

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

CWP-18740-2016

Reserved on : 03.02.2023

Pronounced on : 19.04.2023

Major Singh

..... Petitioner

versus

Punjab State Power Corporation Ltd. and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. H.S. Saini, Advocate
for the petitioner.

Mr. Bhupesh Dogra, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

Challenge is to the chargesheet dated 12.03.2014 (Annexure P-1) and impugned order of punishment dated 15.01.2015 (Annexure P-5), whereby the petitioner has been saddled with the punishment of stoppage of two annual increments without cumulative effect i.e. minor penalty.

2. Petitioner who initially joined respondent-Corporation as Lineman rose to the rank of Senior Executive Engineer at the time of retirement on 30.04.2016. Petitioner claims that he was chargesheeted on 12.03.2014 for an incident related to his posting as Assistant Executive Engineer at PSPCL Bharri, District Ludhiana from where he was transferred way back in 04.09.2008. Chargesheet was issued in terms of regulation 8 of Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 for imposing major penalty. Petitioner responded to the chargesheet in detail contesting and denied all the charges levelled against

him. Considering the reply submitted by the petitioner, disciplinary authority passed order dated 15.01.2015 imposing minor penalty of stoppage of two annual increments without cumulative effect upon the petitioner. Appeal preferred by the petitioner also stands dismissed vide order dated 28.07.2016.

3. Counsel for the petitioner submits that once chargesheet has been issued for imposition of major penalty, disciplinary authority cannot be allowed to turn around but to impose minor penalty without holding inquiry. Reliance is being placed upon Full Bench judgment passed by this Court in the case of ***Dr. K.G. Tiwari vs. State of Haryana reported as 2002(4) SLR 329***. It has been contended that the same regulations which are applicable in the present case came for consideration before Division Bench of this Court in the case of ***Sarupinder Singh (since deceased) vs. Punjab State Electricity Board and another*** involving same question. The same was answered in favour of the employee holding that in cases where the allegation of misconduct are contested by the employee, then even for inflicting minor penalty, an inquiry may have to be held by following the procedure as contemplated by regulation 8(3) to 8(24) of the regulations. Where the order has been passed without compliance of regulation 8(5), the same is liable to be quashed. It has been further asserted by counsel for the petitioner that the petitioner has been met with hostile discrimination while imposing punishment. Three other co-delinquent employees namely Sangeeta Sehgal, Revenue Accountant, Jagjiwan Singh, Revenue Accountant and Rajesh Kumar, Consumer Clerk who were also chargesheeted for the same misconduct involving same allegations and were saddled with stoppage of two annual increments without cumulative effect

have been granted relief by the Appellate Authority by reducing punishment of stoppage of two annual increments without cumulative effect to that of issuance of warning letter. Whereas the Appellate Authority has dismissed the appeal preferred by the petitioner. Further challenge has been raised to the order passed by the Appellate Authority claiming that the same is a non-speaking order. No reason worth mentioning has been assigned to dismiss the claim of the petitioner. Reliance has been placed upon law laid down by Apex Court in the case of ***Chairman, Disciplinary Authority, Rani Laxmi Bai Kshetriya Gramin Bank vs. Jagish Sharan Varshney & others reported as 2009 (5) SCL 152.***

4. Per contra, counsel for the respondent has not disputed the factual assertions made by counsel for the petitioner based on the record of the case. However, it has been submitted that where chargesheet is for the major punishment, the disciplinary authority is well within its right to impose minor penalty.

5. I have heard counsel for the parties and have gone through the records of the case.

6. Full Bench of this Court in the case of ***Dr. K.G. Tiwari's case (supra)*** formulated the precise question involved in the present case in the following terms:-

“The legal question which arises for consideration in the instant case is - as to whether after issuing a charge sheet under rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (hereinafter referred to as 'the Rules') for imposition of a major penalty, for which the Rules envisage holding of a regular departmental enquiry, the authority can, on examination of the reply to the charge sheet, inflict a

minor punishment without holding a regular departmental enquiry ?”

