IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2109 **CWP No.4644 of 2016 (O&M)**
DECIDED ON : 05.02.2020

Head Constable Anil Kumar Belt No.56/YNR

...Petitioner

versus

State of Haryana and others. **...Respondents**

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. Sunil K. Nehra, Advocate
for the petitioner.

Ms. Safia Gupta, Asstt. A.G. Haryana.

GIRISH AGNIHOTRI, J. (ORAL)

Present writ petition has been filed by the petitioner-HC Anil Kumar, *inter alia,* with the prayer to quash the order dated 27.02.2009 (Annexure P-4) and order dated 01.05.2009 (Annexure P-6). Vide order dated 27.02.2009 (Annexure P-4), the Punishing Authority i.e. the Superintendent of Police, Yamuna Nagar has imposed a punishment of stoppage of two future increments permanently. The Second grievance of the petitioner is that ACR for the period from 03.08.2007 to 29.01.2008 has been recorded wherein some adverse remarks/comments have been recorded.

This Court finds merit in the submissions of learned counsel for the petitioner. The writ petition is therefore allowed for the reasons noticed hereinunder.

Learned counsel for the petitioner regarding his first challenge i.e. punishment order dated 27.02.2009 submits that the said order suffers from various illegalities. He submits that after charge-sheet was served upon the petitioner, on 08.07.2008 Inquiry Officer has submitted his report. He

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firstly submits that as per the settled law by the Hon'ble Supreme Court in *'Managing Director, ECIL Vs. B. Karunakar, (1993) 4 SCC 727 and also in 'Yoginath D. Bagde Vs. State of Maharashtra, 1999(4) S.C.T 403,* the employee i.e. the petitioner should have been given a copy of the inquiry report. It is his submission that after giving a copy of the inquiry report to the petitioner, it necessarily imply that employee was to be given an opportunity to represent against the inquiry report. The two versions before the competent authority should be simultaneously placed so that the Punishing Authority when deal with the inquiry report would know both aspects i.e. the view of the inquiry officer as well as the employee before it. However, he submits that in the present case, a perusal of the show cause notice dated 22.12.2008 (Annexure P-2) clearly shows that the Competent Authority proceeded with the pre determined mind. In this regard, he refers to the relevant portion of the show cause notice which records as under:-

> *'I am not agreed with the inquiry report of Inquiry Officer'.*

The second submission to support the first challenge, is that the perusal of the inquiry report would show that the report was actually in favour of the petitioner. However, second submission of the learned counsel for the petitioner is that the punishing authority straightaway recorded that 'I am not agreed with the Inquiry Report of the Inquiry Officer', without recording any Dis-agreement note. As per law, it is the submission of the learned counsel for the petitioner that Dis-agreement note was must because it is only thereafter that the petitioner would have got an opportunity to submit his defence to support the inquiry report. At this stage, para 27 of the judgment of the Hon'ble Supreme Court in *'Yoginath D. Bagde's case* (supra) is reproduced herein:-

JYOTI
2020.02.28 10:30
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> *"27.In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be `not guilty' by the Inquiring Authority, is found `guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded."*

In furtherance with the above submissions, the counsel for the

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2020.02.28 10:30
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petitioner submits that even the Haryana Punishment Appeal Rules, Rule 7(6) of the Punishment and Appeal Rules, 1987 provides as under:-

> *"(6) After the inquiry 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:".*

This rule has been considered and relied upon by the Division Bench of this Court in *'Ramesh Kumar Vs. State of Haryana and others'*. Copy of the said judgment has been placed on record as Annexure P-21. The relevant para of the said judgment is reproduced as under:-

> *"6. We have been put to thinking as to why such an error has been committed by the Disciplinary Authority. The answer is not far to seek. The Disciplinary Authority has followed the Rules religiously. A close look at Rule 7(6) of the Rules would make it patent that the Disciplinary Authority is required to furnish the copy of enquiry report to the petitioner at the stage of proposing punishment which could be arrived after recording a delinquent employee guilty of charge. Rule 7(6) of the Rules is extracted below for facility of reference and the same reads as under :*
>
> *"7. Inquiry before imposition of certain penalties.*
>
> *xxx xxx xxx xxx xxx*
>
> *xxx xxx 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*

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2020.02.28 10:30
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> *report of enquiring authority and be called upon to show cause, within reasonable time, not ordinarily exceeding one month against the particular penalty proposed to be inflicted upon him. Any representation submitted by him in this behalf shall be taken into consideration before final orders 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".*
>
> *A perusal of the above extracted Rule 7(6) of the Rules would show that law has changed by virtue of the judgments in the cases of Union of India v. Mohd. Ramzan Khan, 1991(1) SCT 111 : (1991)1 SCC 588 and B. Karunakar's case (supra). However, Rule 7(6) continues to be static. The result is disastrous for the Disciplinary Authority as it continued to follow Rule 7(6). The rules which were framed in the year 1987 would certainly require to be creased out in accordance with the law laid down by the Hon'ble Supreme Court. The necessity for incorporation of the above suggestion has been felt in view of the fact that number of cases appear before the Court by virtue of lapse committed by the Disciplinary Authorities. Another petition bearing C.W.P. No. 15524 of 2005 has been allowed by us today for the same reason. If the amendment is carried it would avoid unnecessary burden on the public exchequer, wastage of precious time and advance public interest."*

As regards the second challenge i.e. to the ACR for period of 03.08.2007 to 29.01.2008, the learned counsel for the petitioner submits that a perusal of the punishment order itself reveals that the period for which the petitioner was charge sheeted was the same. It can be noticed that one of the charges *inter alia* was that when the petitioner was posted as Investigating officer at Police Station Farakpur, then on 04.11.2007 he was alleged to have committed some irregularity. The submission of the petitioner is also that the ACR has been recorded with the pre determined mind as the memo

JYOTI
2020.02.28 10:30
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whereby ACR has been conveyed is dated 02.01.2008 whereas the period is upto 29.01.2008. He, therefore, prays that since in the inquiry report, the petitioner was found not guilty, therefore, the said ACR also needs to be upgraded appropriately.

Learned State counsel by making reference to the pleadings in the written statement submits that the petitioner has no locus standi to file the present writ petition. It is further submitted that since no mala fide or bias has been there, the challenge of the petitioner is misplaced.

In para 2 of the written statement some reasons are sought to be given for the action but the fact that the inquiry report submitted by the inquiry officer was not relied by the punishing authority which has not been denied. It has been submitted that recommendation of 'not guilty', submitted by the inquiry officer was rightly ignored by the then Superintendent of Police, Yamuna Nagar and issued show cause notice dated 27.02.2009 with the punishment of dismissal from services. It further goes on to say that the punishing authority has clearly shown that he is not agreeing with the report of the inquiry officer.

The writ petition is therefore, disposed of with the following directions:-

i) *the impugned order of punishment dated 01.05.2009 and all consequential orders passed in appeal/revision are set aside.*

ii) *The matter is remitted back to the stage where irregularity/illegality in procedure has occurred. The competent authority/punishing authority would now take up the matter from the stage where inquiry report was submitted by the investigating officer and proceed in accordance with the Punishment Appeal Rules and the law laid down by the Hon'ble Supreme Court of India as noticed above. It is also*

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2020.02.28 10:30
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clarified that in case, however the punishing authority on consideration of the inquiry report at this stage finds that the inquiry report needs to be accepted as it is after examining the plea of the petitioner as taken in the reply and also argued before this Court to the effect that it is wrong to presume that the prosecution witnesses i.e. No.3, 5, 8 and 9 have actually not confirmed the allegations, then punishing authority is at liberty to close the proceedings.

iii) *In the event, the punishing authority comes to the conclusion that the inquiry report deserves to be accepted as it is, all consequential benefits shall be released to the petitioner within three months from the date of passing of the fresh order.*

iv) *For the reasons noticed above, the competent authority is also directed to examine the issue of upgradation of the ACR for the period of 03.08.2007 to 29.01.2008 keeping in view the fact that the inquiry officer has exonerated the petitioner. This fresh decision be taken dehors the earlier adverse remarks so recorded/conveyed vide memo dated 02.01.2008 and also de hors the rejection order, if any on the representation against the said ACR. Let this exercise be done within six months from the date of receipt of certified copy of the order.*

(GIRISH AGNIHOTRI)
JUDGE

February 05, 2020
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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO

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