

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:126617

CWP-11178-2023

DECIDED ON:04.07.2023

SATINDER SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Mandeep Singh Khillan, Advocate
for the petitioner.

Mr. Padamkant Dwivedi , Addl. AG, Haryana.

Mr. Piyush Bansal, Advocate
for respondents No.2 to 4.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari/mandamus* directing the respondents No.2 to withdraw/quash the impugned punishment orders dated 15.01.2020 and 08.07.2020 (Annexure P-1& P-2) with a further prayer to remove the downgrading in ACR for the year i.e 2015-2016.

2. Breif facts leading to filing of present petition are as under:

Petitioner got employed with Respondent No. 2 on 01.06.2001 and Respondent No. 2 awarded contract in favour of M/S Arvindera Electricals dated 18.07.2013 & 25.09.2013 for supply, erection, testing, installation and commissioning of 24, 11 KV lines/feeders in operation circle, Karnal. A complaint was filed alleging some fraud in the feeder installed at Janerson AP & Bibipur AP located in the Indri Division, Karnal. Petitioner joined as SDO Construction at Sub Division, Panipat on 11.09.2015. The work order was awarded on 18.07.2013 and

the charge of the new feeder was taken over by the SDO city on 26.04.2014 and as per the statement before the enquiry officer, both the feeders were charged on the same date and the load was shifted to the newly elected feeders as per the log sheets and the “defect liability period” awarded for the work expired on 26.06.2015.

3. Learned Counsel for the petitioner contends that Petitioner is aggrieved of the orders passed by the punishing Authority dated 15.01.2020 and 08.07.2020 (Annexure P1&P2) as the Punishing Authority has totally discarded the enquiry report and has passed the order on whimsical grounds thus being illegal, arbitrary and violative of principles of natural justice.

4. It is now contended on behalf of the petitioner before this Court that the charge against him is that he being the SDO construction, division Karnal has issued “No Defect Liability Certificate” to the firm on 30.09.2015 by ignoring the fact that Janeshro AP feeder and Bibipur AP feeder never worked properly. He also submits that the work order was awarded on 18.07.2013 and the final bills were released to the contractor on 03.09.2014 and 21.11.2014 inasmuch as the completion of work and payment of final bills was much prior to the joining of petitioner i.e 11.09.2015 [Annexure P-5].

5. Further, he points out that the payment of final bill is the subjective determination of the competent authority which includes furnishing of certificate by the Chief Electrical Engineer and in the present case payment of the final bills of the contractor was already released on 03.09.2014 and feeders started their functioning on 26.06.2014 after getting clearance from Chief Electrical Inspector Chandigarh i.e almost 1 year 3 months prior to his joining.

6. In addition he contends that petitioner took charge on 11.09.2015 and the “No Defect Liability” certificate was issued on 30.09.2015 thereby he simply initiated the process of releasing the amount which was already signed by his two

superior officers who had complete knowledge of the working of the feeders. Even in the enquiry report all the relevant documents and records were scrutinized and the petitioner was exonerated of all the charges by the enquiry officer and the said enquiry report has totally been discarded by the punishing authorities (Annexure P-15). Whereby the petitioner has specifically denied the charges against him which reads as under:-

“That it is totally wrong and denied that myself did not discharge my duties for issuing NO Defect Liability Certificate on 30.09. 2015 for Janeshro AP feeder and Bibipur AP feeder under the work order no. 537 & 538/NIT No. 19/P&D/2013 24/8-310/DD-I Dated 18/7/2013 which WaS issued to M/S Arvindra Electrical Chandigarh. It is submitted that the work was carried out with the co ordination of operation wing. The work was completed by the firm M/S Arvindra Electrical Chandigarh and the said feeders were taken load properly. The same had been admitted by the then SDO 'OP' Indri before the vigilance wing. The feeders duly energized and duly got clearance from CEI Chandigarh as per the Central Electricity rule also. The feeders were handed over to operation wing in healthy condition Moreover, the log-sheet itself shows that the cable was running in maximum load also and operation wing had also generated the revenue from it. A PTW No. 44 that cable have no load and under breakdown but the fault restoration has not been stated in the enquiry report and it continuously show nil load if load was not taken operation wing has not made any correspondence to the construction wing even for long period i.e. 1 year. The feeders were running on load even after issuing No defect Liability Certificate”.

7. Learned state counsel on the other hand vehemently contends that the petitioner did not perform his duties with due care and attention as ensuring quality of the work as per the standard/specifications is the responsibility of the executing agency, which in the instant case was the construction wing where the petitioner was posted. He further points out that the defects in the functioning of the feeders

had been duly pointed out by the OP officer well within the warranty period and all the facts were in the knowledge of the petitioner.

