

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

**CWP NO. 403 of 2014
DECIDED ON : 05.04.2019**

Pardeep Kumar Chawala

...Petitioner

versus

Punjab State Power Corporation Limited and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Harsh Manocha, Advocate,
for the petitioner.

Mr. Y. P. Khullar, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. Petitioner herein seeks quashing of the charge sheet dated 13.09.2010 (Annexure P-1) and impugned order dated 09.02.2012 (Annexure P-4), passed by the punishing authority imposing the punishment of stoppage of one annual increment with cumulative effect. The petitioner has also questioned the legality and propriety of appellate order dated 08.02.2013 (Annexure P-6), vide which his appeal was dismissed.

2. Brief factual matrix first. The petitioner was working with the respondent-PSPCL as Junior Engineer when under instructions of the SDO, he provided electricity connection to one Mukesh Kumar in Medium Supply Category. On coming to know that the said connection was provided under wrong category, he

brought it to the notice of the concerned staff and SDO. File of the case was then given by the petitioner to the SDO for taking further action. The concerned SDO told the petitioner that he would himself check the connection in 1-2 days. However, meanwhile the Enforcement Wing checked the connection and found it issued in the wrong category i.e. Medium Supply instead of Industrial Category. The petitioner, along with the SDO, was put under suspension for issuing the said connection under the wrong category. Subsequently the petitioner was served with the impugned charge-sheet dated 13.09.2010 (Annexure P-1), wherein, he was charged with having supplied the connection under the wrong category. He was also charged with loosing the original case file of the user/consumer. The Punishing Authority got an inquiry conducted. The Enquiry Officer submitted a detailed and reasoned report (Annexure P-3) and held that the charges were not proved against the petitioner.

3. The petitioner filed his detailed reply denying the charges/allegations. He asserted that it was under the instructions of the SDO that he had provided the electricity connection to Mukesh Kumar under the medium supply category and later deposited the file of the case in his office for further action. He was informed that the same had been given under the wrong category and that the SDO would inspect the connection himself. He stated that he deposited the file with the office of SDO and hence, was not responsible for the same thereafter. As the Enforcement Officer had already checked the connection and

imposed penalty on the user/consumer, petitioner could not be blamed for lapse on the part of other concerned officials.

4. Respondent-PSPCL, without taking into consideration the findings of the enquiry report and without giving any opportunity to the petitioner, found him guilty and imposed the punishment of stoppage of one increment with cumulative effect vide impugned order dated 09.02.2012 (Annexure P-4). The Appellate Authority, while considering the appeal of the petitioner, in a non-speaking and cryptic manner upheld the punishment doled out by the Punishing Authority vide order dated 08.02.2013 (Annexure P-6). Hence the present writ petition.

5. In the written statement filed by respondents, the stand taken is that even though the Enquiry Officer had exonerated the petitioner in his report, but the Competent Authority/Punishing Authority had the final say in the matter of awarding the punishment on the charges framed against the petitioner. Impugned order passed by the Punishing Authority, whereby the petitioner and the SDO were punished, was passed as per Rules and the petitioner has wrongly averred that the same is illegal. Appellate Authority upheld the order passed the Punishing Authority and rejected the appeal of the petitioner.

6. The learned counsel for the petitioner has drawn my attention to the enquiry report (Annexure P-3), wherein the Enquiry Officer had held that neither of the charges against the petitioner had been proved. It is pointed out that the report is

detailed and has extensively dealt with both the charges as framed in the charge-sheet whereas, the orders of the Punishing Authority and the Appellate Authority are non-speaking and cryptic. Per the ratio of the decision passed by a Coordinate Bench of this court in "**Dr. P.K. Mittal v. State of Punjab and others**" **reported as 1982(3) SLR 222**, any order passed by punishing authority should speak for itself. If it is non-speaking or cryptic then it will not stand judicial scrutiny.

7. Learned counsel for the respondents has contended that the punishing authority is within its powers to differ with the finding recorded by the inquiry officer and that order of punishment had been rightly passed by the punishing authority and upheld by the appellate authority.

8. I have gone through the record of the case and heard learned counsel for the parties.

9. It is common case of the petitioner that the Enquiry Report had discharged the petitioner on both the charges. The report had found that the wrong-doing was on the part of the SDO. Despite these categorical findings of the inquiry officer, holding that the charges against the petitioner had not been proved, the punishing authority inflicted on the petitioner the penalty of stoppage of one increment with cumulative effect and the same was upheld by the appellate authority.

10. For appreciation of the controversy in the proper perspective, the relevant part of impugned order (Annexure P-4),

passed by the punishing authority, is reproduced below:

"Deputy Chief Engineer/Enquiry P.S.P.C Ltd Patiala for the enquiry has presented his enquiry report to this office vide Memo No. 1295 dated 31.10.2011. Copy of which has been sent to the employee for giving rebuttal vide office regd. Memo No. 3488 dated 09.11.2011.

As Sh. Pradeep Kumar Chawla J.E. Has presented rebuttal of the enquiry report.

That the competent officer after considering the charges framed in the charge-sheet, the reply given by the employee, comments by field officer, enquiry report given by the deputy chief engineer/ enquiry P.S.P.C. Ltd Patiala, Rebuttal by employee and after considering all other facts and circumstances has ordered to stop one increment with cumulative effect of Sh. Pradeep Kumar Chawla J.E.