7. Full Bench answered the same as under:-

“22. After having heard the learned counsel for both the sides and carefully perusing the decisions relied upon by the respondents, we are unable to agree with the contentions put forward by the learned counsel for the respondents. The question is as to whether and if so, why the procedure of holding a regular enquiry should be adopted in a case where the chargesheet is issued under Rule 7 for imposing a major penalty, but ultimately a minor punishment is imposed. If we go through the Scheme for holding an enquiry under Rule 7, we find that elaborate procedure has been prescribed by Rule 7. Sub-rule (1) of rule 7 provides that no order of imposing a major penalty shall be passed against a person to whom the rules apply, unless he has been given a reasonable opportunity to show cause against the action proposed to be taken in regard to him. Sub-rule (2) requires the grounds, on which the action is proposed to be taken, shall be reduced to the form of a definite charge or charges and it should be communicated in writing to the persons charged together with a statement of allegations. He should also be called upon to submit his explanation for defence, if any. If the explanations are not found to be satisfactory, then enquiry shall be held at which the evidence shall be heard with regard to the charges as are not admitted. The chargesheeted employee has to be given an opportunity to cross-examine the witnesses. He should be permitted to give evidence and also to examine witnesses on his side. Therefore, we find from this elaborate procedure that the chargesheeted employee will have an opportunity to explain at the initial stage

itself when he submits the reply to the chargesheet as to why no action is necessary to be taken against him. Only if his explanation is not accepted, then an enquiry has to be held by giving him opportunity to take part in the enquiry as provided for in the rules. A copy of the report of the Enquiry Officer has to be furnished to the chargesheeted employee, if he is found guilty, and if the disciplinary authority accepts it and proposes to impose the punishment on him, then, the chargesheeted employee will get a further opportunity to urge that the finding of guilt on one or more of charges is not warranted by the evidence on record, and therefore, he should not be held guilty on such of those charge, on the basis of the enquiry report for the reasons to be mentioned by him, and also to plead that a particular punishment should not be awarded to him. Whereas, in a case where the chargesheet is served under Rule 8 for the imposition of only minor penalty, the chargesheeted employee will be served with the chargesheet, and will get an opportunity to make his representations or submit his explanation against the same. He will have only one opportunity not only to say that he should not be held guilty by accepting his explanation, and that a particular punishment should not be imposed upon him. The chargesheeted employee has to anticipate the likelihood of his being punished with one of the penalties and also to make the written representation with regard to the same, as he will not get any further opportunity to make any further written representation in writing. It may be that he can be given a personal hearing also, but that will not be an effective substitute for a written representation. But, in a case where the chargesheet is issued under Rule 7 for imposition of a major penalty, the petitioner need not assume while replying to the

chargesheet that he will be held guilty, and can await the receipt of the copy of the enquiry report, to make his further submissions. Therefore, if a chargesheet is issued under Rule 7 for the imposition of a major penalty, but after receiving the explanation from the chargesheeted employee and considering the same, the disciplinary authority imposes a minor punishment, the petitioner will be deprived of the opportunity to make further representation as mentioned above, and will thus be prejudiced, unless the disciplinary enquiry, as contemplated under Rule 7 is held and completed.

23. If the chargesheeted employee is informed that the chargesheet is issued under Rule 8, then the chargesheeted employee will know that he will have only one opportunity to put forth his defence in writing to show that not only he is not guilty, but also that a particular type of punishment, especially like the one ordering recovery, should not be imposed. But if the chargesheet is issued under Rule 7, and if the entire procedure prescribed in Rule 7 is fully complied with by holding a complete enquiry, thereafter it will be open to the Disciplinary Authority to impose a major or minor punishment as may be called for. But, to suddenly drop the enquiry contemplated under Rule 7, after getting the explanation, and then to impose a minor punishment as per Rule 8, will cause prejudice to the chargesheeted employee, and deprive him of putting forward his case. The opportunity of making representation as provided for in Rule 8 contemplates a reasonable opportunity to put forth his entire defence which, the chargesheeted employee would put forth, in case he is put on notice that the procedure under the Rule 8 only will be followed. This opportunity he will not get if the chargesheet is issued under the Rule 7 and

after considering his explanation, a minor penalty is imposed as per Rule 8. This is the serious prejudice that will be caused to the chargesheeted employee when such a change of procedure is adopted.

24. We may also examine the contentions put forward by the learned counsel for the petitioner from another angle. In a case where a chargesheet is issued under Rule 7 for the imposition of a major penalty, if the disciplinary authority, after receiving the reply to the chargesheet, finds that there is no material against the chargesheeted employee, and therefore, after holding of a regular enquiry, it will not be in a position to punish the chargesheeted employee, but still, for its own reasons wants to impose some punishment on him, then the disciplinary authority will choose to adopt the methodology of dropping the procedure contemplated under Rule 7, and simply state that the explanation of the chargesheeted employee has been considered, and impose a minor punishment. This is not the object of having two different sets of procedures in the form of Rule 7 and Rule 8. The object of prescribing these rules for holding disciplinary proceedings is to protect the chargesheeted employee from arbitrary and capricious exercise of power by disciplinary authority and from unjust and illegal punishments. These Rules are intended to safeguard the rights of such chargesheeted employee and to comply with the principles of natural justice.

25. Therefore, in interpreting such beneficial provisions contained in these rules, the courts have to accept the interpretation which will advance the object of the rules rather than to defeat it, and also interpret in a manner which will protect the rights of the chargesheeted employees against arbitrary and capricious exercise of

power by the disciplinary authority.

26. Therefore, we respectfully agree with the decisions relied upon by the petitioners, wherein it has been held that once the chargesheet is issued for imposing a major penalty, then the procedure prescribed for the same in the Rule i.e. holding a regular enquiry should be adopted and completed even if it is subsequently decided to impose a minor punishment only.

27. Therefore, we are unable to concur with the view expressed by the Division Benches of this Court in Samay Singh's case and Puran Chand Sharma's case, and also in the Single Bench decision of the Delhi High Court in I.D. Gupta's case, and that of the Calcutta High Court in M.M. Dutta's case (cited supra), in so far as they hold that even in a case where the chargesheet is issued for imposing a major penalty, the disciplinary authority can still, without holding an enquiry under the relevant Rule for imposing a major penalty, impose a minor penalty. To that extent, we hold that they are not good law. We also hold that the decision of the Hon'ble Supreme Court in Shadi Lal's case is not applicable to the facts of the cases our hand.

28. We hold that once the chargesheet is issued under Rule 7 of the Rules 1987 for the imposition of a major penalty, which envisages holding of a regular departmental enquiry, the disciplinary authority cannot by merely examining the reply to the chargesheet, inflict even a minor punishment without holding a complete departmental enquiry.”

8. The precise regulation involved in the present case were tested by the Writ Court involving the identical issue in the case of ***Sarupinder Singh ibid*** to hold as under:-

“7. When the principles laid down in the aforementioned judgments are applied to the facts of the present case and the order impugned, it becomes crystal clear that the punishing authority has failed to consider the reply of the petitioner submitted by him in response to the charge sheet. In the first recital of the order, only mention with regard to reply has been made that the petitioner did not admit the allegation levelled against him. There is no other reason given for rejecting the reply and, therefore, the impugned order suffers from the same legal flaw which has been pointed out by this Court in the cases of Ram Dass Chaudhary (supra), Dr. Ram Kishan Chopra (supra) and Dr. P.K. Mittal (supra). Moreover, Regulation 8 (5) of the Regulations use the expression ‘consider’, which was subject matter of adjudication of this Court in the aforementioned judgments, whereas the impugned order does not show any consideration of the reply submitted by the petitioner. Therefore, the irresistible conclusion is that the impugned order does not disclose any ‘good and sufficient reasons’ to record the findings that the petitioner was guilty of the charges as contained in the charge sheet. It is well settled that in cases where the allegations of misconduct are contested by an employee then even for inflicting minor penalty an inquiry may have to be held by following the procedure contemplated by Regulation 8(3) to 8(24) of the Regulations as has been provided by Regulation 10(1) (b) of the Regulations. Therefore, the impugned order does not meet the requirement of Regulation 8(5) of the Regulations and, thus, the same is liable to be quashed.”

9. In view of the authoritative pronouncement of law by the Larger Bench, this Court finds no hesitation in holding that the impugned

order passed against the petitioner saddling him with the minor penalty after serving him chargesheet for major penalty without holding inquiry when he contested the charges cannot be sustained.

10. I may hasten to add here that otherwise also, the impugned order of punishment against the petitioner cannot be sustained for being marred by vice of discrimination. Once the co-employees who were treated similarly as the petitioner by the disciplinary authority have been granted relief by the Appellate Authority in the departmental appeal. The Appellate Authority ought not have dealt the petitioner differently to his peril that too without recording any reason as to how his case is different from the co-delinquent employees chargesheeted alongwith him.

11. For the aforesaid reasons, the present writ petition is allowed. Impugned order dated 15.01.2015 is hereby ordered to be quashed. Consequential benefits to the petitioner be released within a period of 08 weeks from the date of receipt of certified copy of the order alongwith interest @ 6% per annum.

12. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

19.04.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes