

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

CWP-3204-2018

Date of Decision : January 24, 2024

Kapoor Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present writ petition has been filed challenging the order of punishment dated 22.10.2012 (Annexure P-9) as well as the order passed in appeal dated 02.09.2015 (Annexure P-14).

2. Learned counsel for the petitioner argues that the imposition of punishment in the present case is without following due process as envisaged under law. Learned counsel for the petitioner submits that after the enquiry report was submitted by the enquiry officer, the same was forwarded to the petitioner vide letter dated 26.04.2012, a copy of which has been appended with this petition as Annexure P-8 and in the said show cause notice, it has already been mentioned that the said enquiry report was accepted which fact clearly shows that the show cause notice was issued with a pre determined mind and as per the judgment of the Hon'ble

Supreme Court of India in ***Civil Appeal No.10913 of 2016 titled as H.P.***

State Electricity Board Ltd vs. Mahesh Dahiya, decided on 18.11.2016,

any show cause notice issued along with enquiry report with the pre determined notion stating that the said enquiry report has already been accepted, the same violates the process as envisaged for holding the disciplinary proceedings and violates the rules of natural justice. Learned counsel for the petitioner argues that the impugned order of punishment as well as the order passed in appeal are liable to be set aside on this ground alone with the direction that a fresh show cause notice be issued to the petitioner so as to seek his reply and thereafter pass appropriate order as envisaged under the facts and circumstances of the present case.

3. Learned counsel for the respondents has not been able to dispute that in the show cause notice, it has been already mentioned that the enquiry report has been accepted but submits that though the said fact has been mentioned in the show cause notice but still, the punishment as well as order in appeal has been passed with the open mind which is clear from the fact that while in appeal, the punishment imposed has been reduced by the Appellate Authority.

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

5. The respondents are under obligation to conduct the disciplinary proceedings in a manner that the rules of natural justice are not violated. It is a settled principle of law that after the enquiry report is received and before the same is accepted, the employee is to be given due opportunity to rebut the findings of the enquiry officer and whatever the objections raised are to be taken into account so as to decide whether, any punishment is to be imposed by accepting the said enquiry report or not.

6. The said procedure has not been followed by the respondents in

the present case as while issuing the show cause notice after the receipt of enquiry report and while forwarding the same to the petitioner, the said enquiry report has already been accepted. Once the said report has been accepted while issuing show cause notice, the same makes it clear that the respondents have already made up their mind to impose the punishment, which is totally arbitrary and illegal. The said procedure has already been held to be illegal and arbitrary by the Hon'ble Supreme Court of India while passing order in ***Mahesh Dahiya's case (supra)***. The relevant paragraph 26 of the said judgment is as under:-

“ 26. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority-cum-Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority-cum-Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the

inquiry report to the delinquent and before obtaining his comments on the inquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained.”

7. Learned counsel for the respondents has not been able to rebut that the procedure followed in the present case is contrary to the judgment of the Hon’ble Supreme Court of India passed in ***Mahesh Dahiya’s case (supra)***.

8. That being the factual position, the order of punishment dated 22.10.2012 (Annexure P-9) as well as the order passed in appeal dated 02.09.2015 (Annexure P-14) are set aside. The case is remanded back to the authorities concerned to follow the procedure envisaged under law from the stage of issuing of show cause notice along with enquiry report and thereafter consider the objections qua the enquiry report and then decide keeping in view the facts and circumstances whether, any punishment is to be imposed upon the petitioner or not.

9. The present writ petition is allowed in above terms.

January 24, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No