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

CWP-3075-2016

Date of decision : 15.02.2023

Pardeep Kumar Garg

....Petitioner

Versus

Chairman Punjab State Power Corp. Ltd. Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.S. Thakur, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

The present writ petition has been filed seeking writ in the nature of certiorari quashing the order dated 15.07.2014 (Annexure P-7) passed by respondent No.3 whereby the petitioner has been saddled with the major punishment of stoppage of two increments with cumulative effect.

Challenge is to further order 12.10.2015 (Annexure P-9) as well whereby the appeal preferred by the petitioner stands rejected. Petitioner while working as Assistant Engineer was issued charge-sheet dated 12.10.2010 (Annexure P-1). The same culminated in the order of censure i.e. minor punishment dated 10.05.2012 placed on record as Annexure P-3. The order was passed by the Chief Engineer/Operation, South, P.S.P.C.L., Patiala after more than 02 years, the same authority

vide order dated 12.06.2014 (Annexure P-4) ordered cancellation of order dated 10.05.2012 claiming that the case of the employee has been ordered to be dealt with in common proceedings. The order reads as under:-

'This office's office order No.379 dated 10.5.2012, vide which the decision on the charge-sheet No.C-280 dated 12.10.2010 issued against the employee Shri Pardeep Kumar, A.A.E. now officer (now A.E.) was taken by issuing the censure letter, is cancelled with immediate effect by the Hon'ble Directors/Distribution, Patiala due to the reason that the case of the employee now officer has been ordered to be dealt with in Common Proceeding.'

On the strength of such order, the departmental inquiry was held, which finally led to passing of order dated 15.07.2014 awarding major punishment to the petitioner in the form of stoppage of two increments with cumulative effect.

Learned counsel for the petitioner submits that there was no power vested with the authority to review its order dated 10.05.2012 and thus, order dated 12.06.2014, cannot be sustained. Since order dated 12.06.2014 itself is illegal, all proceedings subsequent thereto and the order of punishment Annexure P-7 and the order dismissing the appeal of the petitioner, Annexure P-9, cannot be sustained. He refers to the Regulation relied upon by the respondents themselves in the written statement to submit that even the Board of Directors have been rendered *functus officio* beyond the period of six months from the date of passing of the order.

Per contra, counsel for the respondents does not dispute that the order cannot be reviewed beyond the six months in terms of Regulation contained in Regulation No.32 (II). However, she submits that the authority can review the order as prescribed under 32(III) and thus, so far as the power of the authority is concerned, the same cannot be disputed.

I have heard learned counsel for the parties and have gone through the record of the case.

Facts are not much in dispute as the same are borne out from the record itself. The issue is as to whether under Regulation 32, order dated 12.06.2014 Annexure P-4, could have been passed.

In order to appreciate the arguments raised by the learned counsel, it will be apt to peruse Regulation 32, which reads as under:-

“32. Notwithstanding anything contained in the regulations regulations:

(i) The Board, or

(ii) The Appellate Authority, within six months of the date of the order proposed to be reviewed, or

(iii) Any other authority specified in this behalf by the Board by a general or special order, and within such time as may be prescribed in such general or special order, may at any time; either on his or its own motion or other-wise dcall for the records of any inquiry and review any order made under these regulations or under the regulations repealed by regulation 35 from which appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, any may:

(a) Confirm, modify or set aside the order; or

(b) Confirm, reduce, enhance or set aside the penalty

imposed by the order or impose any penalty where no penalty has been imposed:

(c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper circumstances of the case; or in the

(d) Pass such other orders as it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Regulation-8."

Not only the power to review has been exercised beyond six months, there is no order on record to demonstrate that Board specified any authority to exercise such power as contemplated under Regulation 32(iii).

Resultantly, order dated 12.06.2014 Annexure P-4, cannot be sustained and is bad on both the counts. Once the foundation has been found to be unsustainable, it can be axiomatically held that the edifice built thereupon in form of further proceedings from Annexure P-5 to P-9, also cannot be sustained.

In view of the above, the present writ petition is allowed. Impugned orders Annexure P-7 and P-9 are held to be bad in law.

Ordered accordingly.

15.02.2023

ps-I

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(PANKAJ JAIN)
JUDGE