

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

CWP No. 14463-2018

Date of decision : 01.02.2019

Om Parkash Arya

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G Haryana

RITU BAHRI, J. (Oral)

C.M. No. 1490-2019

Application is allowed as prayed for.

Accordingly, replication is taken on record.

C.W.P No. 14463-2018

Petitioner is seeking a writ in the nature of certiorari for quashing notice dated 05.04.2018 (P-5) whereby the enquiry officer has been appointed to conduct the enquiry of charge sheet issued on 12.05.2000.

The facts in brief are that the petitioner was appointed on 16.12.1982 as Forest Guard and was promoted as Forest Inspector on 21.05.2016. Subsequently, the petitioner was suspended on 22.12.1999 and was issued a charge sheet dated 12.05.2000 (P-1) to three charges:-

1. Number of trees got cut illegally
2. To grab the government property
3. Altercation in the Government record.

The petitioner was held guilty as per report of the inquiry

officer dated 13.05.2013. The petitioner was then awarded 4 punishment to the petitioner, vide order dated 06.10.2003 (P-1). The petitioner filed his appeal against the above order and the Appellate Authority had passed an order dated 13.05.2004 for recounting of the missing trees but no final report was received and order dated 06.10.2003 made to implement by deducting the recovery from the salary of the petitioner. The petitioner filed appeal against this order, which was dismissed on 26.04.2005. Subsequently, the petitioner filed a civil suit challenging the enquiry report as well as punishment order dated 06.10.2003 which was decreed vide order dated 21.04.2014. But the respondents were given liberty to initiate fresh inquiry, but without any delay. The respondents challenged the decree by filing an appeal, which was dismissed on 09/10.05.2017. After about 04 years, the respondents issued notice dated 05.04.2018 received by the petitioner on 10.05.2018 for initiating fresh inquiry. Hence the present writ petition.

Learned counsel for the petitioner, *inter alia*, contends that initially a charge sheet was issued on 12.05.2000. On the basis of enquiry report, four punishments were awarded to the petitioner. Thereafter, he filed a civil suit challenging the enquiry report as well as the punishment order dated 06.10.2003. The said suit was decreed vide judgment dated 21.04.2014 passed by the Additional Civil Judge (Senior Division), Sirsa and impugned order dated 06.10.2003 was set aside. However, the defendant-respondents were given liberty to initiate fresh enquiry against the petitioner after following the prescribed procedure including principles of natural justice without any delay. Grievance of the petitioner is that after

passing of the judgment dated 21.04.2014, the enquiry officer has now been appointed on 05.04.2018. Learned counsel for the petitioner has referred to the judgment passed by this Court in *State of Haryana vs. T.S. Bhatti*, 2015 (3) PLR 799, to contend that fresh enquiry cannot be initiated after such a long delay.

On the other hand, learned State counsel has argued that since the respondents were given liberty to initiate fresh enquiry against the petitioner after following the prescribed procedure including principles of natural justice, therefore, the petitioner has rightly been issued notice dated 05.04.2018 for initiating fresh inquiry. There is no delay in issuing notice to the petitioner, as the appeal against the decree was dismissed on 09/10.05.2017 and thereafter, the Legal Remembrance and Administrative Secretary to Government of Haryana, Law and Legislative Department Chandigarh vide office letter dated 10.07.2017 opined that this case is not fit for further appeal. Thereafter, respondent No. 3 vide office letter dated 06.10.2017 required the dealing official of the office of respondent No. 4 to visit his office along with record. Respondent No. 3 then directed respondent NO. 4 to initiate fresh inquiry vide order dated 08.11.2017

Heard learned counsel for the parties at length.

There is no explanation given by the State as to why one year was taken to issue notice to the petitioner. The State was at liberty as well to file RSA. A perusal of judgment and decree dated 21.04.2014 shows that an F.I.R was registered against the allegations mentioned above against the petitioner and six other persons, in which petitioner was acquitted. Further the enquiry report was set aside on the ground that the department has been

represented by the Enquiry Officer and the enquiry report clearly shows that no one has represented the department. Thus, the departmental enquiry itself was conducted by the Enquiry Officer on behalf of the respondent, which is against the principle of natural justice.

A bare perusal of notice dated 06.10.2003 (P-1) that charge sheet was issued against Ajay Pal Forest Ranger, Sh. Joginder Singh Forest Ranger by Principal Chief Conservator of Forests Haryana Panchkula and against Pawan Kumar Deputy Forest Ranger, Balwinder Singh Deputy Forest Ranger by Addl. Principal Chief Conservator of Forests Haryana Panchkula and against Jasbir Singh Forester by Conservator of Forests Western Hissar. But the department has decided to issue impugned notice to petitioner only and it is nowhere explained in the written statement that fresh enquiry is not to be conducted against the above employees. In the present case, the show cause notice has been issued to the petitioner after a gap of 04 years i.e on 05.04.2018 as decree was passed on 21.04.2014 and in the appeal filed by the State, there was not stay. Further after dismissal of the appeal on 09/10.05.2017, the respondents have taken almost 01 year. The incident relates back to the year 2000 and fresh enquiry has been initiated after a gap of almost 18 years, which itself is bad in the eyes of law.

For the reasons recorded above, the writ petition is allowed.
notice dated 05.04.2018 (P-5) is set aside.

(RITU BAHRI)
JUDGE

01.02.2019
G Arora

Whether speaking/reasoned	Yes
Whether reportable	No