

2023:PHHC:166545
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

230

CWP-9326-2021

DECIDED ON: 28.07.2023

SANDEEP KUMAR

.....PETITIONER

VERSUS

HARYANA POWER GENERATION CORPORATION LTD. & ORS.

..... RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL.

Present: Mr. J.S. Maanipur, Advocate and
Ms. Harpreet Kaur, Advocate
for the petitioner.

Mr. Jagbir Malik, Advocate
for the respondent-HPGCL.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in the nature of *Certiorari* seeking quashing of the order dated 09.06.2020 (Annexure P-21), passed by respondent No.3, order dated 22.10.2018 (Annexure P-18), passed by respondent No.4, enquiry report dated 15.06.2009 (Annexure P-5) and order dated 15.10.2009 (Annexure P-6), passed by respondent No.4.

2. The brief facts of the case are that the petitioner joined the respondent-Board as Operator Grade-1 on 21.12.1988 and was performing his duties with sincerity. He could not attend his duties, as his wife was suffering from backbone cancer and unfortunately, she passed away. Thereafter, he was issued four charge-sheets vide memorandum dated 31.08.2001, 30.12.2002, 08.10.2004 and 03.10.2007 respectively and enquiry was got conducted. A

notice was issued to the petitioner, to which he filed consolidated reply on 25.07.2008 (Annexure P-4). The petitioner was got transferred as J.E., from PTPS, HPGCL, Panipat to DCRTTP, Yamunanagar on 22.09.2008, as such he joined there. Without granting any opportunity, vide enquiry report dated 15.06.2009, it was concluded that he seems to be negligent towards his duties and recommended ex-parte decision against him, as per the Rules of HPGCL Rules may be initiated him. Vide order dated 15.10.2009, the punishing authority inflicted the three penalties i.e. stoppage of four annual increments with cumulative effect, ACRs down graded by one step for the period 2001-02, 2003-04, 2004-05, and 2007-08, and the absence period will be regularized as Leave of the Kind Due. He filed an appeal dated 15.09.2011 (Annexure P-7) and subsequent thereof, a mercy appeal dated 22.09.2011 (Annexure P-8) was also filed, which was recommended vide letter dated 05.10.2011 (Annexure P-9). The said appeal was rejected vide order dated 22.10.2018 (Annexure P-18). Thereafter, the petitioner filed a Review Petition on 21.12.2019 (Annexure P-20), which was also rejected vide impugned order dated 09.06.2020 (Annexure P-21) Hence, the present Writ Petition

3. Mr. J.S. Mannipur, Advocate for the petitioner has vehemently contended that the Enquiry Officer, without giving any opportunity of hearing to the petitioner, submitted the enquiry report and held him responsible of remaining absent. He further contends that no witness has been examined during the enquiry. Moreover, no enquiry report was given by the enquiry officer and thus principle of natural justice has been violated.

4. A reliance has been placed upon the judgment of the Apex Court rendered in case of "Kumaon Mandal Vikas Nigam Ltd. Versus Girja

Shankar Pant"; 2001(1) SCT 607" wherein, it has been held that appointment of presenting officer is must by the punishing authority as well as the delinquent employee must have opportunity of cross- examining the witnesses. Further reliance has been placed upon the judgment of the Apex Court rendered in the case of **"Indu Bhushan Dwivedi Versus State of Jharkhand"; 2010(3) SCT 343**, wherein, it has held that punishing authority is duty bound to act in consonance with basic Rule of natural justice and right of hearing is a fundamental right and forms an integral part of the concept of rule of law and also is against the principle of *audi alteram partem*. The Apex Court in case the of **"Gulab Singh Versus Maharshi Dayanand University, Rohtak and others" 2005(1) SCT 111"**, has held that the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to have been done and the appellate authority not only must provide an opportunity of personal hearing to the appellant but also pass a speaking order dealing with each and every contention raised and recording reasons as why it was persuaded to agree with the same.

3. It is submitted on behalf of respondents No.1 to 5 that the petitioner is challenging the enquiry report by filing the present writ petition, law on which is no longer *res integra*. He placed reliance upon the judgment of this Court rendered in the case of **"Karanpal Singh Versus Union of India and others 2003 (4) SCT 41 (DB)"**, wherein, it has been that the High Court can interfere with the punishment only if enquiry proceedings are vitiated due to violation of statutory rules or principles of natural justice or finding rendered by the competent authority is found to be perverse. It has been further held that the Court cannot sit in appeal over the findings given by the Enquiry Officer and if some evidence is available for sustaining the findings,

the High Court cannot examine the sufficiency of adequacy of evidence and substitute its opinion formed by the competent authority.

4. In view of settled proposition of law, the petitioner cannot challenge the enquiry report by filing the present writ petition. On this ground alone the present writ petition is liable to be dismissed. He contends that the petitioner was given a number of opportunities to file reply or to join the enquiry but at a number of occasions he chose not to participate in the enquiry. The contention is that the petitioner had not also replied to the show cause notice issued to him by the competent authority on the basis of enquiry report. The charge Sheets/Show cause notices were decided Ex-parte, as the petitioner never submitted his reply to the charge sheets and show cause notice to the issuing authority. The petitioner was given full opportunity to appear before the enquiry officer and the enquiry officer had advised the petitioner to attend the office of enquiry officer on 30.06.2008 vide his office memo No. Ch.02/SEN-79 dated 23.06.2008 but the official vide his letter dated 30.06.2008 requested to give some more time to prepare the reply of the charge sheets served upon to him. He was again advised to attend the office of the enquiry officer on dated 15.07.2008 along with the reply of the charge sheets along with connected documents vide his office memo No. Ch06/SEM-79 dated 30.06.2008. Again the Petitioner vide his letter dated 15.07.2008 requested for giving some more time. The petitioner was given one more opportunity and directed to report before the enquiry officer on 25.07.2008, vide his Memo No. Ch.08/SEM-79 dated 15.07.2008. The petitioner vide his letter dated 25.07.2008 submitted his written statement in shape of reply to the charge sheets along with a Medical Certificate from Sanjeevani Arogya Dham, VPO Bhikme Distt. Chamoli, Uttarakhand which was not found

satisfactory by the enquiry officer. After availing so many opportunities, now the petitioner cannot allege that the enquiry is vitiated being ex-parte. Accordingly, the writ petition filed by the petitioner is liable to be dismissed.

5. Having heard learned counsel for the parties.

6. The case relied upon by learned counsel for respondents No.1 to 5 is of no help to the respondents, as perusal of the inquiry report (Annexure P-5), clearly shows that the Inquiry Officer held guilty to the petitioner without any evidence despite the fact that for his absence, medical certificate was also submitted by the petitioner. It is a settled law that the Court can exercise the power of judicial review, if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. The respondents have not placed on record any document to show that the order dated 05.06.2008 (Annexure R-1) has ever been served upon the petitioner. Moreover, the petitioner vide letter dated 25.07.2008, the petitioner has submitted the written statement in the shape of reply to the charge-sheet along-with medical certificate. Therefore, once before the Inquiry Officer, reply was submitted to the charge-sheet then it was incumbent upon the Inquiry Officer to get the charge proved against him. On the basis of presumption charge cannot be considered to have been proved. Furthermore, once the absence period has been regularized then the punishment of stoppage of increments with permanent effect cannot be awarded to the petitioner.

7. It is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of

departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to deny availability of judicial review at the instance of an affected person. The observations as above however do find some support from the decision of this Court in the case of “*Apparel Export Promotion Council v. A.K. Chopra*” (1999 (1) SCC 759).

8. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependant upon the facts and circumstances of each individual case. In the case in hand, no such opportunity was even been given to the petitioner, which is violative of the principle of natural justice.

9. No other argument has been raised by the counsel for the petitioner.

10. In view of the discussions made hereinabove, the present petition is allowed.

28th July, 2023
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(SANDEEP MOUDGIL)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No