Inquiry before imposition of certain penalties.

(1) to (5) xxx xxx xxx

(6) After the enquiry against a Government employee has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the Government employee shall, if the penalty to be imposed is major penalty be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within reasonable time, not ordinarily exceeding one month against the particular penalty purposed to be inflicted upon him.

Any representation submitted by him in this behalf shall be taken into consideration before final orders are passed:

Provided that if the punishing authority disagrees with any part or whole of the findings of the enquiring authority, the point or points of such disagreement, together with a brief statement of the ground thereof, shall also be supplied to the Government employee."

(emphasis added)

7. *From a bare perusal of the above provision it is clear that the Disciplinary Authority in case of disagreement with the finding of the inquiring authority was required to record the point or points of such disagreement together with a brief statement of the ground thereof for such a disagreement. The obligation casts on the Disciplinary Authority is heavier because the ground or reasoning of disagreement which the Disciplinary Authority may proceed to record has to be 'sufficient' to sustain. Ordinarily sufficiency and insufficiency of reasoning to sustain the charge would be a question which would not be required to be gone into but it was imperative on the Disciplinary Authority to record a finding on a charge where it expresses disagreement. It may be for the reason that once inquiring authority has concluded one way or the other*

then to reverse those findings sufficient reasoning would be necessary to over turn those findings. Therefore, findings cannot be reversed on flimsy grounds. A perusal of the 'Dissenting Note' would show that the Disciplinary Authority failed to record any reason for disagreement with the findings recorded by the Enquiry Officer on each count. There is not an iota of reasoning which has been made part of discussion in order to reach a conclusion that there are sufficient grounds to sustain the charge in support of disagreement.

The instant case presents a gloomy picture of complete non-application of mind by the Disciplinary Authority. There is virtually no finding discussed to sustain the charges nor any reasoning has been adopted to reach the conclusion that the petitioner-respondent No. 1 is guilty of those charges.

8. *No doubt is left that the disciplinary authority should have recorded reasons to sustain the charges before it could disagree with the findings of the inquiry officer. The 'dissenting note' recorded by the Disciplinary Authority is a far cry from fulfilling the settled proposition of law. Therefore, the impugned orders have rightly been set aside by the learned Single Judge.*

9. *As a sequel to the aforesaid discussion, this appeal fails and the same is accordingly dismissed.”*

Once again, the Division Bench of this Court had an occasion to consider the same question of law while deciding LPA No. 1587 of 2015 titled as **Maman Singh Vs. state of Haryana and others**, on 14.03.2018, wherein the Division Bench held that where the copy of the enquiry report was not supplied alongwith the dissenting note, a serious prejudice has been caused to the employee, rendering the proceedings illegal. The relevant paragraph 8 of the said judgment is as under:-

“8. *The disciplinary authority relied upon the report given*

by a committee more than 2 years after the regular inquiry officer held that the charges were not proved against the appellant. Said material was not before the enquiry officer. Moreover, the appellant was neither associated with the proceedings conducted by the committee which gave its report on 02.05.2012 nor the copy of the said report was supplied to the appellant along with dissenting note, whereas copy of committee report dated 02.05.2012 ought to have been supplied to the appellant along with the note of dissent by recording tentative reasons disagreeing with the finding given by the regular Enquiry Officer and giving an opportunity to the appellant to represent against the tentative findings recorded by the disciplinary authority and it was only after the receipt of representation from the appellant that the matter ought to have been considered and decided by the disciplinary authority. The same not having been done and the note of dissent itself recording that the charges against the appellant stood proved and that too without supplying a copy of report dated 02.05.2012 for arriving at a finding than one recorded by the regular Enquiry officer exonerating the appellant, the appellant was seriously prejudiced. Resultantly the impugned order is unsustainable. Consequently, the same is set-aside. The matter is remanded to the disciplinary authority to proceed afresh in the matter. Needful be done within three months from the date of receipt of certified copy of this order after supplying report dated 02.05.2012 and after affording an opportunity to the appellant to move representation, if any. Disciplinary authority would proceed to decide the matter afresh and would determine the outcome of the action, if any, to be taken against the appellant.”

The case of the petitioner is squarely covered by the law mentioned here-in-before and, therefore, the order dated 31.03.2016

(Annexure P-9), which has been passed against the petitioner imposing punishment cannot be sustained in the eyes of law and the same is accordingly set-aside. However, the respondents will be at liberty to initiate the process afresh in accordance with law after giving the petitioner the enquiry report as well as the dissent note for his comments and thereafter, proceed afresh in accordance with law.

Writ petition is allowed in above terms.

November 13, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*