

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

CWP No.11010 of 2020

Date of decision: 9th September, 2020.

Vikas Mohan Dahiya

.....Petitioner

V/s.

State of Haryana and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. A.K. Viridi, Advocate, for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana and
Mr. Minderjeet Yadav, Deputy Advocate General, Haryana.

Mr. Puneet Jindal, Senior Advocate, with
Mr. Amandeep Singh Meho, Advocate,
for respondents No.2 to 4.

Sanjay Kumar, J.

The petitioner is an Executive Engineer in the service of the Dakshin Haryana Bijli Vitran Nigam (DHBVN). In essence, his two-fold prayer in this writ petition is as under:-

1. to direct the DHBVN to post him as a Superintending Engineer (Current Duty Charge) on par with respondent No.8 from the date his juniors, respondents No. 5 to 7, were posted as Superintending Engineers (Current Duty Charge); and
2. to direct the DHBVN to regularize his suspension period from 14.01.2014 to 02.04.2014 as on duty, with all consequential benefits, on the ground that the charge-sheet dated 26.09.2014 was not served upon him within 90 days, in keeping with Regulation 5 of the DHBVN's Punishment and Appeal Regulations, 2006.

The petitioner entered the service of the DHBVN as an Executive Engineer on 02.12.2011. In the year 2014, he was subjected to disciplinary proceedings in connection with the implementation of the Meter Pillar Box Scheme, whereunder consumer electricity meters were to be relocated from the consumer's premises to meter pillar boxes so as to minimize the theft of electricity.

Based on the first fact-finding report dated 02.01.2014, the petitioner was placed under suspension on 14.01.2014. However, another committee constituted by the DHBVN, comprising three officers, submitted report dated 18.02.2014, opining to the contrary. Thereupon, the petitioner was re-instated in service on 02.04.2014. While so, a vigilance inquiry into the issue culminated in the report dated 27.05.2014, wherein it was opined that the role of the concerned officers of the DHBVN needed to be inquired into and that disciplinary action should be initiated against them as per rules. Owing to this report, the petitioner was again placed under suspension and charge-sheet dated 26.09.2014 was issued to him. The regular inquiry into the matter, based on this charge-sheet, through the Inquiry Committee consisting of a Director of the Uttar Haryana Bijli Vitran Nigam and a Director of the Haryana Vidyut Prasaran Nigam Limited culminated in the report dated 10.02.2016, wherein it was concluded that no apparent financial loss to the DHBVN was suspected as the value of the material available with it was higher than the payments released to the contractors. In consequence, the petitioner was again re-instated in service on 03.08.2016.

However, dissatisfied with the findings recorded in the report dated 10.02.2016, the DHBVN ordered a *de novo* inquiry on 13.07.2016.

Aggrieved thereby, the petitioner filed CWP No. 22878 of 2017 before this Court and by order dated 07.10.2017 passed therein, this Court stayed the passing of the final order in the fresh inquiry proceedings.

While so, by office order dated 04.12.2019, the DHBVN posted respondents No. 5 and 6 herein, juniors of the petitioner in the cadre of Executive Engineer, as Superintending Engineers by giving them current duty charge. Similarly, under office order dated 07.05.2020, respondent No.7, another junior, was given current duty charge against the post of Superintending Engineer, OP Circle, DHBVN, Faridabad. Respondents No. 5 to 7 figure at Serial Nos.257, 262 and 260 while the petitioner stands at Serial No.255 of the seniority list dated 02.11.2017.

The petitioner pointed out that respondent No.8, his senior in the cadre, was also given current duty charge as a Superintending Engineer under office order dated 21.04.2017 though he was also facing disciplinary proceedings in relation to the very same Meter Pillar Box Scheme and it was only on 25.01.2018 that the charges against him were dropped.

It is in this factual background that the petitioner sought the reliefs, set out *supra*, by way of this writ petition.

Notice of motion having been ordered in the case on 31.07.2020, the DHBVN engaged learned counsel and also filed its reply. Comprehensive arguments were advanced by Mr. A.K. Viridi, learned counsel for the petitioner, and Mr. Puneet Jindal, learned senior counsel assisted by Mr. Amandeep Singh Meho, learned counsel for DHBVN. The matter is therefore amenable to final disposal at the admission stage.

The reply filed by the DHBVN, while admitting the factual aspects set out *supra*, brought out the following additional facts:- The *de novo* inquiry initiated against the petitioner culminated in the adverse report dated 25.07.2017 but owing to the stay order passed in the petitioner's pending writ petition, CWP No.22878 of 2017, no further action could be taken against him. According to the DHBVN, the factum of this report was suppressed by the petitioner when he filed the aforestated writ petition and secured interim order dated 07.10.2017 therein. The DHBVN asserted that it was not responsible for the delay in conclusion of the disciplinary proceedings and that, as the report was against him, the petitioner could not claim that he stood exonerated in the matter as on date.

As regards respondent No.8, the DHBVN claimed that the charges levelled against him were minor in nature as they only related to lesser deductions being made in relation to performance bank guarantees and penalties. Investigation into the same resulted in the finding that no over-payments or release of funds had taken place, causing loss to the DHBVN, unlike in the case of the petitioner. Upon considering this report, the charges against respondent No.8 were stated to have been dropped on 25.01.2018. Even during the pendency of the said disciplinary proceedings, the competent authority is stated to have noticed that there was no dereliction of duty or grave misconduct attributed to respondent No.8 and accordingly gave him current duty charge as a Superintending Engineer in April, 2017. Details were set out by the DHBVN relating to the disciplinary proceedings pending against the petitioner and the irregularities allegedly committed by him, resulting in financial loss.

