

116.

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-24150-2022 (O&M)

Date of Decision: 19.01.2023

AMIT KUMAR

.... Petitioner

Versus

DAKSHIN HARYANA BIJLI VITRAN NIGAM AND OTHERS.

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mohnish Sharma, Advocate,
for the petitioner.

JAISHREE THAKUR.J (Oral)

CM-601-2013

Application is allowed, as prayed for.

Copy of DHBVN Employees (Punishment and Appeal)

Regulation 2019, dated 03.10.2019, as Annexure P-14, is taken on record
subject to all just exceptions.

CWP-24150-2022

The petitioner herein seeks a writ in the nature of certiorari
quashing order dated 02.02.2022, Annexure P-7, and order dated 13.09.2022,
Anexure P-9, alleging that the same are passed in violation of DHBVN
Employees (Punishment and Appeal) Regulations, 2019 and the law laid
down by the Hon'ble Supreme Court in *S.N. Mukerjee Versus Union of
India, 1990 AIR (SC) 1984*. Petitioner also seeks direction to be issued to
the respondents to reinstate him in service on the post of Upper Divisional
Clerk.

It is inter alia contended that the petitioner had a statutory right of appeal which was duly availed of, however, the appeal as filed has been summarily dismissed vide impugned order Annexure P-9 without recording any reasons or taking into account any of the grounds raised in the appeal.

Notice of motion.

At this stage, Mr. Dushyant Saharan, Advocate, who is empaneled with the DHBVN and present in Court, accepts notice on behalf of respondents and seeks time to file reply.

However, on a perusal of the cryptic order Annexure P-9 as passed in appeal, this Court is of the opinion that once the petitioner has availed of his remedy of appeal and taken grounds therein challenging order of his compulsory retirement, which in turn would affect his livelihood, the appellate authority would have necessarily looked into the grounds and then pass a speaking order either upholding the order of punishment or setting aside the same.

The respondents authorities are bound by their own statutory rules which are called “DHBVN Employees (Punishment and Appeal) Regulations-2019”, which gives a right of appeal to an employee of the Nigam as provided under Regulation 9, whereas Regulation 11 clearly specifies that in case of an appeal against an order under Regulation 9 or any penalty specified in regulation, the appellate authority shall consider whether the facts on which the order was based have been established; facts established afford sufficient ground for taking action; and penalty is excessive or adequate and after such consideration, shall pass such order as it thinks proper: provided that no penalty shall be increased unless opportunity

is given to the person concerned to show cause why such penalty may not be increased.

A reading of the impugned order Annexure P-9 would reflect that the said Regulation has not been adhered to while passing the same which is apparently a cryptic and non-speaking order. Consequently, the same is set aside. The Appellate Authority is directed to consider the appeal of the petitioner afresh after giving the petitioner herein adequate opportunity of personal hearing.

Writ petition is disposed of accordingly.

(JAISHREE THAKUR)
JUDGE

19.01.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No