

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.3192 of 2020 (O&M)
Reserved on: 31.8.2020
Date of Decision.10.09.2020
(Heard through VC)

Sukhbir Kamboj

...Petitioner

Vs

Dakshin Haryana Bijli Vitran Nigam, Hisar and another

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. S.S. Narula, Advocate
for the respondents.

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JAISHREE THAKUR J.

1. By way of the instant writ petition, the petitioner seeks quashing of preliminary inquiry report dated 24.01.2018 (Annexure P-2), charge-sheet dated 10.04.2018 (Annexure P-3) and inquiry report dated 28.08.2019 (Annexure P-6) being contrary to the facts and material on record and having issued without considering the submissions made by the petitioner. Further, a prayer is made to quash the show cause notice dated 08.01.2020 (Annexure P-8) issued by respondent No.2 whereby a major penalty of dismissal from service has been proposed.

2. In brief, facts of the case are that work order Nos.183/TED-253/IPDS/DHBVN/Hisar and 184/TED-253/IPDS/DHBVN/ Hisar, both dated 12.06.2017 were issued by respondent No.1 to M/s Duhan Electrical Works Pvt. Ltd., Delhi Road, Hisar to supply, erect/install and commission plant and equipment for urban electrification works of four towns i.e. Narnaud,

Adampur, Ratia and Bhuna falling in the jurisdiction of old Hisar Circle (now bifurcated into Hisar and Fatehabad Circles) under the scheme floated by the Central Government i.e. Integrated Power Development Scheme (in short IPDS). At that relevant point of time, the petitioner herein was working as Executive Engineer, Hansi. On 21.08.2017, the petitioner was telephonically informed that he has been made a member of the Joint Verification Report Committee formed by the Chief Engineer, PD&C, DHBVN, Hisar.

3. During the execution of works, the management came to know that the Contractor has extracted excess payment from the respondent-department against supplies and erections made under the project. Consequently, a fact finding inquiry was got conducted under the supervision of Superintending Engineering (Operation), Hisar (hereinafter referred to as SE 'Op', Hisar) wherein it had been concluded that gross irregularities had been committed by the Contractor, concerned field officers and by the office of Finance Adviser/Planning, Design and Construction, DHBVN, Hisar (in short 'FA/PD&C'). Based on the conclusion arrived at in the fact finding inquiry, works orders issued under the IPDS to the Contractor stood cancelled and a charge-sheet dated 10.04.2018 (Annexure P-3) had been issued against the petitioner and other officials. Upon receipt of charge-sheet, the petitioner duly responded vide his reply dated 31.05.2018. Dissatisfied with the reply submitted, the respondent-department decided to proceed with a regular Departmental Inquiry against the petitioner and other officials and consequently, an inquiry officer was appointed by respondent No.1 as per DHBVN Employees (Punishment and Appeal) Regulations, 2006. However, before completion of inquiry, the petitioner had again been asked to furnish a detailed reply, which he submitted on 08.02.2019 (Annexure P-5). The inquiry

officer submitted his report dated 28.08.2019 (Annexure P-6), to which the petitioner submitted his objections on 17.09.2019 (Annexure P-7). Thereafter, a show cause notice dated 08.01.2020 (Annexure P-8) was issued, holding him guilty of charges levelled against him and respondent No.2 had arrived at a conclusion that a major penalty i.e. punishment of dismissal from service should be inflicted upon the petitioner. Hence, this writ petition.

4. Mr. Harkesh Manuja, learned counsel for the petitioner submits that the entire proceedings initiated against him are vitiated. The petitioner has been called to explain as to why a major penalty i.e. punishment of dismissal from service should not be inflicted upon the petitioner, which is not sustainable considering that the preliminary inquiry itself was conducted by respondent no 2, the Nodal officer who was in-charge of verification of the bills as submitted by the Contractor. Respondent No.2, who was himself responsible for execution of the project, appeared as a witness in the fact finding inquiry and was also the complainant in the FIR lodged by the department against the petitioner and other persons, thus, for all intents and purposes, he was an interested party. It is further submitted that there has been a violation of Regulation 7(23) of the DHBVN Employees (Punishment and Appeal) Regulations 2006, in so far as there is no finding on each article of charge and the report is not supported by reasons. An additional submission has been made that the charge-sheet has been served upon him by the Superintending Engineer, who is the same person, who appeared as a witness in the Departmental proceedings and therefore the Show Cause Notice is vitiated.

5. Per contra, Mr. Sartej Narula learned counsel for the respondents would point out that the inquiry officer has spelt out each charge against the

petitioner and has dealt with them independently. He relied upon the inquiry report to substantiate his plea while pointing out that the complete inquiry report had not been furnished to the Court. It is argued that the show cause notice has been issued by the Chairman Cum Managing Director and not the Superintending Engineer as submitted by the counsel for the petitioner. It is also argued that the show cause notice has yet to be replied to, and in case of any adverse order he can thereafter raise all these pleas before the Board of Directors. The petitioner has caused huge monetary loss to the respondent authority, as excessive payment of Rs.4.32 crores and Rs.4.25 crores have been released to the Contractor despite the fact that they had no authority to do so.

6. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case and the case law cited. Written submissions have also been furnished by the counsel for the parties which are taken on record.

7. The petitioner herein would rely upon the work order dated 02.06.2017 which is available on the record as Annexure P-1. A perusal of the same would reflect that Clause No. 2 *Works In Charge* has been reflected to be the Engineer in Charge, i.e the Superintendent Engineer 'OP', DHBVN Hisar who has been nominated as the Nodal Officer for the work to be executed. The Nodal Officer was to be directly responsible for the execution of works, measurement and verification of bills for payment. In other words, the ultimate responsibility for due verification of bills submitted for payment would lie upon the Nodal Officer. On the basis of his inquiry report, a charge sheet was served upon the petitioner and other officials. Sh. Vikas Malik, the then SE, Construction was appointed as Inquiry Officer to conduct a regular departmental inquiry. In these proceedings Mr. Rajneesh Garg appeared as a

witness for the department and the petitioner was given a chance to cross examine him.

8. The counsel for the petitioner has argued that the Show Cause Notice dated 8.1.2020 has been issued by the Inquiry Officer Sh. Rajneesh Garg himself, although he had appeared as a witness in the disciplinary proceedings. He places reliance upon a judgment rendered in **Yunus Khan Vs State Of UP and others 2010(10) SCC 539** in support of his argument, that a witness in an inquiry cannot pass order of punishment as a Disciplinary Authority. Per contra, counsel for the respondents urged that the show cause notice has been served through the SE/Administration and contains the words *“with the approval of the Chairman-cum-Managing Director DHBVN Hisar”* and this has been the normal practice in the department. The argument and the case law relied upon by counsel for the petitioner would not be applicable to the facts of the instant case. The show cause notice has been conveyed after due approval of the Chairman Cum Managing Director, DHBVN, Hisar, through the SE/Administration and it is an administrative action. The order Annexure R-2 annexed with the written statement of respondents would reflect that the Chairman-cum-Managing Director had perused the inquiry report submitted by the Inquiry Officer, as well as the reply and objections received and thereafter he came to a conclusion that the inquiry had been held under the provisions of DHVBN Employees (Punishment And Appeal) Regulations 2006. He came to a conclusion that a show cause notice be issued. The draft show cause notice was prepared and on subsequent discussion was amended by Sh. Rajneesh Garg, but it cannot be lost sight of the fact that the show cause notice has been issued on orders and at the behest of the Chairman-cum-Managing Director, who in fact is the Disciplinary Authority and not the SE,

respondent No.2. In the case of **Yunus Mohd (Supra)**, the Commandant appeared as a witness in the inquiry held and on completion of the inquiry, he himself passed the order of punishment whereas in the instant case the Punishing Authority would be the Chairman-cum-Managing Director. Therefore, the argument raised is without merit.

9. Counsel for the petitioner has laid great emphasis on **Regulation 7(23) of the DHBVN Employees (Punishment and Appeal) Regulations 2006** to contend that after conclusion of the inquiry, a report shall be prepared, which shall contain the articles of charge, the statement of imputation of misconduct or misbehaviour, the defence as set out, an assessment of the evidence in respect of each article of charge and a finding on each article and reasons for the same. There is a proviso to the effect that no finding on such article of charge will be recorded if the employee has admitted to the said charge. Regulation 7(23) is reproduced as under.:

“7. PROCEDURE FOR INFLICTING MAJOR PENALTIES:

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(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 imputations of misconduct or misbehaviour;

(b) the defence of the Nigam Servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and reasons therefor;

Explanation – If in the opinion of the inquiring authority, the proceeding of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Providing that the findings on such article of charge shall not be recorded unless the Nigam Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

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10. The argument as raised by the counsel for the petitioner has no merit. As per the charge sheet dated 10.4.2018, 17 charges had been levelled against the petitioner, which was replied to in detail on 31.5.2018. A perusal of the inquiry report submitted by Mr. Malik, would reflect that each of the 17 charges as levelled against the petitioner have been dealt with. For reasons best known to him, the petitioner has not annexed the entire inquiry report of Mr. Malik and only a part of the said inquiry report has been attached. Pages 22 onwards till page 29 of the inquiry report deal with the 17 charges framed against the petitioner. The contention raised that the charges have not been dealt with individually, is factually incorrect. The petitioner filed his objections to the said inquiry report, however, the same does not mention that there has been a violation of the Regulation 7(23). Even these objections have been dealt with and thereafter, a show cause notice has been issued in terms of Regulation 7 (25A).

11. It is noticed that other officers namely Dilbagh Singh, O.P. Bishnoi, Diwan Chand, who had faced departmental proceedings along with the petitioner and were issued similar show cause notices, had approached the High Court seeking to challenge all proceedings. However, they withdrew their petitions with liberty to appear before the authorities concerned in response to notice under Regulation 7 (25A).

12. For the reasons mentioned hereinbefore, the writ petition is dismissed being devoid of merit.

(JAISHREE THAKUR)
JUDGE

September 10, 2020
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No