

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3818 of 2021 (O&M)
Date of decision: 30.01.2024

Tara Singh
.....Petitioner
Versus
Punjab State Power Corporation Limited and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Sanjeev Kumar Arora, Advocate
for the petitioner.

Mr. Abhilaksh Grover, Advocate
for the respondents.

NAMIT KUMAR J.

1. Prayer in this writ petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of ceritorari, for quashing the order dated 03.03.2015 (Annexure P-4) passed by respondent No.2, vide which 20% cut in pension of the petitioner for 10 years has been imposed as well as the order dated 08.10.2018 (Annexure P-7) passed by the Appellate Authority whereby the punishment order dated 03.03.2015, has been modified imposing 10% cut in the pension of the petitioner for 10 years instead of 20% cut in the pension of the petitioner for 10 years, with a further direction to stay the operation and implementation of the impugned orders dated 03.03.2015 (Annexure P-4) passed by respondent No.2 and dated 08.10.2018 (Annexure P-7), passed by the Appellate Authority.
2. The brief facts, as have been pleaded in the petition, are

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that the petitioner joined the Punjab State Power Corporation Limited (earlier known as Punjab State Electricity Board) as Lineman in January, 1977. Thereafter, he was appointed as Line Superintendent (later on re-designated as Junior Engineer) on 13.07.1978 and further promoted as Assistant Engineer on 02.11.2005 and thereafter as Assistant Executive Engineer on 16.02.2009 and he, on attaining the age of superannuation, has retired from the said post on 31.08.2012. Thereafter on 25.06.2013, after a period of 10 months of retirement of the petitioner, he was served upon with a charge-sheet.

3. The allegations in the charge-sheet dated 25.06.2013 (Annexure P-1) were that during the process of issuance of electricity connections to various consumers, the petitioner had installed the same in wrong places in the absence of correct Fard of ownership of consumers and the petitioner was asked to submit reply to the charge-sheet within a period of 20 days from the date of receipt of copy of charge-sheet.

4. The petitioner filed reply to the charge-sheet dated 27.12.2013 and being dissatisfied with the reply, the disciplinary authority appointed Sh. Darshan Singh Bhullar, the then Superintending Engineer as Enquiry officer to enquire into the charges levelled against the petitioner. Thereafter, the Enquiry Officer vide enquiry report (Annexure P-3) came to the conclusion that the charges were not proved against the present petitioner.

5. Later on, the impugned order dated 03.03.2015 (Annexure P-4) passed by respondent No.2 was served upon the petitioner vide

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which 20% cut in pension of the petitioner for 10 years was imposed.

6. Aggrieved against the said order dated 03.03.2015 (Annexure P-4), the petitioner filed an appeal before the Chief Managing Director i.e. respondent No.1 but during the pendency of the appeal, the respondents started imposing 20% cut in the pension of the petitioner from November, 2015, therefore, the petitioner approached this Court by filing a petition i.e. CWP No.26530 of 2015 titled as '*Tara Singh vs Punjab State Power Corporation Limited and others*' and the said writ petition was disposed of by this Court vide order dated 27.04.2018 with a direction to respondent No.1 to decide the appeal within a period of 04 months from the date of receipt of certified copy of the order. Finally, the appeal preferred by the petitioner was decided vide order dated 08.10.2018 and the punishment order dated 03.03.2015 (Annexure P-4) was modified to the extent of 10% cut in the pension of the petitioner for 10 years. Hence, the present writ petition has been filed.

7. On issuance of notice of motion, written statement has been filed on behalf of the respondents wherein it has been stated that the competent authority need to agree with the finding of the departmental enquiry report. The petitioner has admitted that measurements were carried out by him but had he carried out the measurements of work as per PSPCL Electricity Supply Instructions Manual, 2011. Regulation 21 (21.2) stipulates that the petitioner shall personally examine and take measurements of the service line installed and record a certificate to that effect on the reverse of service

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connection order and due to this negligence in his duty, the connections were issued at the wrong place.

8. Learned counsel for the petitioner submits that the action of the respondents in punishing the petitioner with 10% cut in the pension of the petitioner is totally illegal as no disagreement note was given to the petitioner which is in violation of the principles of natural justice and the law laid down by the Hon'ble Supreme Court in "***Punjab National Bank vs Kunj Behari Mishra***", 1998 (3) SCT 833. He further submits that since the charges were not proved against the petitioner as per the enquiry report (Annexure P-3), therefore, the petitioner should not be punished or charged for any lapse. He further submits that if the disciplinary/punishing authority disagree with the findings of the Enquiry Officer, then, the disagreement note should be supplied to the delinquent officer or employee so that he/she should represent his case and thereafter, he/she should be punished, however, in the present case, no disagreement note was supplied to the petitioner and no opportunity of personal hearing was given to the petitioner. Lastly, he submits that the action of the respondents in imposing penalty of cut in the pension of the petitioner is totally illegal.

9. *Per contra*, learned counsel for the respondents submits that the impugned orders have been passed after following the due procedure of law and no procedural irregularity has been committed by the respondents, therefore, the petitioner is not entitled for any relief whatsoever raised in the present writ petition.

10. I have heard learned counsel for the parties and perused the

record with their able assistance.

11. Rule 9 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, provides action to be taken on the inquiry report, reads as under:-

"9. Action on the inquiry report (1) The punishment authority, if it is not itself the inquiring authority may, for reason to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiring according to the provision of rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (I) to (iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in rule 10, make an order imposing such penalty;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.

(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in clauses (v) to

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(ix) of Rule 5 should be imposed on the Government employee, it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee.”

12. The petitioner was charge-sheeted on 25.06.2013 (Annexure P-1) with the allegations that during the process of issuance of electricity connections to various consumers, he had installed the same in wrong places in the absence of correct Fard of ownership of consumers and thereafter, the petitioner filed reply to the charge-sheet dated 27.12.2013 and the Enquiry Officer vide enquiry report (Annexure P-3) held that the charges were not proved against the present petitioner but despite that the respondents, without supplying the disagreement note and without giving any opportunity to the petitioner to represent his case against the said disagreement, punished the petitioner with 20% cut in his pension and on filing the appeal, 10% cut in the pension of the petitioner was ordered, which is in violation of the principles of natural justice. The Hon'ble Supreme Court in *Kunj Behari's case (supra)*, while considering the pari-materia rule, has held that when the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted and it

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will be most unfair and iniquitous that where the charged officer succeeds before the inquiry officer and he is deprived of representing to the disciplinary authority, before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In such situation, the charged officer must have an opportunity to represent before the disciplinary authority before the final findings on the charges are recorded and punishment imposed and the principles of natural justice have to be read into Regulations. The operative part of the said judgment in *Kunj Behari's case (supra)* reads as under: -

“15. Under Regulation-6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an

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opportunity to represent before the disciplinary authority before the final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (supra).

16. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

17. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Kishan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases (supra) do not lay down the correct law.”

13. In view of the foregoing reasons, finding that charges were not proved against the petitioner in the enquiry proceedings and the

punishing authority acted in violation of the principles of natural justice and the law laid down by the Hon’ble Supreme Court in *Kunj Behari’s case (supra)*, the punishment of cut in the pension of the petitioner held to be illegal and against the principles of natural justice.

14. Accordingly, the present petition is partly allowed and the impugned order dated 03.03.2015 (Annexure P-4) is hereby set-aside and the matter is remanded back to the disciplinary authority to conclude the enquiry proceedings from the stage of supplying the disagreement note to the petitioner and thereafter, proceed further in the matter in accordance with law.

(NAMIT KUMAR)
JUDGE

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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No