

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

CWP No.1318 of 2016(O&M)

Date of Decision : 01.10.2019

Ex ASI Ved Singh

....Petitioner

v/s

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr.R.S. Redhu, Advocate for the petitioner.
Mr. Harish Rathee, Senior DAG, Haryana.

B.S. Walia, J. (Oral)

[1] Sole argument of learned counsel for the petitioner is that grave prejudice was caused to the petitioner by imposing punishment of dismissal vide Order (Annexure P-3) dated 30.09.2013 in view of the disciplinary authority having recorded in the show cause notice (Annexure P-11) dated 23.08.2013 of having perused the report of the Investigating Officer, departmental enquiry file and other material evidence in the departmental enquiry file and of having agreed with the report of the Investigating Officer and provisionally being of the view that the petitioner be imposed punishment of reduction/dismissal from Police Department.

[2] Learned counsel contends that before perusing the enquiry report and arriving at a conclusion to impose punishment, the disciplinary authority was required to supply a copy of the enquiry report to the petitioner and call for the comments of the petitioner against the findings recorded in the enquiry report and it was only after considering the enquiry report and comments if any

that orders as deemed appropriate by the disciplinary Authority could be passed but the aforementioned procedure as laid down by Hon'ble the Supreme Court in **Managing Director, ECIL vs B. Karunakar-1993(4) SCC 727** was not followed. Learned counsel also relied upon the decision of Hon'ble the Division Bench of this Court in '**Ramesh Kumar versus State of Haryana and others**', **2006(3) SCT 799** in support of the aforementioned plea. Relevant extract of the decision in '**B. Karunakar's** case (*supra*) is reproduced as under :-

“29. Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the Inquiry Officer's report before the disciplinary authority take its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

3. A perusal of the aforementioned extract reveals that where the disciplinary authority is other than the Enquiry Officer, then in that eventuality, before the enquiry report is considered by the disciplinary authority, a copy thereof is required to be furnished to the delinquent official

inviting comments/objections, if any, before recording any finding thereon. However, the aforesaid procedure was not adopted in the present case. Learned counsel for the petitioner contends that in the facts and circumstances of the case, the petitioner was gravely prejudiced as view taken by the disciplinary authority with regard to the correctness of the findings recorded in the enquiry report and being of the opinion that punishment be imposed on the petitioner was without giving an opportunity to show cause against the findings recorded by the inquiry officer. Learned counsel contends that had aforesaid liberty been given to the petitioner, then the petitioner would have been in a position to show cause against the findings recorded by the Enquiry Officer and to persuade the disciplinary authority that the findings recorded in the inquiry report were not correct. However, the same not having been done, the petitioner was prejudiced. Resultantly the impugned order is legally unsustainable.

4. Learned Sr. DAG, on the other hand, contends that no prejudice was caused to the petitioner since objections were to be filed by the petitioner in response to the show cause notice and the same were to be considered by the disciplinary authority before passing of final order. Learned counsel for the petitioner contends that denial of the right of the petitioner to receive a copy of the enquiry report before the disciplinary authority took a decision on the charges is a denial of the principles of natural justice and that opportunity to show cause against the correctness of the findings recorded in the enquiry report was to be given before consideration of the enquiry report by the disciplinary authority and taking of decision by the disciplinary authority to impose penalty and the same not having been done, vitiated the proceedings,

punishment of dismissal was illegal and liable to be set aside and the matter remanded to the learned disciplinary authority for proceeding afresh from the stage of receipt of enquiry report from the Inquiry Officer.

[5] Reliance has also been placed on the decision of Hon'ble, the Division Bench of this Court in '**Ramesh Kumar's case (supra)**'. Relevant extract of the aforementioned decision is reproduced as under:-

“The Disciplinary authority – respondent No. 2 agreed with the opinion expressed by the Enquiry Officer and proposed penalty of stoppage of two future annual increments with permanent effect. In this regard the show cause notice dated 30/06/2004 (P/7) was issued to the petitioner suggesting as to why the proposed punishment be not inflicted upon him. It is significant to point out that a copy of the enquiry report was not given to the petitioner before forming an opinion accepting the findings of the enquiry officer. It is obvious that the enquiry officer and the disciplinary authority are two different individuals. In para 8 and 9 of the writ petition, the aforementioned averment has been made. However, respondent No. 2 proceeded to pass the order of punishment dated 16.09.2004 (P/9), which has been upheld by the Appellate Authority on 20.09.2005 (P/12).

The aforementioned factual position is not disputed by the respondents in the written statement. However, in reply to para 8 and 9 it has been asserted that the petitioner was served with the show cause notice proposing the penalty and also by handing over a copy of the enquiry report as per the procedure prescribed in the

Rules. Some other details with regard to holding of enquiry and granting opportunity to the petitioner has also been given in the written statement.

The only question which requires consideration on the basis of the arguments addressed by the learned counsel for the parties is whether the report of the Enquiry Officer should have been furnished to the delinquent petitioner before the Disciplinary Authority arrived at its conclusion with regard to the guilt or innocence of the petitioner in respect of the charges leveled against him. It is admitted position that the report of the Enquiry Officer was furnished to the petitioner along with the show cause notice dated 30.06.2007 (P/7). In the aforementioned show cause notice the Disciplinary Authority had recorded his conclusion and had accepted the findings recorded by the Enquiry Officer. A perusal of the show cause notice dated 30.06.2004 (P/7) makes the aforementioned position explicit and the same reads asunder :-

“Sh. Anil Kumar, IPS, AIG/T who was appointed as Enquiry Officer to hold regular departmental enquiry against you, Shri Ramesh Kumar, Clerk for the charges leveled against you vide charge sheet dated 05.05.2003 has submitted his findings dated 12.05.2004. A copy of the report is enclosed for your information.

On careful consideration of the findings, I fully agree with the conclusion reached by the Enquiry Officer in respect of the charges leveled against you and hold that these charges stand proved. I am provisionally of the opinion that a penalty of stoppage of two future annual increments with permanent effect should be imposed on you.

Before I take action I desire to give you an opportunity of showing cause against the action proposed to be taken. Any representation which you may like to make in that connection will be considered by me before the proposed action is taken. Such representation, if any, should be made in writing and submitted to me as to reach the undersigned not later than 15 days of the receipt of this notice by you. If no reply is received within the stipulated period, it will be presumed that you have nothing to say in your defence and final orders will be passed accordingly. xx”

“It is, thus, obvious that the enquiry report was not furnished to the petitioner before applying its mind by the Disciplinary Authority to the findings recorded by the Enquiry Officer. A Constitution Bench of the Hon’ble Supreme Court in the case of Managing Director, ECIL vs B. Karunakar, (1993) 4 SCC 727, has held that such a course is not open to the Disciplinary Authority and the law requires furnishing of an enquiry report to a delinquent employee in cases where the Enquiry Officer and Disciplinary Authority are two different entities so as to provide an opportunity of hearing to the delinquent employee.”

xxx

“When the facts of the instant case are examined in the light of the principles laid down by the Hon’ble Supreme Court no doubt is left that the disciplinary authority has failed to furnish a copy of the enquiry report to the delinquent employee before concurring with the findings recorded by the Enquiry Officer. It is also obvious that Enquiry Officer and Disciplinary Authority are two different entities,

therefore the principles extracted above have to be followed. Thus, the petition deserves to succeed.”

“In view of the above factual and legal position, order of the Disciplinary Authority, dated 16.09.2004 (P/9) along with all subsequent proceedings are quashed. In other words, the order dated 16.09.2004 (P/9) and order dated 20.09.2005 (P/12) are also set aside. The Disciplinary Authority shall proceed with the enquiry on the assumption that the petitioner is deemed to have been supplied the copy of the enquiry report in the court i.e. 15.05.2006, as has been agreed between the parties and the respondents shall now proceed with the enquiry proceedings in accordance with law from that stage. The petitioner may file a reply within a period of 4 weeks from today, which shall also be considered by the Disciplinary Authority in accordance with law. The petitioner shall be entitled to all the consequential benefits.”

[6] Apart from the stand that no prejudice was caused to the petitioner. Learned Senior Deputy Advocate General, Haryana, has not controverted the factual or the legal position.

[7] I have considered the submissions of learned counsel for the petitioner and am of the considered view that in the absence of copy of enquiry report having been furnished to the petitioner before considering of the same by the disciplinary authority and arriving at conclusion to impose punishment by perusing the same and calling for objections of the petitioner to the findings recorded in the enquiry report, impugned order (Annexure P-3) dated 30.09.2013 is liable to be set aside and the matter remanded to the

of enquiry report in accordance with the decision of Hon'ble the Supreme Court in '**B. Karunakar's** case(supra) as well as of Hon'ble the Division Bench of this Court in '**Ramesh Kumar's case (supra)**'. According, impugned Order (Annexure P-3) dated 30.09.2013 is set aside and the learned disciplinary authority directed to proceed afresh in the matter from the stage of receipt of enquiry report from the Inquiry Officer by furnishing a copy of the enquiry report to the petitioner to enable him to file objections, if any and thereafter to consider the enquiry report along with the objections. Needless to mention, impugned order has been set aside only for the purpose of concluding the departmental enquiry in the matter aforesaid. Entitlement if any of the petitioner to consequential benefits would be subject to the outcome of the conclusion of the departmental proceedings in the manner aforesaid. Since the misconduct pertains to the year 2013, it is directed that the disciplinary proceedings be concluded within a period of 04 months from the date of receipt of certified copy of the order, after complying with the principles of natural justice. Writ petition ***disposed of*** in the aforementioned terms.

(B.S. Walia)
Judge

October 01, 2019
'Rajneesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No