

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

RSA-265-2015 (O&M)

Date of Decision: 24.01.2018

Dakshin Haryana Bijli Vitran Nigam Ltd.

... Appellant

Vs.

Sat Narain

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. P.S. Poonia, Advocate for the appellant.

Mr. Vikas Chatrath, Advocate for the respondent.

P.B. BAJANTHRI J. (Oral)

In the instant appeal, appellants have questioned the validity of trial court as well as appellate court's orders dated 23.8.2012 and 4.9.2014.

Respondent was subjected to disciplinary proceedings for imposing major penalty. After receipt of respondent's explanation, disciplinary authority is of the view that it is a case for imposing minor penalty. Consequently, it proceeded to impose minor penalty. Hence, penalty of one annual increment without future effect on the respondent was imposed. Feeling aggrieved by the penalty order, he preferred an appeal. Appellate Court rejected respondent's appeal. Hence, he preferred a suit before the trial court. Trial Court decreed the suit. Consequently, appellant filed appeal before the appellate court. Appellate court affirmed the decree passed by the trial court. Hence the present appeal.

Learned counsel for the appellant submitted that Rule 7 of Haryana State Electricity Board Employees (Punishment and Appeal) Regulation 1990 provides for imposition of minor penalty without holding inquiry and after due consideration of the employee's explanation. Therefore, there is no infirmity in the order of punishment as well as appellant authority's order. Both the courts below have erred in not

considering the relevant rule. Hence, orders of the courts below are liable to be set aside.

Per contra, learned counsel for the respondents while resisting the appellant's contention submitted that initially inquiry was initiated for imposing major penalty. However, subsequently it has been modified for imposing of minor penalty after receipt of respondent's explanation on the charge memo. Further no inquiry has been held so also no notice has been issued before imposing minor penalty. Therefore, rightly courts below have held that impugned action relating to imposition of penalty as well as orders passed by the authorities are liable to be set aside. Appellants have not made out a case so as to interfere with the impugned orders.

Heard learned counsel for the parties.

Order of penalty imposed on the appellant on 16.11.2004 reads as under:

“The reply submitted by Sh. Sat Narain ALM in response to the charge-sheet No.Ch 45/PF 1347 dated 27.08.02 have been considered alongwith comments offered by SDO 'OP” S/Divn Kanina vide his office memo No.769 dated 9.9.2002 and investigation of complaint made by Sh. Lala Ram S/O Sh. Ram Saroop of village Bagot and investigation considered by SE/Op circle Narnaul vide his office memo N.79/R 7 dated 26.4.02 and found not satisfactory. The personal hearing was given to the official on 12.10.04 and again on 19.10.04 and 26.10.04 along with Sh. Jagdish LM. The official alongwith Sh. Jagdish LM appearing before the undersigned on 26.10.04 and Sh. Sat Narain ALM has been found responsible and his reply is not convincing, so it has been decided to stop his one annual increment without future effect and his suspension period is to be regularized as leave of the kind due.

Accordingly one annual increment without future effect of Sh.

Sat Narain ALM is hereby stopped. The suspension period of the official is hereby regularized as leave of the kind due.”

The appellate authority's decision dated 5.4.2005 reads as under:

“The appeal preferred by Shri Sat Narain ALM against XEN/OP. Division, DHBVN, Mohindergarh O/o No.346 dated 16.11.2004 have been considered by the competent authority in the light of comments offered by XEN/OP. Division, DHBVN, Mohindergarh memo no.ch.17/PF-1347 dated 11.02.2005 and in view of this office memo No.79/R-7 dated 26.4.2002 is hereby rejected.”

Perusal of the order of the disciplinary authority as well as appellate authority, it is evident that it is not a speaking order. When the disciplinary authority considering respondent's explanation on the charge memo and proceeded to impose minor penalty. It was bounden duty of the disciplinary authority to consider each of the contention of the explanation submitted by the delinquent official. In the present case, disciplinary authority has referred to comments submitted by SDO and further it is merely stated that explanation of the respondent is not satisfactory. Further it is also not evident from the record that respondent has been provided copy of the comments submitted by SDO for the purpose of imposing minor penalty as desired by the disciplinary authority. Even perusal of the appellate authority's decision, it is not a considered order. Therefore, order of the trial court as well as appellate court are modified to the extent that matter is remanded to the disciplinary authority for fresh consideration. Disciplinary authority is hereby directed to furnish copy of the comments offered by the SDO on 9.9.2002 and further if any document that is going to be relied upon by the disciplinary authority. After receipt of the documents

by the respondent, respondent is directed to file additional explanation, if any. After receipt of the petitioner's further explanation, disciplinary authority is hereby directed to pass fresh order in accordance with Rules while considering each of the contention raised by the respondent.

It is also made clear that suspension period is treated to be regulated after passing order by the disciplinary authority in terms of regulation within a reasonable period of two months from passing of disciplinary authority's order.

Petition stands disposed of accordingly.

24.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**