

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

201

CWP No.5533 of 2020

Date of Decision: 15.05.2023

SURINDER SINGH**.....Petitioner****Vs****DAKSHIN HARYANA BIJLI VITRAN NIGAM & ORS****.....Respondents****CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

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

Mr.Vishal Garg, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of Certiorari for quashing the order dated 19.11.2019 passed by the Appellate Authority, whereby punishment of recovery of an amount equivalent to stoppage of the two annual increments without future effect from the pension of the petitioner was inflicted vide order dated 07.06.2019 by the prescribed authority.

2. The allegation against the petitioner was that he had failed to supervise the unlawful activity carried out by the private person. The lack of supervision has been labeled as an unlawful

activity carried out by the contractor with connivance of subordinate staff. The lapse was considered to be serious on the part of the petitioner for which the chargesheet was also issued. The reply filed thereto was considered to be unsatisfactory and thereafter, the Superintending Engineer/ Administration, DHBVN, Hisar proceeded to pass an order dated 07.06.2019, ordering an amount equivalent to stoppage of two annual increments without future effect to be recovered from the pensionary benefits of the petitioner. The petitioner had retired on 31.10.2019. The order passed by the Superintending Engineer/ Administration, DHBVN, Hisar dated 07.06.2019 was unsuccessfully assailed before the Chairman-cum-Managing Director, DHBVN, Hisar. The order dated 19.11.2019 was conveyed to the petitioner through Superintending Engineer/ Administration, DHBVN, Hisar.

3. Learned counsel for the petitioner with reference to the notification dated 22.12.2015 submits that the substantive post held by the petitioner was that of Junior Engineer-I. The appointing authority of the petitioner was Superintending Engineer/ Human Resources. The Chief Engineer/Human Resources and Administration was the competent authority to impose major/ minor penalty. The First Appellate Authority for the penalty imposed by the competent authority was the Director/ Operation. The second Appellate Authority for the cases decided by the first Appellate Authority was the Managing Director.

4. The first submission of learned counsel for the petitioner is that the impugned order of punishment has been passed by the Superintending Engineer/ Administration, DHBVN Hisar and the said authority does not figure in the hierarchy of the authority as per notification dated 22.12.2015. Similarly the appellate authority i.e. Chairman-cum-Managing Director also does not figure in the frame of first Appellate authority because Director/ Operation was the first Appellate authority.

5. With reference to the aforesaid factual position, learned counsel for the petitioner has submitted that the impugned order dated 07.06.2019 passed by the Superintending Engineer/ Administration, DHBVN, Hisar and the order dated 19.11.2019 passed by the Chairman-cum-Managing Director, DHBVN, Hisar are without jurisdiction having been passed by the authorities not competent to pass such orders under the notification dated 22.12.2015.

6. Secondly, learned counsel for the petitioner with reference to **O.K.Bhardwaj vs. Union of India and others 2001 (9) SCC 180** submits that the minor punishment has been awarded without holding any enquiry in the present case. As per the conscious decision of the department itself, office circular dated 01.09.2015 was issued by the Chief Engineer/Operation, DHBVN, Hisar communicating that after careful examination of the fatal accident of Sh. Suman occurred on 07.04.2014, the competent

authority was pleased to issue the office order dated 01.09.2015 informing all the concerned quarters that the private person late Sh.Suman was working on line without any intimation to the area incharge and other officials. The victim himself was responsible for the accident, wherein, no Nigam official was responsible for the said accident. The family members of the victim have not filed any court case and no court case was pending at the time when the office circular dated 01.09.2015 was issued. It was decided to close the fatal accident claim of aforesaid Sh. Suman without making any compensation to the victim.

7. Learned counsel for the petitioner with reference to the aforesaid office order, submits that despite reply having been filed by the petitioner to the chargesheet, no enquiry was held which in itself is an utter violation of law laid down in **O.K.Bhardwaj's case (supra)**.

8. *Per contra*, learned counsel for the respondents relied upon the notification dated 08.03.2018 to buttress his arguments that in view of the aforesaid notification, for the post of AEE/AE/Accounts officer/System Analyst, punishing authority is the Director/ Projects and appellate authority is the Managing Director. On a pointed query, learned counsel for the respondents has admitted that the substantive post of the petitioner was Junior Engineer and he was only working on the post of SDO in his own pay scale. He was not drawing any such financial benefits of the

post of SDO. The petitioner was performing only a current duty charge in his own pay scale.

9. In view of the aforesaid, the notification dated 08.03.2018 is not attracted to the facts of the present case. The impugned orders are found to be without jurisdiction. The alleged lack of supervision is in respect of an occurrence which took place on 07.04.2014. Chargesheet was issued to the petitioner on 13.03.2019 and its reply was allegedly considered to be unsatisfactory and, thereafter, the order of punishment was passed on 07.06.2019 without holding any enquiry as mandated in **O.K.Bhardwaj's case (supra)**. In the appeal filed by the petitioner also, no new thing has happened except negating the claim of the petitioner.

10. For the reasons recorded hereinabove, I deem it appropriate to accept this writ petition, thereby quashing the impugned orders dated 07.06.2019 passed by the Superintending Engineer/ Administration, DHBVN, Hisar and 19.11.2019 passed by the appellate authority being without jurisdiction and against the principles of natural justice. The respondent Nigam despite an office order dated 01.09.2015 proceeded to pass the impugned orders knowing fully well that no officer/ official of the Nigam was responsible for the fatal accident of Sh.Suman, who was a private person doing the work on line without any intimation to the area incharge or any other official of the Nigam. No court case was filed

by the family members of the deceased. The petitioner was due to retire on 31.10.2019. Four months prior to his retirement, the impugned order dated 07.06.2019 came to be passed, thereby proposing to recover an amount equivalent to stoppage of two annual increments without future effect from the pension of the petitioner.

11. The illegality is writ large on the face of the record that the aforesaid amount was sought to be recovered from the pensionary benefits of the petitioner without holding any enquiry in view of the office circular dated 01.09.2015 issued by the Chief Engineer/ Operation, DHBVN, Hisar, even enquiry was not feasible as there was no fault on the part of any officer/ official of the Nigam. The family members of the deceased also did not file any claim case against the respondent Nigam, therefore the impugned action besides being illegal is without jurisdiction. The petitioner has been victimized even after his retirement, for which the respondent Nigam is burdened with costs/ compensation of Rs.1 lakh to be paid to the petitioner within a period of one month from the date of receipt of certified copy of this order.

12. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

May 15, 2023

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No