

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.

CWP No.12944 of 2020

Decided on: 25.04.2022

Karambir

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR.

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

Ms. Upasana Dhawan, AAG, Haryana.

JAISHREE THAKUR J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the impugned show cause notice dated 10.08.2020 issued by respondent No.3, being violative of principles of natural justice.

2. In brief, the facts are that the petitioner herein was working as Assistant Sub Inspector in District Hisar when a charge-sheet was issued to the petitioner on the allegation that the petitioner misbehaved with the police team under the influence of liquor, which went to seize a truck bearing No.HR-63-5221 on the secret information received that liquor is being smuggled in the said truck. It was further alleged that the petitioner was in connivance with contractor Sunil for helping illegal smuggling of liquor. A regular departmental enquiry was conducted and the charges levelled against the petitioner were proved. Thereafter, a

show cause notice dated 10.08.2020 was issued to the petitioner along with the enquiry report as to why punishment of reversion in rank i.e. from Assistant Sub Inspector to Head Constable may not be imposed upon the petitioner. Against the aforesaid show cause notice, petitioner has approached this Hon'ble Court in the instant writ petition.

3. Learned counsel for the petitioner would argue that enquiry report must be supplied to the delinquent where the enquiry officer and the punishing authority are different persons before forming any opinion by the punishing authority so as to enable him to represent against the findings of enquiry officer and to point out any defect/irregularity in the procedure or in appreciation of evidence etc., in view of the judgment rendered by this Court in the case of **Ramesh Kumar Versus State Of Haryana 2006 (3) SCT page 799** and the judgment rendered by Hon'ble Supreme Court in **H.P. State Electricity Board Ltd. Vs. Mahesh Dahiya (2017) 1 SCC 768**. It is submitted that in the instant case, the enquiry report was received by the petitioner along with the show cause notice and therefore, no opportunity of representation was provided to the petitioner in view of the judgments referred to above and thus, the impugned show cause notice is liable to be quashed, being passed in violation of principles of natural justice.

4. Per contra, Ms. Upasana Dhawan, AAG Haryana, would argue that no prejudice has been caused to the petitioner as ample opportunity had been given to him by the enquiry officer while holding the departmental inquiry and based on the enquiry report wherein the petitioner proved guilty, the show cause notice has been issued to the

petitioner. The petitioner has been granted 15 days' time to submit his reply to the show cause notice and therefore, there is no violation of principles of natural justice.

5. I have heard the counsel for the parties and gone through the paper book as well as the case laws as cited.

6. It is an admitted fact that both the disciplinary officer and the enquiry officer are not the same and in that eventuality, the enquiry report must be supplied to the delinquent before forming of any opinion by the punishing authority as to correctness of findings of enquiry officer and proposed punishment so as to enable him to represent against the findings of enquiry officer against him and convince the punishing authority as to illegality and irregularities committed by the enquiry officer. This Court while dealing with the similar issue in CWP No.17492 of 2018 titled as **Rohtash Vs. State of Haryana and others** decided on 18.04.2022 and advertent to the judgments rendered by the Hon'ble Supreme Court in **Managing Director ECIL, Hyderabad Vs. B. Karunakar (1993) 4 SCC 727** and the judgment rendered by this Court in **Ramesh Kumar's** case (supra), has held that enquiry report ought to have been supplied to the delinquent employee before the disciplinary authority records its findings on the charges leveled against him and denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and therefore, is breach of principles of natural justice.

7. Therefore, in view of the finding rendered by this Court, the impugned show cause notice is quashed. The matter is remitted back to

the disciplinary authority with direction to supply the enquiry report to the petitioner and thereafter, allow 15 days’ time to submit his representation to the enquiry report. After receipt of the reply of the petitioner, the disciplinary authority may proceed and take a decision in terms of judgment rendered by the Hon’ble Supreme Court in **B. Karunakar’s case** (supra).

8. The writ petition stands disposed of in above terms.

April 25, 2022	(JAISHREE THAKUR)
Pankaj*	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No