

204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5368-1997

Date of decision: 25.07.2024

S.N. MALHOTRA

...Petitioner

VERSUS

HSEB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

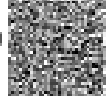
Present:- Mr. Ashwani Talwar, Advocate and
Mr. Dishant Jindal, Advocate for the petitioner.

Mr. Jagbir Malik, Advocate for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

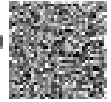
1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 19.09.1996 (Annexure P-3), vide which punishment has been inflicted upon the petitioner and the order dated 03.01.1997 (Annexure P-5), vide which the appeal of the petitioner has been dismissed by the appellate authority.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was working as an Executive Engineer in the respondent-Board and he was served with a charge-sheet vide Annexure P-1 dated 29.09.1995, which was under Regulation No.7 of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990, by which major



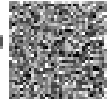
punishment can be imposed. He further submitted that the petitioner filed reply to the aforesaid charge-sheet vide Annexure P-2 and straightaway without holding any departmental enquiry, the impugned order of punishment Annexure P-3 has been passed on 19.09.1996. He further submitted that thereafter, the petitioner filed an appeal vide Annexure P-4 before the appellate authority and vide impugned order dated 03.01.1997 (Annexure P-5), the appeal of the petitioner was dismissed without recording any reasons whatsoever and therefore, both the aforesaid impugned orders are liable to be set aside. While advancing his arguments, he further 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.

3. 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-Board 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 19.09.1996 (Annexure P-3) 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-Board and the impugned order of punishment is liable to be set aside.

4. Learned counsel for the petitioner further submitted that so far as the order of the appellate authority dismissing the appeal of the petitioner Annexure P-5 is concerned, the same is also liable to be set aside because it is *ex facie* an unreasoned order. He further submitted that neither any of the

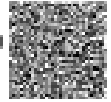


grounds taken by the petitioner in the appeal Annexure P-4 nor any reason whatsoever of any nature has even been referred to or considered by the appellate authority and on the face of it, the aforesaid order was an unreasoned and cryptic order and on this ground also, the appellate order Annexure P-5 is liable to be set aside.

5. On the other hand, learned counsel for the respondent-Board 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-Board 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.

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

7. The core 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-Board 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

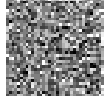


the Regulations/Rules for inflicting of a minor punishment, though the charge-sheet was for a major punishment, the same can be done. However, when there is no such provision, then the same cannot be done without holding departmental proceedings.

8. 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 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.”*

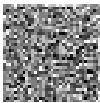
9. A bare perusal of the aforesaid would show that there is no doubt that the aforesaid Regulation provides for a specific provision for the purpose of imposing minor punishment straightaway but it is subject to two conditions. Firstly, that the concerned authorities dispense with the holding of the enquiry and secondly, it can be done only by way of passing of a speaking order. However, a perusal of the impugned order of punishment (Annexure P-3) would show that none of the aforesaid two conditions have been satisfied and for the purpose of invocation of Regulation No.7(8), these two conditions are the conditions precedent and *sine qua non*. Neither there is any order nor even a



reference made to the same for the purpose of dispensation of the enquiry, which is a condition precedent for invoking Regulation No.7(8). Rather a perusal of the impugned order of punishment Annexure P-3 would show that the punishment order has been passed with one stroke of pen and it is *ex facie* an unreasoned and non-speaking order. In this way, both the conditions as aforesaid which are *sine qua non* for invoking Regulation No.7(8) are not satisfied. Therefore, it is a case where the aforesaid Regulation No.7(8) has not been invoked by the respondent-Board. Apart from the above, even a perusal of the appellate order dated 03.01.1997 (Annexure P-5) would show that not even a single reason has been assigned by the appellate authority, who has passed the aforesaid cryptic and non-speaking order not backed by any reasons.

10. This Court also had an occasion to deal with similar kinds of cases in **Vikas Kumar versus Uttar Haryana Bijli Vitran Nigam and others, CWP-14593-2016, 06.05.2024** and **Hukam Singh versus Dakshin Haryana Bijli Vitran Nigam Haryana and others, CWP-9976-2019, 19.03.2024**, in which the facts of the aforesaid cases and the present case are similar. This Court had allowed the aforesaid two petitions by setting aside the order of punishment and also the appellate order. The prayer of the petitioner in the present writ petition is squarely covered by the aforesaid two judgments passed by this Court.

11. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The impugned orders dated 19.09.1996 (Annexure P-3) and dated 03.01.1997 (Annexure P-5) are hereby set aside.



12. The respondent-Board is directed to grant two annual increments to the petitioner, which were ordered to be stopped vide impugned order dated 19.09.1996 (Annexure P-3) 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 consequently, the pension of the petitioner be also re-fixed accordingly.

13. 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