

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10905-1999 (O&M)

Date of Decision:-04.05.2018.

Sukhwinder Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Kuldeep V. Singh Ahluwalia, Advocate for the petitioner.

Ms. Ranjana Shahi, Advocate for the respondents-UOI.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has challenged the validity of the disciplinary, appellate and revisional authorities' orders dated 11.9.1997, 4.7.1998 and 9.4.1999, Annexure P/3, P/4 and P/5, respectively.

2.) Petitioner while working as Constable (GD) in E-9 Batallion is stated to have committed misconduct to the extent that he overstayed leave sanctioned period to the extent of 104 days during the period from 31.01.1997 to 14.05.1997. Further he has disobeyed the orders of the superiors. Disciplinary proceedings was concluded in imposing the penalty of dismissal from service. Feeling aggrieved by the order of dismissal, he had exhausted the departmental remedy like appeal as well as revision wherein he has suffered orders. Hence, the present petition.

3.) Perusal of the disciplinary authority's order, it is evident that there is no consideration of the petitioner's reply on the Inquiry Officer's

report. What has been stated by the disciplinary authority is *“he did not submit any points/reasons to disprove the charges or challenge the Inquiry Officer's report and on the other hand, pleaded guilty.”*. These are all factual aspects and conclusive decision of the disciplinary authority. In other words, disciplinary authority has not examined each and every contention of the petitioner's reply on the Inquiry Officer's report and show cause notice. If such consideration is not forthcoming in the disciplinary authority's order, in that event issuance of show cause notice along with Inquiry Officer's report would be empty formality. On this count, matter requires re-examination by the disciplinary authority.

4.) Learned counsel for the respondents while resisting the contention of the petitioner submitted that appellate as well as revisional authorities have examined in depth relating to the petitioner's contentions. There is no infirmity in the orders of appellate and revisional authorities. In other words, order cures the defect of the disciplinary authority's decision. Thus, petitioner has not made out a case.

5.) Heard learned counsel for the parties.

6.) The disciplinary authority after receipt of the Inquiring Officer's report issued a show cause notice to the petitioner asking his explanation for which petitioner is stated to have submitted a detailed explanation to the extent of what are the defects how the Inquiring Officer has not appreciated certain issues which were stated in the explanation. The disciplinary authority while imposing the penalty has not even considered single contention of the petitioner which is urged in the explanation on the Inquiring Officer and show cause notice. In not considering the petitioner's

explanation by the disciplinary authority would defeat the very object of

issuance of show cause notice along with Inquiring Officer's report and seeking explanation of the employee. Learned counsel for the respondents' contention that even though disciplinary authority's order is defective whereas appellate as well as revisional authorities have considered each of the contention of the petitioner. Justice MEGARRY, ruled in **Leary Vs. National Union of Vehicle Builders**, reported in (1970) 2 All ER 713 held as under:-

“If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him.”

Supreme Court in the case of **Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and another** reported in (1977) 2 SCC 457 in para 14 held as under:-

“14. The second contention urged on behalf of the appellants that as the General Manager of the Mysore Government Road Transport Department confirmed on appeal the orders of dismissal of the first respondents that should be considered as substantial compliance with the provisions of [Article 311\(1\)](#) of the Constitution is, in our judgment, devoid of substance. The original order of dismissal of the first respondents being without jurisdiction and as such void and

*inoperative having been passed in contravention of the provisions of [Article 311 \(1 \)](#) of the Constitution, the order passed on appeal by the General Manager could not cure the initial defect. In similar circumstances, the appellate order passed by the Director General of Prisons was not considered by the Madras High Court in *N. Somasundaram's case (supra)* to remedy the invalidity of the original order passed by the Superintendent of Jails. To the same effect is the decision of the Nagpur High Court in *Provincial Government, Central Provinces and Berar v. Shamshul Hussain Siraj Hussain.*”*

Similarly, this Court in the case of **Karma Devi vs. Punjab National Bank and others**, CWP No. 6863 of 2010, decided on 27.09.2017 held that appellate authority's decision cannot cure the disciplinary authority's order. Thus, disciplinary authority's order and consequential orders passed by the appellate as well as revisional authorities are hereby set aside and the matter is remanded to the disciplinary authority for a fresh consideration of the petitioner's plea on the Inquiring Officer's report. Petitioner is permitted to take additional ground, if any, to that extent, necessary application be made before the disciplinary authority. If such application is submitted, in that event, disciplinary authority is permitted to pass a speaking order based on the initial as well as subsequent explanation submitted by the petitioner within a period of eight weeks from the date of receipt of petitioner's additional explanation, if any. Since penalty order and subsequent orders are being set aside on technical ground, consequently, petitioner is not entitled to reinstatement automatically and he is deemed to be under suspension from the date of imposing the penalty of dismissal from service, he is entitled to subsistence allowance from the date of dismissal till

passing of final order by the disciplinary authority. Competent authority is hereby directed to calculate the subsistence allowance in accordance with law from the date of dismissal till date and disburse the subsistence allowance within a period of two months from today. Automatically reinstatement is impermissible as held by the Supreme Court in the case of **Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others** reported in (1993) 4 SCC 727 in para 30 Clause (v) which reads as under:-

“(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different

consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

7.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

May 04, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.