

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2695-2016 (O&M)
Date of Decision:-27.02.2019.

Sukhwinder Singh

.....Petitioner

Versus

The Punjab State Power Corporation Ltd. through its Chairman-cum-
Managing Director, The Mall, Patiala and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Pankaj Sharma, Advocate for the petitioner.

Mr. R.L. Sharma, Advocate for the respondents.

ARUN MONGA, J. (Oral)

1.) The present petition has been filed, *inter alia*, for issuance of a writ in the nature of *certiorari* to quash the impugned order dated 25.06.2013 (Annexure P-7) passed by respondent No.3/Joint Secretary of the respondent No.1-Punjab State Power Corporation Limited (PSPCL). Thereby, 2 annual increments with cumulative effect have been ordered to be stopped qua the petitioner and amount of Rs.2,43,395 has been ordered to be recovered from him. Also under challenge is the appellate order dated 06.07.2015, whereby, the petitioner's appeal was dismissed and order dated 25.06.2013 has been upheld.

2.) Succinctly, the factual backdrop of the case is that the petitioner, at the relevant time, was posted as Lineman at South Technical, Sub-Division. He was charge-sheeted on 26.03.2012 (Annexure P-1), *inter*

alia, on the charge that he was assigned the job to remove the electric cable of 11 KV, Nehru Colony feeder passing over the residential houses by getting the work done through outsourcing. The petitioner was held delinquent on account of removal of the copper conductors in course of removing the said feeder. The petitioner was charged with embezzlement and committing a fraud to the tune of Rs.2,43,395/- The charge-sheet led to departmental inquiry, wherein a report dated 01.02.2013 (Annexure P-4) was submitted. Vide the said inquiry, the petitioner was exonerated. Notwithstanding the exoneration, the punishing authority vide impugned order dated 25.06.2013 (Annexure P-7) directed the stoppage of 2 annual increments with cumulative effect and further directed to recover from the petitioner an amount of Rs.2,43,395/- being 15% of the total loss caused to the Corporation. The petitioner also preferred an appeal against the impugned order passed by the punishing authority and the same was also dismissed vide order dated 06.07.2015 (Annexure P-9). Hence, the present writ petition.

3.) In the reply filed by the respondent-Corporation, the impugned order dated 25.06.2013 (Annexure P-7) passed by the punishing authority has been justified on the ground that the findings of the inquiry report are not binding and the punishing authority has the power to disagree with the same as provided under Rule 9(2) of Punjab State Electricity Board (Punishment & Appeal) Regulations, 1971.

4.) I have gone through the respective pleadings and have also heard the rival contentions of the learned counsel representing both sides.

5.) The learned counsel for the petitioner contends that even on the

aside, in as much as neither any show cause notice was issued nor any personal hearing was granted to the petitioner by the disciplinary authority before passing the impugned order. He has also drawn my attention to the reply filed by the Corporation wherein it has been conceded that indeed no show cause notice was issued and even the fact of not providing the personal hearing has also been admitted.

6.) On merits, the learned counsel for the petitioner further contends that, even otherwise, a perusal of the impugned order shows that no reasons have been assigned by the punishing authority to record its dissent with the findings of the inquiry officer. It is only in the pleadings filed before this Court that a stand has been taken that the punishing authority did not accept the findings of the Inquiry Officer. To buttress his arguments, learned counsel for the petitioner relies on Rule 9 (2) of the Punjab Civil Services (Punishment and Appeal Rules), 1970 which for ready reference is extracted hereinbelow:-

“9 (2.) The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.”

7.) A perusal of the above Rule reflects that the punishing authority is under a mandate to record his reasons of disagreement in the event of his not accepting the findings of the Inquiring Officer. The same has clearly not been done in the present case.

8.) *Per contra* learned counsel for the respondents states that the impugned order dated 25.06.2013 (Annexure P-7) passed by the punishing

authority is justified as the punishing authority is not bound by the findings of the inquiry report and is empowered to disagree with the same. While there is no quibble about the fact that the punishing authority is empowered to disagree with the findings of the inquiry report, but the position in law is crystal clear that in the event of his disagreement, the punishing authority is bound to record reasons for each of his disagreement. In the present case, the said mandate has clearly not been followed. In view thereof, the argument of the learned counsel for the respondent-Corporation is, therefore, devoid of any merit and is to be necessarily repelled.

9.) The learned counsel for the petitioner has also relied on a judgment rendered by Supreme Court of India rendered in the case of **Punjab National Bank Vs. Kunj Behari Misra** reported in **1998 AIR (SC) 2713**, relevant part whereof is extracted hereinbelow:-

“16. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer

charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

10.) Apart from the above judgment as rendered by the Supreme Court, it would be educative to reproduce from a judgment rendered by this Court in case titled as **“Dr. P.K. Mittal Vs. State of Punjab and others”**, ***reported as 1982 (3) SLR 222*** as below:-

*“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 has been placed by him on **Ram Dass Chaudhary Vs. State of Punjab and another, 1968 S.L.R.792**, wherein P.C.Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in **Bhagat Raja Vs. Union of India and others, AIR 1967 Supreme Court 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 Vs. Dr. R.K.Chopra, 1978 (1) I.L.R. 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 been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, 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 overshadow to some extent cannot have the effect of superimposition to wipe out the ultimate aspect altogether.”

11.) I am in agreement with the arguments of the learned counsel for the petitioner and also hold that the judgments relied by him above are squarely applicable to the present case. Before parting, it would be worthwhile to state that even otherwise, without going deeper into the matter, the impugned order passed by the disciplinary authority is liable to be set aside on the very first principles of violation of natural justice and equity in as much as neither any show cause notice was issued nor an opportunity of personal hearing was granted to the petitioner before passing the impugned order dated 25.06.2013 (Annexure P-7) by the disciplinary

authority. I am also in agreement with the contention of the learned counsel for the petitioner that even the impugned order dated 06.07.2015 (Annexure P-9) passed by the appellate authority is equally cryptic and non-speaking as no reasons, whatsoever, have been assigned while upholding the order passed by the punishing authority. Furthermore, the original order passed by the punishing authority being bad in law, the appellate order upholding the same, has also to meet the same fate.

11.) In view of my discussion above as also the reasoning contained therein, the present writ petition is allowed. Impugned order dated 25.06.2013 (Annexure P-7) passed by the punishing authority as also the order dated 06.07.2015 (Annexure P-9) passed by the appellate authority, upholding the order passed by the punishing authority are set aside. The respondents are directed to grant all consequential benefits to the petitioner arising out of the quashing these orders.

(ARUN MONGA)
JUDGE

February 27, 2019.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.