

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

(112)

**CM-617 & 618-LPA-2023 in/and
LPA-212-2023 (O&M)
Decided on : 02.03.2023**

State of Haryana & others

.....Appellant(s)

Versus

EHC Rohtash

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Mago, AAG, Haryana
Mr.Karan Jindal, AAG, Haryana, for the appellants.

Mr.R.K.Malik, Sr.Advocate
With Mr.Varun Veer Chauhan, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral) :-

CM-617-LPA-2023

Application for condonation of delay of 250 days in re-filing the appeal is hereby condoned in view of the averments made in the application duly supported by affidavit of the official.

CM stands disposed of.

CM-618-LPA-2023

Application for condonation of delay of 5 days in filing the appeal is hereby condoned in view of the averments made in the application duly supported by affidavit of the official and in view of the nominal delay.

CM stands disposed of.

LPA-212-2023 (O&M)

The present appeal is directed against the order dated 18.04.2022 passed by in CWP-17492-2018 titled *Rohtash Vs. State of Haryana & others* whereby the learned Single Judge had remanded the matter to the disciplinary authority for fresh decision in view of the law laid

down in **Managing Director, ECIL Vs. B.Karunakar, 1994 (1) SCT 319.**

Apart from that, counsel had also relied upon **Ramesh Kumar Vs. State of Haryana & others, 2006 (4) RSJ 236** a Division Bench judgment of this Court to raise an argument that when the show cause notice was issued, an opinion had been expressed by the disciplinary authority that there was to be a penalty of dismissal of service while annexing the copy of the disciplinary proceedings. Reliance thus was placed mainly by the Division Bench upon the judgment in Ramesh Kumar (supra) that the enquiry report must be supplied to the delinquent before forming the opinion by the punishing authority as to the correctness of the enquiry proceedings and the proposed punishment.

State Counsel has brought to our notice that the judgment as such was referred to a larger Bench by the Co-ordinate Bench in **Mushlim Khan Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & others, 2008 (3) RSJ 59.** Eventually, in the said case, the three Judge Bench while referring to **Haryana Financial Corporation & another Vs. Kailash Chandra Ahuja, (2008) 2 SCC (L&S) 789** held that when the disciplinary authority sends a copy of the enquiry report to delinquent official, the agreement with the enquiry report is only tentative and final concurrence can only be recorded by the disciplinary authority after affording an opportunity of hearing. The relevant portion of the judgment reads as under:

“Learned counsel for the petitioner has argued that the agreement recorded by the disciplinary authority with the findings of the Enquiry Officer and to propose punishment shows that the disciplinary authority has already applied its mind and the show cause notice issued was illusory and a mere formality. It is contended that it is only after reply of the delinquent official is considered by the disciplinary authority, the findings of the Enquiry Officer can be accepted by the disciplinary authority giving rise to the proposal of punishment. Counsel for the respondent-Nigam has countered this plea

by submitting that by the very nature of things, the order of the disciplinary authority issued to the delinquent official while enclosing a copy of the enquiry report and recording its agreement with the finding and asking the official why punishment should not be imposed are tentative in nature. He submitted that the real and final order was to be passed only after affording an opportunity to the petitioner, which in this case was done.

We are of the view that when the disciplinary authority sends a copy of the enquiry report to the delinquent official, the agreement with the enquiry report is tentative. The final concurrence can only be recorded by the disciplinary authority after affording an opportunity of hearing to the delinquent employee on the findings of the Enquiry Officer. The factum of issuance of show cause notice inviting the delinquent employee to submit his response itself suggests that the agreement recorded therein is tentative and on sufficient cause shown, the delinquent authority is at liberty to take a decision which is just, fair and reasonable and not necessarily the same which the Enquiry Officer has proposed.

Keeping in view the above, we are of the considered opinion that the learned Single Judge was not correctly apprised of the legal position though it was the duty of the Senior Counsel as such to have done so.

Accordingly, in view of the above discussion, the present appeal is allowed and the judgment dated 18.04.2022 passed by the learned Single Judge is set aside and the matter is remanded to the learned Single Judge, for fresh decision.

(G.S. SANDHAWALIA)
JUDGE

02.03.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes