

Sr. No. 1687

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

CWP-16212-1993 (O&M)

Date of decision: 09.05.2022

Lal Chand (died) represented through LR's ...Petitioners

Vs.

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. D.K.Tuteja, Advocate
for petitioner No.(i).

Mr. Akash Juneja, Advocate
for petitioners No. (ii) and (iii)

Mr. R.D. Sharma, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of certiorari to quash the impugned punishment order dated 18.09.1989 (Annexure P-15) vide which petitioner was removed from service for remaining absent from duty without prior permission as well as appellate order dated 23.11.1992 (Annexure P-17) upholding the said punishment.

2. Brief facts first. Petitioner was appointed as a driver in Haryana Roadways, Rohtak w.e.f. 02.03.1969. His services were discontinued w.e.f. 09.09.1969 but he was reappointed w.e.f. 01.10.1969. Thereafter, the petitioner remained absent from duty w.e.f. 15.05.1987 without prior intimation and despite issuance of three telegrams from time to time, he did not join duty and ultimately, after following the due procedure, his services were dismissed vide impugned order.

3. Learned counsel for the petitioners submits that during the period of absence, wife of the petitioner fell ill and ultimately died. Struck

with the tragedy, petitioner went into deep depression. He requested the department to assign him light duty. However, he was instead dismissed from service.

4. Per contra, learned counsel for the respondents submits that the petitioner remained wilfully absent from duty from 15.05.1987 to 18.09.1989 and despite issuance of telegrams thrice, he did not join his duties and was dismissed from service after following due procedure.

5. I have heard learned counsel for the parties and gone through the case file.

6. Respondents by their own conduct seem to have put themselves into a piquant situation where cart was put before the horse. Not only nothing seems hunky-dory but it is topsy-turvy, as is borne out from the manner in which so-called departmental proceedings were conducted against the petitioner, allegedly *qua* his delinquency of having remained absent from duty without leave.

7. *Mala fides* are writ large emerge from memorandum bearing No.7357/TA dated 25.08.1988 (Annexure P-6) vide which petitioner was served a charge-sheet of even date accompanied therewith. Alleged charge was that since he had not joined duties since 15.05.1987, despite having been sent three telegrams and in the premise, he continues to be absent from duty without permission and therefore, for remaining absent from duty without permission he had committed breach of discipline. The petitioner was asked to give his reply within a period of 15 days from the date of receipt of memorandum dated 25.08.1988. Strangely, before the petitioner could have responded to the same, the competent authority appears to have already made up its mind to proceed against the petitioner, inasmuch as, vide order of the even date i.e. 25.08.1988, vide

another memorandum bearing No.7356/TA (Annexure P-5), General Manager of Haryana Roadways, Delhi was appointed Works Manager to hold a departmental enquiry under the Haryana Civil Services (Punishment and Appeal) Rules, 1987 against the petitioner. It was stated therein that Enquiry Clerk will conduct the case as Presenting Officer on behalf of the State.

8. In the premise, it does appear that entire opportunity given to the petitioner to file his response to the charge sheet was a complete farce and nothing but a moonshine. The decision had already been taken by the competent authority to proceed against the petitioner regardless of his response. The petitioner though claimed that he had responded to the memorandum of charges dated 25.08.1988 (Annexure P-6) vide his reply dated 21.09.1988 (Annexure P-8) and yet the same was not considered. In complete short shrift thereof, the departmental proceedings were initiated in a biased and *malafide* manner. The contents of the reply are of perhaps no consequence to be taken note of *qua* proposed enquiry at that stage, since the decision to proceed against the petitioner had already been taken on the date of issuance of memorandum of charges itself.

9. Adverting now to the outcome of the departmental enquiry which culminated in the guilty report dated 26.05.1989 (Annexure P-12). Perusal of the same also does not inspire any confidence, inasmuch as, nothing is borne out as to what evidence was relied upon and as to what was the material presented before the enquiry officer other than the fact that after reproducing the charge-sheet against the petitioner it is summarily stated by the enquiry officer that on one fine day i.e., 25.08.1989, he called the Presenting Clerk Om Prakash at his personal level and his self serving one sided statement was recorded. One does not

know as to whether petitioner was given any notice of the inquiry proceedings before recording the statement of presenting clerk. Even if notice was issued, one wonders as to how the enquiry officer made the prosecution clerk/presenting officer of enquiry himself as a witness of his own cause in the case by recording his statement.

10. Office order 25.08.1988 (Annexure P-5) appointing an enquiry officer clearly states that Enquiry Clerk, who was appointed i.e. Om Prakash was to conduct an enquiry on behalf of the State/Haryana Roadways.

11. After recording the statement of the presenting clerk himself who stated that the petitioner continues to be absent, the enquiry officer recorded that the delinquent employee i.e. the petitioner was given opportunity to cross-examine the presenting clerk and he refused to ask any question. That was then the end of the evidence. Thereafter, it appears that the enquiry officer recorded certain questions and answers ostensibly in the course of enquiry on his own accord and gave adverse findings based on his own questions as well as testimony of Presenting Clerk.

12. No other separate enquiry proceedings were conducted by issuance of any notice. The enquiry report and the entire enquiry proceedings seem to have been started and concluded on the same date without petitioner being put to any prior notice.

13. In this context, it would be relevant to mention that the petitioner being an illiterate driver hardly understands the legal niceties and procedure to be followed, especially any provisions of law and rights arising therefrom. Even on that front, the shoe is on the other foot, inasmuch as it was the duty of the prosecution and the department to

comply with the mandate contained in Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. Rule 7 reads as under:

7(1) *Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850; no order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he has given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.*

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(5) *Where the punishing authority itself enquires into any charge or charges or appoints an enquiry officer for holding enquiry against a person charged it may, by an order, appoint a Government servant or a legal practitioner to be known as a "Presenting Officer" to present on its behalf the case, in support of the charge or charges.*

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a Government employee or a retired Government employee if he so desires, in order to produce his defence before the Enquiry Officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may, with the sanction of the Enquiry Officer, be represented by counsel:

Provided that if in any enquiry, Counsel is engaged on behalf of any department of Government, the person against whom the charge or charges are being enquired into, shall also be entitled to engage counsel:

Provided further that the assistance of a particular Government employee will be allowed only if the Enquiry Officer is satisfied that he is of such rank as is appropriate in the circumstances of the case and that he can be spared by the department concerned for that purpose.

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(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 report of the 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 are passed: "*

14. Perusal of Rule 7, *ibid* clearly reflects that the petitioner ought to have been given an opportunity as envisaged under Section 7 of the Rules. There is nothing in the enquiry report to suggest that the

petitioner was made aware of his rights and he declined to exercise the same.

15. As an upshot of the discussion, the enquiry report cannot be relied upon. I am conscious that ordinarily, the enquiry report need not be interfered with. However, it is a fit case, for the reasons stated hereinabove, enquiry report since does not inspire any confidence and therefore, fails to stand the judicial scrutiny and must be set aside.

16. I also do not find any substance in the listless argument of learned State counsel that since the enquiry report is not under challenge, the same should not be interfered with, inasmuch as, impugned herein is the punishment order. The insipidity of the argument is borne out by the fact that petitioner had challenged the punishment order which is based on the entire adverse enquiry report. Even the punishment order was challenged by way of appeal which too was dismissed by way of a cryptic order without assigning the reasons thereof leading to filing of instant writ petition. The entire genesis of the punishment order and appellate order is an enquiry report, which for the reasons already recorded hereinabove, has been set aside. As a necessary consequence, punishment order, as well as the appellate order, are also set aside and are hereby quashed.

17. However, in order to balance the equities, since not only the petitioner is no more even his widowed wife, who was earlier prosecuting the proceedings, has also died and now only his next generation constituting of only son and daughter are prosecuting the case, the case is being finally decided in the writ jurisdiction itself. No useful purpose would be served by remanding the matter before the competent authority to take a decision afresh, given that sheer effluxion of time of more than

34 years. In any case, neither any evidence would have been kept nor there would be any witnesses available.

18. In the premise, as already stated, to maintain fairness and equities of both the sides, since the punishment accorded to the petitioner (since deceased and now represented through LRs) has already been set aside, it is directed that the original deceased petitioner shall be deemed to have retired compulsorily from service as on the date of passing of the impugned punishment order dated 18.09.1989 (Annexure P-15). Necessary consequences to follow.

19. The needful exercise be carried out within a period of three months.

MAY 09, 2022
vandana

(ARUN MONGA)
JUDGE

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