8. He further refers to para 4 of the punishing authority (Annexure P-1) wherein they have specifically mentioned about the negligent role of the petitioner which reads as under :-

“The contention raised by the charged officer is baseless and is a poor attempt to mislead the punishing authority. As per log sheet, the Janeshro feeder after commissioning on 26.06.2014 remained under breakdown from 29.06.2014 till 30.09.2015 except on one day. Furthermore, XEN (OP) Sub Urban-1 Karnal vide letter dated 28.04.2015 had intimated that the feeder could not be run and was lying idle since the beginning, and that the major problem was in HTAB cable which got punctured frequently. The SE (OP) Karnal vide letter dated 05.05.2015 addressed to SE Const Circle had intimated that both the feeders were lying idle due to frequent puncture of HTAB cable/other defects already intimated from time- to-time. However, the charged officer made an efforts to ascertain whether the required remedial action had been taken by the contractor, before issuing the No Defect Liability certificate on 30.09.2015 on the request dated 03.08.2015 of the contractor. Furthermore, as per log sheets of Janeshro feeder, the feeder is functioning to a limited capacity only as the load on the feeder varied from 10 AMP to 70 AMP and most of the time the load was less than 20 AMP only. Therefore, the feeder never ran on full capacity of around 150-200 AMP. Moreover, the second feeder i.e. Bibipur AP Part 2 feeder, even during this period i.e 01.10.2015 to 31.12.2015 was not functional. Letter dated 08.12.2015 from SDO (OP) S/Divn. Indri further corroborates the above facts that the feeders were not functional even in December 2015. Thus, this contention is also found incorrect.”

9. Heard, learned counsels for the respective parties.

10. Perusal of the file reveals that the petitioner joined as SDO construction at Sub Division Panipat on 11.09.2015 and had also additional charge of SDO Construction, Sub Division Karnal. Respondent no. 2 awarded contract to

M/S Arvindra Electricals Chandigarh for supply and commissioning of new 11KV lines feeder in OP circle Karnal on 18.01.2013. After the completion of the work by the said contractors, the feeders were inspected by AE, Chief Electrical Inspector on 2 occasions i.e 21.04.2014 and on 09.05.2014 and both the feeders started their functioning on 26.06.2014 after getting clearance from the Chief Electrical inspector, Chandigarh that is almost 1 year three months prior to the joining of the petitioner and moreover the payment of the final bills of the contractor were already released on 03.09.2014 i.e also prior to the joining of the petitioner. Even the log book with regard to the Janeshro Feeder showed that the said feeder never faulted since 26.06.2014 to 30.09.2015 even on the date when no defect certificate was issued i.e on 30.09.2015. and the other feeder of bibipur remained under breakdown for continuously 10 months i.e from 03.07.2014 to 29.05.2015 which was also before the joining of the petitioner and during the said period some other officer was the in-charge and the warranty period of the said feeders expired in June 2015 and the no defect certificate was issued by the petitioner on 30.09.2015 which was after the expiry period of the warranty period.

11. Furthermore, the inquiry report submitted by the inquiry officer on 26.09.2019 exonerated the petitioner of the charges levelled against him. The relevant part of the report is reproduced as under:-

“The Reply furnished by the Charged Officer has been found to be satisfied and the points mentioned by him in his defence behold good. The charged officer joined in the Const. Sub-Division in the month of 06/2015. Hence, he cannot be held responsible for issuing No Defence Liability Certificate as the 11 KV lines, feeders in (OP) Circle, UHBVN, Karnal were commissioned/ energized on 26.06.2014 after getting clearance from Chief Electrical Inspector, Chandigarh i.e. almost one year prior to his joining. That he took proper initiatives in taking up the matter with the Firm when reference was made by and also got rectified the defects pointed out to the satisfaction of

Operation Wing, as is evident from Const. Sub-Divn. Memo No. 571/CSD/ KNL dated 22.06.2015. Also the Log Sheets record shows, that the feeders were running on maximum load and Operation Wing had also generated the revenue from it after issuance of No Defect Liability Certificate. It is also an established fact that payment of the bills of the contractor had already been released on 03.09.2014 i.e. prior to his joining. As such, the charge does not prove against him"

12. In view of the above observation made and considering the inquiry report dated 26.09.2019 (Annexure P-15) as well as the fact that the petitioner joined much later i.e., 11.09.2015 and the work order/contract was awarded on 18.07.2013, therefore, no liability towards the petitioner can be made out.

13. Hence, the present petition is allowed and Annexures P-1 & P-2 are set aside.

(SANDEEP MOUDGIL)
JUDGE

04.07.2023
Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>