

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

**CWP-2257-2018**

Reserved on 16.01.2023

Pronounced on: 10.02.2023

Ram Niwas

.... Petitioner

Versus

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Gaurav Aggarwal, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Vivek Chauhan, Advocate, for respondents No.2 to 5.

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**JAISHREE THAKUR.J**

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari seeking quashing of order dated 03.01.2017, Annexure P-17, passed by respondent No.5, whereby the petitioner was inflicted with punishment of stoppage of two annual increments with future effect and order dated 25.09.2017, Annexure P-24, passed by respondent No.2 whereby the appeal filed against the said punishment has been rejected.

2. Brief facts of the case are that the petitioner while posted as Commercial Assistant under SDO CCC, Khadipur Sub Division, Dakshin Haryana Bijli Vitran Nigam, Gurgaon, was charge-sheeted with the allegations that one M/s Deepika Property Consultant Private Limited filed a suit before the Permanent Lok Adalat, Public Utility Services, Gurgaon, vide

application dated 08.04.2008 regarding debiting an amount of Rs.9,32,285/-, vide sundry ID No.74339, dated 26.09.2006, on account of theft of energy. The said case was decided in favour of the consumer, vide order dated 23.04.2008 (Annexure P-1), on the basis of a statement given by Jasbir Singh, UDC, appearing on behalf of the respondent department, that the case can be settled by way of depositing 50% of the penalty amount, whereas there was no such circular in operation for depositing of 50% of penalty amount case of theft of energy at that relevant time. It is alleged that the petitioner, being senior official, did not obtain any legal opinion before implementing the said decision of the Permanent Lok Adalat, which resulted in loss to the tune of Rs.5,20,893/- to the Nigam. Hence, along with the petitioner, charge-sheets were also served upon SDO Manoj Yadav and Jasbir Singh, UDC on 19.06.2012. Pursuant to said charge-sheet, a show cause notice dated 02.03.2015 (Annexure P-4) was issued proposing to inflict penalty of stoppage of two annual increments with future effect upon the petitioner. In turn, petitioner sought by way of representation dated 13.03.2015, Annexure P-5, a copy of the alleged report/finding by the Enquiry Officer, which was supplied to him vide letter dated 20.03.2015, Annexure P-6. Thereafter, petitioner, vide letter dated 30.03.2015, Annexure P-7, submitted that the said enquiry report was just the noting sheet of the concerned office file and not the independent finding report of the Enquiry Officer, as per the procedure laid down in Regulation-7 of DHBVN Employees (Punishment & Appeal) Regulations 2006. Subsequent thereto, petitioner was given personal hearing on 23.04.2015 in the chamber of respondent No.5, vide which, an Enquiry Officer Shri P.K. Chauhan was

appointed to conduct enquiry, who submitted his report dated 26.02.2016 (Annexure P-11) that the Presenting Officer has failed to prove the allegation against the petitioner by not producing the original sundry register, as such, it goes in favour of the charged employee.

3. In the meanwhile, petitioner also filed a suit for declaration with consequential relief of permanent injunction before the Additional Civil Judge (Junior Division), Mewat, which was dismissed vide judgment dated 22.03.2016 being not maintainable as was the appeal vide judgment dated 19.09.2016. Another Enquiry Officer was appointed vide order dated 10.06.2016 by respondent No.5, who submitted his report dated 19.10.2016. Respondent No.5, vide order dated 03.01.2017 (Annexure P-17) decided the show cause notice dated 02.03.2015 in connection with charge sheet dated 19.06.2012 by stopping two annual increments with future effects, upon having the approval of respondent No.3. Feeling aggrieved, petitioner approached respondent No.2 by way of appeal, which was rejected vide order dated 25.09.2017 (Annexure P-24). The petitioner had earlier approached this Court by way of CWP No.119 of 2018, however, that petition was dismissed as withdrawn vide order dated 10.01.2018 with liberty to file afresh. Hence the instant petition.

4. Learned counsel for the petitioner would argue that the show cause notice dated 02.03.2015 was issued while ignoring the Enquiry Officer's report. It is submitted that the sundry item No.84/27 for the refund of Rs.5,20,893/- was neither prepared by the petitioner nor was checked by him. Moreover, the respondent Nigam has failed to produce the original/ photocopy of said sundry before both the Enquiry Officers. It is argued that

along with the petitioner, two other officials were charged, one of them was Manoj Yadav, the then SDO, who was punished with a letter of advice and another official Jasbir Singh, UDC, was punished with stoppage of one increment without future effect, whereas a different yardstick was adopted against the petitioner by punishing him with a major penalty. It is submitted that the decision dated 23.04.2008 of the Permanent Lok Adalat records the fact that Jasbir Singh, UDC made a statement that he had consulted with SDO concerned, who told him on phone that the matter can be settled on payment of 50% penalty amount in settlement of the case and the petitioner had no role in giving that very statement before the Permanent Lok Adalat. He has been inflicted with the punishment of stoppage of two annual increments with future effect, which is contrary to the provisions of Regulation 7 of the DHBVN Employees (P & A) Regulations, 2006. It is further submitted that a second Enquiry Officer had been appointed without giving reference to the first enquiry report.

5. The argument of counsel appearing on behalf of the respondents to the contrary was that the petitioner, being senior official, did not bother to obtain legal opinion before implementing the decision of the Permanent Lok Adalat and due to that negligence, Nigam has to suffer a loss of Rs.5,20,893/-. It is submitted that since Jasbir Singh, UDC, was a new entrant in the department and was not aware of the rules and regulations of the DHBVN at that time as he had served the department only for 8 months, and moreover, at that time he had not passed DAE and could not be assigned the court cases in the first instance, hence, a lenient view was taken against him.

6. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case.

7. The facts as emerged are that the petitioner was punished on account of the fact that he had not sought legal opinion before implementing the decision of the Permanent Lok Adalat which resulted in loss to the tune of Rs.5,20,893/- to the Nigam. Sh. P.K. Chauhan, the first Inquiry Officer so appointed, had taken note of the contentions as raised by the petitioner, including a plea that legal panel Advocate Sh. Abhay Dhaiya had opined that the Nigam is bound to implement the orders of Permanent Lok Adalat under all circumstances and in case appeal is preferred in High Court, the same shall be dismissed with costs. The first Inquiry Officer so appointed exonerated the petitioner by coming to the conclusion that “*the presenting officer had failed to prove the allegations against the petitioner by not proving the original sundry register as such it goes in favour of the charged employee.*” However, interestingly enough, the second Inquiry Officer while taking note of the fact that the sundry register No.27 which would establish the name of the person who prepared, checked and signed the entry regarding refund, which was part of the documents as relied upon in the charge-sheet, was never produced despite several opportunities given, proceeded to hold the petitioner guilty.

8. Though the writ Court does not exercise appellate jurisdiction so as to re-appreciate and re-evaluate evidence to substitute its own opinion, however, it can certainly scrutinize the order under challenge and other relevant records. On doing so, if the Court comes to a conclusion that the order of punishment is based on no evidence or that the view taken is

perverse, the writ Court can nullify the same. The Hon'ble Supreme Court in ***Allahabad Bank Versus Krishna Narayan Tewari, (2017) 2 SCC 308*** has held that:

*“it is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice.”*

9. The entire edifice of punishing the petitioner with stoppage of two increments with future effect is that he had caused a loss to the Nigam to the tune of Rs.5,20,893/-. The punishing authority has not taken into account that the sundry register No.27 was never produced both in the enquiry proceedings, which register would establish whether the petitioner had sanctioned the refund. The punishing authority has also ignored the opinion of panelled counsel for the Nigam, who had in no uncertain terms opined that the order of the Permanent Lok Adalat should be implemented and that no relief would be given by the High Court if an appeal is filed. The sundry register No.27 was the entire basis of the evidence of the Nigam which never saw light of the day. The view taken by the punishing authority appears to be totally perverse and based on no evidence. The Hon'ble Supreme Court in

***Chandrama Tewari Versus Union of India, 1988 AIR (Supreme Court)***

**117** has held as under:-

*“It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges proved against the officer, the enquiry would be vitiated for the violation of principles of natural justice.”*

10. Another factor that impels the Court to interfere is, that the statement given before the Permanent Lok Adalat by Jasbir Singh, UDC to settle the issue on payment of 50% of the penalty amount, was made on instructions received from SDO concerned, namely, Manoj Yadav and not the petitioner herein. Both Jasbir Singh, UDC and Manoj Yadav, SDO, who faced charges as did the petitioner, have been let off lightly whereas the petitioner has been imposed major penalty especially when the very register as relied upon by the Presenting Officer and as mentioned in the charge-sheet, was never produced.

11. Consequently, the writ petition is allowed and the impugned order dated 03.01.2017 (Annexure P-17) imposing major penalty upon the petitioner and the order rejecting his appeal dated 25.09.2017 (Annexure P-24) are set aside.

**(JAISHREE THAKUR)**  
**JUDGE**

**10.02.2023**

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No