

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

CWP-23508-2021

Date of decision : 15.02.2023

Mohinder Preet Singh

..... Petitioner

versus

Punjab State Power Corporation Limited and ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.K. Malik, Senior Advocate with
Mr. S.S. Randhawa, Advocate
for the petitioner.

Mr. Kannan Malik, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

Petitioner has approached this Court for issuance of a writ in the nature of certiorari seeking quashing of the order of punishment of censure dated 28.03.2019 (P-6) and the subsequent orders affirming the same. He further prays for writ in the nature of mandamus seeking directions to the respondents to consider his claim for promotion as Superintending Engineering (Electrical) from the day his juniors were promoted. Further prayer is that his ACRs for the year 2019-20 and 2020-21 be treated as 'very good' instead of 'good'.

2. As per the pleadings raised in the writ petition, petitioner claims that vide P-3 on 04.08.2016 he was asked to furnish explanation to certain allegations. The petitioner tendered the explanation. The same was accepted by Whole Time Directors of the Corporation in their 225th meeting held on 11.06.2019. An office order to that effect was issued by Deputy Secretary, PSPCL on 25.06.2019 (Annexure P-4). However on the same set of

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allegations, chargesheet dated 16.01.2017 was issued. Regular inquiry was conducted and the petitioner was awarded punishment of censure vide impugned order dated 28.03.2019. The review application preferred by the petitioner against the said order stands rejected vide order dated 20.04.2021. It has been further submitted that but for the said punishment of censure, the petitioner was entitled to be promoted when his juniors were promoted in DPC for the year 2020-21 and that for the year 2021-22. It has been contended that it has been wrongly recorded that the petitioner could not meet the benchmark. The required benchmark was 15, whereas the petitioner secured 17.46. Only on account of censure dated 28.03.2019, 3 marks were deducted, reducing the same to 14.46. Even ACRs were not properly assessed. Grading of ACR for the year 2020-21 was to be treated as 'very good' as assessed by the reporting authority and reviewing authority. The accepting authority also did not differ to the assessment by the reporting and reviewing authority. However, someone who is neither reporting/reviewing authority, nor the accepting authority down graded the ACR of the petitioner from 'very good' to 'good' and that too without recording any reason. He thus submits that in case the petitioner's ACR for the year 2020-21 is taken as 'very good', he still would be entitled to be promoted when his juniors were promoted in DPC for the year 2020-21.

3. Per contra, counsel representing the Corporation submits that the order passed by Whole Time Directors in their meeting dated 11.06.2019 as recorded in the order dated 25.06.2016 (P-4) related to a fact finding inquiry, whereas order of punishment dated 28.03.2019 whereby the petitioner was censured, is result of outcome of regular inquiry. Though he does not dispute that both the inquiries were based upon the same set of allegations.

With respect to the second plea regarding down grading of ACRs, he submits that as per circular No.22/2001 issued vide memo dated 25.07.2001, confidential reports dated 04.08.1976 got amended and part B was inserted. The effect of the said circular is that all the ACRs where Chairman is the accepting authority, have to be routed through Secretary or Member incharge as the case may be. For ACRs of the petitioner, Chairman is the accepting authority and thus the same were required to be routed through Secretary/Member Incharge and thus Secretary/Member Incharge was well within its right to down grade the ACR of the petitioner.

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

5. Facts being matter of record are not much in dispute. The question thus arises is, once the explanation of the petitioner qua a set of charges was accepted by the Whole Time Directors, could he be proceeded against on the same charges.

6. Counsel representing respondent-Corporation has tried to justify the action of the respondent-Corporation by contending that it was outcome of different inquiries, one was a fact finding inquiry wherein the petitioner earned exoneration, whereas the other was a departmental inquiry wherein the petitioner reaped censure. The plea raised is patently against the record.

7. The explanation of the petitioner was called vide communication dated 04.08.2016. The same reads as under:-

“xx xx

On the directions of Hon'ble Deputy Chief Minister, Punjab regarding supply of Zirakpur Division, the Chief Engineer/ Operations (South), Patiala inspected the Zirakpur Area alongwith the Hon'ble Deputy Chief Minister and found that:

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1) While you were posted as Additional S.E. Zirakpur Division, then you did not pay any attention to maintain the supply position of Zirakpur Town and rather not brought the true status of overloading of feeders to the notice of higher authorities. 12 no. Feeders were overloaded under Zirakpur division and their load was running above 200 amps. Instead of De-loading them, the data was forged by you and no feeder was mentioned as overloaded in technical returns. (List of details of over loaded 11KV Out Going feeders & Technical Returns is attached).

