

220

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

CWP No.17174 of 2017 (O&M)

Date of Decision: 30.05.2023

MANJEET

.....Petitioner

Vs

STATE OF HARYANA & ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Ojas Bansal, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has prayed in this writ petition for the issuance of an appropriate writ, order or direction especially in the nature of certiorari, quashing the order dated 14.09.2015 passed by the respondent No.2, whereby the revision preferred by the petitioner against the order dated 01.07.2015 passed by the respondent No.3 rejecting the appeal against the order of punishment dated 11.04.2013 passed by the respondent No.4 was partly allowed thereby reducing punishment of five future annual increments with permanent effect to stoppage of three future annual increments with permanent effect.

[2]. The petitioner along with Constable Suresh Kumar while posted on duty at gate No.3 of Maurti Suzuki Plant, Manesar were found to be absent. Both were proceeded against in terms of departmental enquiry. The departmental enquiry went against them. The Enquiry Officer submitted his enquiry report holding the petitioner and Constable Suresh Kumar to be guilty of charges levelled against them. A show cause notice was issued by the respondent No.4 on 05.01.2013 for showing cause as to why they should not be dismissed from the service. Ultimately the punishing authority passed an order of punishment thereby stopping of five future annual increments with permanent effect.

[3]. The petitioner remained unsuccessful in appeal whereas the appeal filed by the Constable Suresh Kumar was partly accepted thereby reducing the punishment of stoppage of five future annual increments with permanent effect to stoppage of one future annual increment with permanent effect. Feeling aggrieved against the order passed by the appellate authority, the petitioner filed revision before the respondent No.2 which was partly accepted thereby reducing the punishment of stoppage of five future annual increments with permanent effect to stoppage of three future annual increments with permanent effect.

[4]. Learned counsel for the petitioner submitted that at the time of issuance of show cause notice, copy of enquiry report was never supplied to the petitioner and that has vitiated the entire proceedings. In case of Constable Suresh Kumar, even the punishment of stoppage of one future annual increment with permanent effect was reduced to that of censure vide order dated 14.10.2016 passed by the respondent No.2.

[5]. That case was heard and dismissed by the Co-ordinate Bench of this Court vide order dated 27.05.2022, however while dictating the judgment it was noticed that the arguments were not addressed by the learned counsel for the petitioner on two grounds. Firstly, the charge sheet was served upon the petitioner by the Enquiry Officer whereas it ought to have been served by the appointing/punishing authority. Secondly, the petitioner was not served with the enquiry report while issuing show cause notice dated 05.01.2013. Taking exception to the aforesaid two grounds, on 20.12.2022 following order was passed by the Co-ordinate Bench of this Court:-

“On 27.05.2022, this Court passed the following order : -

“Arguments were addressed in the instant writ petition and after hearing both the parties, this court dismissed the same in open

Court in the earlier part of the day today. However, while dictating the judgment, it has been noticed that arguments were not addressed by the counsel appearing for the petitioner on the following two grounds on which the impugned orders were sought to be challenged:-

- (i) The charge-sheet was served upon the petitioner by the Enquiry Officer whereas it ought to have been served by the appointing/punishing authority.*
- (ii) The petitioner was not served with the enquiry report while issuing show cause notice dated 05.01.2013.*

Lest injustice is done to the petitioner, this Court deems it appropriate to list the instant petition for rehearing on 03.08.2022 to enable the counsel for the petitioner to address arguments on the aforesaid grounds and the State Counsel to reply accordingly. Both the counsel for the parties be informed accordingly.”

In response to the two issues raised by the Court in the afore quoted order learned State counsel prays for time to file an additional affidavit on behalf of the respondents.

Adjourned to 10.05.2023.

20.12.2022
sunil yadav

(DEEPAK SIBAL)
JUDGE”

[6]. In compliance to the aforesaid order, an affidavit has been filed by the Commandant, 4th IRB Manesar, Gurugram.

Para No.6 of the said affidavit reads as under:-

“6. Thus the delinquent-petitioner was made acquaintance with the findings of the Enquiry Officer. It is worth mentioning here that the petitioner challenged the order of punishment by filing of appeal as well as revision petition and he never objected that he was not provided with the charge sheet and enquiry report and that due to non supply of these documents, he could not put his defense effectively.

[7]. Perusal of the aforesaid ground would show that the enquiry report was never supplied to the petitioner. Only the petitioner was made acquaintance with the findings of the Enquiry Officer. Supply of enquiry report is *sine qua non* for considering the stand of the petitioner in pursuance of the show cause notice. The punishing authority ultimately proceeded to inflict punishment upon the petitioner without adhering to the mandatory requirement of supplying the copy of the enquiry report to the petitioner. In view of Union of India vs. Mohd. Ramzan Khan, 1991(1) S.C.T. 111, it is a settled principle of law that the delinquent has still a right to represent against the conclusions of the Enquiry Officer and non-supply of the enquiry report to the delinquent will vitiate the entire proceedings.

[8]. Learned counsel for the petitioner also referred to indifferent treatment meted to the petitioner in view of

punishment of censure granted to co-culprit Constable Suresh Kumar against whom also the allegation of remaining absent from the duty was found to be proved.

[9]. As a result of this, the present writ petition is allowed. The impugned orders assailed in this writ petition are hereby quashed. Normal consequences to follow.

May 30, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No