

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

**CWP No.29391 of 2018
Date of Decision : 06.05.2022**

Paramjit Singh

.. Petitioner

Versus

Punjab State Power Corporation Limited and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. Alok Mittal, Advocate
for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the challenge of the petitioner is to the order dated 03.03.2015 (Annexure P-4) by which, the Punishing Authority imposed a cut in pension to the tune of 15% for a period of 10 years as well as to the order passed by the Appellate Authority dated 08.10.2018 (Annexure P-6) by which the cut in pension has been reduced from 15% to 8%.

As per the averments made in the petition, the petitioner was issued a charge sheet while in service on 25.06.2013. The petitioner filed the reply to the said charge sheet. Not feeling satisfied with the reply, an enquiry was held into the allegations and the enquiry officer after conducting the enquiry, submitted an enquiry report on 23.05.2014 wherein, the petitioner was found innocent. The said enquiry report was submitted to the Punishing Authority and the Punishing Authority,

without issuing any dissenting note to the report of enquiry officer or calling for comments of the petitioner, straight away imposed the order of punishment on 03.03.2015 imposing a cut in pension by 15% for a period of 10 years as, by the said date, the petitioner had already attained the age of superannuation and retired.

Feeling aggrieved against the said order, the petitioner preferred an appeal raising a grievance that the process as envisaged under the rules has not been followed particularly that the petitioner has not been supplied the dissenting notes of the punishing authority before imposing the punishment, therefore the punishment is liable to be set aside.

The Appellate Authority passed an order though reducing the cut in pension from 15% to 8% but did not advert to the arguments whether, the Punishing Authority could have imposed the punishment without supplying the delinquent official the dissenting note for his/her comment.

Two orders dated 03.03.2015 (Annexure P-4) and 08.10.2018 (Annexure P-6) are under challenge in the present petition.

After notice of motion, the respondents have filed the reply, wherein, the factual averment that the dissenting note of the Punishing Authority, disagreeing with the recommendations of the enquiry officer, was not supplied to the petitioner, has not been controverted.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question which arise in the present case is whether, the order of punishment dated 03.03.2015 (Annexure P-4) has been passed

after following the due process as envisaged under the rules or not. It is a conceded position that for holding the disciplinary proceedings against an employee, Punjab State Electricity Board Employees Punishment & Appeal Regulations, 1971, are to be adhered too. The said regulations provide in detail as to how, the disciplinary proceedings are to be held. Section 9 of the above States's regulations gives the detail as to what action on any enquiry report is to be taken by the Punishing Authority. Section 9 clause 2, which is relevant for the purpose of the present order is as under:-

“The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.”

As per section 9(4), the employee is to be given a chance to make representation. In the present case, concededly the said process has not been adopted. Meaning thereby that the imposition of punishment upon the petitioner by order dated 03.03.2015 is without following the procedure envisaged under the Regulation for holding the disciplinary proceedings and imposing punishment.

The case of the petitioner is covered by the judgment of the Division Bench passed in **CWP No.3889 of 1993 - 'Rachhpal Singh vs. Punjab State Electricity Board'**, decided on 21.09.2013. Relevant paragraph No.11 reads as under:

“In the light of the authoritative pronouncement, it has to be held that it was incumbent upon the disciplinary authority to furnish

*the grounds of disagreement from the report of the Inquiry Officer to the delinquent official before proceeding to inflict the punishment. The Board has violated the principles of **audi alterm partem** and this renders the orders of termination from services invalid.”*

That being so, the impugned order of punishment dated 03.03.2015 cannot be sustained in the eyes of law.

Further, even in appeal, though the said argument has been raised by the petitioner but, the same has not been dealt by the Appellate Authority though, the quantum of punishment was reduced in appeal. Once, the basic order is not sustainable in the eyes of law, the order passed in appeal cannot be sustained.

Learned counsel for the respondents submits that as the order of punishment is being set aside on technical grounds, the respondents be given opportunity to pass a fresh order by adhering the process as envisaged under Regulation.

The said argument is reasonable and is accepted. Let the dissenting note of the punishing authority be supplied to the petitioner within a period of one month from the date of receipt of certified copy of this order and whatever reply is submitted by the petitioner, to the said dissenting note, the disciplinary authority shall pass appropriate orders after apprising the same, keeping in view the facts and circumstances of this case.

In case, the ultimate order exonerates the petitioner, then all the amount recovered from the petitioner so far be refunded to the petitioner along with interest at the rate of 6% per annum and in case, the

petitioner is again found guilty and punishment is imposed, then appropriate orders be passed in the said regard and same be duly conveyed to the petitioner so that he can avail appropriate remedy as admissible to him.

The present petition is disposed of in the above terms.

May 06, 2022

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No