

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

CWP No.29951 of 2019

Date of Decision : 29.11.2019.

Inspector Deep Chand

...Petitioner

Versus

State of Haryana and others

.... Respondents

Coram : HonbBle Mr. Justice B.S.Walia

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Yogesh Sheoran, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S.Walia, J.

1. Prayer in the petition under Article 226 of the Constitution of India is for the issuance of a writ of Certiorari for quashing show cause notice Annexure P/1 dated 03.10.2019, issued by the Deputy Commissioner of Police, Faridabad, conveyed on 09.10.2019 as well as show cause notice Annexure P/2 dated 07.10.2019, issued by the Commissioner of Police, Faridabad, conveyed on 10.07.2019, on the ground that reports of the enquiry officer were accepted without supplying copies of the same to the petitioner and calling the comments of the petitioner. Prayer is also for the issuance of directions to the respondents to call for the comments of the petitioner and thereafter to take a decision on the enquiry reports.

2. Brief facts of the leading to the filing of the writ petition are that the petitioner was appointed as Constable on 31.07.1985, promoted as Head Constable on 28.09.1993, as ASI in November, 2003, as Sub Inspector in May, 2010 and as Inspector on 14.08.2015 and although he has excellent service record besides 32 good entries, two charge sheets were issued to him, whereupon, Enquiry Officer was appointed, who after conducting the enquiry submitted two separate reports to the concerned disciplinary authorities. However, the Deputy Commissioner of Police, (Hq), Faridabad, without supplying copy of the inquiry report and without calling for the comments of the petitioner, accepted the report and issued a show cause notice Annexure P/1 dated 03.10.2019, as to why punishment of stoppage of two future annual increments be not imposed upon him. Likewise, the Commissioner of Police, Faridabad, without supplying the copy of the inquiry report and calling for the comments of the petitioner, accepted the inquiry report and issued show cause notice Annexure P/2 dated 07.10.2019, as to why punishment of reduction in rank be not imposed upon him.

3. Sole argument of learned counsel for the petitioner is that as per law laid down by Hon'ble the Supreme Court in **Managing Director ECIL, Hyderabad vs B. Karunakar 1993 (4) SCC 727**, before acceptance of the inquiry report, a disciplinary authority is required to supply copy of the report to the charged official, call for the comments of the charged official qua the same and after considering the inquiry report and comments, if any, submitted by the charged official against the findings recorded by the inquiry officer, pass orders as deemed appropriate,

but aforementioned procedure was not followed. Learned counsel has also relied upon the decision of Hon'ble the Division Bench of this Court in **Ramesh Kumar vs. State of Haryana and others 2006 (3) SCT 799**. 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 levelled against him. That right is a part of the employee's right to defend himself against the charges levelled 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.”

4. 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 supplied 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, 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, therefore the petitioner was prejudiced. Resultantly the impugned order is legally unsustainable.

5. Learned Sr. DAG, on the other hand, contends that no prejudice whatsoever has been 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, the proceedings were vitiated, resultantly the impugned show cause notices were 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 enquiry officer. Relevant extract of the decision of Hon'ble Division Bench of this Court in case titled as Ramesh Kumar's case (supra) 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 levelled 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 as under :-

“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 levelled against you vide chargesheet 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 levelled 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.”

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“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. In the reply, filed by the respondents, it has been contended that the show cause notice Annexure P/1 dated 03.10.2019, proposing stoppage of two future increments with permanent effect was served upon the petitioner with the directions to submit written reply within 15 days from the date of said notice (Annexure P/1), but the petitioner never demanded the copy of enquiry report. Likewise, show cause notice

Annexure P/2 dated 07.10.2019, proposing punishment of reduction in rank along with copy of findings of the Enquiry Officer was served upon the petitioner with a direction to submit written reply within 15 days from the date of said notice (Annexure P/2). It has been further averred that both the departmental proceedings were conducted in the presence of the petitioner and the petitioner was provided all the documents to defend himself and the aforesaid show cause notices, Annexure P/1 and P/2 dated 03.10.2019 and 07.10.2019, had been passed as per the provisions of the Punjab Police Rules, 1934.

7. I have considered the submissions of leaned counsel for the parties.

8. In the light of the decisions as referred to above, since the disciplinary authority is different than the enquiry officer, the petitioner had a right to receive the copy of the Inquiry Officer's report before the disciplinary authority arrived at its conclusion as recorded in the show cause notices regarding the guilt of the petitioner with regard to the charges levelled against him as said right is a part of the petitioners right to defend himself against the charges levelled against him. Denial of supply of enquiry report and calling for objections to the findings recorded therein before taking of decision by the disciplinary authority qua the guilt of the petitioner amounts to denial of reasonable opportunity to the petitioner to prove his innocence. Accordingly, impugned show cause notices Annexure P/1 and P/2 dated 03.10.2019 and 07.10.2017, are liable to be set aside and disciplinary proceedings commenced afresh from the stage of receipt of enquiry report by the disciplinary authority from the enquiry officer.

9. In view of the position as noted above, the writ petition is disposed of. Impugned show cause notices Annexure P/1 and P/2 dated 03.10.2019 and 07.10.2019 are set aside. Disciplinary authority shall proceed in the matter from the stage of receipt of report from the Enquiry Officer and shall furnish a copy of the inquiry report(s) in both the cases in case not already supplied and take a decision in the matter in accordance with law pursuant to receipt of objections if any from the petitioner with regard to the findings recorded by the Enquiry Officer in both the cases, preferably within four weeks from the date of receipt of certified copy of this order.

(B.S.WALIA)
JUDGE

29.11.2019

rajesh.k.khurana

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