

205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17413-1998

Date of decision: 25.07.2024

K. K. DHAMIJA

...Petitioner

VERSUS

HARYANA VIDYUT PRASARAN NIGAM, PANCHKULA

...Respondent

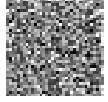
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. K. Gautam, Advocate
for the petitioner.

Mr. R. S. Longia, Advocate
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

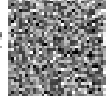
1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the charge-sheet dated 07.10.1994 (Annexure P-4), punishment order dated 24.03.1995 (Annexure P-6), whereby three annual increments were stopped without future effect, though for the same action penal rent @ 50% of the basis pay of the petitioner has been recovered instead of 10% of the basis pay, communication dated 12.03.1996 (Annexure P-9), vide which the appeal of the petitioner was rejected and communications dated 21.07.1997 (Annexure P-11) and dated 24.04.1998 (Annexure P-13), vide which review/appeal/mercy appeal preferred by the petitioner have been dismissed with a further prayer to direct the respondent to recover 10% of the basis pay of the petitioner for the



period from 01.04.1993 to 23.12.1994, instead of 50% of the basis pay on account of retention of lower status accommodation at Hisar and refund the excess recovery made from the petitioner along with interest.

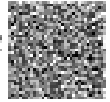
2. By giving facts of the case, learned counsel for the petitioner submitted that the petitioner was working as a Junior Engineer (JE) in the respondent-Nigam and while he was working, a charge-sheet was issued to him vide Annexure P-4 dated 07.10.1994 under Regulation No.7 of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990, which deals with the major punishment and thereafter, the petitioner filed a reply to the aforesaid charge-sheet vide Annexure P-5 dated 12.01.1995. He further submitted that the disciplinary authority did not hold any departmental enquiry at all despite the fact that charge-sheet was issued to the petitioner under Regulation No.7 of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990, which deals with the major punishment and straightaway inflicted minor punishment of stoppage of three annual increments without future effect upon the petitioner vide Annexure P-6 dated 24.03.1995. He further submitted that thereafter, the petitioner filed an appeal vide Annexure P-7 before the appellate authority, which was dismissed by the appellate authority in its meeting held on 22.02.1996 and the same was communicated to the petitioner on 12.03.1996 vide Annexure P-9.

3. Learned counsel for the petitioner also submitted that once a charge-sheet has been issued against an employee under the provisions for imposing major penalty then even the order of punishment of minor penalty cannot be passed without holding departmental enquiry. In this regard he



referred to a Full Bench judgment of this Court in **Dr. K. J. Tiwari versus State of Haryana, 2002 (2) SCT 915**, wherein the aforesaid proposition of law has been answered that once a charge-sheet has been issued for inflicting major punishment, then in that situation without holding departmental enquiry, minor punishment cannot be imposed.

4. Learned counsel for the petitioner also submitted that with regard to one of the power utilities of the State of Haryana, namely, Dakshin Haryana Bijli Vitran Nigam Limited, the present issue was considered by the Hon'ble Supreme Court in **DHBVNL Vidyut Nagar, Hisar and others versus Yashvir Singh Gulia, 2013 (11) SCC 173** and it was held that when there is a specific statutory provision with regard to dispensing with the enquiry then the statutory provision has to be adhered to and in case there is invocation of the statutory provision for dispensing with the enquiry then in that situation minor punishment can be imposed. He further submitted that the present petitioner was governed by the provisions of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 and in these Regulations, there is a specific provision under Regulation No.7(8) which provides that where an employee has been charge-sheeted under this Regulation and the competent authority on receipt of his reply to the charge-sheet is of the opinion that no major punishment as laid down in Regulation-4 (vi to x) is called for, it may dispense with the holding of enquiry and inflict straightaway any of the minor penalties as laid down in Clause (i) to (v) of the *ibid* Regulation by passing a speaking order. He further submitted that the aforesaid provision was to be applied in the present case but the respondent-Nigam has



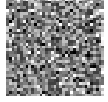
not satisfied the conditions precedent *sine qua non* of the aforesaid Regulation No.7(8) of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990. In this regard, he again referred to the order of punishment dated 24.03.1995 (Annexure P-6) and submitted that a perusal of the same would show that none of the ingredients of the aforesaid Regulation No.7(8) has been complied with and therefore, the aforesaid provision of Regulation No.7(8) could not have been invoked by the respondent-Nigam and the aforesaid impugned order of punishment is liable to be set aside.

5. Learned counsel for the petitioner further submitted that so far as the order of the appellate authority dated 22.02.1996 dismissing the appeal of the petitioner, which was communicated to the petitioner vide Annexure P-9 on 12.03.1996 is concerned, the same is also liable to be set aside because the order of the appellate authority is dependent upon the order of punishment, which is *ex facie* an unreasoned order.

6. On the other hand, learned counsel for the respondent-Nigam submitted that in the presence of the aforesaid Regulation No.7(8) of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990, the respondent-Nigam was within its powers to have not conducted any departmental enquiry and therefore, in view of the judgment passed by Hon'ble Supreme Court in **Yashvir Singh Gulia's case (supra)**, there was no requirement of conducting any enquiry.

7. I have heard the learned counsels for the parties.

8. The issue involved in the present case is as to whether when a charge-sheet is issued for the purpose of inflicting major punishment, then in

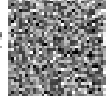


that situation can the respondent-Nigam pass on order of minor punishment without holding departmental enquiry or not. A Full Bench of this Court in **Dr. K. J. Tiwari's case (supra)** observed that whenever any charge-sheet is issued for inflicting major punishment, then even if minor punishment is inflicted upon a delinquent employee, then the same cannot be done without holding any departmental enquiry. However, in another case before the Hon'ble Supreme Court in **Yashvir Singh Gulia's case (supra)** which was pertaining to another power utility i.e. Dakshin Haryana Bijli Vitran Nigam Limited, it was observed by Hon'ble Supreme Court that when there is a specific provision in the Regulations/Rules for inflicting of a minor punishment, though the charge-sheet was for a major punishment, the same can be done. However, when there is no such provision, then the same cannot be done without holding departmental proceedings.

9. So far as the provision which is applicable to the present case is concerned, the same is comprised in Regulation No.7(8) of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990. The same Regulation of Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990, is also applicable to Haryana Vidyut Prasaran Nigam Limited (HVPNL).

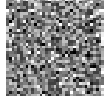
10. The aforesaid Regulation No.7(8) of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990, is reproduced as under:-

“Regulation 7(8)- Where an employee has been charge-sheeted under this regulation and the Competent Authority, on receipt of his reply to the charge sheet, is of the opinion



that no major punishment as laid down in Regulation-4 (vi to x) is called for, it may dispense with the holding of enquiry and inflict straight-away any of the minor penalties as laid down in Clause (i) to (v) of the ibid Regulation by a speaking order.”

11. A bare perusal of the aforesaid would show that there is no doubt that the aforesaid Regulation provides for a specific provision for the purpose of imposing minor punishment straightaway but it is subject to two conditions. Firstly, that the concerned authorities dispense with the holding of the enquiry and secondly, it can be done only by way of passing of a speaking order. Annexure P-6 dated 24.03.1995 would show that the order of punishment has been passed without satisfying the conditions of Regulation No.7(8) of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990. There is nothing stated in the impugned order of punishment Annexure P-6 nor it has been brought to the notice of this Court that any order has been passed for dispensation of the enquiry due to peculiar circumstances as envisaged under Regulation No.7(8). Even so far as the second condition is concerned, the aforesaid order of punishment Annexure P-6 cannot be said to be a reasoned order because the punishing authority has only recorded that the petitioner has failed to comply with the order for vacation of Board's accommodation and that he also exerted pressure from outside Board Agency, whereas it was the case of the petitioner that due to compelling circumstances and because of the education of his children, he was not able to vacate the premises. The aforesaid cannot be considered to be a cogent reason because it was a duty of the punishing authority to have considered the plea taken by the

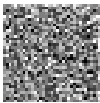


petitioner in this regard and to have thereafter passed a reasoned order in order to invoke the provision of Regulation No.7(8). Therefore, this Court is of the considered view that the aforesaid punishment order dated 24.03.1995 (Annexure P-6) does not satisfy the twin conditions as stated above. So far as the order of appellate authority is concerned, some reasons have been assigned by the appellate authority therein but the order of the appellate authority would be dependent upon the fate of the aforesaid order of punishment dated 24.03.1995 (Annexure P-6).

12. After hearing learned counsel for the parties, this Court is of the considered view that the prayer of the petitioner is squarely covered by the judgments passed by this Court in **Hukam Singh versus Dakshin Haryana Bijli Vitran Nigam Haryana and others, CWP-9976-2019, 19.03.2024** and **S. N. Malhotra versus HSEB, CWP-5368-1997, 25.07.2024.**

13. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The impugned order dated 24.03.1995 (Annexure P-6) and communication dated 12.03.1996 (Annexure P-9) are hereby set aside.

14. The respondent-Nigam is directed to grant three annual increments to the petitioner, which were ordered to be stopped vide impugned order dated 24.03.1995 (Annexure P-6) and to calculate the arrears of the same along with interest @ 6% per annum (simple) from the date of its accrual till the date of its disbursement and pay to the petitioner within a period of four months from today. In case the aforesaid amount is not paid to the petitioner within a period of aforesaid four months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple). It is further directed that the pension of the



petitioner be also re-fixed accordingly and excess recovery of penal rent, if any, made from the petitioner be refunded back to him along with interest @ 6% per annum (simple) from the date of its deduction till the date of its disbursement.

15. However, there shall be no order as to costs.

25.07.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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