

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

CWP No.17492 of 2018

Reserved on: 30.3.2022.

Decided on: 18.04.2022.

Rohtash

... Petitioner

Versus

State Of Haryana and others

...Respondents

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

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Tapan Yadav, 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 6.4.2016 (Annexure P-3) vide which the penalty of stoppage of seven increments with permanent effect has been imposed; quash order dated 25.7.2017 (Annexure P-8) vide which, the petitioner has been removed from service and also order dated 16.4.2018 (Annexure P-10) vide which, the appeal filed by the petitioner against order dated 25.7.2017 has been rejected. A further prayer has also been made for setting aside the order dated 30.11.2016 vide which the representation made by the petitioner against the adverse entries made in ACR from 1.4.2015 to 1.3.2016 has been rejected.

2. The petitioner was appointed as a Constable on 4.9.1992 and further promoted as EHC in 2008. A criminal case was registered against him and he was arrested in FIR No.340 dated 19.05.2014 under Sections 365, 376, 354, 120-B IPC and Section 4 of the POCSO Act at Police Station Jhajjar. The petitioner was then placed under suspension for gross negligence and indiscipline and in this connection, a regular departmental enquiry was ordered against him by the Superintendent of Police, Jhajjar vide order dated 21.5.2014. The enquiry officer by order dated 12.2.2016 found the allegations to be proved. A show cause notice dated 17.2. 2016 was issued by the Superintendent of Police Jhajjar wherein it was proposed to impose a punishment of dismissal from service and the petitioner was allowed 15 days time to submit his representation. In reply to the show cause notice, the petitioner appeared and submitted his written reply to the show cause notice. After considering the reply, the disciplinary authority imposed punishment of stoppage of 7 future annual increments with permanent effect by order dated 06.04.2016. The petitioner stood acquitted in the FIR case by the Special Court Judge Jhajjar on 29.07.2016. An appeal was filed against the order imposing penalty, which appeal was dismissed on a disagreement note/ show cause notice proposing punishment of dismissal from service. A detailed reply was filed to the disagreement note/show cause notice dated 14.06.2017 which was taken into consideration and order of dismissal from service was passed on 25.7.2017 taking into account that the prosecutrix had made a statement under section 164 Cr.P.C before the Magistrate against the petitioner, but had turned hostile before the trial court, presumably due

to compromise/social pressure. The revision petition preferred by the petitioner also stood dismissed vide order dated 16.04.2018 passed by respondent No.2. The petitioner also seeks to challenge the adverse entries made in his ACR on the ground that the authorities had to assess his work for a minimum of three months before making any remarks in his ACR. Aggrieved against the aforesaid orders, the present writ petition has been filed.

3. Mr. R.K. Malik, learned Senior Counsel along with Mr. Sandeep Dhull, Advocate for the petitioner assails the orders of penalty of stoppage of 7 annual increments with permanent effect, dismissal from service as well the order whereby his ACR was downgraded. It is contended that the acceptance of the enquiry report without calling for comments of the petitioner would not be acceptable in view of the judgments rendered in the case of **Ramesh Kumar Versus State Of Haryana 2006 (3) SCT page 799**. It is submitted that the impugned orders have been passed in violation of Rule 16.3 of the Punjab Police Rules in which it is prescribed that no departmental enquiry can be held on the same allegation in which the employee has been acquitted by the Criminal Court. Reliance in this regard has been placed upon judgment rendered in **Ex Constable Dalbir Singh Vs State Of Haryana, CWP No.17934 of 2015** decided on 17.5.2017 whereby it has been held that if a police officer stands acquitted, the competent authority would have to consider the impact of Rule 16.3 at that point of time. The learned Senior Counsel would also argue that the adverse entries are not sustainable in view of the orders whereby it has been held that no remarks can be made

in a Annual Confidential Report of an officer under him, unless he has seen his work and conduct for at least three months during a calendar year. It is submitted that the petitioner was under suspension and therefore, the adverse entries could not have been made for the period 1.4.2015 to 1.3.2016, as the petitioner remained suspended from 25.5.2014 to 24.1.2016. It is submitted that the petitioner worked for less than three months and therefore, no assessment could be done of his work.

