

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

CWP No.21744 of 2014 (O&M)

Date of Decision:20.02.2020

Amrik Singh Viridi

.....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr.Vikas Kuthiala, Advocate for the petitioner.

Mr. Mukul Aggarwal, Advocate for the respondents.

TEJINDER SINGH DHINDSA J.

Petitioner who was serving as Senior Executive Engineer under the Punjab State Power Corporation Limited, now stands retired w.e.f. 31.05.2019.

Petitioner raises a challenge in the instant petition to an order of penalty dated 27.11.2006 (Annexure P-4) whereby his two annual increments with cumulative effect were with-held as also recovery of Rs.69,535/- was imposed. The order of penalty stands affirmed by the Appellate Authority in terms of order dated 15.09.2011 (Annexure P-6). A writ of mandamus has also been sought for directing the respondent-Corporation to grant to the petitioner the deemed date of promotion on the post of Senior Executive Engineer w.e.f. 29.09.2004 i.e. the date when his juniors were promoted as opposed to 26.09.2006 when the petitioner was actually promoted to such post.

Counsel for the parties have been heard.

In the considered view of this Court the validity of the order of punishment dated 27.11.2006 at Annexure P-4 need not be examined on merits at this stage. Such view is being taken as the facts make out a case for remand

to the Appellate Authority for a decision afresh.

Admittedly, the order of punishment dated 27.11.2006 (Annexure P-4) was passed upon culmination of departmental proceedings that had been initiated against the petitioner. A statutory appeal at Annexure P-5 was preferred by the petitioner against the order of penalty. Perusal of the same would reveal that a number of grounds and submissions had been raised. It would not be necessary for this Court to delve into the same in detail. Suffice it to observe that one of the grounds taken in the appeal was that the order of penalty dated 27.11.2006 is a composite order of punishment imposing a major as also a minor penalty. It had been contented by the petitioner that under the relevant punishment and appeal rules such course could not have been adopted. That apart it had been stated in the appeal that no cogent and clinching evidence had come forth during the course of enquiry proceedings so as to support the finding of guilt recorded by the Enquiry Officer. The appeal preferred by the petitioner has been dealt with by the Appellate Authority vide order dated 15.09.2011 (Annexure P-6) in the following terms:-

“As though, appeal of the officer considered by the Competent Officers, Complementary Directors in their 56th meeting which held at Patiala on 30.8.2011 and below mentioned order got passed:-

The Committee after discussion on the details given in the memorandum passed the following resolution:-

RESOLVED THAT considering Charge Sheet issued on the basis of findings of Technical Audit, the gravity of charges leveled, reply of the officer, comments of the higher office given on the reply of the officer. Remarks of the Officer conducting Departmental Enquiry, the appeal

of Er. Amrik Singh Viridi (code No.3828) against Office Order No.738/D-7871 dated 27.11.2006 containing the facts already considered at the time of decision of the Chargesheet be and is hereby rejected.

So, according to the above said order of Punjab State Power Corporation Limited, Patiala, appeal of Er. Amrik Singh Viridi, Sen. E. Er. (Code-3828) is dismissed and remain enforce the orders of recovering the loss amount of Rs.68535/- from him and for withholding his two annual increments with cumulative effect.”

The order passed by the Appellate Authority is a cryptic non-speaking order. The contentions and grounds raised by the petitioner in the statutory appeal have not even been adverted to much less dealt with. The order passed by the Appellate Authority dated 15.09.2011 at Annexure P-6 as such cannot sustain. The same is set aside. Matter is remanded back to the Appellate Authority to consider the appeal preferred by the petitioner afresh and to pass a reasoned order after affording to the petitioner an opportunity of hearing within a period of three months from the date of receipt of this order. It is however clarified that this Court has not examined the order of penalty dated 27.11.2006 (Annexure P-4) on merits.

However, the second relief sought in the petition for issuance of directions to the respondent-Corporation to grant deemed date of promotion on the post of Senior Executive Engineer w.e.f 29.09.2004 i.e. the date his juniors were so promoted deserves to be accepted.

It has gone uncontroverted that DPC for the year 2004-05 was held on

post of Senior Executive Engineer but was kept in “Sealed Cover” due to pendency of a charge sheet bearing No.283 dated 20.07.2004. Juniors to the petitioner were however promoted to the post of Senior Executive Engineer w.e.f. 29.09.2004. Petitioner was actually promoted to the post in question only on 26.09.2006. In the written statement claim of the petitioner seeking deemed date of promotion as Senior Executive Engineer w.e.f. 29.09.2004 is resisted in terms of a stand that he did not fulfil the required bench mark of 13. A tabulation has been furnished in Para 13 of the written statement to contend that the total Bench Mark achieved by the petitioner on the basis of ACRs from 01.04.1999 to 31.3.2004 were 18. Seven bench marks are stated to have been deducted on account of punishments in different disciplinary cases and thereby the petitioner having achieved net bench mark of 11 against the required 13. Details in such regard as furnished in the written statement are as follows:-

Disciplinary cases	Decision	Effect of punishment on ACR to be down graded by
CS-125/D5093 dt.07.04.99	LOA	---
SCN-29/D5394 dt.05.02.99	Censure	1 mark
CS-161/D6362 dt. 27.06.00	LOW	---
SCN-102/D5079 dt.30.05.97	Censure	1 mark
CS-123/D5563 dt.07.04.99	Censure	1 mark
D7521 Explanation regarding misbehaviour with consumer	Filed	---
CS-283/D7756 dt.20.07.04	Letter of Advise & Recovery of Rs.5544/-	---
SCN-328/D7847 dt.15.09.04	Letter of warning	---
CS-365/D7871 dt.25.10.04	With holding of 2 annual increments with cumulative effect	4 marks
Total marks to be deducted		7 marks

A glaring fact which comes forth from the afore-reproduced tabulation is that 4 marks stand deducted by the respondent-Corporation pursuant to a punishment awarded of with-holding of two annual increments with cumulative effect in relation to departmental proceedings initiated vide chare sheet dated 25.10.2004. This is precisely where the respondent-Corporation has erred.

