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**(2010) 11 P&H CK 0443**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 12124 of 2004**

Radhey Shyam

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 08-11-2010

**Acts Referred:**

**Citation :** (2011) 163 PLR 819

**Hon'ble Judges :** Kanwaljit Singh Ahluwalia, J

**Bench :** Single Bench

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## Judgement

Kanwaljit Singh Ahluwalia, J.—Petitioner was appointed as a Sectional Officer in the year 1993 and at the relevant time he was discharging his duties as such in the Water Works, Mansa Devi Complex, Maini Majra, Chandigarh. On 2nd February, 1996, a charge-sheet (Annexure P-I) was served upon the petitioner, in which 18 charges were mentioned. An enquiry was held and the Enquiry Officer found the petitioner guilty of six charges. Thereafter, the punishing authority passed an order of removal of the petitioner from service (Annexure P-4) dated 4th October, 1999 without any disqualification, for the future employment under the Government. Aggrieved against the order of removal (Annexure P-4), the petitioner filed an appeal (Annexure P-5), which was to be decided by the Secretary, Local Government, U.T. Chandigarh-cum-Appellate Authority. The appeal was dismissed vide order (Annexure P-6). The petitioner approached this Court by filing Civil Writ Petition No. 4496 of 2000 and the same was decided on 1st August, 2001 directing the appellate authority to reconsider the appeal and pass a speaking order in accordance with the provisions of law. The appellate authority again, vide order (Annexure P-I4) dated 20th March, 2005 dismissed the appeal. The petitioner filed another petition bearing Civil Writ Petition No. 9569 of 2003 and the same was disposed of by a Division Bench of this Court by giving following directions:

After having heard both sides, we are of the considered view that the order, Annexure P9, is even now liable to be quashed on the ground that it contravenes

the provisions of Rule 19(2) of the Rules. A reading of this rule reveals that it imposes a duty on the appellate authority to consider various factors enumerated therein while deciding the appeal filed against an order of punishment, and those factors are (a) whether the procedure laid down in the rules has been complied with, and if not, whether such noncompliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice; (b) whether the findings of the punishing authority are warranted by the evidence on the record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or, severe.

A perusal of the order, Annexure P9, shows that the appellate authority had not at all considered the questions as to whether the procedure laid down in the Rules for holding departmental enquiry had been followed or whether the findings recorded by the punishing authority were based on the evidence available on the record. It was pointedly brought to the notice of the appellate authority that the delinquent official had not been allowed to cross-examine the witnesses, during the enquiry. Still, it did not consider it necessary to ascertain the correct position in this regard from the records of the enquiry file, and disposed of the objection by simply observing that "In case the I.O. did not at any point of time adopt due procedure, the delinquent official could have also represented to the Commission, Municipal Corporation, which he had not done. It also did not apply its mind to the question as to whether the findings of the punishing authority in respect of the charges, which were several in number, were supported by any material on record, or not.

This case is squarely covered by a Division Bench judgment of this Court reported as Balwinder Singh v. State of Punjab and others, 1998 (4) RSJ 148, wherein also, the appellate order was quashed as the same did not contain any indication which could give a clue to the application of mind by the competent authority on the issue of compliance of procedure laid down in the Rules or the justification of the findings recorded by the punishing authority.

In view of the above, the writ petition is allowed and the order Annexure P9 is quashed. The appellate authority shall, however, be at liberty to pass the order afresh, in accordance with law.

Sd/- Kiran Anand Lall Judge

Sd/- H.S. Bedi Judge

2. Counsel for the petitioner has submitted that in spite of two orders passed by this Court in Civil Writ Petition No. 4496 of 2000 (Annexure P-7) and Civil Writ Petition No. 9569 of 2003 (Annexure P-15), the appellate authority had again dismissed the appeal without complying with the directions issued in order (Annexure P-15). It is stated that if the earlier order (Annexure P-9) and the order (Annexure P-17) now passed by the appellate authority are compared, first three pages are identical and on page No. 4 the contentions have been noticed and same have been summarily dismissed without holding any discussion.

Learned counsel has further stated that even if the discussion of the appellate authority is considered, the same is vague in nature and has not dealt with the grounds taken in appeal and the arguments raised by the petitioner.

3. Counsel for the respondents has stated that the order passed by the appellate authority satisfies all the parameters and the directions issued by this Court in order (Annexure P-15).

4. Counsel for the petitioner has submitted that qua all the six charges, he had made specific submissions that the charges are not proved if the facts of the case are taken into consideration.

5. A perusal of order (Annexure P-17) reveals that no discussion was made qua each of the charges, submissions made by the petitioner and as to whether the charges have been proved or not, nothing is reflected in the impugned order.

6. Counsel for the respondents has further stated that in case the record is perused, it will be apparent that the appellate authority was conscious of the issues, even though they have not been specifically dealt with and stated in the impugned order.

7. This Court has always held that the application of mind should be apparent from the face of the order and from a perusal thereof it should be discernable. However, without going into the controversy, order (Annexure P-17) is hereby set aside and the Home Secretary-cum-Secretary, Local Government, Chandigarh-cum-Appellate Authority is directed to comply with the directions given by this Court in order (Annexure P-15) and thereafter, pass a fresh order. To set at rest any controversy, which may not be raised in future, the petitioner is directed to file written submissions before the appellate authority detailing each argument and the appellate authority shall deal with each argument detailed in the written submissions to be made by the petitioner. The petitioner shall submit his written arguments within a period of 15 days from the date of receipt of a certified copy of this order and the appellate authority shall pass final order within a period of three months from the date of receipt of written arguments.

With the observations made above, present petition is disposed of.