The DHBVN asserted that the petitioner was not fit for assignment of current duty charge as he was not only facing the subject disciplinary proceedings but had also suffered the minor penalty of stoppage of one annual increment without future effect, *vide* office order No. 37 dated 27.01.2020, and the minor penalty of censure, *vide* office order No.74 dated 18.02.2020. In addition thereto, he was stated to be facing disciplinary proceedings pursuant to show-cause notice dated 21.02.2019, which were still pending. To show that the case of the petitioner was not an isolated one, instances were cited of other officers who were not assigned current duty charge owing to currency of disciplinary proceedings or punishments against them.

The DHBVN also explained as to why it was not in a position to make full-fledged promotions to the posts of Superintending Engineer. Interim order dated 06.07.2018 was stated to have been granted by this Court in ***CWP No.11058 of 2016***, titled ***'Manoj Kumar and others V/s. State of Haryana and others'***, staying further promotions to the posts of Superintending Engineer. It is due to this that the DHBVN is unable to proceed with regular promotions.

As regards the prayer of the petitioner to regularize his suspension period, the DHBVN pointed out that the disciplinary proceedings were still pending against him owing to the stay order secured by him in CWP No.22878 of 2017 and asserted that the said issue would be decided by the competent authority at the relevant time .

Though Mr. A.K. Viridi, learned counsel, sought to place reliance on a rule contained in the Punjab Civil Services Rules, Volume-I, Part-I, which

states to the effect that, save in exceptional circumstances, no officer should be retained in a lower paid post for more than six months beyond the date on which he becomes entitled to officiate continuously in a higher post, Mr. Puneet Jindal, learned senior counsel, would point out that with the promulgation of the Haryana Civil Services (Pay) Rules, 2016 (for short, 'the Rules of 2016'), with effect from 01.01.2016, the Punjab Civil Services Rules, Volume-I, Part-I, stood repealed insofar as the State of Haryana was concerned. Learned senior counsel would point out that the Rules of 2016 are being followed by the DHBVN and that assignment of current duty charge is being undertaken under Rule 76 thereof. Rule 76 states to the effect that no additional pay would be admissible for holding independently or in addition to the employee's own duty, the current duty charge of another post of the same or higher grade pay, regardless of the duration. The DHBVN had also stated in its reply that current duty charge of the post of Superintending Engineer was only a stop-gap arrangement assigned to eligible Executive Engineers in their own pay scale.

From a conspectus of the aforestated facts, it is clear and manifest that the petitioner is not only facing disciplinary proceedings as on date but is also suffering currency of the minor punishments imposed upon him in two other cases. He is therefore not entitled to have his candidature considered for any form of career advancement during such period. That apart, no substantive right vests in the petitioner to claim assignment of even a current duty charge. Be it noted that such assignment would be in the existing pay scale and there is no financial benefit arising therefrom.

Further, the petitioner cannot claim parity with his juniors, respondents No. 5 to 7 herein, who were assigned such current duty charges as they are not facing any disciplinary proceedings or suffering the consequences of punishment. Insofar as respondent No.8 is concerned, the DHBVN has cogently explained how the petitioner cannot claim parity with him. As to whether the DHBVN was justified in dropping the charges against respondent No.8 does not fall for consideration in this case, as the petitioner is not aggrieved thereby and only seeks parity with him on the ground that he was also facing disciplinary proceedings. Sufficient explanation having been offered by the DHBVN to justify the difference in its approach towards the two of them, no grounds are made out to infer any discrimination against the petitioner. In effect, the petitioner failed to establish his entitlement to be considered for assignment of a current duty charge as on date.

As regards the second prayer of the petitioner, it may be noted that the petitioner himself secured stay of passing of the final order in the pending disciplinary proceedings in CWP No. 22878 of 2017. He therefore cannot rely upon the *ratio decidendi* of 'State of Punjab V/s. Chaman Lal Goyal' [1995(2) SCC 570]. That was a case relating to delayed initiation of disciplinary proceedings and it was in that context that relief was granted to the employee, by directing consideration of his candidature for promotion without reference to the pendency of the disciplinary proceedings. Presently, it is not the case of the petitioner that there was any delay in initiation of proceedings against him. His grievance appears to be with regard to initiation of a *de novo* inquiry and that is the subject matter of the

earlier writ petition filed by him. This Court sees no reason to consider any issue that might logically arise for consideration in the said writ petition in the present case.

Further, the issue of how the petitioner's suspension should be treated would ordinarily be dealt with by the disciplinary authority upon culmination of the disciplinary proceedings and at the time of passing of the final order. At this stage, no grounds are made out for this Court to step into the shoes of the disciplinary authority and consider the status and validity of the suspension period undergone by the petitioner in the year 2014.

On the above analysis, the petitioner failed to make out any ground for interference in this writ petition or for award of the reliefs as prayed for.

The writ petition is therefore devoid of merit and is accordingly dismissed.

There shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

9th September, 2020.

rakesh

whether speaking/non speaking

: *Yes/no*

whether reportable/non reportable

: *Yes/no*