

CWP No.28575 of 2018

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

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CWP No.28575 of 2018
Date of decision:06.02.2023

Rajan Dev

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sardavinder Goyal, Advocate
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

By way of present petition, petitioner has approached this Court for issuance of a writ in the nature of certiorari quashing impugned order dated 12.07.2018 (Annexure P-7) passed by the Appellate Authority-respondent No.1, whereby, order dated 09.06.2015/04.09.2015 (Annexure P-5) passed by respondent No.2 has been modified and punishment has been enhanced.

Counsel for the petitioner submits that the petitioner, who was working as Veterinary Livestock Development Assistant (VLDA) with the Department of Animal Husbandry and Dairy, Haryana, was served with a charge-sheet dated 22.10.2018 (Annexure P-2) on the ground that he

remained absent from duty from 21.07.2008 to 25.07.2008 and took away the keys of Govt. Veterinary dispensary, as a result of which, dispensary remained closed from 28.07.2008 to 30.07.2008. Counsel submits that petitioner submitted his objections to the charge-sheet, but without considering them, an inquiry was conducted and by impugned order (Annexure P-5), punishment of stoppage of one increment with cumulative effect was imposed. Counsel submits that the petitioner preferred an appeal (Annexure P-6), but as the appeal remained pending, he approached this Court and pursuant to order passed by this Court on 23.09.2013, appeal was decided, vide impugned order dated 12.07.2018 (Annexure P-7) by imposing higher punishment of stoppage of three annual increments with cumulative effect.

Inter alia argument raised by counsel for the petitioner is that punishment has been increased without serving any show-cause notice in violation of proviso to Rule 11 of Haryana Civil Services (Punishment & Appeal) Rules 2016 (for short “2016 Rules”).

Per contra, State counsel has opposed the petition and has submitted that as the petitioner had appeared in person before the Appellate Authority, there was no need to serve a show-cause notice.

I have considered the submissions made by counsel for the parties.

Rule 11 of 2016 Rules provides as under:-

“11. Order which may be passed by the appellate authority.—

(1) In the case of appeal against an order under rule 9 or any

penalty specified in rule 4, the appellate authority shall consider whether the—

(a) facts on which the order was based have been established;

(b) facts established afford sufficient ground for taking action;

and

(c) penalty is excessive or adequate and after such consideration, shall pass such order as it thinks proper:

Provided that no penalty shall be increased unless opportunity is given to the person concerned to show cause why such penalty may not be increased.

(2) An authority, against whose order an appeal is preferred, shall give effect to any order passed by the appellate authority.”

Proviso to the above reproduced Rule shows that it was mandatory for the Appellate Authority to afford an opportunity of showing cause to a delinquent employee before penalty could be increased. Merely because the petitioner was appearing in person before Appellate Authority, cannot be a ground to overlook the mandatory statutory provisions. Consequently, the impugned order (Annexure P-7), cannot be sustained and the matter deserves to be remitted back to the Appellate Authority.

In view of the above, the impugned order dated 12.07.2018 (Annexure P-7) is set aside. Writ petition is disposed of with a direction to the Appellate Authority-respondent No.1 to hear the appeal afresh by giving opportunity of hearing to the petitioner and pass a fresh order after

complying with the provisions of 2016 Rules within a period of four months from the date of receipt of certified copy of this order, provided that there is no delay on the part of the petitioner.

February 06, 2023

savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>