

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.8296 of 2014
Date of decision:20.01.2015**

Ram Diya

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.N.S.Panwar, Advocate for the petitioner.

Mr.P.S.Poonia, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

The present writ petition is directed against the punishment order, whereby one annual increment of the petitioner was stopped with cumulative effect but without holding any regular departmental enquiry.

Notice of motion was issued and pursuant thereto, written statement has been filed.

Learned counsel for the petitioner submits that in view of the law laid down by the Hon'ble Supreme Court in **Kulwant Singh Gill v. The State of Punjab, 1991 (2) SCT 30**, the respondent authorities had no authority to impose major penalty without holding regular departmental enquiry. He further submits that since admittedly regular departmental enquiry was not conducted in the present case, before imposing the major penalty on the petitioner, the impugned action of the respondent authorities

was liable to be set aside. He prays for setting aside the impugned punishment order, by allowing the present writ petition.

Per contra, learned counsel for the respondents submits that a show-cause notice was issued to the petitioner vide Annexure P-1 but he did not submit any reply within the stipulated period. He further submits that investigation report submitted by the then Assistant Executive Engineer was relied upon, whereby the petitioner himself was found negligent for the accident in which he suffered injuries. He also submits that in view of given fact situation of the present case, punishment was rightly awarded to the petitioner and the impugned action taken by the respondents deserves to be upheld.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant writ petitions deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that the punishment awarded to the petitioner was a major punishment. It is also not in dispute that the punishment was awarded to the petitioner without holding any regular departmental enquiry. It is also undisputed on record that in terms of Regulation 7 of Haryana State Electricity Board Employees (Punishment & Appeal) Regulations, 1990, a regular departmental enquiry was mandatory before imposing the major punishment. Having said that, this Court feels no hesitation to conclude that impugned action of the respondent authorities

was impermissible in law and the same cannot be sustained.

During the course of hearing, learned counsel for the respondents, despite his best efforts, could not distinguish the judgment in **Kulwant Singh Gill's case (supra)** and rightly so, because it was a matter of record. As noticed hereinabove, no regular departmental enquiry was conducted in the present case before imposing major punishment. Thus, the impugned action taken by the respondent authorities, was contrary to the law laid down by the Hon'ble Supreme Court in **Kulwant Singh Gill's case (supra)** and the same cannot be sustained, for this reason also.

Further, the respondent authorities have also violated the basic principles of natural justice, while imposing the major punishment against the petitioner. Once the respondent authorities were of the view that a major punishment was to be imposed on the petitioner, it was obligatory on the part of the respondent authorities to conduct regular departmental enquiry. Besides this, the respondent authorities were under legal obligation to grant an opportunity of being heard to the petitioner before passing the punishment order. However, in the present case, since basic principles of natural justice were not complied with by the respondent authorities, the impugned order cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned action, imposing major punishment without holding any regular departmental enquiry, has been found to be patently illegal, the same is hereby set aside. However, it is

made clear that the respondent authorities would be at liberty to proceed against the petitioner, but strictly in accordance with law.

Resultantly, with the above-said observations made, the present writ petition stands allowed, however, with no order as to costs.

20.01.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE