

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24380-2014 (O&M)
Date of decision: 09.01.2017

R.K.Garg

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Petitioner in person
Mr.Naveen Sheoran, DAG Haryana

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

Kuldip Singh, J. (Oral)

Petitioner, who is a retired Chief Engineer from Irrigation Department, State of Haryana, has filed this writ petition for issuance of a writ in the nature of certiorari quashing the charge sheet dated 29.10.2007 (Annexure P11), enquiry report dated 21.11.2008 (Annexure P16) and the punishment order dated 3.9.2014 (Annexure P25), whereby punishment of 10% cut in the pension has been imposed.

The short facts required to be noticed for the purpose of disposal of the present writ petition are that the petitioner was posted as Chief Engineer, Yamuna Water Services Unit (for short, 'YWSU') with headquarters at Chandigarh. A meeting for the review of the flood preparedness chaired by the Chief Minister Haryana was held on 21.5.2005, wherein it came to the notice that UP Irrigation department has started construction of embankment, namely, Jewar Tappal Marginal Bund on the left bank of river Yamuna in UP. The embankment is down stream of Okhla headworks and is opposite land of

District Faridabad of State of Haryana. This construction of embankment had remained unnoticed by the officers/ officials of irrigation department of Faridabad Circle. Therefore, when this background was brought to the notice of the Chief Minister, Haryana; it was observed that it was a case of negligence on the part of the officers/ officials of the Yamuna Water Service Circle, Faridabad, who failed to take notice of start of work of this magnitude by the UP Irrigation Department. It was also noticed that as much as 14 kms of bund has been completed which must have taken atleast two years, therefore, Chief Minister directed the Deputy Commissioner to check such instances in their respective neighborhood and if they feel that such construction is danger to the Haryana side, they should take immediate priority measures. ESI Irrigation was also directed to look into the matter.

It comes out that Engineer-in-Chief Shri J.S.Ahlawat addressed a communication to Shri R.K.Garg, Chief Engineer, YWSU Haryana Irrigation Department, Panchkula (petitioner), asking him to call the explanation of the Superintending Engineer, Executive Engineer and SDO's concerned immediately and send the report along with the explanation and comments of his office. Accordingly, the petitioner addressed a communication dated 27.5.2005 (Annexure P3) to Shri J.P.Singhal, Superintending Engineer, YWS Circle, Faridabad, asking him to call for the explanation of the concerned Executive Officer and Sub Divisional Officer and also report the date of start of work and the incumbencies of the officers/ officials. A copy of the same was also forwarded to the Engineer-in-Chief HID Panchkula. Executive Engineer, Palwal Water Services Division, Palwal vide communication dated 1.6.2005 (Annexure P4) addressed to Shri J.P. Singhal, Superintending Engineer, Yamuna Water Services Circle, Faridabad while reporting about the said matter stated that work on Jawar Tappal Marginal Bund commenced during 5/2003 at

site on river Yamuna, left side by UP Irrigation authorities after completing necessary formalities except having concurrence/ consent of Haryana Irrigation Department and also without clearance from Centre Water Commission (CWC). He also gave list of the Executive Engineers, Sub Divisional Officers and Junior Engineer who worked there from 2001 to 2004, when the work is stated to have started. He reported that Shri S.C.Chawla was the Executive Engineer, whereas the name of the five SDOs and one Junior Engineer was also given. Shri J.P.Singhal, Superintending Engineer, on the basis of the said report of the Executive Engineer, addressed a communication dated 3.6.2005/ 7.6.2005 (Annexure P5) to the Chief Engineer, YWS i.e. the petitioner, reiterating the facts stated in the said letter. On the basis of the said communication, the petitioner submitted the report dated 9.6.2005 (Annexure P6), stating that the work on the said scheme was started by UP Irrigation Department sometime in May 2003 and by the time it came to the notice of the Haryana Government they had nearly completed first 12 kms. He also reported that the Chief Minister Haryana on 21.5.2005 had noticed that it is a case of negligence on the part of the officers/ officials of YWS Circle, Faridabad, who failed to take notice of the start of work of this magnitude by the UP Irrigation Department. Therefore, he recommended no action against Shri J.P.Singhal, Superintending Engineer, who was the supervisory officer, whereas, he recommended action against the XENs and SDOs for minor penalty and against JEs for major penalty.

In the meanwhile, the petitioner was appointed member in Delhi Jal Board on 31.08.2006 on deputation. He was to retire from the service of Haryana Government on 30.11.2007. From Delhi Jal Board, petitioner retired on 30.11.2011 after getting two extensions. Later on, the petitioner was charge sheeted under Rule 7 of Haryana Civil Services (Punishment and Appeals), Rules, 1987, wherein it was alleged that he made a wrong report with mala fide

intention and to mislead the government and thereby causing strained relationship between the government of Haryana and UP Government on a sensitive issue of inter State river matters reporting that Shri S.C. Chawla was the Executive Engineer at the time when the work had started by the UP Government. The second charge was that he made derogatory remarks against the Government accusing the Government of non-application of mind and lacking bona fide. After the inquiry, he was held guilty of both the charges vide inquiry report dated 21.11.2008 (Annexure P16). Thereafter, punishment order dated 13.1.2010 (Annexure P24) was passed by the Financial Commissioner & Principal Secretary to Government Haryana Irrigation Department, whereby penalty of cut of 50% in pension was imposed upon him. Aggrieved by the said order, the petitioner filed CWP No.6456 of 2010 before this Court, which was decided by this Court on 11.10.2013, whereby the said order of 50% cut in pension was held to be non-speaking order. The same was set aside and the case was remanded to the respondent no.1 to reconsider the issue by taking into account all the material and relevant facts and also to deal with the submissions and grounds supplied by the petitioner in the detailed reply dated 21.8.2009. Petitioner was also to be afforded an opportunity of personal hearing.

Consequently, the matter was re-considered. Personal hearing was given to the petitioner and impugned order 3.9.2014 (Annexure P25) has been passed, whereby in place of 50% cut in pension, 10% cut in pension has been imposed. Petitioner has challenged the said order on the ground that the same is unreasonable and not based on the evidence.

The State in the reply has not disputed the facts which resulted in initiation of the inquiry. It was stated that the petitioner had made a wrong report as a result of which Shri S.C.Chawla, Executive Engineer was charge sheeted. In the reply, Shri S.C.Chawla has stated that as per record of Drainage

Division No.1 Meerut, the work was started after 4.10.2004, the date on which, the MOU was signed. Shri S.C.Chawla was transferred on 21.1.2004 much prior to 4.10.2004, which is the date of signing the date of MOU. In this way, the wrong report was submitted by the petitioner. It was further stated that against the show cause notice dated 28.3.2007 and the order recalling the petitioner from Delhi Jal Board, the petitioner had approached the Delhi High Court by way of CWP NO.4559 of 2007, in which, the respondent department was restrained from taking penal action against the petitioner till next date of hearing. However, ultimately, the said writ petition was disposed of, stating that Delhi High Court has got no territorial jurisdiction. It is stated that the petitioner committed gross indiscipline, insubordination and grave misconduct, for which he was rightly charge sheeted and punished.

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

The facts and the inquiry report makes it clear that there are two charges against the petitioner. First is regarding the wrong report that Shri S.C.Chawla was working in the year 2004 when the work on Jewar Tappal Marginal Bund was started by UP on the left bank of river Yamuna. The charges are that the petitioner submitted the wrong report, whereas as per reply of Shri S.C.Chawla, the work was started on 4.10.2004 when MOU was signed and before that Shri S.C.Chawla was already transferred on 21.1.2004. Second charge is that the petitioner claimed in reply to the show cause notice that the 'action of the government is non-application of mind and lacking bona fide'. Reply of Shri S.C.Chawla was based on letter dated 6.12.2006 (Annexure P7), wherein Executive Engineer, Drainage Division-1, Meerut (wrongly mentioned as Superintending Engineer) has addressed a communication to the Executive Engineer, Palwal Water Services Division (wrongly mentioned as

Superintending Engineer) that the work was started after MOU was signed on 4.10.2004.

Now, the question would arise as to whether the petitioner made a wrong report?

Communications on file shows that the report made by the petitioner was not wrong. He based his report on the basis of the report received from his subordinate i.e. Superintending Engineer Shri J.P.Singhal, whose report was further based on the report of his subordinate Executive Engineer Palwal Water Works Division, Palwal. It was reported that Shri S.C.Chawla remained posted from 13.2.2001 to 23.1.2004 and the work was started during his tenure in May 2003. The latter dated 9.5.2005 (Annexure P8) addressed by the Executive Engineer, Drainage Division -1, Meerut to the Superintending Engineer YWS Circle Faridabad makes it clear that the Executive Engineer Meerut had informed the Superintending Engineer YWS Circle Faridabad in response to his letter dated 29.4.2005 that the project estimate of Jewar Tappal Marginal Bund was submitted for sanction clearance in the year 1999-2000, which was subsequently sanctioned by the following High Power Committees in 2001. It was also reported that this project was under construction since 2002-2003. It was further stated that it is not possible to stop the construction activities of Jewar Tappal Marginal Bund at this stage. It appears that the Government took the reply of Shri S.C.Chawla Executive Engineer as a gospel truth and did not try to verify as to whether any MOU was actually signed or not and whether the facts mentioned in the latter Annexure P7 are correct or not and whether the facts mentioned in the letter Annexure P8 are incorrect? The inquiry report reveals that the said MOU mentioned in the letter Annexure P7 was never found in the record of the government. As a controlling officer, the petitioner sought the report from his subordinate, who further got a report from

his own subordinate and on the basis of the reports of the subordinates, he submitted the report to the government. The petitioner at that time was stationed at Chandigarh. Therefore, his act of submitting the report on the basis of the report of the subordinate cannot be called mala fide or making wrong report.

Even during the inquiry, MOU was not found and therefore, it cannot be said that Shri S.C.Chawla correctly stated in the reply that some MOU was signed on 4.10.2004, when he was already transferred. In the meeting chaired by Chief Minister on 21.5.2005, it was noticed that 14 Kms bund is already constructed which is not possible if work starts after 4.10.2004. Therefore, charge no.1 reported to be proved against the petitioner, is against the record.

So far charge no.2 is concerned, in reply to the second charge, the present petitioner had stated that the charge sheet is because of 'non-application of mind and lacking bona fide'. According to the inquiry officer, this is derogatory language. I differ with the view taken by the inquiry officer. Merely stating that charge sheet is due to non-application of mind is not a derogatory language particularly when some important letters were not considered to see whether whatsoever is stated by Shri S.C.Chawla in the reply is correct or not. Lacking of bona fide is based on the non-consideration of the said letters. Therefore, merely stating that the charge sheet is on non-application of mind and lacking bona fide, cannot be called derogatory language against the government. Consequently, the second charge levelled against the petitioner will also collapse.

Further, the minutes of the meeting in which, the punishment order was passed, is placed on file as Annexure A1, which shows that department had reported that no financial loss has been caused to the exchequer nor it tantamount to grave misconduct which may invite infliction of punishment under Rule 2.2(b). Therefore, it was recommended that charge sheet against him

may be dropped. However, the Chief Minister disagreed with the report and expressed the view that punishment of 50% cut in pension should be reduced to 10%. I am of the view that the view taken by the department was correct. It appears that since the matter of construction of embankment came to the notice of the Chief Minister and he expressed displeasure, therefore, the present incumbent was inclined to award one or the other punishment to the petitioner. However, after considering the documents on file and the discussion above clearly shows that the charges levelled against the petitioner were not proved.

Consequently, the present writ petition is allowed. Charge sheet dated 29.10.2007 (Annexure P11), enquiry report dated 21.11.2008 (Annexure P16) and the impugned punishment order endorsed on 3.9.2014 (Annexure P25) imposing 10% cut in the pension are hereby quashed.

09.01.2017*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes