

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 4234 of 2012
Date of decision : 15.02.2016**

Dalip Singh

...Petitioner

versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Narender Singh, Advocate
for the petitioner.

Mr. Keshav Gupta, AAG, Haryana

Mr. B.S. Kundu, Advocate
for respondent No. 2.

Mr. Rahul Deswal, Advocate
for respondent No. 3.

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

RITU BAHRI , J. (Oral)

The present petition is against inquiry report dated 17.08.2011 (P-5), order dated 13.10.2011 passed by respondent No. 2 as well as order dated 29.12.2011 (P-8) passed by respondent No. 1 whereby appeal of the petitioner against order dated 13.10.2011 has been dismissed.

Petitioner is a JE/civil with respondent No. 2-Haryana

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Tourism Corporation (for short ' Corporation') and was issued charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short 'Rules 1987') on the allegations that while being in-charge of the execution of the work of Tourist Complex at Hisar (construction of VIP Rooms), the RCC of 6 feet cantilever was improper and the said cantilever fell just after removal of the shuttering, since the shuttering was removed much ahead of the required time.

Petitioner submitted his reply on 26.06.1996 to the above said charge-sheet taking a stand that the RCC cantilever was casted on 27.07.1995 and the shuttering was removed by the Contractor on 06.08.1995, as per the instructions issued by the Sub Divisional Engineer to the contractor on 04.08.1995 to remove the shuttering and to complete the plaster work since the Managing Director was to visit the complex on 10.08.1995. The petitioner was then posted with HQ at Sirsa and given temporary charge at HQ Hisar and thus he used to visit their on Saturday and Sunday and in his absence, Sub Divisional Engineer directed the contractor to remove the shuttering. Further, the reinforcement of the cantilever was made in accordance with the structural design supplied by the Divisional Office. The reinforcement was properly placed and the steel was checked by the Sub Divisional

Engineer In-charge on 27.07.1995 before the start of concreting. Even the concreting was carried out in the presence of Sub Divisional Engineer in charge and all the entries of the steel bar was done in accordance with instructions of P.W.D (B&R) which are followed by the Corporation.

Despite the fact that the petitioner filed its reply on 26.06.1996, no action was taken for 14 years and in the year 2009, Sh. Rajbir Kaushik, Executive Engineer Haryana Tourism Corporation was appointed as Enquiry Officer, who conducted the enquiry and submitted his report dated 29.03.2010 and subsequently petitioner was issued show cause notice dated 20.08.2010 (P-3) for removal from service.

In response to the above said show cause notice, petitioner filed a detailed reply dated 02.07.2010 demonstrating that the inquiry has not been conducted in accordance with the principles of natural justice. Accordingly, Managing Director HTC ordered fresh inquiry and appointed Shri Parkashvir Rajoria, XEN, HTC as inquiry officer. Pursuant to the transfer of Shri Parkashvir Rajoria, XEN, HTC, the inquiry was entrusted to Sh. K.S. Sihag, Executive Engineer, HTC, Chandigarh.

Petitioner then submitted a detailed reply to the charge sheet and taken a stand what he has stated in reply dated 26.06.1996

and accordingly Inquiry Officer concluded his inquiry and accepted the fact that the petitioner never issued the orders for removal of shuttering and that the same was removed on the orders of the Sub Divisional In charge was duly substantiated by the written statement of Shri. Abhay Kumar, Contractor and held that the removal of the shuttering has been ordered by Sub Divisional In charge and involvement of Dalip Singh is under doubt. However, the Inquiry Officer made an observation that the petitioner is equally responsible for wrongful placement of steel in the cantilever slab on account of joint responsibility with the Sub Divisional Engineer in charge regarding the quality of work at site.

This Inquiry report was accepted by the Managing Director vide order dated 13.10.2011 and imposed the punishment of stoppage of two increments with cumulative effect, without issuing second show cause notice with regard to punishment.

An appeal dated 01.12.2011 (P-7) was filed against this order, which was also dismissed vide order dated 29.12.2011 (P-8). Hence, the present writ petition.

Learned counsel for the petitioner has vehemently argued that as per PWD Manual, it has been provided that the responsibility of reinforcement and structures is upon the Sub Divisional Engineer and

not upon the Junior Engineer.

Learned counsel has further argued that the authorities have imposed punishment upon the petitioner without issuing second show cause notice with regard to proposed punishment, as mandated under the statute

Learned counsel has argued that the petitioner was issued charge sheet on 11.10.1995 and he filed his reply on 26.06.1996 and no action was taken by the department for 14 years and it is only in the year 2009 Sh. Rajbir Kaushik, Executive Engineer Haryana Tourism Corporation was appointed as Enquiry Officer, who conducted the enquiry and submitted his report dated 29.03.2010.

