

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24750 of 2013 (O&M)

Date of decision: 13.07.2016

Jagmohan

.....Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Sushil Jain, Advocate for the petitioner
Mr.Vikrant Pamboo, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

The petitioner seeks issuance of writ in the nature of certiorari for quashing of order dated 13.8.2013 (Annexure P5), whereby the recovery was effected from his DCRG /Gratuity to the tune of Rs.1,97,451/-.

The undisputed facts are that the petitioner joined the respondent department as ALM (Asst. Lineman) in the year 1973 and ultimately retired as Assistant Foreman on 31.5.2012. While releasing the reitral benefits the gratuity and commuted pension and full pension were not paid. However, subsequently, provisional pension to the extent of 75% was granted on 6.7.2012. The petitioner approached this Court by way of CWP No.5680 of 2013, wherein the petitioner was given liberty to file a representation to the respondents for release of his retiral dues and the respondents were directed to decide the same within a period of three months. Thereafter, on 30.7.2013, a show cause notice was issued to the

petitioner for recovery of shortage of material i.e. oil and parts of damaged transformers and it was proposed to recover Rs.1,97,451/- from him. While releasing the retiral benefits on 30.8.2013, the said amount has been deducted from his DCRG/Gratuity. The petitioner is aggrieved of the said order.

The stand of the respondents in the reply is that when the pensionary benefits were released, the petitioner gave a consent that in case any outstanding recovery is found after the release of his pension, same can be recovered from his subsequent payment of monthly pension. It is not denied that the show cause notice was issued but it is claimed that the same was decided vide office order No.14 dated 8.1.2014 and the recovery was accordingly effected.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, the proceedings were initiated after the retirement of the petitioner subsequent to the direction issued by this Court to decide representation of the petitioner. In such case Rule 2.2 (b) of the Punjab Civil Services Volume II Part I (for short, the Rules') provides as under:-

2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave mis- conduct or to have caused pecuniary loss to Government by misconduct or to have caused pecuniary loss to

Government by misconduct or negligence, during his service including service rendered on re-employment after retirement :

provided that –

(1) Such departmental proceedings, if instituted while the officer was in service whether before his retirement or during his re-employment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service .

(2) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

(i) shall not be instituted save with the sanction of the Government ;

(ii) shall not be in respect of an event which took place more than four years before such institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made;

3. such judicial proceedings , if not instituted while the officer was on duty either before his retirement or during his employment, shall be instituted in respect of an event as is mentioned in clause (ii) of proviso (2); and

(4) The Public Service Commission shall be consulted before final orders are passed.

Explanation.- For the purpose of this rule—

(1) Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date ; and

(2) Judicial proceedings shall be deemed to have been instituted-

(i) in the case of a criminal proceedings, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of a civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court .

Note 1 As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General.

Note 2. In case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss, caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which may have been commuted.”

The 'departmental proceedings' are itself defined in the explanation and shall deem to be instituted when the charges were framed against the pensioner. Now so far as present case is concerned, the show cause notice dated 13.7.2013 (Annexure P3) shows that the petitioner was held responsible for shortage of material i.e. Oil and parts of the damaged Transformer and the following amount was sought to be recovered from him:-

1. Rs.100600/- on A/c of shortage of material i.e. Parts & oil damaged T/F.

2. Rs.33733.80 paisa on A/c of schedule 28.401.

3. Rs.66116.85 paisa on A/c of GH-28.870.

The petitioner submitted the reply (Annexure P4) to the show cause notice putting forward his side of the story. Thereafter, order 8.1.2014

was passed by the Superintending Engineer which is reproduced as under:-

“A show cause notice no.80/PF-1367 dated 30.7.13 was issued to Sh.Jag Mohan AFM (now retired), for the charges relating to his period of posting under SDO S/U S/Divn., No.1, DHBVN, Jind after considering the recommendations of XEN 'OP' Divn. DHBVN, Jind by the competent authority, with reference to the facts/ material available on record, it has been decided to recover the amount in the tune of Rs.1,97,504.65P from the official.

As such, a sum of Rs.1,97,504.65P may be recovered from his pensionary benefits as the official has since been retired from the Nigam's service.

This issue with the approval of SE 'OP' Circle, DHBVN, Jind given at NP-26 of PF-1367.”

It goes to show that after the issuance of show cause notice and obtaining reply, the matter was decided. At the very outset the order dated 8.1.2014 is a non-speaking order. It does not show as to whether the reply was considered and mind was applied to the facts of the case. Therefore, the order dated 8.1.2014 is otherwise illegal and liable to be set aside. However, it also indicates that no charge sheet was served as stipulated under Rule 2.2 (b) of the Rules. Therefore, without inquiry and holding that the petitioner is liable for the said damages, the said recovery could not be effected. A similar view was expressed by this Court in Ram Phal vs. Uttar Haryana Bijli Vitran Nigam Limited and others (CWP No.1318 of 2009) decided on 8.1.2010.

As such, the impugned order dated 13.8.2013 (Annexure P5)

for effecting recovery of Rs.1,97,451/- is hereby set aside. The respondents are directed to pay the said amount to the petitioner with interest @ 9% per annum from the date it became due.

Learned counsel for the respondents has requested that the department may be granted liberty to initiate departmental proceedings afresh in conformity to the Rule 2.2(b) of the Rules. However, I am of the view that at this stage, it is not justifiable that such permission should be granted. The petitioner retired from service on 31.5.2012 and now four years have elapsed. As such, the request of learned counsel for the respondents is declined.

The petition is accordingly allowed.

13.07.2016
gk

(Kuldip Singh)
Judge