4. Per contra, Mr. Tapan Yadav, DAG Haryana, would argue that no prejudice has been caused to the petitioner as ample opportunity had been given to him, by the inquiry officer holding the departmental inquiry, by the officer who issued him a show cause notice as well as by the appellate authority after a disagreement note/show cause notice was issued. All replies were considered and the petitioner was thereafter dismissed from service on the ground that he had been named in the FIR under Sections 365, 376, 354, 120-B IPC and Section 4 of the POCSO Act and the prosecutrix had suffered a statement under Section 164 Cr.P.C but later on turned hostile.

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

6. The fact is that on the basis of FIR being registered, an enquiry was held and the enquiry officer concluded *“in the above case charge has been framed against EHC Rohtas and the case is pending before the Court. Therefore, after considering the above said fact allegation leveled against EHC Rohtas no 818/Jhajjar were proved.”*

Based on the report of the enquiry officer, a show cause notice was issued to him, relevant portion of which reads as under:

“On a careful consideration of the departmental enquiry file, relevant record and finding report of the enquiry officer, I am provisionally of the opinion that as to why not a punishment of dismissal from service be imposed upon you. Before taking the proposed action, I desire to give you an opportunity of showing cause against the action proposed to be taken. Any representation, which you like to make in this connection, will be considered by me before taking the proposed action. Such representation in writing should reach the undersigned within 15 days of the receipt of this notice by you. You are also allowed to appear before the undersigned personally in this connection and can submit your written reply. If no reply is received within the stipulated period, it will be presumed that you have nothing to say in this regard and final order will be passed as per rule.”

7. It is an admitted fact that both the disciplinary officer and the enquiry officer are not the same. After an enquiry, the report is to be put up before the disciplinary authority and it is open to the disciplinary authority either to agree with the findings recorded by the enquiry officer or disagree with those findings. The report is not final or conclusive and the disciplinary proceedings do not stand concluded. In the case in hand, the Disciplinary Authority agreed with the opinion expressed by the Enquiry Officer and proposed penalty of dismissal from service. The enquiry report was submitted along with the show cause notice. A Constitution Bench of the Supreme Court in the case of ***Managing Director, ECIL v. B. Karunakar, 1994(1) S.C.T. 319; (1993) 4 SCC 727***

has held that the law requires furnishing of an inquiry report to a delinquent employee in cases where the Enquiry Officer and Disciplinary Authority are two different entities, so as to provide an opportunity of hearing to the delinquent employee. The observation made by the Hon'ble Supreme Court is reproduced as under:

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A 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 is a breach of the principles of natural justice."

30. Hence the incidental questions raised above may be answered as follows :

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(iv) In the view that we have taken, viz. that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of

the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly".

Subsequently, Division Bench of this Court in **Ramesh Kumar's case** (supra) also held that where the enquiry officer and the punishing authority are different persons, 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. Meaning thereby, providing copy of enquiry report only along with the final show cause notice is violative of principles of natural justice.

8. Therefore, relying on the ratio as laid down by the Supreme Court in **Managing Director, ECIL v. B. Karunakar (Supra)**, **Union of India & Ors. v. Mohd. Ramzan Khan (1991)1 SCC 588** and in **Ramesh Kumar's case** (supra) it is held that the show cause notice (Annexure P-2) and subsequent proceedings are not sustainable and liable to be set aside. The enquiry report ought to have been furnished to the delinquent employee before the disciplinary authority had formed an opinion to dismiss him from service.

9. Another argument that has been raised is that the impugned orders have been passed in violation of Rule 16.3 of the Punjab Police

Rules, in which it is prescribed that no departmental enquiry can be held on the same allegation in which the employee has been acquitted by the criminal court. However, the petitioner came to be acquitted after the departmental enquiry. It is also argued that the adverse entries would not be sustainable in view of the fact that the work and conduct of the petitioner had not been assessed for a period of more than three months. As regards these arguments, since the matter is being remanded back to the disciplinary authority, these pleas can be taken up before the said authority.

10. In these circumstances, this writ petition is allowed and the impugned order of dismissal from service of the petitioner is set aside. 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 being 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 three 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.

April 18, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No