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

CWP-12527-2020

Date of Decision: 30.10.2020

Ajmer Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Karan Bhardwaj, Advocate,
for the petitioner.

Ms. Lavanya Paul, AAG, Punjab.

SUDIP AHLUWALIA, J. (ORAL)

The petitioner in this case happens to be a former Constable in the Punjab Police, who was dismissed from Service vide the order passed by respondent No.5 - the Senior Superintendent of Police, Patiala (Annexure P-2), on 06.07.2013, and his period of absence from duty was also treated as non-duty period, for which he was not paid any remuneration. He filed his Appeal against the above order of his dismissal, which in turn was dismissed by respondent No.4 – the Deputy Inspector General of Police, Patiala Range, Patiala, on 14.08.2015, vide the order at Annexure P-4. His Revision Petition thereafter, was dismissed by respondent No.3 - the Inspector General of Police, Zonal-1, Patiala, Punjab, on 22.01.2016, vide the order at Annexure P-6, and his final Mercy Petition was then rejected by respondent No.2 - the Director General of Police, Punjab Police Headquarter, Sector-9, Chandigarh,

on 23.08.2016, vide the order at Annexure P-8. Petitioner then made a representation before respondent No.1, which also did not find favour and was dismissed on 19.03.2020, vide order at Annexure P-10.

2. The petitioner has now sought to challenge the Show Cause Notice issued to him before the first order for punishment by way of his dismissal from service (Annexure P-2) was passed and also the above referred orders. His contention in this regard is that such Show Cause Notice was untenable, since perusal of the same clearly indicates that his Appointing Authority (respondent No.5) had already formed an opinion to the effect that the charges against him were proved during the disciplinary inquiry, and consequently, his dismissal from service was biased and also untenable. Ld. Counsel for the petitioner in support of this contention has relied upon the decision of the Hon'ble Supreme Court in **“Managing Director, ECIL, Hyderabad Vs. B. Karunakar” 1994(1) SCC 319**, and has specifically drawn attention of this Court to the following observations of the Ld. Apex Court in the concerned decision:

“.... 30. Hence the incidental questions raised above may be answered as follows:-

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii)

(iii) *Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.*

(iv) *In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report in an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan' case (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority record its findings on the charges levelled against him. Hence question (iv) is answered accordingly.*

(v) *The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is*

dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made on difference to the ultimate punishment awarded to him.” (Emphasis added)

3. From the aforesaid observations highlighted on behalf of the petitioner, an impression is sought to be created that the respondent No.2 in issuing the impugned Show Cause Notice (Annexure P-1), dated 16.03.2013, had already decided that the gravest punishment was to be inflicted upon the petitioner, who had not been informed about the result of the disciplinary Inquiry Proceedings, and possibly even a copy of the Inquiry Report was not made available to him, on account of which, all subsequent proceedings became vitiated.

4. This, however, is an incorrect impression sought to be created. This is so because admittedly the petitioner had preferred his Appeal against the Order of his dismissal, and his grounds of Appeal (Annexure P-3) clearly go to reveal that he was fully aware not only of the contents of the Inquiry Reports, but had also challenged the decision of the Inquiry Officer, himself, in Para No.6 (iv) of his grounds of Appeal.

5. Further, on specific query of the Court, Ld. Counsel for the petitioner has submitted in all fairness that Report of Inquiry was actually made available to the petitioner, which fact also becomes indisputable from the following contents of the Show Cause Notice:-

“This Show Cause Notice is also containing a copy of conclusion report, submitted by the Inquiry Officer, which is being served free of cost.”

6. Thereafter, fullest opportunity was also given to the petitioner to make his submissions before the Punishing Authority as would be clear from the following contents of the Show Cause Notice:-

“You are called upon to submit your reply in my office within a period of 10 days from receipt of this Show Cause Notice for my perusal, which will be thoroughly considered. Moreover, in case you want to state something in person in connection with the charges leveled against you, you may come to my office on any working day during the stipulated period and put your version, which will be heard with due care. In case your written reply is not received in my office or you didn't appear in person within stipulated period, it will be presumed that you have accepted the charges leveled against you and are not willing to say anything in this regard, and in that even, final order will be passed on the basis of facts of the case.”

7. Now, it is the matter of record that instead of replying to the Show Cause Notice or availing the opportunity to present his defence in the case pertaining to the Report of the Inquiry Officer, the petitioner preferred to challenge the same in Appeal after the punishment by way of dismissal etc. was already awarded to him, after his failure to file reply to the Show Cause Notice or to approach the Punishing/Appointing Authority.

8. In such circumstances, it cannot be said that there was any pre-meditation on the part of respondent No.5 to dismiss the petitioner from service without granting him an opportunity to make any submission qua the punishment, which could be awarded to him. Even otherwise, his unauthorized absence from duty for as many as 234 days, coupled with his extremely bad record in service, which was specifically mentioned in nine separate items of

the Show Cause Notice, would go to indicate that the punishment awarded to him was neither disproportionate nor uncalled for, considering his extremely truant conduct and record as the member of a disciplined Police Force.

9. No merits.

10. Dismissed.

30.10.2020

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No