

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

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**CWP-7950-2015 (O&M)
Date of decision: 27.03.2017**

Sultan Singh

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Naveen Daryal, Advocate for the petitioner.

Mr. Suvir Sehgal, Advocate with
Mr. Jeevan Gautam, Advocate for the respondents.

P.B. Bajanthri, J. (Oral)

In the present writ petition, petitioner has questioned the validity of the order dated 05.08.2011 and 05.12.2013 vide Annexures P3 and P5 respectively. The petitioner while working as S.A., he was charge-sheeted for certain misdeeds alleged to have committed on 29.04.2010. The petitioner submitted his reply to the charge-memo. The disciplinary authority after pursuing the reply statement to the charge memo proceeded

to impose the penalty of with holding of 2 annual increments without cumulative effect. Petitioner preferred an appeal before the appellate authority. The appellate authority confirmed the order of disciplinary authority. Thus, the present writ petition.

2. Learned counsel for the petitioner submitted that the petitioner has been charge-sheeted for major penalty under Rule 7 of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations 1990 (for short 'Regulation'). It was submitted that once the respondents/disciplinary authority exercised the power of Regulation No.7 for imposing major penalty, the same cannot be converted. In this regard he has cited full court decision of this court reported in 2002(2)SCT 915 titled as ***Dr. K.G.Tiwari versus State of Haryana***. Further it was contended that as per sub-Regulation 8 of Regulation 7, disciplinary authority is required to form an opinion before proceeding to dispense the holding of inquiry. Thus, there is non-compliance of Sub-Regulation 8 of Regulation 7.

3. Per contra, learned counsel for the respondents submitted that decision cited by the petitioner i.e. ***Dr. K.G.Tiwari versus State of Haryana*** is not applicable to the present case having regard to Sub-Regulation 8 of Regulation 7 which specifically empowers the disciplinary authority to convert the major penalty to that of minor penalty after perusal of reply to the charge memo. Thus, the disciplinary authority after receipt of petitioner's reply to the charge memo has come to the conclusion that the petitioner has not submitted satisfactory explanation to the charge memo and proceeded to pass an order of punishment. Therefore, there is no

infirmity in the order of punishment as well as appellate authority's order.

4. Heard learned counsel for the parties.

5. Short question for consideration in the present writ petition is whether the disciplinary authority can convert the initiation of inquiry from major penalty to that of minor penalty or not. Undisputedly, sub-Regulation 8 of Regulation 7 provides for conversion. Provision reads as under:-

“8. Where an employee has been charge-sheeted under this regulation and the Competent Authority, on receipt of his reply to the charge sheet, is of the opinion that no major punishment as laid down in Regulation-4(vi to x) is called for, it may be dispense with the holding of enquiry and inflict straight away, any of the minor penalties as laid down in Clause (i) to (v) of the ibid Regulation by a speaking order.”

Since above provision has been invoked by disciplinary authority. Thus, there is no infirmity in the conversion of initiation of inquiry. Purely technical ground has been urged by the counsel for the petitioner that disciplinary authority is required to form an opinion before conversion of initiation of major penalty to that of minor penalty that has not been formed by the disciplinary authority as is evident from the order of penalty. Therefore, on this score the order of penalty as well as appellate authority's order are hereby set aside. Matter is remanded to the disciplinary authority to re-examine the petitioner's reply to the charge memo and comply Sub-Regulation 8 of Regulation 7 in forming an opinion with reference to petitioner's reply to charge-memo and proceeded to pass order.

The above exercise shall be completed by the disciplinary authority within a period f 3 months from today.

27.03.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No