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2023:PHHC:166871

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-20246-2018
DECIDED ON: 07.12.2023

MAHESH GUPTA

PETITIONER

VERSUS

INDIAN RED CROSS SOCIETY AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. G.S. Sullar, Advocate
for the petitioner.

Mr. Vaibhav Vig, Advocate for
Mr. Rajesh Gaur, Advocate
for respondent No.1.

Mr. Randeep Tanwar, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 Constitution of India has been invoked seeking a writ in the nature of *Certiorari* for quashing the impugned order/letter dated 19.06.2018 (Annexures P-7) whereby, respondent No.1 has straightway marked second enquiry on the same set of allegation on the basis of complaint dated 29.05.2018 (Annexure P-5 Colly) against the petitioner with further prayer for quashing the action of respondent No.2 appointing respondent No.3 as Inquiry Officer and order/letter dated 09.07.2018 (Annexure P-6).

2. The case of the petitioner is that he was appointed as Assistant

Secretary in the District and Red Cross Society in March, 1996 and served as such in different districts of Haryana with honesty and dedication. The petitioner was promoted to the post of Secretary in May 2000 due to the satisfactory services rendered by him. In the year 2013, a false complaint was made against the petitioner regarding misappropriation of Rs.25,05,443/-, as fee of Licenses etc. during the period 18.09.2009 to 25.07.2012 in the District Red Cross Society, Jhajjar. The District Magistrate, Jhajjar without verifying the record submitted his report dated 16.05.2013 thereby, observing that a sum of Rs.25,05,443/- less found to be deposited and recommended for departmental action against the Secretary, Accountant Clerk and other officials, which was forwarded to the Secretary, Indian Red Cross Society, Haryana vide letter dated 15.07.2013, who requested the Deputy Commissioner-cum-President District Red Cross Society, Jhajjar to take appropriate action and submit report. On the basis of written request made by the petitioner a Committee was constituted to enquire about the total amount received with regard to the driving licenses of Drivers/Conductors from the Medical and Blood Group tests, during the period 08.09.2009 to 25.07.2012. The enquiry officer concluded that no financial loss regarding medical and blood group tests of any kind is found and submitted his report dated 26.05.2016 (Annexure P-1), which was forwarded to the Secretary, Indian Red Cross Society, Haryana State Branch Chandigarh vide letter dated 06.06.2016 (Annexure P-2) and was approved by the competent authority. In this regard, a communication dated 11.08.2016 was sent to the Secretary, Indian Red Cross Society, Haryana, which was further sent to the Deputy

Commissioner-cum-President, District Red Cross Branch Jhajjar vide letter dated 12.08.2016 (Annexure P-4).

3. Another complaint dated 29.05.2018 (Annexure P-5) was made by one Vijender Singh on the same set of allegations to the Secretary to the Governor of Haryana as well as to the Deputy Commissioner-cum-President, District Red Cross Society, Jhajjar. Respondent No.2 without inquiring about the correctness and genuineness of the allegations or to calling for reply from the petitioner on the complaint (Annexure P-5), appointed respondent No.3 as Enquiry Officer vide order dated 08.05.2018.

4. Learned counsel for the petitioner has contended that a detailed inquiry has already been conducted by the Enquiry Committee. Vide report dated 26.05.2016 (Annexure P-1), it has been held that no financial loss regarding medical and blood group tests of any kind is found. Thus, no amount of any kind has been misappropriated by the petitioner and no action is made out against him. It has been further contended that the action of the respondent for initiating second inquiry on the basis of complaint (Annexure P-5) is vitiated on account of violation of principle of natural justice and is also impermissible under the rules and law.

5. Learned counsel for the respondents has contended that the petitioner without exhausting the remedy prescribed under the Conduct and Discipline Rule straightway knock the door of this Court. Therefore, the present writ petition is liable to be dismissed as the petitioner has efficacious and alternative remedy under the Rules. It is further contended on behalf of the respondents that a complaint dated 29.05.2018 (Annexure P-5) was made by one Bijender RTI activist against the petitioner

regarding embezzlement of Rs.2.80 Lakh, the enquiry of same was entrusted to the then SDO (C) , Badli vide order datd 08.06.2018 and in the said enquiry the allegation of embezzlement of Rs.2,80,000/- stands proved. In the enquiry report dated 07.08.2018 (Annexure R-2), it has been mentioned that the issue regarding embezzlement of Rs,25,00,000/- had already been enquired two times, firstly, it was enquired by City Magistrate, Jhajjar and secondly, it was enquired by SDO (C), Jhajjar and the as per the report of the then SDO (C), Badli, the report of SDO (C), Jhajjar was never approved by the Deputy Commissioner, Jhajjar. In the report of the then SDO (C), Badli, the said fact has been clearly mentioned and that is why, his report is different from the report of the then SO (C), Jhajjar, as certain facts and documents were not considered by SDO (C), Jhajjar.

6. No other argument has been raised by either of the parties.
7. Heard learned counsel for the respective parties.
8. From the facts, it is clear that the respondent No.2, as per service rule which governs the service condition of the petitioner has served charge-sheet vide order dated 28.01.2019, thus, the relief sought by the petitioner become rendered infructuous and on the basis of the enquiry report, the disciplinary authority serve charge-sheet to the petitioner. It is also clear from the afore-said facts that the disciplinary Rules applicable on the petitioner prescribed remedy of appeal and also remedy of filing memorandum to the President, Indian Red Cross Society, Haryana against the order of the Appellate Authority, meaning thereby, the petitioner has efficacious remedy of appeal and instead of availing the remedy of appeal,

he approached this Court directly. Further, it is evident to note that the enquiry report which was submitted by the petitioner on its own level was never put up before respondent No.2 nor the letter dated 06.06.2016 was got approved and signed by respondent No.2 and the said fact was came to the notice of the authority later on and thereafter, the enquiry was marked by respondent No.2 as per the original order dated 30.12.2015 and 19.06.2016 passed by the answering respondent.

9. As per the internal audit report for the year 2017-18, the petitioner agreed that the amount of Rs.2,80,000/- are yet to be deposited and it is a matter of record that he deposited an amount of Rs.3,45,520/- vide letter dated 05.06.2018, which shows that he embezzled the amount of the Society. Moreover, the reference of earlier enquiry cannot be the base for denying the initiation of second enquiry, particularly when the fresh evidence and material are brought to the notice of the authority for taking the disciplinary action against the petitioner.

10. In view of the discussions made hereinabove, this Court does not find any merit in the present petition, as such the same is dismissed being devoid of merits with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

07.12.2023
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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |