

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

Civil Writ Petition No. 18865 of 2018

DATE OF DECISION : August 01, 2019

Balwant Singh

..... PETITIONER(S)

VERSUS

Dakshin Haryana Bijli Vitran Nigam and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Sarvshri S.K. Nehra and Jaivir Singh, Advocates,
for the petitioner.
Mr. S.S. Narula, Advocate, for the respondents.

...

Amit Rawal, J.

This Court, while noticing the contentions of the learned counsel for the petitioner, issued notice of motion vide order dated 01.08.2018.

Mr. S.S. Narula, Advocate, for the respondents, submits that as per the preliminary objection taken in the written statement, the question qua maintainability of the writ petition, before adverting to submissions on merits, is required to be gone into, in view of availability of an alternative remedy of filing an appeal before the Board of Directors.

addressed arguments on the maintainability of the writ petition only and the judgment was reserved.

In this view of the matter, this Court is called upon to answer the question posed with regard to the maintainability of the writ petition on account of the availability of the alternative remedy. For this purpose, the facts in brief are required to be refereed to.

Facts of the case :

In the year, 1984, petitioner was appointed as Assistant Engineer in the erstwhile Haryana State Electricity Board. Thereafter, in the years 1993 and 2005, was promoted as Assistant Executive Engineer and Executive Engineer, respectively. Upon division of the Haryana State Electricity Board, the petitioner came under the Dakshin Haryana Bijli Vitran Nigam Limited (for short 'the Nigam'). On 10.08.2009 and 03.12.2014, was promoted as Superintending Engineer and Chief Engineer, respectively. In 34 years of service rendered by the petitioner, nothing adverse was recorded in the Annual Confidential Reports. On 23.11.2016, the petitioner was placed under suspension. Vide the same order, Enquiry Officer was also appointed. Not satisfied with the reply submitted by the petitioner, charge-sheet dated 13.01.2017 (Annexure P-3) was served upon him by the Chairman-cum-Managing Director of the Nigam. The petitioner submitted his reply to the charge-sheet which was found to be unsatisfactory and an Enquiry Officer was appointed vide order dated 02.05.2017. The Enquiry Officer submitted the inquiry report dated 29.12.2017 (Annexure P-7), which was communicated to the petitioner along with a show cause notice dated 06.01.2018 (Annexure P-

6). The said show cause notice (Annexure P-6) was challenged by the petitioner by way of CWP-1140-2018 on merits as well as on the ground of jurisdiction. However, vide order dated 19.01.2018 (Annexure P-8), this writ petition was disposed of with liberty to the petitioner to file an appropriate and suitable response to the show cause notice (Annexure P-6). The petitioner, accordingly, filed reply dated 22.01.2018 (Annexure P-9) and a separate reply of even date (Annexure P-10) to the inquiry report. Vide letter dated 01.03.2018 (Annexure P-14), the petitioner was informed that as per Article 46 of the Articles of Association of the Nigam, it is the Managing Director of the company who shall be the Principal Executive Officer of the company and the employees of the company shall exercise their powers and perform their duties under his superintendence and control. The Managing Director, thus, would be competent to inflict minor/major punishments to the officers in the rank of Executive Engineer and above. The aforementioned letter (Annexure P-14) was assailed by the petitioner by way of CWP-6145-2018. This Court, vide order dated 05.04.2018 (Annexure P-17), disposed of the same with liberty to the petitioner to file objections to the letter (Annexure P-14) by raising all the objections and pleas, including the jurisdiction of respondent No.3. According to the petitioner, the issue with regard to his grievance about the competency of respondent No.3 was not addressed by this Court in order (Annexure P-17), therefore, preferred LPA-646-2018 but the same was dismissed vide order dated 23.05.2018 (Annexure P-18). Thereafter, the petitioner submitted reply dated 24.05.2018 (Annexure P-19) in terms of letter (Annexure P-14) on merits as well as with regard to

the jurisdiction of respondent No.3. However, final show cause notice dated 04.06.2018 (Annexure P-20) was served upon the petitioner. Finally, vide order dated 10.07.2018 (Annexure P-23), the petitioner was ordered to be dismissed from service with immediate effect.

