

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

**C.W.P No. 6894 of 2014
Date of decision : 09.05.2016**

Faquir Chand

...Petitioner

versus

State of Haryana and ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Rana, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G. Haryana

RITU BAHRI , J.

By way of present writ petition, petitioner is seeking quashing of order dated 13.05.2013 (P-12) and order dated 05.04.2010/04.08.2010 and all consequential proceedings arising therefrom.

Brief facts of the case are that on 24.09.2001, petitioner joined as Jr. Engineer in Provincial Divn No. VI, Ambala Cantt and remained posted there upto 31.07.2003. During this period, work of periodic maintenance on State Highway (SW-04) Kala-Amb-shahabad Road was allotted to M/s Banowari Lal Aggarwal Pvt. Ltd Kolkata, vide contract No. HHUP/M-23 for contract price of Rs.10,96,52,601/-.The

work was to commence on 08.10.2002 and its date of completion was 07.01.2004. The department being dissatisfied with the performance of the petitioner placed him under suspension on 28.07.2003 but later on reinstated him on 17.05.2004. Thereafter, petitioner was again served with a charge sheet under Rule 8 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for short 'Rules 1987'), vide charge sheet dated 14.03.2005, to which the petitioner submitted his detailed reply on 15.04.2005. After considering the reply of the petitioner, the department withdrew the charge sheet submitted under Rule 8 of Rules 1987, vide order dated 10.08.2006 (P-1). However on the same day, petitioner was served a charge sheet under Rule 7 of Rules 1987 (P-2). However, it was not only the petitioner but other employees posted at Sub Divn. Ambala Cantt were charge sheeted including one Kuldeep Singh, J.E, who was equally responsible along with petitioner to monitor the work allotted to M/s Banowari Lal Aggarwal Pvt. Ltd Kolkata.

Petitioner gave his reply to the above said charge sheet on 20.09.2006 (P-3) and denied the charges. In the meantime, petitioner retired from his services on 31.03.2008. After his retirement, the Inquiry officer submitted his report on 03.07.2009 (P-4) and charges No. 3 and 4 were proved against the petitioner. Petitioner was issued a show cause notice indicating a provisional cut of 3% in pension throughout

his pension life on 08.10.2009 (P-5). Similarly charges No. 3 and 4 were proved against Kuldeep Singh and both were exonerated from charge Nos. 1 and 2. Kuldeep Singh was also served with a show cause notice indicating a provisional cut of 3% in pension.

The petitioner submitted his defense on 30.10.2009 but respondent No. 2 vide its order dated 05.04.2010/04.08.2010 (P-7) ordered the punishment of 3% cut in pension through out pension life and ordered regularization of the suspension period w.e.f 28.07.2003 to 16.05.2004 as period spent on duty with no more pay and allowances except pay and allowances already drawn/allowed. Further the appeal filed against the punishment order was also dismissed vide order dated 31.05.2013 (P-12) on the ground that the appeal is a time barred.

Learned counsel for the petitioner contends that the appeal filed by Kuldeep Singh, J.E was accepted by the department vide order dated 19.05.2011 and order the punishment was quashed holding that it to be an harassment and on the ground that no loss of amount has been specified either in charge sheet or inquiry reports (P-9).

Learned counsel for the petitioner submits that the petitioner is similarly situated employee like Kuldeep Singh, whose punishment was set aside and further 3% cut in pension is harsh punishment.

Learned State counsel on the other hand has admitted that Kuldeep Singh, JE was similarly placed with that of petitioner but contends that since the appeal of the petitioner was time barred, his appeal has rightly been dismissed.

Heard learned counsel for the parties.

Reference at this stage can be made to order dated 19.05.2011 whereby punishment of Kuldeep Singh, JE was quashed on the ground that the department took 7 years to finalize the matter. Further the Inquiry Officer did not observe any loss regarding charge No. 4 and the independent report of Supdt. Engineer Amabla on his inspection of site on 02.07.2003 was over looked by Inquiry Officer, which has reported that the thickness of LBM were found in order. Further there is no report regarding for the material used in the BUSG layer for the test conducted by the filed staff.

The case of the petitioner is identical to that of Kuldeep Singh, as petitioner was also served with the charge sheet and retired before finalization of the inquiry. Petitioner had served for 37 years and in the case of the petitioner as well no loss has been specified and accordingly, the punishment on monetary terms should not be imposed.

Further reference at this stage can be made to a judgment

passed by this Court in a case of ***State of Haryana v. Prem Singh, 2010 (5) SLR 291*** wherein respondent was prematurely retired from service. The trial Court partly decreed his suit invalidating the part of the order by which pension cut to the extent of 25% was imposed upon the plaintiff and held that he is entitled to 100% pension. The appeal filed by the State was dismissed.

Further Division Bench of this Court in a case of ***S.D. Prasher v. Punjab State Electricity Board and another, 2005(2) SCT 261*** wherein also the cut of 10% imposed by the department was held to be bad and in para 3 of the judgment, it has been observed as under:-

3. *We have heard learned counsel for the parties. We do not find any merit in the submission of the learned counsel for the respondents that an appeal is competent before the Board against the order Annexure P-4 dated 17.6.2003. A perusal of the order shows that the impugned order has been passed by the Full Time Members of the Board. Regulation 17 of Employees Punishment & Appeal Regulations, 1971 provides that no appeal shall lie against any of the orders made by the Board. Clearly, therefore, the petitioner would not be entitled to seek any relief before the Board by way of filing the appeal. We are also of the considered opinion that order Annexure P-4 is arbitrary, having been passed without*

application of mind. In the order it is stated that after perusing the reply filed by the petitioner and the report of the Inquiry Officer, 10% cut is imposed on the pension of the petitioner. As noticed earlier, the Inquiry Officer has exonerated the petitioner, therefore, on the basis of the Inquiry Report, no cut could have been imposed on the pension of the petitioner. The order is clearly arbitrary, whimsical and suffers from non-application of mind. Clearly, therefore, the order is violative of Article 14 of the Constitution of India. Even otherwise, we are constrained to observe that order Annexure P-4 is a non-speaking order. It is settled principle of law that authorities are duty bound to pass detailed speaking orders when the civil rights of the employees are liable to be adversely affected by the order. The impugned order is also liable to be quashed on this short ground.

In view of the above factual position, the writ petition is allowed and orders dated 13.05.2013 (P-12) and 05.04.2010/04.08.2010 (P-7) are hereby quashed along with all consequential proceedings arising therefrom.

09.05.2016

G Arora

**(RITU BAHRI)
JUDGE**