

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

CWP-27975-2019

Date of decision : 06.02.2023

Daljit Singh Sidhu

..... Petitioner

versus

Punjab State Power Corporation Ltd. and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Animesh Sharma, Advocate
for the petitioner.

Mr. Sahil Sharma, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

By way of present writ petition, the petitioner seeks writ in the nature of certiorari quashing the impugned order (Annexure P-6) dated 12.01.2015, whereby the petitioner has been saddled with the punishment of stoppage of two annual increments with future effect and order dated 02.08.2017 (Annexure P-9), whereby the appeal preferred by the petitioner stands rejected by respondent No.4.

2. Petitioner was served with chargesheet dated 31.03.2009 (Annexure P-1). Petitioner filed reply thereto on 13.06.2009. In the inquiry, the petitioner was exonerated from one of the charge. However, he was found partly responsible qua second charge and on the basis of that, order dated 12.01.2015 (Annexure P-6) was passed to the following effect:-

“xx xx xx

As per above, I hereby pass the order of stoppage of two annual increments of Eng. Daljit Singh Sr. Exe. Eng. (Code no.4775), Punjab State Power Corporation Limited, with future effect.”

3. The petitioner filed appeal against the same before Board of Directors on 30.03.2015 (Annexure P-7). Opportunity of hearing was afforded to the petitioner by Director Commercial exercising his powers as Delegatee of the Board of Directors who vide order dated 15.12.2016 exonerated the petitioner of the second charge as well. Order is placed on record as Annexure P-8. Thereafter, Whole Time Directors vide order dated 02.08.2017 (Annexure P-9) resolved as under:-

“Resolved that considering the gravity of charges leveled, facts of the case, enquiry report, appeal of Er. Daljit Singh Sr. XEN (Code no.104775) DOR 30.06.27 against office order No.17/D8907/T-1 dated 12.01.2015 and views given of after director/Commercial personal hearing the committee found the officer guilty of charges and no merit in his appeal as lapse has put the company to financial loss and hence rejected the appeal.”

As per the above, the punishment of stoppage of two annual increments with future effect imposed upon Er. Daljit Singh Sr. Ex. Eng. (Code no.4775) Punjab State of Power Corporation Ltd, Patiala, vide office order no.17 dated 12.01.2015, is hereby upheld and the appeal is hereby rejected.”

4. Counsel for the petitioner submits that despite having been exonerated by a Delegatee, the Board of Directors before passing order (P-9) failed to issue any show cause notice to the petitioner w.r.t. the punishment proposed. The order cannot be sustained. Apart therefrom, he submits that though the Board of Directors have recorded the conclusion, there is no reason to back the same. Resultantly, the said order also suffers from the vice of non application of mind. Reliance is placed upon Rule 9 of the Employees' Punishment and Appeal Regulations 1971.

5. Per contra, Mr. Sharma submits that the Board of Directors were well within their power as per regulation as contained in 26(2) proviso 2 of the Rules which reads as under:-

“(2) In the case of an appeal against an order Imposing any of the penalties specified in Regulation 5 or enhancing any penalty imposed under the said Regulation, the appellate authority shall consider:-

- (a) whether the procedure laid down in these regulations has been complied with and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;
- (b) whether the findings of the punishing authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is excessive, adequate, inadequate or severe;
- (d) whether the facts on which the order was based, have been established;
- (e) whether the facts established afford sufficient ground for taking action and pass orders.
 - (i) confirming, enhancing, reducing or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that:-

- (i) if the enhanced penalty which the appellate authority proposes to impose is one of the

penalties specified in clause (v) to ix) of Regulation 5 and an enquiry under Regulation 8 has not already been held in the case, the appellate authority shall subject to the provisions of Regulation 14 itself hold such Inquiry or direct that such inquiry be held in accordance with the provisions of regulation 8 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit.

- (ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Regulation 5 and an inquiry under Regulation 8 has already been held in the case, the appellate authority, shall, make such orders as it may deem fit; and
- (iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with provisions of Regulation 10 of making a representation against such enhanced penalty.”

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

7. Facts are not much in dispute. Counsel for the respondents is not in a position to dispute that after Commercial Director exonerated the petitioner, no show cause notice was issued before imposing the punishment by Whole Time Directors. No reason has been recorded by the Board of Directors to differ with their delegatee. Resultantly, Annexure P-9 cannot be sustained and the same is hereby quashed. However, liberty is granted to

the respondent-authorities to proceed afresh in case they feel that they do not concur with the exoneration awarded by the Commercial Director. Apart from that the authorities shall also consider the claim of the petitioner w.r.t. belated release of leaves encashment and gratuity and other terminal benefits and award of interest thereon.

8. Disposed off accordingly.

(PANKAJ JAIN)
JUDGE

06.02.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No