

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(243)

CWP No. 6798 of 2017

Date of Decision : 09.12.2019

Sukhminder Singh (since deceased) through his Lrs.

....Petitioners

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. H.P.S. Ghuman, Advocate for the petitioners.

Mr. Parminder Pal Singh Thethi, Advocate
for the respondents.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the challenge is to the order dated 10.03.2015 (Annexure P-7) by which a punishment of stoppage of cut in pension to the tune of 20% for a period of 5 years was imposed upon the late husband of petitioner No. 1 as well as order dated 15.11.2016 (Annexure P-8), whereby appeal filed by the late husband of petitioner No. 1 was rejected.

The facts as stated in the writ petition are that Sh. Sukhminder Singh, husband of petitioner No. 1 (who has unfortunately died during the pendency of the writ petition), was appointed on 21.01.1977 as a Line man on ad-hoc basis with the Punjab State Electricity Board. On 12.06.1978 the

services of the late husband of petitioner No. 1 were regularised and

thereafter, he was promoted as a Junior Engineer on 02.09.1983. On 09.10.2003, late husband of petitioner No. 1 was promoted as Additional Assistant Engineer. He was further promoted as Assistant Engineer on 25.06.2007. Ultimately, he was promoted as Assistant Executive Engineer in the year 2011 from which post, he ultimately retired on attaining the age of superannuation on 30.04.2015.

While the late husband of petitioner No. 1 was in service and was working as Assistant Executive Engineer, a charge-sheet dated 05.06.2013 (Annexure P-3) was issued against him. After the issuance of charge-sheet, a joint enquiry was conducted against Sh. Sukhminder Singh, late husband of petitioner No. 1 and one Sh. Surinder Singh, who was working as a Junior Engineer. The Enquiry Officer in his report exonerated the late husband of petitioner No. 1 of the charges but held Sh. Surinder Singh guilty of certain charges, which were alleged against him. Copy of the enquiry report was sent to the late husband of petitioner No. 1 for his comments. As the late husband of petitioner No. 1 was exonerated, no reply was submitted by him but the punishing authority vide order dated 10.03.2015 (Annexure P-7) by disagreeing with the enquiry report, punished both the employees. Punishing authority imposed a punishment of cut of 20% on the pension of late husband of petitioner No. 1 for a period of 5 years. Against the said order, late husband of petitioner No. 1 preferred an appeal, which was also rejected by the appellate authority vide order dated 15.11.2016 (Annexure P-8). Orders of punishment dated 10.03.2015 (Annexure P-7) as well as rejection of the appeal dated 15.11.2016 (Annexure P-8) are under challenge in the present writ petition.

The grievance as raised in the present petition is that once the late husband of petitioner No. 1 was exonerated of the allegations by the Enquiry Officer, imposing the punishment by the Punishing Authority without supplying the Disagreement Note to the Enquiry Officer's report, violates the principles of natural justice and, therefore, the imposition of punishment upon the late husband of petitioner No. 1 is liable to be set-aside on the ground that the proper procedure for holding the enquiry has not been followed by the respondents.

Upon notice of motion, respondents have filed the reply. In the reply, the respondents have stated that once the detailed reasons have been given in the order of punishment, no grievance can be raised by the petitioner and, therefore, the punishment order is valid and legal and even the order passed by the appellate authority is liable to be upheld keeping in view the facts and circumstances of the present case.

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

It is not disputed by learned counsel for the respondents that the Enquiry Officer had exonerated the late husband of petitioner No. 1 in the enquiry report. It is further not disputed by the learned counsel for the respondents that only the said enquiry report was forwarded to the late husband of petitioner No. 1 for his comments. Once, the late husband of petitioner No. 1 was exonerated by the Enquiry Officer and the said report was forwarded to the late husband of petitioner No. 1 without there being any objection from the punishing authority to the said report, the respondents were under obligation to pass an order on the basis of the report

of the Enquiry Officer as it is deemed that the enquiry report has been accepted by the respondents, wherein the late Sh. Sukhminder Singh has been exonerated.

Learned counsel for the petitioners states that it is only in the order of punishment, the dissent note has been given by the punishing authority so as to impose punishment upon late Sh. Sukhminder Singh to the tune of 20% cut in pension for a period of 5 years.

The question of law raised before this Court is whether in the facts and circumstances of the present case the objections/dissenting note by the punishing authority to the report of the Enquiry Officer was liable to be given to late Sh. Sukhminder Singh before imposing the punishment or not and whether the non-supply of the said disagreement note, by which the punishing authority disagreeing with the finding of the Enquiry Officer prior to the imposition of punishment upon late Sh. Sukhminder Singh, will render the disciplinary proceedings illegal.

The said question of law has already been considered by the Hon'ble Supreme Court of India in Civil Appeal No. 5128 of 2013 titled as ***S.P. Malhotra Vs. Punjab National Bank and others, decided on 04.07.2013.*** It has been held by the Hon'ble Supreme Court of India that where the punishing authority disagrees with the enquiry report, the same has to be furnished to the delinquent so that the delinquent can give the objection to the disagreement note of the punishing authority. In the absence of any disagreement note being supplied to the delinquent and directly passing of the order of punishment, violates the rules of natural justice and the same causes prejudice to an employee, who does not know as

to on what account, the punishment has been imposed. The relevant paragraphs of the said judgment are as under:-

“11. In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL (supra).

xxxx xxxx xxxx xxxx

13. As the case is squarely covered by the judgment of this court in Kunj Behari Misra (supra), we do not see any reason to approve the impugned judgment rendered by the Division Bench.”

Thus, in view of the above, the appeal is allowed. The judgment and order of the Division Bench is set-aside and that of the learned Single Judge is restored. No costs.

The case of the petitioner is squarely covered by the decision in ***S.P. Malhotra's case (supra)*** as the late husband of petitioner No. 1 was never supplied the disagreement note, which the respondents have recorded in the impugned order of punishment only. Passing of the punishment straight away by disagreeing with the Enquiry Officer, has caused prejudice to the late husband of petitioner No. 1. Any execution order which is passed without following the rules of natural justice and causes prejudice to an employee, cannot be sustained and, therefore, the impugned order of punishment dated 10.03.2015 (Annexure P-7) is set-aside. Once the order of punishment is set-aside, even the order dated 15.11.2016 (Annexure P-8) passed in the appeal is also liable to be set-aside as the order of appeal is also based upon the order of punishment and is accordingly set-aside.

In the ordinary course, this Court would have allowed the respondents to give the late husband of petitioner No. 1 another opportunity by supplying the disagreement note of the punishing authority so as to complete the enquiry proceedings but as husband of petitioner No. 1 has, unfortunately, passed away during the pendency of the writ petition, no further opportunity can be granted to respondents to rectify their mistakes. As the punishment order has been set-aside, the recovery which has been effected from the late husband of petitioner No. 1 in pursuance to the order of punishment, be refunded to his legal heirs, who have been impleaded as petitioners in the present writ petition, within a period of two months from the date of receipt of certified copy of this order.

As the order of punishment passed by the respondents was contrary to the settled principles of law and the recovery which has been done from the pension of late husband of petitioner No. 1, was without jurisdiction, petitioners will also be entitled for interest on the amount which is to be refunded. The same will carry interest @ 9% per annum from the date, the amount was deducted till the amount is released to the petitioners in pursuance to the order passed in this writ petition.

Writ petition is allowed in above terms.

December 09, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes
Whether reportable? Yes