2) The cables of many 11 KV feeders were burnt for a long period of time since 6/2014, 7/2014, and 6/2015, Instead of replacing these burnt cables, the load of these feeders was shifted to other feeders. While looking at the cables, it seems that no attempt was made to repair/replace them for a long period.

At Grid S/S Bhabat and Grid S/S Dhakoli, 7-8 cables were laid on common poles, in case of any fault in any one of the cables, the cables of the other feeders have to be shut down for safety precaution to remove the fault, from which it seems that that no efforts were ever made to operate the 11 KV system properly. (Status of Cable position attached).

3. The under sized cables and conductor was erected in the LD system of Zirakpur town and L.T. fuses were not fixed properly. Many Transformers were overloaded and pillar boxes were damaged due to fire caused by under size cables/wires. LD system was in poor condition. No efforts have been made to improve the LD system, due to which the LD system gets further deteriorated.

Hon'ble CMD PSPCL, Patiala considering the above report and sought reply regarding system deficiencies in 11 KV & LD system under Zirakpur Town.

You are therefore directed to send your explanation of the above omission to this office within 20 days.

It is issued with the approval of Hon'ble CMD."

8. The same was admittedly issued by the departmental authority.

The office order dated 25.06.2019 conveying the decision of Whole Time

Directors in their 225th meeting held on 11.06.2019 makes it further clear that the explanation was sought for delinquency/negligence and irregularities. The Whole Time Directors did consider the charges levelled and the reply of the employees including that of petitioner. It was after considering the same that the Directors accorded their consent to file charges against the employees. Thus, an attempt being made by counsel representing the respondent to claim as if the explanation sought vide P-3 was a super departmental exercise does not cut any ice. Counsel for the respondent does not dispute that the allegations levelled are the same. Resultantly, the inevitable conclusion is that the chargesheet dated 16.01.2017 and the consequential order of punishment Annexure P-6 are barred being hit by the basic tenet of law that no person should be tried twice for the same charges.

9. Coming on to the second limb of the argument raised by learned Senior counsel representing the petitioner. He seems to be right in contending that apart from the reporting authority, reviewing authority and the accepting authority, no other authority has any power to downgrade/upgrade the remarks recorded in the ACR. Merely for the reason that a circular provides that the ACR should be routed through a particular officer will not clothe that officer with the power to downgrade the ACR that too without recording any reason. Trite it is that the public authorities must have legal authority for their actions. The same may be derived from statute, rules and regulations. He cannot be allowed to act beyond the scope of the legal authority backed by statute. The circular which has been relied heavily upon by counsel for the respondent does not vest any power with the officer to meddle with the ACR. A circular for internal movement of files cannot be inferred to have vested power in an enroute authority to assume jurisdiction not vested in it

explicitly. Moreover, non-recording of any reason for such downgrade adds to the manifest illegality.

10. Thus, finding that the respondents are in breach of law and the said breach has infringed upon the valuable right of the petitioner, the present writ petition is allowed. Order Annexure P-6 whereby the petitioner has been ordered to be censured is set aside. The ACRs of the petitioner for the year 2020-21 shall be read as ‘very good’ as recorded by the reporting officer. Director/Distribution PSPCL had no authority to downgrade the same in the absence of any rule/regulation vesting him with such power. It is only the accepting authority and the reviewing officer who had the authority to concur or differ with the opinion of reporting officer. Even in a case where the accepting authority differs with the opinion of the reporting/reviewing officer, he is required to record reason(s). Respondents-Corporation is directed to consider the claim of the petitioner for promotion to the post of Superintending Engineer (Electrical) and grant the petitioner from the date of his entitlement in accordance with law within a period of 08 weeks from the date of receipt of certified copy of the order. It is further made clear that petitioner shall be entitled for all consequential benefits from the date his juniors were promoted.

11. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

15.02.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes