

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18264 of 2018
Date of Decision : 19.03.2019

Hukam Singh

...Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. John Kumar, Advocate,
Mr. Rose Gupta, Advocate and
Mr. Ashish Gupta, Advocate for the petitioner.

Mr. H.N. Mehtani, Advocate for the respondents.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the challenge is to the order dated 12.5.2016 (Annexure P-6) passed by respondent No. 2, wherein, recovery of ₹3,01,440/- alongwith stoppage of two annual increments without cumulative effect has been imposed upon the petitioner.

The main ground to challenge the said order is that the said punishment has been inflicted upon the petitioner without following the due procedure of law as envisaged for imposing punishment under Rule 9 of the Dakshin Haryana Bijli Vitran Nigam Limited Employees (Punishment and Appeal) Regulation 2006 (hereinafter referred to as '2006 Regulation') and, therefore, the said punishment is contrary to the law laid down by a Full

Bench of this Court in ***Dr. K.G. Tiwari Vs. State of Haryana, 2002(2)***

S.C.T. 915.

The facts as mentioned in the writ petition are that the petitioner was issued a charge-sheet while he was working as a Commercial Assistant with the respondent-Corporation on 06.12.2010. The said charge-sheet was issued to the petitioner under Regulation 7 of '2006 Regulation'. Under Regulation 7, an employee can be charge-sheeted for imposing the major punishment.

After the receipt of the said charge-sheet, petitioner filed reply to the said charge-sheet on 29.10.2011. After considering the reply, without holding any enquiry into the allegations alleged against the petitioner in the charge-sheet, straightway, an order was passed on 10.06.2015, whereby recovery of ₹3,01,440/- was imposed and further two increments of the petitioner without cumulative effect were stopped. Against the said punishment, the petitioner filed an appeal, which was dismissed by the respondents on 12.05.2016.

The grievance which has been raised by the petitioner in the present writ petition is that once a charge-sheet was issued to the petitioner under Regulation 7 of 2006 Regulation, punishment could have only imposed upon the petitioner after following the due procedure as envisaged under Regulation 7 of '2006 Regulation' for imposing the punishment though it could be a minor punishment.

Learned counsel for the petitioner states that as no procedure has been followed by the respondents as envisaged under 2006 Regulation for imposing the punishment as envisaged under Regulation 7, punishment order dated 10.06.2015 (Annexure P-4) and the order rejecting the appeal of

the petitioner dated 12.05.2016 (Annexure P-6) are liable to be set-aside.

Upon notice of motion, the respondents have filed the reply to the writ petition filed by the petitioner. In the reply, the respondents have submitted that as minor punishment has been imposed upon the petitioner, the procedure for inflicting minor punishment was observed by the respondent-Corporation, hence no grievance can be made by the petitioner in respect of the punishment imposed upon him.

Learned counsel for the respondents states that not only the reply was filed by the petitioner but even due personal hearing was given to the petitioner to present his case and therefore, all the requirement of imposing a minor punishment were observed and therefore, no grievance can be made by the petitioner as no prejudice was caused to the petitioner while imposing the said punishment. The relevant paragraph of the reply submitted by the respondents in this regard is as under:-

“10 & 11. That in paras no. 10 & 11 of the writ petition, the petitioner has reproduced some of the provisions of the Dakshin Haryana Bijli Vitran Nigam Limited Employees (Punishment and Appeal) Regulations, 2006 (Annexure P-7) and the same do not need any reply.

That main contention of the petitioner in the present writ petition is that when a show cause notice was given to him for awarding major punishment even the minor punishment under Rule 8 of 2006 Rules cannot be awarded without holding a regular inquiry as required by Rule 7 of the 2006 Regulations. In support of his contention the petitioner has relied upon the Full Bench Judgment of this Hon'ble Court in Civil Writ Petition No. 3616 of 1999 in Dr. K.G. Tiwari Vs. State of Haryana reported in RSJ 2002 Vol. (3) page 296. It is

most humbly and respectfully submitted that in view of the ratio of the judgment of the Hon'ble Supreme Court of India in Shadi Lal Gupta Vs. State of Punjab, 1973(1) Service Law Reporter 913, the impugned action of the respondents in awarding minor punishment even when after giving a charge sheet to the petitioner for awarding major punishment, without holding an enquiry as provided in rule 7 of the Service Regulations (Annexure P-7), cannot said to be unjustified. The aforesaid matter Shadi Lal (supra) was under the Punjab Civil Services (Punishment and Appeal) Rules, 1952. In that case the charge sheet was given to the petitioner therein was for imposing a major punishment and he was awarded minor punishment without holding enquiry against him. The main contention of the petitioner in the aforesaid matter was that he was not given any opportunity to adduce evidence in defence and no prosecution witnesses were examined as required by 1952 Rules as referred to therein & the said Rules has been contravened. The provisions of Rule 8 of 1952 rules subject matter of Shadi Lal (supra) case are somewhat similar to rule 8 of 2006 Regulation (Annexure P-7). The rule 8 of the 1952 Rules is to the following effect:

“Without prejudice to the provisions of rule 7, (1952 Rules) no order under clauses (i), (ii) or (iv) of Rule 4 shall be passed impugning a penalty on a Government servant unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation has been taken into consideration.” The provisions of Rule 8 of 1952 Rules are almost similar to provisions of rule 8 of 2006 Regulations (Annexure P-7).

