

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

Civil Writ Petition No. 24312 of 2016

Date of Decision : February 26 , 2020

Satnam Singh

..... PETITIONER(S)

VERSUS

Punjab Water Supply and Sewerage Board and another

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Dhiraj Chawla, Advocate, for the petitioner.
 Mr. Vijay Kumar Kaushal, Advocate, for the respondents.

...

Sanjay Kumar, J.

The petitioner, an employee of the Punjab Water Supply and Sewerage Board (PWSSB), was visited with the major penalty of stoppage of three increments with future effect, *vide* order dated 04.03.2016 passed by its Chief Executive Officer. The same stood confirmed in appeal by the Board of Directors of the PWSSB, *vide* order dated 30.06.2016. Aggrieved thereby, he is before this Court.

The petitioner entered the services of the PWSSB as a Junior Engineer in the year 1992 on temporary basis. His services were regularised in August, 1997. He was promoted as a Sub Divisional Officer w.e.f. 14.09.2007. While so, he was given the additional charge of Executive Engineer on 16.02.2009. In 2011, he was given independent

charge of the post of Executive Engineer at Hoshiarpur.

While so, an inspection was carried out by a quality control team in the context of irregularities alleged against the petitioner in the award of tenders for works of ₹0.49 lakh during the period 12.10.2012 to 25.04.2013. Certain minor irregularities were noticed by this team and in consequence thereof, a letter was addressed on 02.07.2013 to the Superintending Engineer of the PWSSB requesting him to verify and investigate as to whether there was any financial loss to the PWSSB or to the Government. A detailed report was then submitted by the Superintending Engineer of the PWSSB at Jalandhar, *vide* letter dated 14.01.2014, whereby he informed the Engineer-in-Chief-cum-Technical Advisor of the PWSSB at Chandigarh that there were some procedural violations but the work was done as per norms. He further stated that the quality of work was found to be satisfactory and that there was no financial loss. Thereupon, the Engineer-in-Chief-cum-Technical Advisor of the PWSSB at Chandigarh directed the Superintending Engineer at Jalandhar, *vide* letter dated 31.01.2014, to ensure that the officers concerned *viz.* the petitioner, and the Sub Divisional Engineer were warned that tenders of larger works should not be divided, in future, into smaller tenders. He further directed that a copy of the warning should be sent to the Head Office. Pursuant thereto, the Superintending Engineer at Jalandhar issued a warning to the petitioner, *vide* letter dated 24.02.2014, cautioning him to be careful in future and to ensure that, in future, small tenders were not floated by dividing larger works. He was also warned that if the material used at the site was found to be defective, it would be

his personal liability.

While matters stood thus, the Chief Executive Officer of the PWSSB at Chandigarh independently constituted a Committee to investigate into the matter once again, *vide* letter dated 21.10.2014. The two officers who had carried out the preliminary inspection were also part of this Committee. The Committee submitted a report on 16.11.2014 again stating that there were certain irregularities but the work was found to be in accordance with the site plan and the quality of the work was satisfactory. The Committee also recorded that there was no financial loss. However, the Chief Executive Officer at Chandigarh was of the opinion that the matter was serious and issued show-cause notice dated 12.12.2014 to the petitioner to explain as to why major penalty departmental proceedings should not be initiated against him. Not satisfied with the petitioner's reply dated 02.01.2015, the Chief Executive Officer initiated disciplinary proceedings and charge-sheet dated 11.02.2015 was issued to him. The petitioner submitted his reply to the charge-sheet claiming that he had already been punished for the self-same charge by issuance of a warning and that he could not be penalized again. This reply to the charge-sheet was dated 31.03.2015. The inquiry that ensued culminated in the report dated 07.12.2015, whereby the Inquiry Officer held that the charges framed against the petitioner were duly proved. The petitioner submitted his response to the findings recorded in the inquiry report, *vide* letter dated 20.01.2016. Therein, apart from assailing the recorded findings on merits, the petitioner again took the plea that he could not be punished twice for the same irregularity.

However, by the impugned order dated 04.03.2016, the Chief Executive Officer of the PWSSB visited the petitioner with the penalty of stoppage of three increments with future effect. The same stood confirmed in appeal by the Board of Directors of the PWSSB on 15.06.2016.

This being the factual milieu, Mr. Dhiraj Chawla, learned counsel for the petitioner, would argue that the major penalty imposed upon the petitioner stands vitiated by the fact that he was already punished earlier for the same misconduct.

