

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

**CWP-6563-2014 (O&M)
Date of decision : 27.08.2019**

Ashok Vardhan

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. C.M. Chopra, Advocate,
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for quashing of disciplinary proceedings including charge sheet dated 19.03.2002 (Annexure P-1), inquiry report dated 11.12.2003 (Annexure P-4) and for release of all the consequential benefits accrued therefrom i.e. promotion etc. from the date when his juniors were promoted.

It is contended that in the year 1988, Executive Engineer, Township Division, Ranjit Sagar Dam, Shahpurkandi was entrusted the work of construction of Penstock Fabricated Yard at Shahpurkandi. The said work was executed during the incumbency of different officers, viz. three Executive Engineers, one Sub Divisional Officer and three Junior Engineers. The work was completed in the year 1991. Thereafter, a

complaint was moved by the President of INTUC Ranjit Sagar Dam against concerned SDO, namely, Shri B.K. Rishi, in the year 1994 for alleged irregularities in the construction of said Penstock Fabrication Yard. The matter was investigated into on 09.10.1996 by the then Executive Engineer, Inspection and Quality Control Division, Amritsar, who found the floor thickness of Penstock Yard constructed in Their Dam Complex was less than the prescribed norms of designs and therefore, a loss of ₹6,69,380/- had been caused to the exchequer. Therefore, the petitioner and six other officers were issued charge sheet on 19.03.2002 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The enquiry was entrusted to Shri R.P.S. Yaduwanshi, Chief Engineer vide order dated 28.02.2003 (Annexure P-3), who submitted his report on 11.12.2003 (Annexure P-4) and held the petitioner and one Shri Harpal Singh, Junior Engineer, guilty after recording that the thickness of floor of penstock yard constructed during their incumbency as Junior Engineers, was found significantly less than the one provided in the designs and they could not provide any tenable defence to prove their innocence whereas, recommended withdrawal of charge-sheets against the remaining five delinquents. Copy of the inquiry report was supplied to the petitioner on 24.03.2004 (Annexure P-5), who submitted detailed reply on 19.04.2004 (Annexure P-6). After considering the reply, no punishment was inflicted upon the petitioner, whereas, the departmental proceedings against five delinquents were dropped.

The grouse of the petitioner is that despite being senior and eligible for promotion to the post of Sub Divisional Officer, he was ignored,

whereas, many juniors were promoted vide order dated 06.09.2012 (Annexure P-9) and 29.04.2013 (Annexure P-10). The case of the petitioner was kept under sealed cover.

Learned counsel contends that the alleged offence relates back to the year 1988, whereas, the impugned charge-sheet was issued on 19.03.2002. Thus, there is inordinate and unexplained delay in initiating the departmental proceedings against the petitioner. Still further, despite the petitioner having been held guilty in the departmental proceedings, no punishment was awarded to him. Therefore, the petitioner cannot be put to prejudice.

On the other hand, learned State counsel submits that the inquiry report indicted the petitioner and Harpal Singh, Junior Engineer. The thickness of floor of penstock yard constructed during their incumbency as JEs was found significantly lesser than the one provided in the designs. As the departmental proceeding were pending, therefore, the petitioner was not promoted to the rank of Sub Divisional Officer . Further states that the petitioner had also misplaced the measurement books which are the most important documents during the execution of works. It is further submitted that total loss caused to the exchequer has been assessed at ₹6,69,380/- in the inquiry report dated 11.12.2003. Out of the said amount, the government proposed to recover 50% which comes to ₹3.35 lakh from the petitioner from his pension along with interest @ 10% vide letter dated 29.03.2017 and the remaining 50% was proposed to be recovered from Harpal Singh, Junior Assistant. However, after

consideration of their replies, the punishment of cut of 5% in pension for one year was imposed on the petitioner. Further submits that the case for promotion of the petitioner to the post of SDO was considered and rejected in view of the punishment imposed. The case remained under process and the delay, if any, has been caused on account of administrative exigencies.