According to the aforesaid order, now Punjab State Power Corporation Ltd. Issued order to stop one annual increment with cumulative effect of Sh.Pradeep Kumar Chawla J.E.

This is issued with the direction of the competent officer."

11. In principle, I am in agreement with the contention of the learned counsel for the respondents that the punishing authority and the appellate authority were entitled to differ from the findings of the inquiry officer and record their own findings about the charges against the petitioner. But my agreement with him ends here. While differing with the findings of the inquiry

officer, it was incumbent upon the punishing authority to appraise the findings of the inquiry officer and give cogent reasons for differing with them. Further, it was also necessary for the punishing authority to record its own dissent findings about the charges against the petitioner. Doing so was necessary so that it could be found out whether before doing so, the punishing authority had properly applied his mind to the facts and circumstances of the case.

12. It would be seen that the punishing authority did not even notice as to what were the findings recorded by the inquiry officer, let alone discussing the same and recording its own reasons for taking a view contrary to the findings of the inquiry officer. No reasons are given as to how and why the punishing authority refused to accept the same. Further, the punishing authority did not record any findings of its own about the charges against the petitioner. Without assigning any reasons and without even holding the petitioner responsible for the lapse, the punishing authority passed the said penal order against him. The impugned order is thus very cryptic and totally non-speaking. Similar controversy was dealt by the co-ordinate Bench of this Court in ***Dr.P.K. Mittal's case (supra)***, relevant part whereof is extracted hereunder:

"2. The only contention raised by Mr. J.L. Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to

*why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance is placed by him on **Ram Dass Chaudhary v. State of Punjab and another, 1968 SLR 792**, wherein P.C. Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in **Bhagat Raja v. Union of India and others, AIR 1967 SC 1606**, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature. The case before P.C. Jain, J. arose from an appellate order of the Government, but here the impugned order is on the original side. In **State of Punjab v. Dr. R.K. Chopra, 1978 (1) ILR 1**, a Division Bench of this Court approved P.C. Jain, J.'s view in Ram Dass Chaudhary's case (supra). To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court. Ex facie, something has to be available on the face of the order from which the Court of correction has to go by. In the instant case, as is plain, the order was that the reply of the petitioner had to be considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That parse, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is*

a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be true, that it indicates the reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner. The arena for the respective two spheres is well marked. And though permitted to over-shadow to some extent, cannot have the effect of superimposition to wipe out the ultimate aspect altogether.

13. In view of the facts and circumstances and the legal position as brought out above, there is no escape from holding that the impugned order dated 09.02.2012 (Annexure P-4), was passed by the punishing authority without complying with and contrary to the requirements of law, the elementary principles of fair play and natural justice. The same is, therefore, illegal and liable to set aside.

14. Let us now examine the impugned order dated 08.02.2003 (Annexure P-6). Its relevant part is reproduced below:-

"That Sh. Pradeep Kumar Chawla J.E. has filed appeal against the office order no. 82 dated 09.02.2012.

That the appeal preferred by the employee has been considered by the Whole Time Director in the 104th meeting which was held on 01.02.2013 in Patiala and decided as under:-

" The Committee of whole time directors after considering the memorandum passed the

following resolution:-

Resolved that considering the gravity of the charges levied, quantum of punishment awarded no new facts presented in the appeal, the appeal of Sh. Pradeep Kumar Chawla J.E. against office order No.83/D-9477/S-2/T-3 dated 09.02.2012 be and is hereby rejected."

Therefore P.S.P.C. Ltd here by the issue of the order to reject the appeal preferred by P.K. Chawla JE against office order 82/D-9477/S-2/T-3 dated 09.02.2012.

This is issued with the order of Whole Time Directors."

15. The impugned order passed by the appellate authority is not founded on any reasoning and merely upholds the order dated 09.02.2012 (Annexure P-4), passed by the punishing authority. I have held the order passed by the punishing authority illegal and liable to be set aside. When the foundation goes, the superstructure built on such foundation has also necessarily to fall.

16. Even otherwise, the impugned order dated 08.012.2003 (Annexure P-6), is totally silent as to what were the contentions raised in appeal by the petitioner, the considerations of the appellate authority and what were the reasons which prevailed with the appellate authority for rejecting the same. Thus the impugned appellate order dated 08.012.2003 (Annexure P-6), is also cryptic and totally non-speaking. On this account also, it is unsustainable in law and liable to be set aside.

17. Even a perusal of the Electricity Supply Instruction Manual and looking at the duties assigned to other similar situated employees, it becomes clear that any connection above 50 kilo watts could not have been issued by the petitioner being a Junior Engineer, as the power is vested in Assistant Engineers/SDO's. Similarly, the Junior Engineer is not the custodian of consumer/user files and it is the duty of the Consumer Clerk/Staff to store the files in safe custody.

18. In light of the discussion above and the reasons contained therein, I find that the present petition deserves to be allowed. The impugned orders passed by the Punishing Authority dated 19.02.2012 (Annexure P-4) and by the Appellate Authority dated 08.02.2013 (Annexure P-6) are set aside. Petitioner shall be entitled to all consequential benefits.

(ARUN MONGA)
JUDGE

APRIL 05, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No