

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

(110)

CWP-3961-2024

Date of Decision : February 21, 2024

Amit Kumar Yadav

.. Petitioner

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate, with
Mr. Viren Nehra, Advocate, and
Mr. Arnav Udai Singh Ahlawat, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the enquiry report dated 05.12.2023 (Annexure P-7) by which, the petitioner has been held guilty by proceedings ex parte as the petitioner failed to participate in the said disciplinary proceedings.

2. Further prayer of the petitioner is that the disciplinary proceedings should be kept in abeyance as the petitioner is also facing a criminal case on the same allegation.

3. Certain facts may be noticed for the correct appreciation of the issue in hand.

4. While posted at Satnali, District Mahendergarh, an FIR No.1 dated 04.01.2022 was registered against the petitioner under Section 7 of the Prevention of Corruption Act, 1988. The petitioner was arrested on 18.01.2022 and keeping in view the said arrest, he was suspended from duty on 20.01.2022. The petitioner was granted bail on 15.03.2022 after the challan was submitted in respect of the said FIR.

5. Thereafter, a charge sheet was issued to the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016 on 19.09.2022 (Annexure P-2). The proceedings in respect of the said charge sheet were initiated and Enquiry Officer was appointed on 12.06.2023 (Annexure P-3). The petitioner was asked to appear in the departmental enquiry but rather than, assisting the departmental proceedings, the petitioner started making request for an adjournment on one pretext or the other, a copy of request submitted by the petitioner is annexed as Annexures P-4 and P-6. From the perusal of the pleadings mentioned in paragraph 13 to 18, shows that due opportunity was being given to the petitioner though it is being alleged that the petitioner was not being given due opportunity to defend but the averments go to show that *prima facie*, the petitioner was interested in getting the proceedings delayed on one pretext or the other. Ultimately, the petitioner was proceeded ex parte and a report has already been submitted by the Enquiry Officer on 05.12.2023 (Annexure P-7) by proving the charges alleged against the petitioner. The show cause notice has also been given to the petitioner along with enquiry report for his comments.

6. Rather than replying to the show cause notice, the petitioner has filed the present writ petition challenging the enquiry report as well as prayer that the departmental proceedings should be held in abeyance till the time criminal proceedings on the same cause are pending against him.

7. Keeping in view the service of advance copy of petition, Mr. Harish Nain, learned Assistant Advocate General, Haryana, has appeared on behalf of the respondents and submitted that once the enquiry report has already been given for the comments of the petitioner, the petitioner can raise all the defence before the authorities concerned in the said reply but

the petitioner choose to challenge the enquiry report without stating/raising his grievance before the authorities concerned.

8. Learned counsel for the respondents further submits that the plea of the petitioner that the enquiry proceedings should be kept in abeyance on the ground that the petitioner will suffer irreparable loss, is delayed as, the enquiry report has already come proving the charges against the petitioner hence, the claim of the petitioner for setting aside the said enquiry report may kindly be rejected.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. The jurisdiction of the Court to interfere with the disciplinary proceedings is very limited. As of now, the enquiry report has already been submitted by the Enquiry Officer to the punishing authority and the same has already been furnished to the petitioner for his comments. In case the petitioner has any grievance with regard to any of the procedure undertaken during the enquiry proceedings, the same should be brought to the notice of the punishing authority for the consideration. As of now, no action has been taken by the respondent-Department on the basis of the enquiry report which has been impugned in the present petition dated 05.12.2023 a copy of which has been appended as Annexure P-7.

11. In the absence of any action taken by the Department qua the enquiry report especially when, the petitioner has been given liberty to raise all the objections qua the said enquiry report, this Court will not interfere so as to quash the said enquiry report and the said prayer is accordingly rejected.

12. Further, the prayer of the petitioner is that keeping in view the criminal case being faced by the petitioner that the disciplinary proceedings

should be kept in abeyance, the reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in *Civil Appeal No.1906 of 1999 titled as Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. decided on 30.03.1999* as well as in *Civil Appeal No.2794 of 2022 titled as Eastern Coalfields Limited and others vs. Rabindra Kumar Bharti, decided on 07.04.2022*, a copy of judgment has been annexed as Annexures P-9 and P-12 respectively.

13. Qua the said prayer, it may be noticed that as of now, the enquiry proceedings have already been concluded by the Enquiry Officer. The witnesses which were needed to be examined, have already been examined in the absence of the petitioner as the petitioner failed to participate in the proceedings despite being given due opportunity to re-present and was proceeded ex parte.

14. From the pleadings of the petitioner himself, the enquiry proceedings were adjourned more than three times so as to allow the petitioner to defend himself. Not only this, even the assistance of an Advocate was allowed by the Department so as to hold a free and fair enquiry. Despite the said fact, the petitioner got the proceedings adjourned on one pretext or the other raising a plea of ill health. Once, stage of the examination of the witnesses has already over and the enquiry report has already been submitted, the plea of the petitioner that examination of the witnesses will cause prejudice to him, cannot be accepted at this stage. Therefore, the judgments being relied upon by the learned counsel for the petitioner, are not applicable in the facts and circumstances of the present case.

15. Keeping in view the above, no ground is made out for any interference by this Court in the facts and circumstances of the present case.

16. The present writ petition is accordingly dismissed.

February 21, 2024(HARSIMRAN SINGH SETHI)
harshaJUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes