

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

CWP-18646-1995

Decided on: 16.02.2018

Karam Singh

.... Petitioner

Versus

The Chairman HSEB and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.S. Rana, Advocate
for the petitioner.

Ms. Anupama Sharma, Advocate,
for the respondent-HSEB/DHBVN.

RAJIV NARAIN RAINA, J (ORAL)

1. The petitioner was served charge sheet on 01.01.1993 accompanied by a summary of charges, statement of allegations and a list of witnesses and documents in support of the charges. The attribution was that while working as an Assistant Engineer he had allowed installation of 63 KVA T/F at the premises of one Shri Gurdasa Singh without any formal allocation from the Divisional Office and proper intimation of damage to the higher authorities as per details in the summary of allegations which shows gross negligence of duties on his part.

2. There are three other charges of related kind, but in addition, imputing undue favours to consumers without formal allocation, the details of which charges need not be gone into since the case can be decided on the material admitted facts and on a short point. The threat proposal in the Memo/charge sheet was that the Annual Confidential Reports of the petitioner for the relevant period would be downgraded in case he is found responsible of the alleged derelictions in performance of duties. The

petitioner filed a detailed defence statement pleading innocence by bringing out the entire facts of the case to show that he had not misconducted himself.

3. Though objections were filed but no order was passed as to why the explanation given by the petitioner was not found satisfactory and instead an order was passed on 27.08.1993 (P-4) directly imposing punishment of stoppage of two increments without future effect and for downgrading the ACR of the relevant year. This was done without notice or hearing and without holding an enquiry.

4. It happened that in the meanwhile, the services of the petitioner had been placed under suspension from 18.09.1992 to 07.06.1993. He was reinstated in service on 29.06.1993 w.e.f. 04.06.1993- (P-3). An order dated 30.03.1994 (P-5) was passed regularizing the period of suspension as extraordinary leave (EOL) ostensibly in terms of Rule 7.3(5) of the CSR Vol. I Part I. At the same time, it was ordered that subsistence allowance already paid would not be recovered. Inversely, full salary for the suspension period was denied.

5. Against the order dated 30.03.1994 (P-5), an appeal was filed on 04.11.1994 (P-6). No decision was taken thereon which brought the petitioner to this Court in a writ petition in which directions were issued for deciding the said appeal within fixed time. The appeal was decided vide order dated 29.08.1995 (P-7) by rejection. In these circumstances, the petitioner has approached this Court. The present petition was admitted to regular hearing on 20.12.1995.

6. The question for consideration is as to whether the charge sheet once having been issued and reply filed and received, could the respondent-

Board discontinue with the enquiry and impose minor penalties in violation of the principles of natural justice. In the charge sheet, the proposal was downgrading the ACR only in case petitioner was found responsible for the alleged misconduct. If the charge sheet contains such a proposal, then responsibility could have only been fastened at a regular enquiry upon evidence on each of the charges to establish guilt or innocence. But that procedure was not adopted. The Secretary of the Board fell in grave error in passing the impugned order dated 27.08.1993 straightaway as though guilt was proven, calling for imposition of the penalty inflicted.

7. Though the punishment imposed is minor but this does not entitle the punishing authority to act whimsically and as per his personal wishes. There is no discussion in the order as to why the penalty was imposed without first establishing guilt of the petitioner. One of the charges were giving undue favour and acting mala fide which touched on corruption. Therefore, the authority was enjoined in law to offer him a reasonable opportunity in a full-fledged enquiry to explain his position and prove his innocence. The punishment of stoppage of increments is apparently beyond the charge sheet. The downgrading of the ACR is based on only *ipse dixit* of the punishing authority without any material to support such a conclusion in the absence of proven guilt. Mr. P.S. Rana may not be incorrect in his argument that two punishments have been imposed in the same order, which is highly impermissible.

8. Coupled with these two punishments, virtually even a third punishment has been imposed blindly by depriving the petitioner of the arrears of full salary for the period of suspension. The subsequent order dated 30.03.1994 also does not stand test of reason, the decision being

arbitrary and not based on a proper understanding of Rule 7.3(5) of CSR Vol. I Part I.

9. It is well settled that any punishment imposed beyond charge sheet is vitiated in law. I have, therefore, no doubt in my mind that the impugned orders dated 27.08.1993 and 30.03.1994 and the order in appeal cannot be legally sustained as they suffer from fundamental errors apparent on the face of record.

10. Accordingly and as a result of the above discussion, this petition is allowed. The impugned orders dated 27.08.1993 (P-4) and 30.03.1994 (P-5) and the appellate order dated 29.08.1995 (P-7) are hereby quashed with all consequential benefits.

(RAJIV NARAIN RAINA)
JUDGE

16.02.2018
Dinesh

Whether speaking/reasoned : *Yes*
Whether Reportable : *No*