Heard.

The alleged offence pertains to the year 1988. The charge-sheet was issued on 19.03.2002 and Enquiry Officer was appointed on 28.02.2003. The inquiry officer submitted his inquiry report on 11.12.2003. Thus, the departmental proceedings stand vitiated on the ground of inordinate delay of about 14 years. Reliance in this regard can be placed on a decision of Hon'ble the Supreme Court rendered in ***State of M.P. Vs. Bani Singh, JT 1990(2) SC 54***, wherein, it has been observed as under:-

“4. xxxxxxxx it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. xxx”

Similar view has been taken by Hon'ble the Supreme Court in case of ***P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board, AIR 2006 SC 2007***, by holding thus:-

“16. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this

distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

Further, the inquiry report has also been prepared in contravention of Rule 8(23)(i) of Punjab Civil Services (Punishment & Appeal) Rules, 1970, which reads thus:-

“8(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain:-

- (a) the articles of charge and the statement of the imputation of misconduct or misbehavior;*
- (b) the defence of the Government employee in respect of each article of charge;*

- (c) *on assessment of each article of charge;*
- (d) *the findings on each article of charge and the reasons therefore;”*

A perusal of the inquiry report shows that there is no discussion of any evidence by the inquiry officer. There is no reference of any document. The findings of the Enquiry Officer are just the conclusions without discussing the evidence at all. Such a report is no report in the eyes of law. Reliance in this regard can be placed on a decision of this Court in ***M.V. Bijlani Vs. Union of India, 2006(2) RSJ 740***, wherein, it has been held as under:-

“12. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of material on record.....”

Similar view has been taken by this Court in ***M.L. Duggal Vs. Netaji Subhash National Institute of Sports and others, 1991(6) SLR 574***, by holding thus:-

“10. I am of the opinion that there is considerable force in the arguments advanced by the learned counsel for the petitioner. There is no discussion of the evidence by the Inquiry Officer

which was led by the parties before him. There is no reference to any document. The findings of the Enquiry Officer are just to conclusions without discussing the evidence at all. In this view of the matter, the report could not be relied upon as this is no report in the eyes of law. The impugned order is passed on the basis of this report and the same cannot stand. Consequently, the orders Annexure P-11 and also the Appellate order which also suffers from the same defects are liable to be set aside, inasmuch as the Appellate Authority order also does not discuss the evidence at all.”

Moreover, the Inquiry Officer had no authority for making any recommendation in favour of the delinquents. He had only to record a finding whether charge is proved or not, whereas, the inquiry officer has recommended for withdrawal of charge-sheets against three of the then Executive Engineers. Similar recommendations were made for main accused B.K. Rishi, SDO who had died and Avtar Singh, Junior Engineer. The department also failed to produce complainant G.S. Loomba, who had made complaint about alleged irregularities committed in the construction of the Penstock Fabricated Yard. Even the inquiry officer could not ascertain the amount of loss caused to the Government.

It is further to be noted that the petitioner remained on the project upto 30.10.1989 and handed over the Measurement Books to Harpal Singh on 31.10.1989, as is clear from Annexure P-14. Therefore, the petitioner cannot be held responsible for any loss of the Measurement

In view of the above, the instant petition is allowed; charge-sheet (Annexure P-1); and all subsequent proceedings arising therefrom, including inquiry report (Annexure P-4), are hereby quashed. Further, the petitioner is held entitled to all consequential benefits i.e. promotion to the post of Sub Divisional Officer from the date when his juniors were promoted as such. His pay, retiral benefits and pension be refixed accordingly. However, the arrears shall be restricted to 38 months from the date of filing the instant petition as has been held in ***Saroj Kumari Vs. State of Punjab, 1998(3) SCT 664***. The necessary exercise, including payment of arrears, be concluded within a period of eight weeks from the date of receipt of a certified copy of this judgment.

Allowed.

27.08.2019

atulsethi

(JITENDRA CHAUHAN)

JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No