

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

**CWP-19077-2016 (O&M)
Date of Decision: 28.11.2017**

Mohinder Partap Singh Dhillon

... Petitioner

Versus

Punjab State Power Corporation Ltd. & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Animesh Sharma, Advocate for the petitioners.

Mr. Manuj Chadha, Advocate for the respondents.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Petitioner, who is currently serving as Deputy Chief Engineer under the Punjab State Power Corporation Limited was imposed the penalty of recovery of 30% of the loss caused to the Corporation vide order dated 02.02.2015 passed by the 3rd respondent/Joint Secretary Technical-I, Punjab State Power Corporation Limited (Annexure P-6). An appeal preferred by the petitioner against such penalty has been dealt with vide order dated 03.08.2016 (Annexure P-9) and whereby the recovery imposed upon the petitioner stands reduced to 20%.

The instant writ petition has been filed impugning the afore noticed orders dated 02.02.2015 (Annexure P-6) and 03.08.2016 (Annexure P-9).

Having heard counsel for the parties at length, I am of the considered view that the legality of the order dated 02.02.2015 (Annexure P-6), wherein recovery to the extent of 30% was directed would not require examination on merits at this stage. Such view is being taken for the reason that the facts of the present case make out a case for remand to the Appellate Authority for reconsideration.

The admitted position of fact is that the penalty of recovery was imposed upon the petitioner towards culmination of departmental proceedings that had been initiated. Charge sheet dated 03.09.2012 (Annexure P-1) was served upon the petitioner in relation to the point of time when he was serving as Additional Superintending Engineer and posted at Distribution Division, Jeera. The precise articles of charge framed against the petitioner were to the following effect:

“The Works Audit Party-7 during the year 2008-11 of Jeera Division has found that The Jeera Division has 6 regular post of Drivers, meaning thereby Division Jeera has been sanctioned total 6 vehicles. Besides this, 5 government vehicles are already running under the Jeera Division. In this way, the division office was required to take only one number of vehicles on rent. But he (Eng. M.P.S. Dhillon Additional Superintending Eng.) has taken 5 vehicles on rent. In this way, he (Eng. M.P.S. Dhillon Additional Superintending Eng.) has taken 4 vehicles on rent in violating of the instructions.

As per the memo No.2721 dated 19.04.2012 of Jeera Division, he (Eng. M.P.S. Dhillon Additional Superintending Eng.) has made illegal payment of Rs.7,41,000/- to the said vehicles from 18.09.2010 to 30.04.2011, which is liable to be recovered from him (Eng. M.P.s. Dhillon Additional Superintending Eng.). By doing so, he (Eng. M.P.S. Dhillon

Additional Superintending Eng.) has violated instructions of the PSEB, now Power Corporation and the provisions of Section 4 (1) of Employees Conduct Regulations, 1971.”

Petitioner having responded to the charge sheet, Inquiry Officer was appointed. The Inquiry report furnished by the Chief Engineer/ Technical Investigation and Inspection-cum-Inquiry Officer has been placed on record and appended at Annexure P-5. Perusal of the same would reveal that allegation No.1 with regard to hiring of vehicles on rent in violation of the instruction was held to be not proved. As regards allegation No.2 i.e. an amount of Rs.7.41 lakhs having been illegally paid for the period 18.09.2010 to 30.04.2011 towards the vehicle in question, Inquiry Officer concluded that the petitioner during his tenure at the place of posting had continued the use of the vehicles which had been hired by his predecessor, namely, Engineer Bhupinderjit Singh and the payment and release of amount of Rs.7.41 lakhs is to be treated as **'irregular expenses'** and that Engineer Bhupinderjit Singh is responsible for **'irregular expenses'** as he had fixed the expiry date of the work order as 30.04.2011. Inquiry Officer finally concluded that the allegations levelled against the petitioner are not **'completely proved'**.