The legal preposition is well-settled that disciplinary proceedings commence only when a chargesheet is issued to the delinquent employee. A reference in this regard may be made to the judgments of the Apex Court in **Coal India Limited and ors. V. Saroj Kumar Mishra, AIR 2007 SC 1706** and **Chairman-cum-Managing Director, Coal India Limited and others v. Ananta Saha and others (2011) 5 SCC 142.**

A “Sealed Cover” procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence the findings of his entitlement to the benefits are kept in a sealed cover to be opened after the proceedings in question are over. The circumstances in which a “Sealed Cover” procedure is adopted were dealt with by the Apex Court in **Union of India v.K.V. Jankiraman 1991 (3) SCT 317** and it was observed as follows:-

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the

employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy”

In the facts of the present case the DPC for the year 2004-05 was held

respondent-Corporation on account of pendency of chargesheet No.283 dated 20.07.2004. Counsel for the Corporation has conceded that such chargesheet had culminated in issuing of a warning to the petitioner. The chargesheet dated 25.10.2004 which ultimately led to the imposition of a penalty of withholding of two annual increments with cumulative effect was subsequent to the date of holding of the DPC i.e. 04.08.2008. A senior employee has a right to be considered for promotion alongwith his juniors. Such right of consideration cannot be defeated on account of subsequent developments. The right of the petitioner for promotion to the post of Senior Executive Engineer alongwith his juniors had crystallized on 04.08.2008 when the DPC was held. Subsequent disciplinary proceedings initiated vide chargesheet dated 25.10.2004 cannot adversely impact the consideration that had already taken place at the hands of a duly constituted departmental promotion committee on a date prior i.e. 04.08.2008. In other words, the deduction of 4 marks while determining the Bench Marks achieved by the petitioner for the consideration year 2004-2005 on account of issuance of chargesheet dated 25.10.2004 subsequent to the DPC held of 04.08.2008 is bad in law. If such deduction of 4 Bench Marks is to be ignored, the petitioner would then secure 15 Bench Marks as against the required bench marks of 13. The petitioner as such was vested with the right in law to be promoted to the post of Senior Executive Engineer w.e.f. 29.09.2004 i.e. the date when his juniors were so promoted.

Counsel for the respondent-Corporation has placed heavy reliance upon memo dated 30.08.2004 (Annexure R-2 alongwith the written statement) to contend that even if some new disciplinary cases are pending against the employee, the promotion orders are not to be issued and the competent authority would be fully empowered to defer the promotion or to keep the same under

Clause (III) of memo dated 30.08.2004 and which reads in the following terms:-

“The employees, who are on select list prepared by the various DPCs for promotion to higher ranks, shall be promoted after obtaining latest position of new/pending disciplinary cases. If the new disciplinary cases/punishments in pending cases at the time of consideration effect the promotion, the promotion orders shall not be issued and competent authority shall be fully empowered to defer the promotion or to keep it in sealed cover as the case may be. All efforts shall be made to collect the required information well in time. In case it is not received within stipulated period then the promotion order of the employees shall be issued conditionally, subject to the condition that if any new disciplinary case initiated/pending case decided within the waiting period from the receipt of information regarding disciplinary cases at the time of consideration and the issue of promotion order effects his present promotion then the employee will be liable to be reverted.”

The relevant clause under memo dated 30.08.2004 is being misread by the Corporation. The new disciplinary cases/punishments referred to Clause (III) are in relation to the pending cases at the time of consideration for promotion. Such Clause (III) would cover a situation where at the time of consideration by the DPC if certain pending disciplinary proceedings have not been brought to its notice, the competent authority can then with-hold the orders of promotion and thereby defer the promotion to await the outcome of such proceedings. Clause (III) would not take within its sweep disciplinary

proceedings that have been initiated after the holding of the DPC. The interpretation as being put forth by counsel for the corporation as regards Clause (III) of memo dated 30.08.2004 if accepted would be against the dictum laid down in **Janki Raman's case (supra)**. Even otherwise the DPC in question for the year 2004-2005 had been held on 04.08.2008. The memo relied upon on behalf of the corporation was issued on 30.08.2004. The same can have no retrospective applicability.

In view of the above the action of the respondent-Corporation in denying to the petitioner promotion to the post of Senior Executive Engineer alongwith his juniors is held to be bad in law.

For the reasons recorded above, writ petition is partly allowed.

Directions are issued to the respondent-Corporation to grant the petitioner the deemed date of promotion as Senior Executive Engineer w.e.f. 29.09.2004. Since the petitioner already stands retired, he shall be granted notional pay fixation on such post and thereafter would be released the revised retiral benefits based on such notional fixation.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

February 20, 2020

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No