

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

CWP No.12178 of 2016

Decided on: 20.04.2022

Jagir Singh

... 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. Kirti Singh, DAG, 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 order dated 20.01.2011 (Annexure P-3) vide which the punishment of stoppage of three annual increments with cumulative effect has been imposed and orders dated 03.05.2011 (Annexure P-4) and 02.03.2012 vide which, the appeal and revision respectively filed by the petitioner against order dated 20.01.2011 have been rejected. A further prayer has also been made for setting aside the order dated 24.08.2012 vide which ACR of the petitioner has been recorded as 'undisciplined and average' as well as orders dated 24.05.2013 and 09.07.2013 whereby representations made by the petitioner against the adverse entries made in ACR for the period from 01.04.2010 to 22.10.2010 and 25.10.2010 to 31.03.2011 have been rejected.

2. In brief, the facts are that the petitioner was enrolled as a Constable and was performing his duties as EASI in Yamuna Nagar District when on 19.10.2010, he was charge-sheeted on the allegation that the petitioner along with EASI-Pritam Singh and Constable Jangsher Singh was on duty on 14.08.2010 from 8 PM to 8 AM on PCR vehicle bearing No.10-HR-58-6749 and on checking done by Inspector Ajit Kumar, they were found under the influence of liquor. An enquiry was conducted and vide enquiry report dated 16.11.2010, all of them were found guilty. On 14.12.2010, a show cause notice was served upon the petitioner by respondent No.4 along with copy of inquiry report as to why petitioner be not dismissed from service. On 20.01.2011, respondent No.4 awarded punishment of stoppage of three annual increments with cumulative effect to the petitioner. The appeal and revision filed against the aforesaid order were also dismissed vide orders dated 03.05.2011 and 02.03.2012, which were passed by respondents No.3 and 2 respectively. Thereafter, on 10.07.2012, a mercy petition was filed by the petitioner before respondent No.1, however, the petitioner did not receive any response till date. On the basis of aforesaid departmental enquiry, ACRs of the petitioner for the period from 01.04.2010 to 22.10.2010 and 25.10.2010 to 31.03.2011 have also been downgraded by making adverse entry of 'undisciplined and average', which were communicated to the petitioner on 24.08.2012. The petitioner had filed representations against the aforesaid adverse entry in the ACRs, which were rejected vide orders dated 24.05.2013 and 09.07.2013. Aggrieved against the aforesaid orders, the present writ petition has been filed.

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 orders are liable to be quashed, being passed in violation of principle of natural justice. It is also submitted that the ACR of the petitioner for the period from 01.04.2010 to 22.10.2010 and 25.10.2020 to 31.03.2011 has been downgraded only on the ground that a departmental enquiry was pending against the petitioner and a punishment of stoppage of three annual increments with cumulative effect without any material before the reporting officer.

4. Per contra, Ms. Kirti Singh, DAG 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 the punishing authority, before awarding punishment to the petitioner had issued a show cause notice and also given opportunity of

being heard personally. It is only upon consideration of the reply of the petitioner submitted to the show cause notice as well as contentions raised by the petitioner at the time of personal hearing afforded to him, the punishing authority passed the order awarding punishment of stoppage of three annual increments with cumulative effect. It is also submitted that the adverse remarks recorded in the ACR for the period from 25.10.2010 to 31.03.2011 have already been expunged and duly communicated to the petitioner vide acknowledgement dated 17.07.2013. With regard to adverse remarks in the ACR for the period 01.04.2010 to 22.10.2010 is concerned, it is submitted that the remarks 'undisciplined and average' have been recorded owing to the conduct of the petitioner whereby he consumed liquor during duty hours. While rejecting the representation of the petitioner against the same, he was heard personally and thereafter, the order dated 24.05.2013 was passed and thus, there is no violation of principle 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 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 adverting to the judgments rendered by the Hon'ble Supreme Court in **Managing Director, ECIL v. B. Karunakar, 1994(1) S.C.T. 319; (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 orders dated 20.01.2011, 03.05.2011 and 02.03.2012 passed by respondents No.4, 3 and 2 respectively are quashed. The matter is remitted back to the disciplinary authorities for a fresh decision in terms of the judgment rendered in **B. Karunakar's case (supra)**. It is, however, made clear that setting aside of the impugned order of dismissal of the petitioner would not result in any benefit granted to him and the same would be dependent on the order to be now passed in accordance with law. Since the matter has been pending in this Court for almost six years, the disciplinary authority is directed to finally decide the matter within six months from the date of receipt of a certified copy of this order, provided the petitioner cooperates with the disciplinary authority.

8. As regards the adverse remarks recorded in the ACR of the petitioner for the period from 01.04.2010 to 22.10.2010, since the matter

is being remanded back to the disciplinary authority, these pleas can be taken up before the said authority.

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

April 20, 2022		(JAISHREE THAKUR)
Pankaj*		JUDGE
	Whether speaking/reasoned	Yes
	Whether reportable	No