



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

209

CWP-22347-2021 (O&M)
Date of Decision: 20.09.2024

Krishan Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

Mr. IS Sidhu, Advocate for respondent No.4.

AMAN CHAUDHARY, J. (Oral)

1. The petitioner is aggrieved that the show cause notice dated 13.04.2021, Annexure P-17 was rendered as a hollow ritual, the disciplinary authority having recorded therein that he was in agreement with the enquiry report, a copy whereof was served upon him a month thereafter, vide letter dated 18.05.2021, Annexure P-18. The same reads thus:

“The Enquiry Officer appointed to enquire into the charges levelled against you vide this office memo No.6355-60/AE1/E2, dated 24.09.2018 has submitted his enquiry report. A photocopy of the report is enclosed for your information.

On careful consideration of the report, I fully agree with the conclusion reached by the Enquiry Officer in respect of the charges levelled against you where in the charges stand proved including the embezzlement of Rs. 2,28,505/- of public Ex-chequer. I am provisionally of the opinion that why not a penalty of dismissal of services should be imposed and why not the recovery of amount of embezzlement of Rs.2,28,505/- be made against you, and proposed action shall serve the purpose



of justice and the proposal punishment shall be in proportionate to the gravity of charge proved. However, any representation, which you may like to make in this connection will be considered by the competent authority before the proposed action is taken as per law. Such representation, if any, should be made in writing and submitted so as to reach in my office not later than 15 days from this communication.

2. The aforesaid is in teeth of the judgment by Hon'ble the Supreme Court in **Oryx Fisheries (P) Ltd. vs. Union of India**¹, wherein it had been observed that while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice, while holding that, "It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence."

3. Hon'ble the Supreme Court in **Himachal Pradesh State Electricity**

¹ (2010) 13 SCC 427



Board Ltd vs. Mahesh Dahiya², had observed that the disciplinary authority formed an opinion to punish the respondent therein without forwarding a copy of the report and as such he was not afforded an opportunity to submit his reply to the same with regard to any defect in procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence, both oral or documentary.

4. Insofar as the order of punishment is concerned, it is evident that a reply, Annexure P-21, alongwith the certain documents to the enquiry report, was submitted by the petitioner, which however, without even having remotely been referred to, the punishment order dated 22.10.2021, Annexure P-25, was passed, assigning no reasons whatsoever, which reads thus:

“Sh. Krishan Kumar, Sub-Inspector, office-Haryana State Roadways, Panipat, is compulsorily retired from government service with effect from 21.10.2021 under Chapter-4(B) V of the Haryana Civil Services (General) Rules-2016. It is also ordered that only after recovering Rs.228505/- from him, his Leave Encashment should be paid.”

5. In **M/s Kranti Associates Pvt. Ltd. And Another vs. Sh. Masood Ahmed Khan and Others**³, Hon’ble the Supreme Court observed that when passing an order, there is a legal obligation on the authorities to give reasons, which are the essence and virtually a part of the due process. The face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must not be like the 'inscrutable face of a Sphinx', rather must speak. The principles as enumerated therein, that are relevant to the present case, read thus:

“a. In India the judicial trend has always been to record

² (2017) 1 SCC 768

³ 2010 (9) SCC 496.

m to o xx xx xx''

8. As is apparent, in the case at hand, not conforming to the above, the

DINESH
2024.09.25 04:41
I attest to the accuracy and
integrity of this document



punishing authority had fallen in error when, initially as a knee jerk reaction, went ahead to accept the findings of the enquiry officer and thereafter, while imposing punishment, miserably failed to record any reasons in support thereof, much less cogent, to which there was no remedy of statutory appeal also provided. This Court in a similar set of circumstances had in **Dev Kumar, Constable vs. State of Haryana**⁵, set aside the order of punishment and against the said judgment no appeal was filed by the State.

9. Taking stock of the totality of facts and legal position, the impugned order deserves to be and is hereby set aside. However, the matter is remitted to the punishing authority to decide the same afresh in accordance with law, from the stage of issuance of show cause notice and granting an opportunity to the petitioner to file reply as also of being heard.

10. It is clarified that nothing observed hereinabove shall be construed to be an expression of opinion on the merits of the case.

11. Disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

September 20, 2024
dinesh

Whether speaking : Yes/No

Whether reportable : Yes/No

⁵ 2014(1) S.C.T. 215