

Sr. No.337

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

CWP-1599-1997

Date of decision: 06.04.2022

Sube Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amrit Paul, Advocate,
For the petitioner.

Mr. R.K.S. Brar, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, seeks issuance of a writ in the nature of certiorari to quash the punishment order of termination (Annexure P-7).

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

3. I am unable to persuade myself with the interpretation of the sub rule 2 of Rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 resorted to by learned counsel for the petitioner that even if no reply had been submitted to the charge-sheet by the petitioner, which concededly is the case herein, even then the punishing authority was under a mandate to refer to the charge-sheet for further disciplinary proceedings by way of appointing an inquiry officer. Petitioner could not have been thus denied his substantive right to cross-examine the witnesses or to adduce evidence in support of his claim as has been done summarily by passing the punishment order, is the contention.

4. Sub rule 2 of Rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 is reproduced herein below:

(2) *“The grounds on which it is proposed to take such action shall be reduced to the form of definite charge or charges which shall be communicated in writing to the persons charged together with a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take up into consideration in passing orders on the case and he shall be required within a reasonable time to state in writing whether he admits the truth of all or any, of the charges, what explanation for defence, if any, he has to offer and whether he desires to be heard in person. If the punishing authority is not satisfied with the explanation given by the person charged or there are other reasons to do so shall direct that an enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The persons charged shall, subject to the conditions described in sub-rule (3), be entitled to cross examine the witnesses, to give evidence in person and to have such witness called, as he may wish, provided that the Officer conducting the enquiry may for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient record or the evidence and statement of the findings and the grounds thereof provided that*

(a) it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement of allegation made by the person charged in the course of his defence; and

b) the provisions of the foregoing sub-rule shall not apply where any major penalty is proposed to be imposed upon a person on the ground of conduct which has led to his conviction on a criminal charge; or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for sum reasons to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him, or wherein the interest of the security of the State it is considered not expedient to give to that person such an opportunity.”

5. Moreover, what is more relevant is that sub rule 2 of Rule 7 *ibid*, as is relied upon by learned counsel for the petitioner, is subject to sub rule 3 thereof as is stated herein below:-

“(3) If any question arises whether it is reasonably practicable to give to any person an opportunity to defend himself under sub-rule (2) the decision thereon of the punishing authority shall be final.”

Perusal of the above sub rule 3 clearly reflects that in case the punishing authority deems it fit that no further steps are required then his decision shall be final. In the present case, punishing authority was right in dispensing with the inquiry proceedings in view of the petitioner's own conduct of not responding to the charge sheet.

6. A perusal of the punishment order, which is self-explanatory reveals that petitioner was given ample opportunities to respond to the charge-sheet and he chose not to file any reply. Thereafter, he was given an opportunity to appear in person and effective steps were also taken to serve him including the publication in newspapers and yet he chose not to appear. Left with no choice, punishing authority rightly proceeded with the extreme step of terminating services of the petitioner for not reporting at work.

7. The argument of learned counsel that there are valid reasons for him not to report, may have held some force had it been a case if the petitioner had responded to the charge sheet and appeared to explain his conduct for not reporting to work.

8. An attempt has been made in the writ proceedings by appending proof of medical treatment for the relevant period he was indisposed. But it is not for this Court to hold a trial qua the same at this belated stage. By efflux of time (petition was filed in 1997), it has now been more than 26 years and trial/inquiry qua the same cannot be held by sheer inordinate delay and lapse caused by petitioner's own conduct.

9. Be that as it may, once the petitioner responded to the termination order, he preferred an appeal and appellate authority vide order

dated 24.07.1996 had directed the reinstatement of the petitioner in the following terms:-

XXX

XXX

XXX

“I personally heard the employee today on 16.07.1996 and while seeing about 15 years’ service and previous record of the employee which is as follows:-

- 1. Warning 2 times*
- 2. Censure*
- 3. Annual increment*
- 4. Recovery- Total Rs. 25/-*

While seeing the aforesaid service record and by considering the employee’s appeal sympathetically, I have arrived at this conclusion that this employee may be given one more opportunity to do service, and while reducing him to time scale for ten years, I sanction leave without pay for the period for which he remained out of service and the absence period. The employee shall not be paid anything for the period of remaining out of service.”

10. Perusal of the above shows that no irregularity either in facts or law has been committed.
11. In the totality of circumstances, I am of the view that appellate authority has since already taken a lenient view of the entire matter, no further indulgence is required.
12. No grounds are made out to interfere.
13. Dismissed.

06.04.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No