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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26662-2016

Date of Decision:02.09.2023

RAVI KUMAR

..... Petitioner

Versus

UNION OF INDIA AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Naveen Daryal, Advocate
for the petitioner.

Mr. Shivoy Dhir, Senior Panel Counsel
for Union of India-respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 18.03.2016 (Annexure P-8) and order dated 25.11.2016 (Annexure P-10) whereby services of the petitioner have been terminated.

2. The respondent No.3 is Sainik School and 2 & 4 are its officials. The respondent on 22.04.2013 appointed petitioner on the post of Lower Divisional Clerk (for short 'LDC'). The Disciplinary Authority in terms of Rule 10.05 & 10.07 (D) of Sainik Schools Society Rules (for short 'Rules') served show cause notice dated 20.11.2015 upon the petitioner who filed his reply to the aforesaid show cause notice. The Principal issued another show cause notice dated 05.01.2016 in terms of Para 10.10 of the Rules. The petitioner filed written statement dated 18.01.2016. The petitioner was served further show cause notice dated

04.02.2016. The petitioner filed reply dated 20.02.2016 denying all the charges levelled against him. The Disciplinary Authority vide order dated 18.03.2016 dismissed the petitioner from service.

3. Learned counsel for the petitioner *inter alia* contends that procedure for awarding major penalties has been prescribed under Rules. As per prescribed procedure, if Disciplinary Authority on the basis of preliminary inquiry comes to a conclusion that an authority should inquire into the truth, the Disciplinary Authority shall draw up the case and refer the matter to an authority. The Inquiry Officer would be supplied substance of imputation of misconduct and articles of charge as well as admission or confession made by employee alongwith list of witnesses in support of articles of charge. The Disciplinary Authority shall deliver copy of articles of charge, statement of imputations of misconduct, list of documents and witnesses to the employee and require him to submit his reply and state whether he desires to be heard in person. In the case in hand, inquiry was conducted by Court of Inquiry. The petitioner prior to inquiry was asked to give his comments with respect to allegations and he was further asked to file his response to the report of Court of Inquiry, however, he was never granted opportunity to join proceedings before Inquiry Officer.

4. Learned counsel for the respondents concedes that procedure as pointed out by petitioner is applicable to respondent with respect to imposing major penalties. He further submits that petitioner was given opportunity prior to appointment of Court of Inquiry as well as post Court of Inquiry. The petitioner was duly served with report of Court of Inquiry and he was given opportunity to put forth his stands. He has submitted his

reply.

5. On being asked, learned counsel for the respondents confirms that petitioner was not granted opportunity to join proceedings of Court of Inquiry.

6. From the perusal of record and statements of learned counsels for the parties, it comes out that petitioner was confronted with adverse material prior to Constitution of Court of Inquiry and his statement was recorded. The Disciplinary Authority came to a conclusion that regular inquiry should be conducted to find out the truth. Court of Inquiry was conducted, however, petitioner was not made to join at that point of time and Court of Inquiry was conducted in his absence. The petitioner was supplied with copy of report of the Court of Inquiry and thereafter served show cause notice on the basis of report of the Court of Inquiry. The petitioner filed reply to show cause notice.

7. Rule 10.07 of Rules prescribes procedure for awarding major penalties. The said rule is reproduced as below.

“10.07 (a) No penalty specified in sub rules 10.01 (b) (iii) (iv) and (v) shall be made except after an inquiry, held as far as possible, in the manner provided in this rule.

(b) Where the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may appoint, under this rule, an authority to inquire into the truth thereof.

(c) Where it proposes to hold an inquiry, the disciplinary authority shall draw up or cause to be drawn up –

(i) the substance of imputation of misconduct or misbehaviour into definite and distinct articles of

charge, and

(ii) a statement of imputations of misconduct or misbehaviour in support of each article of charge, which shall contain.

(aa) statement of relevant facts including any admission of confession made by the employee, and

(bb) a list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained.

(d) the disciplinary authority shall deliver or cause to be delivered to the employee, a copy of articles of charge, the statement of imputations of misconduct and misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit with in such time as may be specified, a written statement of defence and state whether he desires to be heard in person.

(e) On receipt of the written statement of defence, the disciplinary authority, if considered necessary, may appoint an inquiring authority for this purpose. Where all the articles of charge have been admitted by the government servant in his written statement, the disciplinary authority shall record its findings on each charge taking into consideration such evidence as it may think fit and passes orders as regards the penalty proposed to be imposed.

(f) If no written statement is received or it is considered necessary to appoint an inquiring authority, the disciplinary authority may appoint such an authority and make available the following documents to the inquiring authority:-

(i) a copy of articles of charge and statement of imputations of misconduct and misbehaviour.

(ii) a copy of the written statement of defence submitted by the employee, if any.

(iii) a copy of statement of witnesses, if any and

(iv) evidence of having delivered the above documents to the employee.

(g) The employee may be permitted to take assistance of another employee, who is not a legal practitioner. At the time of the inquiry, the concerned employees shall be required to be present throughout and will be given an opportunity to cross examine the witnesses and also inspect the documents on which articles of charge or imputations of misconduct or misbehaviour are based. If he declines to do so, this shall be recorded in the proceedings. After conclusion of the inquiry, a report shall be prepared and forwarded by the inquiring authority to the disciplinary authority, alongwith the complete proceedings of the inquiry.”

8. It is conceded case of both sides that petitioner was not granted opportunity to join proceedings before Court of Inquiry. The proceedings before Court of Inquiry took place in the absence of petitioner, thus, there is violation of procedure prescribed by rules.

9. In the wake of aforesaid facts and findings, the present petition is allowed and impugned orders dated 18.03.2016 (Annexure P-8) and 25.11.2016 (Annexure P-10) are hereby quashed. The respondent is directed to conduct fresh inquiry after following procedure prescribed by aforesaid rules. The petitioner shall cooperate with Inquiry Officer. He shall join and would not seek adjournment. The respondent is expected to conclude inquiry within 3 months from the date of receipt of certified copy of this order.

10. It is hereby made clear that Court has not expressed any opinion on the merits of the case. The Inquiry Officer shall conduct

inquiry without being prejudiced by order of this Court. Mere setting aside of impugned order would not entitle the petitioner to back wages and other financial benefits. The petitioner on passing of fresh order by Disciplinary Authority would be entitled to financial benefits, in terms of Rules in force.

(JAGMOHAN BANSAL)
JUDGE

02.09.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>