

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.9001 of 2020
Date of decision: 03.03.2021

H.C. Satish Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Jayoti Parshad Sharma, Advocate for the petitioner.

Mr. Sharad Aggarwal, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to order dated 13.03.2013 (Annexure P/4), by which the petitioner was imposed a punishment of Censure; order dated 24.06.2019 (Annexure P/5), by which the period of probation of the petitioner was extended for a period of six months as well as order dated 09.06.2020 (Annexure P/7), by which the appeal preferred by the petitioner (Annexure P/6) against the order of punishment of Censure, has been returned on the ground that the appeal is only maintainable against the order of dismissal or reduction of rank or stoppage of increment or forfeiture of approved service for increment.

Learned counsel for the petitioner submits that the petitioner will be satisfied in case, the authorities of the Haryana police are directed to decide the appeal/representation (Annexure P/6) preferred by the petitioner against the order dated 13.03.2013 (Annexure P/4) impugning the

punishment of Censure by passing an appropriate speaking order on merits.

Upon notice of motion, the respondents have filed reply. In para-8 of the reply, the respondents have reiterated that an appeal only lies against the order of dismissal or reduction of rank or stoppage of increment or forfeiture of approved service for increment keeping in view the Rule 16.29 (1) of the Punjab Police Rules (as applicable to Haryana) and, hence, non-entertainment of the appeal (Annexure P/6) preferred by the petitioner cannot be faulted with.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of fact that the petitioner was imposed a punishment of Censure by the respondents vide order dated 13.03.2013 (Annexure P/4). That being so, the petitioner has a right to approach the higher authority either by way of an appeal or representation especially, when the said order is causing prejudice to the petitioner. In the present case, the punishment of Censure has led to the extension of probation of the petitioner by six months and the said extension of probation has reduced the seniority of the petitioner qua his colleagues, who were appointed along with him, which is causing prejudice to the petitioner and that being so, the petitioner has a right to approach the higher authority for the redressal of his grievance.

It is the settled principle of law that an employee has a right to approach the higher authority either by way of a statutory appeal or even by a representation in case, any order passed by the authority is causing prejudice to him/her. An employee has to have a right of appeal or atleast

right to file a representation against an order imposing punishment which causes prejudice to him/her. An employee cannot be left remediless in case any executive order passed by an authority causes prejudice to him/her.

In the present writ petition, the letter (Annexure P/6) has been worded as a representation hence, even if, the statutory appeal is not available to the petitioner but, once the petitioner has raised his grievance before the higher authority by way of a representation, it becomes the duty of the higher authority to dispose of the same on the basis of merits rather than rejecting the same on the ground of non-maintainability. Every employee has a right to represent his grievance to the higher authority in case, any action of the authority is causing prejudice to the said employee.

In the present case, rejection of the representation (Annexure P/6) preferred by the petitioner on the ground of non-maintainability vide order dated 09.06.2020 (Annexure P/7) is not in accordance with law, especially, when the order dated 13.03.2013 (Annexure P/4) is causing prejudice to the petitioner. Though, the remedy of an appeal might not be available to the petitioner but, the representation Annexure P/6 should have been decided by passing appropriate speaking order.

Learned counsel for the respondents argues that even the representation could not have been preferred against the order passed in the year 2013.

This Court is not expressing any opinion on the merits of the case. The only observation of this Court is that the representation filed by the petitioner should not have been returned by the respondents simpliciter on the ground of non-maintainability but, the same should have been

decided by passing an appropriate speaking order.

In view of the above, a direction is issued to the respondents to decide the representation (Annexure P/6) filed by the petitioner against the order imposing penalty of Censure by the respondents, by passing an appropriate speaking order within a period of three months from the date of receipt of a copy of this order.

March 03, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

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