On the other hand, learned counsel for respondent No. 2 has argued that the reply of the petitioner was not found satisfactory and is contradictory to the report submitted by R.S. Dahiya the then Executive Engineer, Haryana Tourism Corporation and the steel reinforcement was found in the middle of the slab thickness as per the report by the then Executive Engineer and this fact is a matter of record and same is annexed as R-2/1. Thus, the petitioner was rightly punished by the competent authority vide orders dated 13.10.2011 and 29.12.2011 (P-6 and P-8).

Heard learned counsel for the parties at length.

The respondents have taken a stand that the slab was got done from M/s B.R. Constants Mohali and there is nothing on record regarding the faulty design of the same. It is not denied that as per PWD code, SDE Incharge is responsible 100% check measurement of hidden items but Junior Engineer is also associated in making record entries and the execution, as per P.W.D Code 6.6.7 to 6.6.13, which reads as under:-

“6.6.7:- Sub Divisional Engineer shall check the foundation of every work and see that it is sound. He shall check the founding level of all structures including embankments. He shall fully check all hidden works before they are covered. Length of line works (e.g roads, canals, pipelines, sewers etc) shall similarly be checked/recorded 100% by the Sub Divisional Engineer himself regarding other items of all minor and major works, he shall check 50% quantities of the work if the work is at his headquarters and 25% if outside. The Sub Divisional Engineer shall remain in constant and close touch with the day to day work of the Jr. Engineers and should see that measurements are taken in due time and got checked.

6.6.8 Sub Divisional Engineer shall see that all public property/works/buildings/structures in his charge are duly

inspected at least once a year as per instructions contained in the Departments manual.

6.6.9 Sub Divisional Engineer shall see that his subordinates thoroughly understand and strictly adhere to the details of the estimates for work on which they are engaged. Detailed instructions should be freely and patiently on all points regarding which a subordinate has doubts.

6.6.10 Sub Divisional Engineer shall report immediately to the Divisional Officer any serious accident or unusual of occurrence resulting in serious injury to or death any person or damage to work of property in his charge.

6.6.11 Sub Divisional Engineer shall keep a vigilant control over expenditure. He will report progress of work periodically as may be ordered by Divisional Officer, or higher authorities.

6.6.12 Sub Divisional Engineer shall personally examine all the Standard Measurement Books of the Sub Division once a year and have them up-dated in case of any additions/alternations.

6.6.13 Sub Divisional Engineer shall check all the stores in his Sub Division twice a year and T&P articles once a year. Surplus or unserviceable material at site or in the store shall be

properly accounted or disposed of as prescribed procedure.”

However, as per Rule 6.6.3 and 6.6.4 it was Sub Divisional Engineer who was to arrange and to supervise the actual execution of all works in the Sub Division in accordance with sanctioned estimates, specifications and drawings.

Further petitioner has given his statement before the Enquiry Officer stating therein that the order for removal of shuttering was passed on by the SDE-in-charge and this statement was also supported by the written statement of Sh Abhey Kumar Jain, Contractor dated 12.10.2010.

Further no departmental witness attended the hearing the D.R requested to give notices to the witnesses on behalf of E.O but they did not come present and Abhey Kumar, Contractor informed through letter that he is not in a position to move due to his bad health and requested to accept his written statement dated 12.10.2010 wherein he stated that orders to remove the shuttering were passed on to him by the SDE In-charge and Sh. Dalip Singh was not present at the site when the shuttering was removed.

After going through the contents of the case, the writ petition deserves to be allowed on the grounds mentioned below:-

(1) Petitioner was served charge sheet in the year 1995 to

which he submitted his reply on 26.06.1996 and after 14 years i.e in the year 2009 Sh. Rajbir Kaushik, Executive Engineer Haryana Tourism Corporation was appointed as Enquiry Officer, who conducted the enquiry and submitted his report dated 29.03.2010. Thus no action was taken by the department for 14 years.

(2) It was the prime duty of S.D.E to arrange and to supervise the actual execution of all works in the Sub Division

(3) In the inquiry report, on the one hand, Enquiry Officer held that petitioner is not responsible for early removal of shuttering of cantilever slab and on the other hand, he held that petitioner is equally responsible for wrong placement of steel in the cantilever slab.

(4) Abhey Kumar, Contractor in his statement stated that orders to remove the shuttering were passed on to him by the SDE In-charge and Sh. Dalip Singh was not present at the site when the shuttering was removed.

Thus, even if there was some laxity on the part of the petitioner, the punishment of stoppage of 02 annual increments with cumulative effect is not proportionate, as it was the SDE who was 100% responsible to arrange and to supervise the actual execution of all works in the Sub Division. Further there was no loss suffered by the Corporation and only the petitioner was held responsible for wrong

placement of steel in the cantilever slab.

In view of the above factual position, the present writ petition is allowed and inquiry report dated 17.08.2011 (P-5) , order dated 13.10.2011 passed by respondent No. 2 as well as order dated 29.12.2011 (P-8) passed by respondent No. 1 are hereby quashed. Petitioner is entitled to all consequential benefits.

(RITU BAHRI)
JUDGE

17.02.2016

G Arora