IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 25478 of 2013 (O&M)
Date of Decision: 26.04.2018

Gurmail Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Kapil Kakkar, Advocate
for the petitioner.

Mrs. Lavanya Paul, Assistant Advocate General, Punjab
for the respondents/State.

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JASWANT SINGH, J.

1. The present petition is filed under Article 226 and 227 of the Constitution of India seeking quashing of charge-sheet dated 18.07.2002 **(Annexure P-3),** inquiry report dated 29.06.2007 **(Annexure P-5),** order dated 06.05.2010 **(Annexure P-6)** and order dated 05.07.2013 **(Annexure P-9),** whereby punishment of 10% perpetual cut in the pension of petitioner has been imposed.

2. Facts emerging from petition and written statement are that during 08.01.1986 to 29.05.1989, the petitioner remained posted as Sub Divisional Officer at Jhunir, Sub Division. There was flood throughout the State, during 1988 which caused heavy damage to Canals and other irrigation system of the State. For the repair/restoration of Canal work in Jhunir Sub Division, 139 repair/restoration works were identified and list of these works alongwith estimate of expenditure was sent by petitioner to the Competent Authority in December' 1988. The Government India under the

heading 'natural calamity' released funds for repair/restoration of irrigation system which were to be utilized before March' 1989 to avoid being lapsed. The petitioner got done work of repair and restoration of damaged Canal system without following the procedure as set out in Rule 2.79 and 2.89 of PWD Code.

It is not disputed that Sub-Rule 2 of Rule 2.89 of the Code deals with urgent or emergent situation whereby relaxation in compliance of normal procedure has been extended, and the Chief Technical Examiner and Vigilance Officer vide Letter dated 16.03.1981 **(Annexure P-1)** had instructed all the Executive Engineers to send list of all works to Superintending Engineer every month where work has been taken up without sanction of the project estimates/scheme/detailed estimates. In case the Superintending Engineer does not agree he will order to stop the work and in case he does not raise any valid objection, it will mean that he agrees to the start of work at site, without prior going to the necessary formalities due to peculiar circumstances.

3. The petitioner under the supervision of Executive Engineer, who is Competent Authority to invite tenders as per PWD Code, got the work done of repair of 130 works as identified. The tenders were invited on 22.01.1989 and opened on 30.01.1989 under emergency clause and further submitted to Superintending Engineer before the commencement of work. The Office of Superintending Engineer cleared 128 works and remaining 11 works were sent back to the Office of Executive Engineer with certain objections on 20.07.1990 and 08.11.1990 whereas the petitioner had already been relieved on 30.05.1989.

4. The petitioner was issued a Show Cause Notice dated

10.01.2000 by which it was alleged that the petitioner did not get sanctioned tender rate for 11 works. The petitioner filed reply to said Show Cause Notice. The petitioner was issued charge-sheet dated 18.07.2002 whereby following charges were levelled:-

> *(i) Serious violation of Financial & Codal Rules.*
>
> *(ii). Responsible for Audit para due to violation of Financial Rules.*
>
> *(iii) Negligence in payment on Government duty by violating the Financial Rules.*

5. The aforesaid charge-sheet was followed by appointment of Sh. B.S. Bhullar as Inquiry Officer who vide report dated 21.07.2004 concluded as under:-

> *i) There was heavy rain during 1988;*
>
> *ii) The estimates of work had been approved by higher Officers and 11 tenders of work did not pass;*
>
> *iii) Executive Engineer who was in charge of work and financial transaction invited tenders for work;*
>
> *iv) Monthly accounts were sent to Division Office who could stop the work but it did not happen;*
>
> *v) No loss was caused to Government and in view of instructions dated 16.03.1981, there was no negligence/infringement of rules on the part of Sub Divisional Officer/Petitioner;*
>
> *vi) Negligence has been committed by the Executive Engineer and Divisional Accountant who should have sorted out and removed the financial irregularities before submitting monthly accounts to Accountant General, Punjab;*
>
> *vii) The timely action was required against the XEN and Divisional Accountant;*

6. The respondent-State Government finding itself dissatisfied, asked same Inquiry Officer namely Mr. B.S. Bhullar to re-inquire the matter, who vide its report dated 29.06.2007 upheld the charges and held the

petitioner responsible for violation of PWD Code Rule 2.79 (2). It is apt to notice here that facts namely flood during 1988; damage to Canals; lapsing of funds was not in favour of Government; tenders were invited by then Executive Engineer etc. were not disputed in the said report.

7. On the basis of Second Inquiry Report, the respondent after seeking opinion of Punjab Public Service Commission, vide Order dated 06.05.2010 **(Annexure P-6)** imposed punishment of 10% perpetual cut in the pension of petitioner who had retired on 30.09.2004.

8. Counsel for the petitioner has contended that Second Inquiry Report is bad in the eye of law because there was no occasion to seek Second Inquiry Report from the same Officer and it is based upon statement of Divisional Accountant who was held guilty in the First Report. The petitioner was not granted opportunity of cross-examination and statement of Sh. Charan Dass, Divisional Accountant was recorded at his back. It is further contended that imposition of any penalty after such a long period and especially issue of charge-sheet after the expiry of 13 years from the date of incident is bad in the eye of law. The petitioner acted in good faith and while dealing with emergent situation worked as bonafide and Vigilant Officer of the State and he is protected by letter dated 16.03.1981 of Chief Technical Examiner, Rule 2.89 (2) and 2.90 of PWD Code.

9. The counsel for the State contended that the petitioner has violated PWD Rules and Code. The work done without following prescribed procedure which amounts to violation of Financial Rules. The petitioner made payment without getting the bills pre-audited from Division Office which amounts to financial irregularity, therefore, petitioner was rightly subjected to penalty under Rule 8 of Punjab Civil Services (Punishment and

Appeal) Rules, 1970.

10. From the record and arguments of both the counsels the conceded position as emerged is that heavy rainfall as well as flood came in 1988; the estimate of the work was approved by Higher Officers and out of 139 works tender of 11 works was not approved at a later stage; the tenders were invited by Executive Engineer who was incharge of work and financial transactions; the monthly accounts were sent by Sub Division to Division and Superintending Engineer did not ask for withholding of work in terms of letter of Chief Engineer; first inquiry report dated 21.07.2004 exonerated petitioner from all the allegations and same Officer even though recorded same findings but held the petitioner guilty of violation of Financial Rules; Sh. Chaman Dass, Divisional Accounts Officer was held guilty in the First Inquiry Report and Second Inquiry Report is based upon his statement dated 28.06.2007 which was recorded at the back of petitioner and no opportunity of cross-examination was granted.

11. After having scrutinized record of the case, aforesaid admitted facts and hearing arguments of both the counsels, this Court finds that present petition deserves to be allowed on account of following reasons:-

> **i)** The petitioner was not responsible for inviting tenders and it was Executive Engineer who was incharge of entire work and financial transactions. As per instructions dated 16.03.1981 **(P-1)** which are binding in nature relax strict compliance of Financial Rules, in case of urgency or emergent work. Due to flood, there was urgent situation and it was need of the hour to get the work done without strict compliance of Financial Rules. Therefore,

non strict compliance of Financial Rules cannot warrant punishment.

ii) The petitioner got done 139 works and objection was raised with regard to 11 works involving meagre amount of ₹ 5,45,765/- which further did not cause any loss to exchequer.

iii) Tenders were invited, rates were approved and payment was released in view of emergent situation coupled with lapsing of financial assistance by 31.03.1988, causing loss to State Government.

iv) The charge-sheet was issued after the expiry of 13 years which may be justified on the ground that record was manipulated or destroyed or was not available during the intervening period, however, no justification is put forth by the State for delay of such a long period.

v) The petitioner was required to send monthly report and Superintending Engineer was quite competent to stop the work which did not happen means higher authorities let the work done and raised objection much after the completion of work.

vi) There is no allegation of allotment of tenders at higher rate than scheduled rates or prevailing rates. There is further no allegation of malafide intention resulting into favouritism or loss to State Government.

vii) The Punjab Public Service Commission without appreciating facts and circumstances of the present case recommended for reduction of 10% of pension forever, without examining the aspect of the urgent nature of the work and the impact of the contents of the letter/instructions dated 16.03.1981 **(P-1)**. There cannot be same punishment across the Board because persons in unequal situation cannot be subjected to equal punishment.

viii) The Appellate Authority has passed impugned order without assigning reason whereas all quasi judicial authorities are bound to deal with all the arguments and pass speaking order.

12. In view of above findings, present Court finds that present petition deserves to be allowed and accordingly impugned orders dated 06.05.2010 **(Annexure P-6),** 05.07.2013 **(Annexure P-9)** and charge-sheet dated 18.07.2002 **(Annexure P-3)** are quashed. The respondents are directed to pay pension which has been deducted on account of impugned orders, within a period of six months from the date of receipt of certified copy of this order. The respondent would be liable to pay interest @ 12% p.a. if payment is not made within six months from the date of receipt of certified copy of this order and State would be entitled to recover liability of interest from the Competent/Sanctioning Authority.

April 26th, 2018 **(JASWANT SINGH)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*