Written statement of respondents :

As per preliminary objection, the present writ petition was not maintainable as there is remedy of filing an appeal before the Appellate Authority, in view of Dakshin Haryana Bijli Vitran Nigam Employees (Punishment and Appeal) Regulations, 2006 (for short '2006 Regulations').

The impugned order is supported by relying upon Notification dated 28.05.1991 (Annexure R-1) in terms of which the power to inflict punishment, minor or major, upon an officer of the rank of Chief Engineer and above, is with the Chairman and the appellate authority is Board.

Arguments of Shri Rajiv Atma Ram :

- (i) Learned counsel appearing on behalf of the petitioner submitted that the punishing authority of the petitioner has been defined in Regulation No.21 in Appendix 'D' of the Punjab State Electricity Board Service of the Engineers (Electrical) Recruitment Regulations, 1965 (for short '1965 Regulations'). For the purpose of inflicting punishment, minor or major, upon the Chief Engineers, the punishing and appellate authority is the full Board i.e. Board of Directors and, therefore, the impugned order is not sustainable.

- (ii) Even otherwise, as per 1965 Regulations, the punishing authority of the petitioner i.e. Chief Engineer, is the Board and the Regulations in respect of the punishing authority and the appellate authority of Chief Engineer have not been amended till date. It is settled law that any order passed contrary to the statutory rules, cannot be sustained.
- (iii) 2006 Regulations are applicable to the employees of the Nigam, including the petitioner. Regulation 2(h) of the 2006 Regulations prescribes that the punishing authority notified under the service regulations to inflict on a Nigam employee any of the penalties specified in Regulation No.4. Till date, no other service regulations are applicable on the employees of the Nigam except 1965 Regulations. Further, Regulation 6 of the 2006 Regulations specifies the authority to institute proceedings and inflict penalties.

The sum and substance of the argument of Mr. Rajiv Atma Ram is that 2006 Regulations only provide the procedure and not the imposition of the penalty, which is provided under Notes 2 and 3 of Regulation 21, Appendix 'D' *ibid.* As per definition of Regulation 2(h) of 2006 Regulations, punishing authority means the authority notified under service regulations, to inflict on a Nigam employee, any of penalties specified in Regulation 4. Till date no other service regulations have been made applicable to the Nigam except 1965 Regulations.

In support of his argument, learned counsel for the petitioner also relied upon order dated 03.12.2014 (Annexure P-1) whereby the petitioner was promoted from Superintending Engineer to Chief Engineer, which was subjected to Ex-post facto approval by the Board of Directors. Thus, it is apparent that 1965 Regulations not only deal with the recruitment but conditions of service of the person so appointed.

Arguments of Mr. Sartej Singh Narula :

- i) As per Article 39 of the Articles of Association of the Nigam, the Board may delegate its power to the Managing Director and the powers that the Managing Director draws, as per Article 46 sub-clauses (xi) and (xii) are to make appointment of the staff authorised by the Board of Directors or Staff Service Rules, to supervise and control staff of the institution subordinate to him, to maintain their confidential files and impose penalties as per Staff Service Rules. The Managing Director, vide order dated 06.05.2015 (Annexure P-16), has been delegated the power to inflict punishment, minor or major.
- ii) Regulation 21 of the 1965 Regulations was introduced on account of promulgation of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1980. Thus, Note-2 to the aforementioned Regulations by referring to Appendix 'D' cannot be read in isolation. After 1965 Regulations and before trifurcation of the Electricity Board, in exercise of the

powers under Section 79 of the Electricity (Supply) Act, 1948, new Regulations called the 'Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1980' (for short '1980 Regulations'), were promulgated. As per 1980 Regulations, punishing authority was defined as the authority competent to impose penalties under the regulations governing appointments and other conditions of service of the employees of the Board and where no such competent authority is declared under the service regulations of the employee, the Appointing Authority will be the Punishing Authority. The aforementioned Regulations were amended vide 2006 Regulations and, as per definition of the punishing authority under Regulation 2(h), the punishing authority means the authority notified under the service regulations, to inflict on a Nigam employee any of the penalties specified in Regulation 4 i.e. minor or major penalties. The impugned order of dismissal has been passed in the year 2018 and, therefore, 2006 Regulations will apply.

Arguments heard, record perused.

Findings :

To understand the arguments/controversy raised in the present writ petition, it would be apt to reproduce, proviso to Regulation 21(1) and relevant portion of Appendix 'D' of the 1965 Regulations. The same read as under :-

“21. DISCIPLINE, PENALTY AND APPEAL

(1) xx xx xx xx xx

XX XX XX XX XX

Provided that the nature of penalties which may be inflicted, the authority empowered to impose such penalties and the appellate authority shall be as specified in Appendix 'D'."

“APPENDIX-'D'
(Referred to in Regulation-21)

MINOR PENALTIES

XX XX XX XX XX

XX XX XX XX XX

MAJOR PENALTIES

XX XX XX XX XX

XX XX XX XX XX

Note:- For the purpose of inflicting minor penalties
(Reference (i) to (vi) above) on the categories of
following officers, the punishment authority will
be the Chairman and appellate authority will be
the full Board:-

<i>Sr. No.</i>	<i>Category</i>	<i>Punishing Authority</i>	<i>Appellate Authority</i>
1	Superintending Engineer	Chairman	Full Board
2	Executive Engineer		
3	Assistant Executive Engineer		
4	Assistant Engineer		
5	Any other technical Officer corresponding to the above rank/status but other than Head of Department		

Note:-2 For the purpose of inflicting minor penalties on
Chief Engineer and equal status, the punishing

and appellate authority will be the full Board.

Note:-3 For the purpose of inflicting major penalties (Reference (vii to x above) the categories of Service of these Regulations, the punishing authority will be full Board.”

In the first glance, the argument of Mr. Rajiv Atma Ram, Senior Advocate, looks attractive that it would be the Board which would be competent to pass the impugned order and when the Managing Director had no power, the impugned order of dismissal is without jurisdiction, but on close scrutiny of the Regulations of 1965, 2006 and 1980, I am of the considered view that the petitioner would be governed by 2006 Regulations, and the reasons are not one but many.

(i) When 1965 Regulations were promulgated i.e. on 01.09.1965, they had the following nomenclature :-

“In exercise of the powers conferred by clause (c) of Section 79 of the electricity (Supply) Act, 1948, the Punjab State Electricity Board is pleased to make the following regulations governing the recruitment and conditions of service of persons appointed to the Punjab State Elec. Board Service of Engineers (Electrical)”

The authority empowered to inflict minor or major punishments has been defined under Regulation 21 Appendix 'D' of the 1965 Regulations, dealing with discipline, penalty and appeal, as the Board. Thus, for all intents and purposes, Regulation 21 was not in existence when 1980 Regulations were promulgated. 1980 Regulations define the punishing authority under Regulation 3(d), which reads as

under:-

“Punishing Authority” means the authority competent to impose penalties under regulations governing appointments and other conditions of service of the employees of the Board and where no such competent authority is declared under the service regulations of the employee, the Appointing Authority will be the Punishing Authority.”

(ii) The Saving Clause 3-A comes into play which provides that all powers, rights and remedies provided by these regulations shall be in addition to and not in derogation of the provisions of such regulations as may be made by the Board to regulate the recruitment and conditions of service of persons appointed to Board service and posts in connection with the affairs of the Board. There would have been force in the argument of Mr. Rajiv Atma Ram had 1980 Regulations been invogue but, as noticed above, the Nigam came out with 2006 Regulations and the punishing authority defined under Regulation 2(h) is as under:-

“Punishing Authority” means the authority notified under the Service Regulations, to inflict, on a Nigam employee, any of the penalties specified in Regulation-4.”

(iii) It is a matter of record that the Nigam is a company registered under the Companies Act, 1956 and it has its own Articles of Association i.e. Articles of Association of Dakshin Haryana Bijli Vitran Nigam Limited, wherein Chairman-cum-Managing Director has been defined as a Chairman-cum-Managing Director of the company appointed as per the procedure laid down in the Articles.

(iv) Article 39, which empowers the board to delegate any of its

powers to the Managing Director of the company, reads as under :-

“Directors may appoint committees

- 39. Subject to the restrictions contained in Section 292 of the Act, the Board may delegate any of its powers to the Managing Director of the Company or to committees of the Board consisting of such Member or Members or one or more Directors and a member or Members of the Company as it thinks fit, and it may from time to time revoke and discharge any such person or Committee of the Board either wholly or in part and either as to persons or purposes, but every such person or Committee of the Board so formed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed on it by the Board.”**

Article 46 deals with the powers of Managing Director, provides, that the Managing Director of the company, shall be the Principal Executive Officer of the company and the employees of the company shall exercise their powers and perform their duties under his superintendence and control. Clauses (xi) and (xii) of Article 46, which also deal with the appointment of the staff and imposition of penalty as per Staff Service Rules, read as under:-

“Powers of Managing Director

- 46. The Managing Director of the Company shall be the Principal Executive Officer and the employees of the Company shall exercise their powers and perform their duties under his superintendence and control. He shall exercise his powers and perform his duties as under:-**

XX XX XX XX XX
XX XX XX XX XX

- (xi)To make appointment of the staff authorized by the Board of Directors or Staff Service Rules.
- (xii)To supervise and control staff of the Institution Subordinate to him and to maintain their confidential files and impose penalties as per Staff Service Rules.

XX XX XX XX XX
XX XX XX XX XX”

(v) The impugned order is dated 10.07.2018. Thus, only 2006 Regulations are applicable and it cannot be even remotely manifested that 1965 Regulations dealing with the conditions of service would come into play in the present case, as stressed. I cannot remain unmindful of the fact that the delegation of power to inflict minor/major punishment to the Managing Director vide order dated 06.05.2015 (Annexure P-16) has not been denied by the learned counsel for the petitioner. Not only this, in the matter of imposition of major punishment, even vide Notification dated 08.03.2018 (Annexure P-21), the Managing Director has been defined as Punishing Authority in respect of an officer of the rank of Chief Engineer, the Chairman as the Ist appellate authority and the Board of Directors as the 2nd Appellate Authority. It would be in the fitness of things to extract relevant portion of table-2 of the said Notification, which reads as under:-

“DAKSHIN HARYANA BIJLI VITRAN NIGAM
NOTIFICATION
08th March, 2018

No. 49/SE/Admn/REG-01. In exercise of powers

conferred under Section – 56(3) (vi) of Haryana Electricity Reforms Act – 1997, read with the Electricity Act – 2003, Article 42 of the Articles of Association of DHBVN and all other enabling powers in this behalf, read with Article 46 of the Articles of Association of DHBVN, the Dakshin Haryana Bijli Vitran Nigam (DHBVN) is pleased to authorise the punishing authorities & appellate authorities mentioned in table No.1 for minor penalties in respect of Class-I/ class-II Gazetted Officers and the punishing authorities & Appellate authorities mentioned in table No.2 for major penalties in respect of Class-I/class-II Gazetted Officers, notified vide this office Notification No. 47/SE/Admn/REG-01 dated 08.03.2018, is given below:-

XX	XX	XX	XX	XX	XX
XX	XX	XX	XX	XX	XX

Table-2

Powers to inflict Major Punishment & Appellate Authority to Gazetted Officers.

<i>Sr. No.</i>	<i>Category</i>	<i>Punishing Authority</i>	<i>Ist Appellate Authority</i>	<i>2nd Appellate Authority</i>
1	2	3	4	5
(I)	(i) Chief Engineer	Managing Director	Chairman	BODs
XX	XX	XX	XX	XX
XX	XX	XX	XX	XX

Note. 1. In terms of of Article 46 of the Articles of Association of DHBVN, the Managing Director of

the company has the powers to impose penalties as per Staff Service Rules.

2. In case punishing authority happens to be Chairman-cum-Managing Director, the appellate authority will be the Board of Directors of DHBVN.

xx xx xx xx xx xx
xx xx xx xx xx xx”

Note-2 of the aforementioned table provides that if the punishing authority happens to be Chairman-cum-Managing Director, the appellate authority will be the Board of Directors. In these circumstances, in my view, the petitioner has remedy of appeal or any other alternative remedy.

At the time of conclusion of arguments, an alternative prayer was made by the learned senior counsel for the petitioner that in case this Court agrees with the preliminary objection of the respondents, the petition may be dismissed as withdrawn with liberty to the petitioner to avail the alternative remedy.

In view of the above, the writ petition is ordered to be dismissed as withdrawn with liberty to the petitioner to avail alternative remedy, in accordance with law.

August 01, 2019
Kang

(Amit Rawal)
Judge

Whether speaking/reasoned	Yes
Whether reportable	No