The record reflects that the letter dated 14.01.2014 of the Superintending Engineer of the PWSSB at Jalandhar noted that the petitioner had undertaken the work under the pressure of the local administration but the quality of the work was found to be satisfactory and there was no financial loss, despite certain irregularities. Thereupon, the Engineer-in-Chief-cum-Technical Advisor of the PWSSB, in his wisdom, addressed the letter dated 31.01.2014 requesting the Superintending Engineer at Jalandhar to issue a warning to the petitioner and mark a copy thereof to the Head Office. The said warning was duly administered by the Superintending Engineer, *vide* letter dated 24.02.2014. There is no indication of the Head Office raising any objection to this measure of punishment adopted by the Engineer-in-Chief. The Chief Executive Officer of the PWSSB however re-initiated proceedings by directing a fresh inspection, which culminated in the report dated 16.11.2014 which was practically on the same lines as the earlier report. However, the Chief Executive Officer chose to take a stricter view of the matter and set in motion the disciplinary proceedings that culminated in imposition of the

major penalty of stoppage of three increments with future effect upon the petitioner, which stood confirmed in appeal.

The petitioner raised the issue of his having suffered a punishment in relation to the very same charge, time and again, but to no avail. In his response to the inquiry report findings, *vide* reply dated 07.12.2015, the petitioner pointed out that he had been warned, *vide* letter dated 24.02.2014, and asserted that issuance of the charge-sheet amounted to a review thereof. However, the Chief Executive Officer merely stated that he was conscious of the fact that there could not be a second or de novo inquiry into the same charge but did not clarify as to how he justified doing just that in the case on hand.

In his appeal against the penalty order, the petitioner again raised this issue but the Appellate Authority, *viz.* the Board of Directors, upheld the punishment and rejected the appeal without even advertng to the merits of his contention.

Mr. Vijay Kumar Kaushal, learned counsel for the PWSSB, would contend that the Engineer-in-chief at Chandigarh was not competent to authorise the Superintending Engineer to issue a warning to the petitioner. He however does not dispute the fact that no proceedings were initiated to cancel or withdraw the warning issued to the petitioner, *vide* the letter dated 24.02.2014 of the Superintending Engineer at Jalandhar. Though four specific charges were framed against the petitioner, *vide* the charge-sheet dated 11.02.2015, it is not in dispute that the same pertained to the very same irregularities which resulted in issuance of a warning to him under the letter dated 24.02.2014 by the

Superintending Engineer of the PWSSB at Jalandhar.

Therefore, in effect, the petitioner was penalized twice for the very same irregularities committed by him. No material is placed before this Court in support of the contention that the Engineer-in-Chief at Chandigarh did not have the competence to instruct the Superintending Engineer to impose a particular punishment upon the petitioner. Even if that be so, the PWSSB necessarily had to recall the warning issued to the petitioner and only thereafter initiate disciplinary proceedings afresh. Without taking recourse to such procedure, the PWSSB cannot justify two penalties being visited upon an employee for the same misconduct. As the earlier punishment was never withdrawn or cancelled by the PWSSB, imposition of the later punishment has no legs to stand upon.

In Lt. Governor, Delhi and others v/s. HC Narinder Singh [(2004) 13 SCC 342], an employee was visited with the penalty of reduction of pay by one stage without cumulative effect and thereafter, he was again issued a show cause notice proposing to remove his name from the promotion list on the strength of the very same incident. In such circumstances, the Supreme Court held that the second action proposing to deny promotion, based on the same cause, would be unsustainable in law.

In Nand Kumar Verma v/s. State of Jharkhand and others [(2012) 3 SCC 580], the Supreme Court observed that there is no justification for conducting a second inquiry on the very charges which were dropped earlier and though the principle of double jeopardy may not have application, law permits only disciplinary proceedings and not

harassment. The same view was taken in **Union of India and others v/s. Harjeet Singh Sandhu [(2001) 5 SCC 593]**.

The writ petition is accordingly allowed setting aside the impugned order dated 04.03.2016, whereby the petitioner was visited with the penalty of stoppage of three increments with future effect, and the appellate order dated 30.06.2016 whereby the Board of Directors of the PWSSB confirmed the same. In consequence, the petitioner would be entitled to restoration of all benefits in accordance with law and due procedure.

In the circumstances, there shall be no order as to costs.

February 26, 2020
Kang

(Sanjay Kumar)
Judge

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