Acting upon the inquiry report, the order dated 02.02.2015 (Annexure P-6) was passed imposing the penalty of recovery of 30% of the loss that was incurred by the Corporation. The petitioner concededly preferred a statutory appeal under the Punjab State Electricity Employees (Punishment and Appeal) Regulations, 1971. Copy of the appeal dated 24.02.2015 is appended as Annexure P-7 along with the petition and the contents thereof are not disputed. In the appeal, the petitioner raised a

number of grounds and submissions. Petitioner stated that he had joined Jeera Division on 18.09.2010 and the vehicles in question had been hired and were running prior to his joining the Division. It was further stated that the work order had been issued by the Engineer Bhupinderjit Singh for hiring of vehicles through outsourcing basis and as such, the petitioner had not committed any illegality in releasing the payments as per terms and conditions of the work order. A question of law was also raised that if the Punishing Authority disagrees with the findings of the Inquiry Officer on any article of charge, then it was incumbent for the Punishing Authority to record its reasons for such disagreement and to record its own findings on such charge, if the evidence on record is sufficient for the purpose.

The appeal preferred by the petitioner has been dealt with vide impugned order dated 03.08.2016 (Annexure P-9), whereby the penalty of recovery has been reduced from 30% to 20% and the operative part thereof reads in the following terms:

“Resolved that considering the charges levelled, view of controlling officers and magnitude of punishment awarded appeal of Er. MPS Dhillon, Addl. SE, (Code No. 103872) against office order No. 67/D-9954/T-1 dated 02.02.2015 views of Director/Commercial give after personal hearing, the Committee of whole Time Directors found the officer, guilty of the charges levelled but the punishment was on higher side and as such revised the punishment from LOA and 30% recovery of loss to LOA and 20% recovery of loss.

Therefore, the appeal filed by PSPCL Eng. MPS Dhillon, Additional Superintending Engineer, (Code-3872) against the order No. 67 dated 02.02.2015, whereby the advise letter issued to him and orders for recovery of 30% of loss had been passed, the same be reversed and advice letter be re-issued and

it is hereby ordered that recovery of 20% of the loss of PSPCL be made from the officer.

The same is being issued with the approval of the Whole Time Directors.

Sd/- 03.08.2016”

Suffice it to observe that the order passed by the Appellate Authority dated 03.08.2016 at Annexure P-9 does not contain reasons and is a cryptic non-speaking order.

The question as regards reasons to be assigned by the Appellate Authority upon consideration of an appeal came up for consideration before the Hon'ble Supreme Court in **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney & others, 2009 (5) SLR 512** and it was observed as under:

“8. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

9. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of [S.N.Mukherjee vs. Union of India](#) reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities.

10. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

*No doubt, in **S.N. Mukherjee's case (supra)**, it has been observed (vide para 36) that:*

"..The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate

or revisional authority agrees with the reasons contained in the order under challenge."

11. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority."

Perusal of the impugned order dated 03.08.2016 passed by the Appellate Authority at Annexure P-9 would clearly reveal that the submissions/grounds raised by the petitioner in the appeal have not even been adverted to much less dealt with. The appeal preferred by the petitioner was towards exhausting a statutory remedy available to him and which would be construed as a substantive remedy. The remedy of appeal, as such, could not have been reduced to a mere formality. The impugned order passed by the Appellate Authority, as such, cannot sustain.

For the reasons recorded above, the present writ petition is partly allowed and the order dated 03.08.2016 at Annexure P-9 passed by the Appellate Authority is set aside. The matter is remanded back to the Appellate Authority to pass an order afresh after taking into consideration all the submissions and contentions raised by the petitioner in the appeal dated 24.02.2015 (Annexure P-7). Let such final order be passed within a period of three months from the date of receipt of a certified copy of this order.

Liberty is granted to the petitioner to submit written submissions within a period of two weeks from today and in the eventuality of any such submissions being filed, the Appellate Authority would also take

into account the same while passing the final order as directed.

The instant petition is disposed of in the aforesaid terms.

28.11.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | Yes |