

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26275 of 2019

Date of Decision: September 18, 2019

Surinder Kumar Makkar

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Mukul Aggarwal, Advocate,
for the petitioner.

Mr. Arun Gupta, Advocate &
Mr. Sachin Jain, Advocate,
for the caveator.

AMIT RAWAL, J. (Oral)

Petitioner, who is working as XEN in the Construction Division of the Uttar Haryana Bijli Vitran Nigam at Karnal (for short, UHBVN), has invoked the extraordinary writ jurisdiction of this Court in seeking quashing of the Memo No.CH-26/Conf-6289 (VO-7169) dated 20.08.2019 (Annexure P-31).

Mr. Sanjeev Sharma, learned Senior Counsel assisted by Mr. Mukul Aggarwal, Advocate, representing the petitioner submits that the petitioner joined as XEN/Construction Division, Karnal on 22.04.2015. Prior to that, the competent authority awarded three work orders to a contractor for laying 11 KV lines/feeders in (OP) Circle, UHBVN, Karnal containing comprehensive terms and conditions including twelve months warranty post completion of the work/energized. The aforementioned feeder line was activated on 26.06.2014 and twelve months warranty period

expired on 25.06.2015. XEN Sub Urban, Division No.1 wrote a letter to the petitioner dated 28.04.2015 for correction of the defects in the 11 KV Bibipur and 11 KV Janesron feeder work. The line could not run and remained idle as the major problem was in HT AB cable, which frequently was punctured. He drew the attention of this Court to Annexure P-19, a letter dated 22.06.2015 written by the SDO Const.S/Divn., UHBVN, Karnal to SDO 'OP' S/Divn., UHBVN, Indri with copy endorsed to the petitioner to the effect that the firm rectified the defects pointed out by the office and to intimate the office in case of occurrence of any defect in future. Thereafter, no such communication was received. Accordingly, the petitioner on 30.09.2015 issued 'No defect liability certificate'. Petitioner was confronted with the following charge-sheet on the basis of an ex-parte vigilance investigation ordered against the 'OPs.':-

“During the course of vigilance investigation, it has been found that the work for supply, erection, testing and commissioning of new 11 KV lines, feeders in (OP) Circle, Karnal was awarded to M/s Arvinder Electricals, Chandigarh vide contract No.537 & 538/NIT No.19/P&D/2013-14/B-310/DD-II dated 18.07.2013.

He being XEN/Construction Division, Karnal issued 'No Defect Liability Certificate' to firm on 30.09.2015 by ignoring the fact that Janeshro AP feeder and Bibipur AP feeder never worked properly since the date of taking over by the Nigam. Resultant, the said feeders has not been put to use and the huge expenditure incurred by the Nigam on these feeders gone waste due to his negligence.”

Petitioner appeared before the Enquiry Officer and brought on record entire material. The Enquiry Officer vide report dated 26.02.2019 (Annexure P-27) exonerated the petitioner by noticing that the perusal of

the log books revealed that the feeders were running on maximum load and also generated the revenue, i.e., after issuance of No Defect Liability Certificate, but to the utter shock of the petitioner, the punishing authority recorded a dissenting note dated 20.03.2019 (Annexure P-28) on eight counts. The aforementioned points were duly replied by E-mail which the respondents have emphatically denied and during the course of the hearing, reliance has been laid to Annexures P-14, P-16, P-18 and P-19 de hor of the fact that the respondents have not taken the cognizance of the reply, which is disputed question of fact at the moment. Another show cause notice for imposing major punishment of stoppage of two annual increments with future effect and downgrading of Annual Confidential Report has been received vide communication dated 20.08.2019 (Annexure P-31), which is in consonance with the decision of the Chairman-cum-Managing Director, UHBVN, Panchkula as the rules envisage remedy of appeal before the Board of Directors. Petitioner though would be reiterating his defence as enumerated in the reply Annexure P-29, but has serious apprehension that there would be no application of mind as the show cause notice does not refer to any points recorded by the Enquiry Officer, thus, it is totally apposite to what the Enquiry Officer has found. The petitioner has also not been confronted with the material already part of the record enabling him to count the earlier period. He contemplates to file the reply, but expresses apprehension that owing to rancour being nursed against the petitioner, he may be made a scapegoat.

Notice of motion.

Mr. Arun Gupta, Advocate, who is on the caveat, accepts notice on behalf of the Caveator and disputes the receipt of the reply Annexure P-

29. He submits that writ petition is premature as the petitioner has the remedy to file reply to the show cause notice Annexure P-31.

I have heard the learned counsel for the parties and appraised the paper book.

The opinion expressed in the show cause notice, which, according to Mr. Sharma, unilaterally reflects the decision in the absence of the reply of the petitioner which is in dispute for the time being, I am of the view that the petitioner since has been given a chance to file reply, he may do so and the respondents will afford an opportunity of hearing and examine all the material relied upon or to be relied upon by the petitioner and pass a speaking order uninfluenced of the decision taken by the Chairman-cum-Managing Director contemplating to downgrade ACR and as well as other punishment.

In case the respondents find the reply to be not justified and intends to impose contemplated punishment, if any, as according to Mr.Sharma, rules do not envisage downgrading of the Annual Confidential Report, said order to be kept in abeyance for a period of fifteen days from the receipt of the communication, enabling the petitioner to avail the remedy in accordance with law.

With the aforementioned observations, writ petition stands disposed of.

September 18, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No