

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8994-2021

Reserved on 04.07.2023

Decided on 27.09.2023

Sundeep Kumar

... Petitioner

VS.

The Board of Directors, DHBVN & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Kumar, Advocate for the petitioner

Mr. Samarth Sagar, Advocate for the respondents

Sandeep Moudgil, J.

(1). The issue which arises for consideration is whether the Competent Authority has rightly and legally approved the charge-sheet issued under the provisions of DHBVN Employees Punishment and Appeal Regulation 2006 to initiate disciplinary proceedings against the petitioner for imposing major penalty, on the basis of an anonymous complaint received by the respondent-Nigam?

(2). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of the punishment order dated 23.07.2020 (Annexure P25) as well as the order dated 12.03.2021 (Annexure P30) whereby the punishment of stoppage of two increments with future effect has been reduced to stoppage of two increments without future effect which has been decided without advertent to the arguments/contentions raised by the petitioner in the appeal. Further, a direction is sought for quashing of the charge-sheet dated 08.03.2018 (Annexure P4) and enquiry report dated 09.07.2019 (Annexure P8).

(3). The petitioner was appointed as Assistant Engineer Electrical with respondent-Nigam on 11.08.2004 and is presently working as Assistant Executive Engineer. An anonymous complaint was received by the respondents, on the basis of which a charge-sheet was issued on 08.03.2018 against the petitioner by Superintending Engineer/Vigilance alleging that the petitioner did not attend the meeting on 01.06.2017 in non-compliance of the directions of SP, Vigilance. Vide inquiry report dated 09.07.2019 (Annexure P8), the charges against the petitioner were proved as a result of which order dated 23.07.2020 (Annexure P25) was passed by Chairman-cum-Managing Director whereby punishment of stoppage of two increments with future effect was imposed on the petitioner. In pursuance to the writ petition filed by the petitioner i.e. CWP No.12181 of 2020, the petitioner filed statutory appeal before the Board of Directors. Resultantly, vide impugned order dated 12.03.2021, the SE/Administration conveyed that the Board of Directors in its meeting held on 17.02.2021 has decided to reduce the punishment from “stoppage of two annual increments with future effect” to “stoppage of two annual increments without future effect”. Hence, the present writ petition.

(4). Mr. Sandeep Kumar, learned counsel for the petitioner contended that the punishment order has not been issued nor approved by the competent disciplinary authority. The charge sheet was neither drawn up nor caused to be drawn up by the competent punishing authority. Therefore, the punishment orders dated 23.07.2020 and 12.03.2021 (Annexures P25 & P30, respectively) are liable to be quashed in view of Regulation 7(3) read with Section 2(a), (b) and (h) of DHBVN Employees Punishment and Appeal Regulation 2006, i.e. the statute governing the punishment regulation for the petitioner. According to

the petitioner, if the record is called for, it can be verified whether the approval was accorded by the concerned authority, at appropriate stage and as such there was non-application of mind by the disciplinary authority which is contrary to the judgment of the Supreme Court in **Union of India and Ors. vs. B.V. Gopinath [(2014) 1 SCC 351]**.

(5). It is further submitted that as per Article of Association of DHBVN, formulated under the Companies Act, 1956 coupled with the mandate contained under Article 311 of Constitution of India, the Board of Directors of respondent-Nigam is only the 'competent appointing authority' who may initiate major disciplinary action against the petitioner. He submits that since the Superintending Engineer/Vigilance is not the Competent Authority having the power or jurisdiction to issue the charge sheets in question, therefore, the very issuance of charge-sheet is illegal and actuated by gross *mala fide* on the part of respondent-Nigam.

(6). Further, it is argued that the proceedings against the petitioner were initiated on an anonymous complaint received from the office of Vigilance/HVPNL, Panchkula. However, as per reply dated 10.05.2019 (Annexure P13), the respondent-Nigam has no such complaint record nor they have any source of the alleged complaint against the petitioner. It was contended that the respondent-Nigam has acted against the spirit of Government circular/memorandum (Annexures P15, P34 & P35) wherein it is categorically mentioned that the anonymous complaints, even those carrying verifiable facts, are just simply filed and no action is to be taken.

(7). Learned counsel further urged that in case of departmental inquiry against Class-1 and Class II officers, all departments are required to consult

Legal Remembrancer before issuance of charge sheet etc. No such legal vetting or consultation has been obtained from the Legal Remembrancer before issue of charge sheet. Moreover, Director, Vigilance HVPNL, Headquartered at Panchkula has wrongly re-delegated his power to the SP Vigilance, Headquartered at Gurugram to conduct the review meeting of all field units in violation to the Rule 8(8), Chapter 2 of the Haryana Civil Services (General) Rules, 2016.

(8). Another submission made on behalf of the petitioner is that there is no document/Order/Noting etc., which was signed "Independently" by each member of Board of Director authorizing a particular authority to act as appointing authority or punishing authority to impose any major punishment upon the petitioner.

(9). Notice of motion was issued in this case on 27.04.2021 and pursuant thereto, the reply has been filed by respondent-Nigam.

(10). Mr. Samarth Sagar, Advocate appearing on behalf of the respondent-Nigam, on the basis of averments made in the reply dated 16.09.2021 submits that under Regulation 7(3) of the 2006 Regulations, the charge-sheet has to be issued by the disciplinary authority to which the delinquent officer is subject to. He submits that the BOD of DHBVNL had delegated its power of appointment of officers in the corporation to the Managing Director. Furthermore, under Article 46 (xi) and (xii) of the Articles of Association, the BOD had also delegated its power to supervise and control the staff subordinate to the Managing Director. Therefore, the Managing Director was the appropriate disciplinary authority over the petitioner and had the power to issue the charge-sheet.

(11). The argument raised by learned counsel for the respondent-Nigam is that the Regulations of 2006 (Annexure P20) were later amended in 2019, during the pendency of the impugned departmental proceedings. Under Regulation 19(1)(b) of the 2019 Regulations, all departmental proceedings at the time the 2019 Regulations came into effect are to be carried in accordance with the 2019 Regulations, as if they had been initiated under the same. Therefore, since the departmental proceedings in the present case were pending when 2019 Regulations came into effect, the same also became applicable to the petitioner's case with full effect. Under Regulation 7(A)(3) of the 2019 Regulations, the competent authority to issue the charge sheet in a case involving major penalty is the punishing authority.

(12). On the question of non-vetting of charge-sheet by Legal Remembrancer, learned counsel for respondent-Nigam submitted that the procedure of departmental proceedings was firstly regulated by statutory regulations of 2006, and then later by statutory regulations of 2019. Neither of these statutory regulations makes it incumbent upon the disciplinary or punishing authority to consult the Legal Remembrancer before issuance of charge-sheet to delinquent officer.

(13). In so far as initiation of action on an anonymous complaint is concerned, it is contention raised on behalf of the respondent-Nigam that the basis of the above contentions are mere instructions issued by the government from time to time. It is submitted that the instructions are only guidelines, which can neither restrict nor curtail the discretion available to an authority under a legislative statute.

(14). No other point is pressed by the learned counsel for the parties.

(15). Heard learned counsel for the parties and gone through the record.

(16). The main thrust of challenge to the charge-sheet is about its issuance by the authority, not having competence to do so. Further, the issuance of charge-sheet is assailed on the ground that the charges levelled therein are vague and insufficient to constitute any misconduct against the petitioner especially in the light of the fact that the foundation for initiation of disciplinary proceedings is an anonymous complaint which has not been verified by the respondent-Nigam, as per law.

(17). The respondent-Nigam is an organization constituted under the Companies Act and the Board of Directors are the competent Appointing Authority. Under Article 311 of the Constitution of India, the disciplinary action may be taken by the Appointing Authority if Article of Association of DHBVN is read in conjunction therewith, the same defines power and duties of Managing Director (Article 46) and power of Board of Directors (Article 42). A reading of the Article of Association would show that the Board of Directors of DHBVN is the only competent appointing authority who may initiate major disciplinary action in respondent-Nigam against the petitioner inasmuch as the Companies Act does not permit the single individual like Chairman or the Managing Director to re-delegate the statutory power of competent appointing authority or disciplinary authority in so far as the rank of the petitioner is concerned and as such, the Chairman-cum-Managing Director, in their individual capacity, shall neither be a competent appointing authority nor disciplinary authority. Meaning thereby that the CMD is not competent to initiate disciplinary action or to impose major punishment order against the petitioner since as per Articles 46 (xi) & (xii), the Managing Director can make

appointment of the staff, supervise, control and impose penalties on the staff, **only under authorization** by the Board of Directors.

(18). Further, as per Regulation 7(3) read with Regulations 2(a), (b) & (h) of the 2006 Regulations, the charge-sheet has to be issued by the disciplinary authority to which the delinquent officer is subject to. Even as per the 2006 Regulations or the subsequently amended 2019 Regulations, the competent authority to issue the charge-sheet in a case involving major penalty is the punishing authority and as per 'Annexure A' attached to the 2019 Regulations, the competent authority to award punishment to Executive Engineer (the petitioner) is the Managing Director. The contention raised on behalf of the petitioner merits acceptance inasmuch as the charge-sheet was issued by the Superintending Engineer and as such he lacked jurisdiction as there is nothing on record to establish that the Superintending Engineer was duly authorized or powers were delegated to him issue charge-sheet.

(19). A scrutiny of case-file would show that, no formal decision was taken to initiate the departmental enquiry against the petitioner. This Court is unable to persuade itself in the manner the charge-sheet has been drafted. There exists nothing in the said charge-sheet which suggests that a conscious decision was taken by the Managing Director/ Disciplinary Authority by approving the draft of the charge-sheet except that a simple one line has been added in the charge-sheet to the effect that "*This issues with the approval of the Chairman-cum-MD, DHBVN, Hisar*". The microscopic reading of this charge-sheet leads to the conclusion that no such draft charge-sheet was kept for approval before the Managing Director and in turn, he approved it.

(20). In **B.V. Gopinath's case** (supra), while repelling the plea that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge-sheet can be drawn by an authority other than the disciplinary authority, the Supreme Court authoritatively held as under:-

“Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under [Article 311\(1\)](#) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under [Article 311\(2\)](#) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.”

(21). While rejecting the above submission in relation to delegation, the Supreme Court further held that acceptance of proposition viz. the charge-sheet can be drawn by an authority other than the disciplinary authority, would run counter to the well known maxim *delegates non protest delegare* (or *delegari*).

(22). The principle is summed up in “**Judicial Review of Administrative Action**” *De Smith, Woolf and Jowell (Fifth Edition)* as follows:-

“The rule against delegation A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.”

(23). The same principle has been described in “**Administrative Law**” *H.W.R. Wade & C.F. Forsyth (Ninth Edition), Chapter 10*, as follows:-

“Inalienable discretionary power An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorized by the authority endowed with the power.”

(24). Once the service regulations designate a particular authority as having jurisdiction to impose a particular penalty upon an employee, it is that authority and that authority only which has the power or jurisdiction to impose such penalty. No other authority, even if it is equivalent in stature and seniority to the designated authority, can be said to be competent to impose such penalty. The submissions raised on behalf of the petitioner further qualifies inasmuch as

the proceedings for imposition of the major penalty in question can be commenced only by the authority competent to impose the said penalty.

(25). The arguments raised on behalf of the petitioner that no action could have been initiated on an anonymous complaint cannot be rejected outrightly and deserves to be affirmatively considered in the light of the Instructions (Annexure P15, P34 & P35) which prescribed the procedure for dealing with the anonymous complaints. As per memo No.CH-78/GM/Admn.(Gen.38/Vol-IV dated 30.06.2014 (Annexure P15) issued by the DHBVN, the decision of the Management was circulated to the effect that in future only those complaints will be considered where complainants submit an affidavit along with complaint in respect of the facts mentioned therein and further, legal action will be taken against the complainant in case the facts are not verified and fake allegations are made in their complaints. The Circular dated 14.12.2020 (Annexure P35) clearly stipulated that no action should be taken on anonymous complaints and the same are liable to be filed. If at all, there was any verifiable allegation contained in the complaint, the respondent-Nigam was required to send the same to the complainant for owning/disowning by way of filing an affidavit/response within 15 days. In the present case, the respondent-Nigam, after having received the complaint, did not verify the contents of the complaint nor did the respondent-Nigam send the complaint enabling the complainant to file an affidavit verifying the contents of the complaint. So much so, the respondent-Nigam also refused to supply the copy of the complaint to the petitioner stating that “no such complaint is available in this office as per record of this office”.

(26). Moreover, section 4(6) of the Whistle Blowers Protection Act, 2011 mandates that "*no action shall be taken on public interest disclosures by the competent authority if the disclosure does not indicate the identity of the Complainant or public servant making public interest disclosure or the identity of the Complainant or public servant is found incorrect or false.*"

(27). The basis for initiation of the disciplinary proceedings in the case of the petitioner, itself is bad and *non est* in the eyes of law inasmuch as the context in which the complaints have surfaced and the perfunctory manner in which they have been handled, in gross violation of the mandatory procedures stipulated vide Circulars (Annexure P15, P34 & P35) vitiates the entire disciplinary proceedings. the Office Memorandum has been issued to prevent harassment which may be faced by officials in their service career and with this purpose the same have been issued and that purpose and object should not be allowed to be frustrated in a case of this present nature where the allegations *per se* also appears to be malicious. If departmental enquiry is bad in law since inception because of a defective charge-sheet, the entire edifice founded upon it needs to be axed.

(28). Another aspect drew attention of this Court that whole controversy revolves around petitioner's non-attending the meeting on 01.06.2022. However, admittedly, the meeting was called by SP/Vigilance, HPU who has been re-delegated powers to convene such meeting by DGP-cum-Director/Vigilance, HVPNL, Panchkula. Moreover, the re-delegation of power by Director, V&S to SP, Vigilance is against Rule 8(8) Chapter 2 of the Haryana Civil Service (General) Rules, 2016 which provides that "*competent authority*" in relation to the exercise of any power under Haryana Civil

Services Rules means the authority to which any power has been delegated.

Further, there is merit in the contention of learned counsel for the petitioner that in view of the hierarchy of respondent-Nigam, the SP Vigilance is not a competent authority to conduct/supervise the affairs/working of the petitioner. The SP Vigilance had called the meeting while he was posted at Gurgaon whereas the authority could be delegated to an Officer who is posted at same headquarter. Also, there is no place of SP Vigilance in the organizational structure of HVPNL/DHBVNL. The decision of re-delegation of power by Director, V&S HVPNL was required to be circulated through proper office order and its endorsement should have been made to the Finance Department and other administrative authorities in respondent-Nigam which is otherwise not in tune with the procedure mentioned in “Manual of Office Procedure” of Government of India, Ministry of Personnel, Public Grievances and Pensions.

(29). It is undeniable that in the meeting dated 01.06.2017 which was convened to discuss administrative issues and presentation regarding status of enquiries, the requisite information sought from the petitioner was supplied to the concerned quarter in March/April, 2019 itself. In addition, the petitioner, while discharging his official duties as Executive Engineer, also deputed Sh. Yugank Jain, AE/SDO (Vigilance) to attend the said meeting on behalf of the petitioner. The respondent-Nigam has failed to place on record any such evidence, oral or documentary, to establish that, at any stage, prior or after the meeting, it suffered any sort of loss due to non-attending of meeting particularly by the petitioner. The purpose of meeting, in any case, was served and mere enforcing the presence of the petitioner in the meeting, out of malice, only

shows the colorable exercise of powers being exercised by the respondent-Nigam which ought to be set at naught.

(30). For the reasons discussed above, this writ petition is allowed and the punishment orders dated 23.07.2020 (Annexure P25 and P30, respectively) as well as the charge-sheet and all other consequential proceedings initiated in pursuance to the anonymous complaint are hereby set aside. The respondent-Nigam is directed to grant all service/promotional benefits, if any, accrued to him, to the petitioner along with interest @ 9% p.a. from the date it became due till the date of its realization including the increment due to him in the year 2022.

(31). The needful shall be done within two months from the date of receipt of certified copy of this order.

(32). Ordered accordingly.

27.09.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No