“It is humbly submitted that besides this no prejudice can be said to have been caused to the petitioner by

not holding a regular enquiry as per the provisions in rule 7 of 2006 Regulation when he was awarded a minor punishment. The procedure laid down in 2006 Regulation being safe guard prescribed to protect the employee from the arbitrary action, the law demands that more stringent safe guards should be complied with only in the case of graver punishment. Since in the present case, only a minor penalty has been imposed on the petitioner, the action of the respondents in imposing minor penalty without holding an enquiry when charge sheet was issued to the petitioner for awarding major punishment cannot said to be unjustified.

It is submitted that rule 7 of 2006 Regulations (Annexure P-7) provides for holding an enquiry in case major punishment is to be awarded to the employee and rule 8 provides for inflicting minor penalty therefore, impugned orders Annexure P-4 & Annexure P-6 are fully sustainable in the eyes of law. In the present case after the charge-sheet dated 06.12.2000 (Annexure P-2) was served upon the petitioner, he submitted a detailed reply (Annexure P-3). Thereafter the Competent Authority after duly considering the submissions made therein inflicted minor punishment. Thereafter, petitioner filed an appeal (Annexure P-5). The Appellate Authority granted him an opportunity of personal hearing and passed the impugned order dated 12.05.2016 (Annexure P-6). It may be submitted that in the grounds of appeal (Annexure P-5) he did not raise any objection for awarding him minor punishment without holding a regular enquiry as envisaged by rule 7 of Service Regulation (Annexure P-7), therefore, the petitioner is estopped from raising the aforesaid plea in the present writ petition. It is, therefore, submitted that there is no merit in the present writ petition and the same deserves to be dismissed.”

To controvert the averments made in the reply, learned counsel

for the petitioner states that no separate show cause notice was issued to the petitioner under Rule 8 before imposing the minor punishment and only charge sheet was issued to the petitioner under Regulation 7 in pursuance to which the impugned order of punishment was passed, which is clear from the impugned order itself as the said order has been passed in pursuance to the charge sheet dated 6.12.2010, which was issued to the petitioner under Regulation 7 of '2006 Regulation'.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of fact that under 2006 Regulation, for imposing the major punishment, a charge sheet is issued under Regulation 7. Under Regulation 8, minor action or minor punishment can be taken against an employee. In the present case, it is an admitted case that the charge sheet which was served upon the petitioner on 6.12.2010 was under Regulation 7 of 2006 Regulation. Under the said Regulation, before any action can be taken against an employee, holding of an enquiry is must. It is only after holding the enquiry into the allegations and giving the enquiry report to the concerned employee, imposition of punishment can be done whereas if an action which is against an employee is to be taken in respect of Regulation 8, only a show cause notice is to be given to an employee and after receiving the said reply, an order inflicting the punishment can be passed. Regulations 7 & 8 which are the procedure under 2006 Regulation for major and minor penalty are as under:-

“PROCEDURE FOR INFLICTING MAJOR PENALTIES:

(1) No order imposing any of the major penalties specified in

Regulation 4(B) of these Regulations shall be made except after an inquiry held, as far as may be, in the manner provided by the Public Servants (In-quarries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

- (2) *Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Nigam Servant, it may itself inquire into or appoint under this regulation or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be an authority to inquire into the truth thereof.*

8. **PROCEDURE FOR INFLICTING MINOR PENALTIES**

- (a) *Without prejudice to the provisions of Regulation-7, an order for inflicting minor penalty shall not be passed on an employee unless he has been given a show cause notice thereof and a reasonable opportunity of making representation there-against. If he requests for access to relevant hearing, be also given. Request for personal hearing, may be rejected by the punishing authority by passing a speaking order.*
- (b) *Provided that this condition shall not apply in a case where an order based on facts, has led to his conviction in a criminal court or an order has been passed superseding him for promotion to a higher post on the grounds of his unfitness for that post on account of the existence of unsatisfactory record.*
- (c) *Period of Limitations for deciding the charge sheet/SCN within 60 days of reply filed by the employee.”*

A bare perusal of the above would show that for inflicting

punishment under Regulation 7, an enquiry is must.

From the facts narrated hereinbefore, it is clear that no enquiry was held against the petitioner as envisaged under 2006 Regulation. Argument of the learned counsel for the petitioner is that straight away after receiving the reply and after giving an opportunity of hearing, an order was passed inflicting the punishment though the punishment was a minor punishment under 2006 Regulation. The scuttling of the procedure by the respondents is under challenge in the present writ petition on the ground that the same is contrary to the law laid down by this court in **Dr. K.G. Tiwari's case (supra)** decided on 20.12.2001, wherein it has been held that once a charge sheet has been issued to an employee for imposing the major punishment, the punishment cannot be imposed upon the employee after scuttling the procedure as envisaged for imposing the major punishment. The relevant paragraph of the said judgment is as under:-

24. We may also examine the contentions put forward by the learned counsel for the petitioner from another angle. In a case where a charge sheet is issued under Rule 7 for the imposition of a major penalty, if the disciplinary authority, after receiving the reply to the charge sheet, finds that there is no material against the charge sheeted employee, and therefore, after holding of a regular enquiry, it will not be in a position to punish the charge sheeted employee, but still, for its own reasons wants to impose some punishment on him, then the disciplinary authority will choose to adopt the methodology of dropping the procedure contemplated under Rule 7, and simply state that the explanation of the charge sheeted employee has been considered, and impose a minor punishment. This is not the object of having two different sets of procedures in the from of Rule 7 and Rule 8. The object of prescribing these rules for

holding disciplinary proceedings is to protect the charge sheeted employee from arbitrary and capricious exercise of power by disciplinary authority and from unjust and illegal punishments. These Rules are intended to safeguard the rights of such charge sheeted employee and to comply with the principles of natural justice.

25. Therefore, in interpreting such beneficial provisions contained in these rules, the courts have to accept the interpretation which will advance the object of the rules rather than to defeat it, and also interpret in a manner which will protect the rights of the charge sheeted employees against arbitrary and capricious exercise of power by the disciplinary authority.

26. Therefore, we respectfully agree with the decisions relied upon by the petitioners, wherein it has been held that once the charge sheet is issued for imposing a major penalty, then the procedure prescribed for the same in the Rule i.e. holding a regular enquiry should be adopted and completed even if it is subsequently decided to impose a minor punishment only.

27. Therefore, we are unable to concur with the view expressed by the Division Benches of this Court in Samay Singh's case and Puran Chand Sharma's case, and also in the Single Bench decision of the Delhi High Court in I.D. Gupta's case, and that of the Calcutta High Court in M.M. Dutta's case (cited supra), in so far as they hold that even in a case where the charge sheet is issued for imposing a major penalty, the disciplinary authority can still, without holding an enquiry under the relevant Rule for imposing a major penalty, impose a minor penalty. To that extent, we hold that they are not good law. We also hold that the decision of the Hon'ble Supreme Court in Shadi Lal's case is not applicable to the facts of the cases our hand.

28. We hold that once the charge sheet is issued under Rule 7 of the Rules 1987 for the imposition of a major penalty, which envisages holding of a regular departmental enquiry, the disciplinary authority cannot by merely examining the reply to the charge sheet, inflict even a minor punishment without holding a complete departmental enquiry.

We answer the reference accordingly, and direct the writ petitions to be placed before the appropriate Bench for further examination and disposal.

Order accordingly.”

From the above reproduced portion of the judgment, it can be safely said that as per the settled principle of law, once a charge sheet has been issued for major punishment, even for imposing the minor punishment, the employer has to undertake the process of imposing the major punishment. In case the same is not done, the said punishment cannot be sustained. In the present case also, the same has been done. Though the charge sheet was served under Regulation 7 for imposing the major punishment but without holding an enquiry, after receiving the reply to the charge sheet and by giving a personal hearing to the petitioner, the punishment was imposed. This punishment is contrary to the law laid down by the full bench of this court in ***Dr. K.G.Tiwari's case (supra)*** and hence cannot be sustained.

Learned counsel for the respondent vehemently argued that no prejudice has been caused to the petitioner for the reason that all the procedure for imposing the minor punishment as envisaged under Regulation 8 has been adopted and therefore, in the absence of any prejudice caused, the punishment order shall not be set aside. The said

argument though seems attractive but cannot be accepted for the reason that once the settled principle of law settled by the Full Bench is that the procedure envisaged for imposing the major punishment cannot be scuttled, for imposing even a minor punishment, the prejudice part cannot be taken as a valid ground to uphold the imposition of minor punishment. The said ground has already been taken into consideration by the Full Bench and rejected. Therefore, the said argument now raised by the respondents in the written statement cannot be a valid ground to uphold the punishment imposed upon the petitioner.

Further, from the impugned order, it is clear that the said punishment has been imposed upon the petitioner in pursuance to the charge sheet dated 6.12.2010, which was issued to the petitioner under Regulation 7. If the respondents wanted to impose the minor punishment, they were well within their right to withdraw the present charge sheet and issue a fresh charge sheet to the petitioner under Regulation 8 and pass an order afterwards. Once this process was not followed and the punishment has been imposed upon the petitioner on the basis of the charge sheet dated 6.12.2010, which was issued under Regulation 7, which is for major punishment, the process envisaged for imposing the major punishment should not have been scuttled by the respondents while awarding the punishment. Therefore, the ground taken by the respondents that punishment has been validly imposed after giving an opportunity of hearing cannot be taken as a valid ground.

No other arguments have been raised by the learned counsel for the respondents in support of the order of the punishment.

In view of the above, the order imposing the punishment upon the petitioner dated 10.6.2015 as well as the order rejecting the appeal of the petitioner dated 12.5.2016 are set aside. However, the respondents are given liberty to pass an appropriate order after following the due procedure of law as envisaged by the Full Bench in ***Dr. K.G.Tiwari's case (supra)***.

The writ petition is allowed in above terms.

March 19, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*