

Before Ranjit Singh, J.

JOGINDER SINGH,—Petitioner

versus

STATE OF HARYANA,—Respondent

CWP No. 7907 of 2009

21st July, 2010

Constitution of India, 1950—Art. 226—Haryana Civil Services (Punishment and Appeal) Rules, 1987—Rl. 7—Violation of principles of natural justice—Enquiry Officer exonerating petitioner—Punishing authority differing with Enquiry Officer while holding petitioner guilty of causing loss to State exchequer—Show cause notice—Petitioner seeking time to file reply—No full and fair opportunity to contest proposed action afforded to petitioner—An opportunity of hearing essential in such like cases to enable a person to contest view taken while disagreeing with finding recorded by Enquiry Officer—Petition allowed, order imposing cut in pension and recovery of 10% loss set aside while granting liberty to respondents to reconsider case and pass a fresh order in accordance with law.

Held, that the petitioner was not afforded full and fair opportunity to contest the proposed action against him. It is a case where Enquiry Officer had exonerated the petitioner. The punishing authority had recorded a dissent note while differing with the view taken by the Enquiry Officer. An opportunity of hearing, thus, was essential in such like cases to enable the person to contest the view taken while disagreeing with finding recorded by the Enquiry Officer. The petitioner has not only been punished but is also burdened with a substantial liability. His pension shall stand reduced for all times to come. It is only fair that the petitioner is heard and thereafter an appropriate order is passed. The rigid and technical approach not to consider the objection filed by the petitioner on the ground of delay would appear harsh. The impugned order is passed in violation of principles of natural justice and is, therefore, set aside.

(Para 5)

(*Ranjit Singh, J.*)

Amit Rawal, Advocate, for Kamal Sehgal, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana for the State.

RANJIT SINGH, J (ORAL)

(1) The petitioner joined the P.W.D. Department as an Assistant Engineer on 27th May, 1964. Between the years 1997 and 1999, the petitioner was working as Chief Engineer, National Highways. He retired on 30th September, 1999. Much after the date of his retirement, on 8th March, 2002, the petitioner was served a memorandum of charges, intimating that the Governor has proposed to take action against him under Rule 7 of Haryana Civil Services (Punishment and Appeal), Rules 1987 read with Rule 2.2 (b) of Punjab Civil Service Rules Volume II, as per the allegations set down in the charge sheet.

(2) It was alleged against the petitioner that while approving the tender for National Highway No. 65 submitted by Superintending Engineer, National Highway Circle, Faridabad, he did not take notice of the contents and consequently allowed the tender in favour of Gawar Co-operative L/C Society, Hisar, without omitting the kilometers, where the pre-mixed carpet works had already been done during April, 1998 to September, 1998. The Enquiry Officer was detailed to go into the allegations. The petitioner appeared and submitted his reply. The petitioner had produced documents in support of his defence. The petitioner was thereafter exonerated of the charges by the Enquiry Officer.

(3) The Punishing Authority, however, issued him a show cause notice alongwith copy of dissent note and the enquiry report holding that it was tentatively of the view that the allegation against the petitioner stood proved and the petitioner was guilty of causing loss to the tune of Rs. 32,85,030. Accordingly, it was proposed to impose a cut of 20% in his pension alongwith recovery of an amount of Rs. 3,28,503, being 10% of the loss. The petitioner was given 15 days' time to file reply.

(4) The show cause notice dated 14th March, 2008 was received on 5th April, 2008. The petitioner, however, sought extension of time by two months through his communication dated 8th April, 2008 to file response as his wife had suffered a heart attack. The Punishing Authority instead had

allowed the time till 20th May, 2008 to the petitioner to file his response. On 15th May, 2008, the petitioner prayed for supply of certain documents. Instead of considering the prayer of the petitioner, he was told to file reply by 10th June, 2008. On 9th June, 2008, the petitioner again prayed for 7 to 10 days time for supply of documents. The respondents instead asked the petitioner to file reply by 20th July, 2008 as a last opportunity. The petitioner was also supplied the copies of documents on 24th July, 2008, which as per the petitioner, were though delivered on 7th August, 2008. The petitioner visited the office on 5th August, 2008 to file reply, when he was informed that the case has already been disposed of. The petitioner then made a request for condoning the delay and considering his reply, which was also not agreed and the impugned order maintained. The petitioner has accordingly filed this writ petition to impugn the punishment as well as action on the ground that he was denied fair opportunity to defend himself, especially so when he was exonerated by the Enquiry Officer.

(5) Without going into the validity of the assertions made in the writ petition or the authenticity thereof, I am of the view that the petitioner was not afforded full and fair opportunity to contest the proposed action against him. It is a case where Enquiry Officer had exonerated the petitioner. The punishing authority had recorded a dissent note while differing with the view taken by the Enquiry Officer. An opportunity of hearing, thus, was essential in such like cases to enable the person to contest the view taken while disagreeing with finding recorded by the Enquiry Officer. The petitioner has not only been punished but is also burdened with a substantial liability. His pension shall stand reduced for all times to come. It is only fair that the petitioner is heard and thereafter an appropriate order is passed. The rigid and technical approach not to consider the objection filed by the petitioner on the ground of delay would appear harsh. The impugned order is passed in violation of principles of natural justice and is, therefore, set-aside. The respondents, however, would be at liberty to reconsider this case and pass a fresh order after considering the reply submitted by the petitioner. The petitioner may, if he so wishes, supplement his pleas made in the reply by filing additional pleadings and is granted a period of three weeks to do so. The request of the petitioner for personal hearing, if made, may also be considered and granted in accordance with law.

(6) The writ petition is accordingly disposed of.