

206

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19101-2014 (O&M)

Date of Decision: 28.08.2023

DR. MUKHTIAR SINGH

.....Petitioner

V/s.

**STATE OF PUNJAB THROUGH SECRTARY, MEDICAL
EDUCATION AND RESEARCH DEPARTMENT, PUNJAB AND
OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present Mr. D.S. Patwalia, Senior Advocate, assisted by
Ms. Sehar Navjeet Singh Sandhu, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J (Oral)

1. The petitioner by way of this Writ Petition challenges the order dated 27.03.2014 (Annexure P-14) whereby the petitioner was dismissed from service as a major penalty mentioned under Rule 5 (ix) of The Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as “the Rules of 1970”) as well as order dated 24.06.2014 (Annexure P-16) whereby the Appeal, preferred by the petitioner, was also dismissed.

2. Learned counsel for the petitioner submits that the charge-sheet was served upon the petitioner vide memo dated 10.04.2012 under Rule 8 of the Rules of 1970, wherein nine charges were leveled against him. The petitioner had submitted reply to the said charge-sheet denying the charges leveled against him. However, the disciplinary authority, which was supposed to appoint an Enquiry Officer in terms of the Rule 8 of the Rules

of 1970, did not appoint any Enquiry Officer and directly proceeded to call the petitioner for personal hearings for presenting his defence.

3. In the impugned order, it has been stated that the petitioner himself has admitted regarding tampering of his date of birth, whereas learned counsel for the petitioner submits that the petitioner has nowhere admitted the charge of tampering as alleged against him in his reply.

4. Learned counsel for the petitioner submits that service record of the petitioner is always kept with the Department and therefore, occasion to tamper with the service record cannot be presumed.

5. Learned counsel for the petitioner submits that on the basis of personal hearings, punishment of dismissal from service could not have been awarded to the petitioner. The procedure as laid down under Rule 8 of the Rules of 1970 was required to be necessarily followed.

6. *Per contra*, learned State counsel submits that as the petitioner has admitted that his date of birth actually is 12.03.1952, whereas for the service record, he was allowed to continue treating his date of birth as 12.03.1957. The admission of the petitioner was sufficient to pass the impugned order(s).

7. Rule 8 of the Rules of 1970 provides a comprehensive method and manner in which a departmental enquiry is required to be conducted. Even if the contention of the respondents that the petitioner being allowed to continue beyond superannuation age on account of wrongful date of birth mentioned in his service record is accepted then too the petitioner who had been served with a charge sheet on 10.04.2012, would have required to face

departmental enquiry even after superannuation age as is provided under Pension Rule 2.2(1) which provides as under:-

“2.2.

XXXXX

(i) serve upon the pensioner a notice specifying the action proposed to be taken against him and the grounds on which it is proposed to be taken and calling upon him to submit, within sixteen days of the receipt of the notice or such further time not exceeding fifteen days, as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

XXXXX ”

8. Keeping in view the above, this Court finds that the impugned orders dated 27.03.2014 (Annexure P-14) and 24.06.2014 (Annexure P-16) passed by the disciplinary authority as well as the appellate authority are not sustainable in the eyes of law, and the same are accordingly quashed and set aside. However, the same would not create any benefit in favour of the petitioner who would be treated to be facing departmental enquiry in terms of the memorandum dated 10.04.2012 and the enquiry shall be deemed to be continued during attaining of superannuation age.

9. The Enquiry Officer shall be appointed by the disciplinary authority who will conduct an enquiry within a period of three months thereafter. The petitioner would be free to present his defence before the Enquiry Officer and shall cooperate with the Enquiry Officer. The enquiry report thereafter shall be submitted and final orders in relation to the enquiry shall be passed after providing a copy of the enquiry report and taking the response from the delinquent official/petitioner.

10. A complete final order shall be passed by the respondents within a period of 6 months. The decision thereto shall be conveyed to the petitioner. The petitioner shall be free to take recourse to the remedies under the law, which may be available to him, if advised so.

11. It is made clear, of course, that during the pendency of the enquiry, the petitioner having attained the superannuation age would be entitled to provisional pension alone, and no other retiral benefits shall be released to the petitioner.

12. The Writ Petition is allowed in the aforesaid terms.

13. Pending application(s), if any, stand(s) disposed of.

August 28, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned : *Yes/No.*

Whether Reportable : *Yes/No*