

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

221

CWP-9976-2019 (O&M)
Date of Decision:19.03.2024

Hukam Singh

.....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Dr. S.K. Bhar, Advocate for the petitioner.

Mr. Jagbir Malik, Advocate for the respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present 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 impugned orders dated 29.05.2015 and 12.05.2016 at Annexure P-3 and P-5.
2. The learned counsel for the petitioner submitted that it is a case where the petitioner was charge-sheeted vide Annexure P-1 dated 04.04.2011 on the ground that he had made short assessment of bill and to this charge-sheet, the petitioner had filed a detailed and elaborate reply vide Annexure P-2 in which all the facts and figures of record have been so incorporated to show that he was not responsible for the aforesaid short assessment of bill and even otherwise also it was a team work and only he was charge-sheeted and no other employee was charge-sheeted. He further submitted thereafter impugned order vide Annexure P-3 dated 29.05.2015 was passed by which and order of stoppage of two annual increments

without cumulative effect which is a minor penalty has been passed as well as recovery of Rs.97642/- has been ordered to be effected from the petitioner. Thereafter he filed an appeal before the Appellate Authority vide Annexure P-4 and in which he again reiterated that his reply was not considered by the punishing authority and without considering the same the punishment order (Annexure P-3) has been passed. The relevant portion of the aforesaid appeal is reproduced as under:-

“The punishment awarded vide office order No.411/SE/HR dated 29.05.2015 without considering my reply. In the reply, I have mentioned that the assessment of theft was calculated on slab basis but the audit party assessed the assessment against theft on highest tariff rate and amount so pointed out has been debited and recovered from the respective consumer. No loss sustained to the Nigam but I have been punished double one side my two increment has been stopped and on the other side recovery of Rs.97,642/-.

As per “principle of natural justice” double punishment of a case cannot be awarded. Moreover Sh. Rajbir Singh LDC can not be absolved from the responsibility on account of non checking of master file in token of the advice sent has been taken in to account by the computer or not, if not advice has to be sent again. Exactly same in case of SDO 'OP' S/Divn. Dharuhera can not be escaped from the responsibility as per duties assigned of the SDO by the Nigam. How & why I have been held responsible, when the higher authority asked for the name of co-sharer.

3. Learned counsel for the petitioner while referring to the aforesaid grounds of appeal specifically stated that his reply to the charge-sheet has not been considered because it has been mentioned that assessment of theft was calculated on slab basis but the audit party assessed the assessment against the theft on highest tariff rate and amount so pointed out has been debited and recovered from the respective consumer and no loss has been sustained to the Nigam and he has rather been awarded double punishment because his two increments have been stopped and recovery of Rs.97,642/- has been effected from him. It was also stated by the petitioner in his reply that the other employees were absolved of the aforesaid responsibility rather all of them were to be proceeded against but only the petitioner was targeted in this regard. He further submitted that thereafter in the aforesaid appeal an order dated 12.05.2016 vide Annexure P-5 was passed by the appellate authority by which his appeal has been dismissed without any reason at all. The order has been passed on the basis of *ipse dixit* of the appellate authority and totally unreasoned and cryptic order has been passed. He further submitted even otherwise also the petitioner was charge-sheeted under Regulation 7 of the Dakshin Haryana Bijli Vitran Nigam Limited Employees (Punishment & Appeal) Regulation 2006 (hereinafter to be referred to 'Regulation') for inflicting of major punishment but no enquiry was conducted. He further submitted that after issuance of charge-sheet, only on the basis of reply which has been filed by the petitioner, instead of conducting a regular enquiry, the minor punishment has been imposed upon the petitioner. He also submitted such course of action was conducted by the respondents-Nigam was illegal in view of the fact that once charge-sheet is served in which a proposal is to

inflict a major punishment then minor punishment can not be imposed unless an enquiry is conducted. Learned counsel for the petitioner referred to a Full Bench judgment of this Court in ***Dr. K.J. Tiwari Vs. State of Haryana, 2002(2) SCT 915*** wherein this proposition of law has been laid down and therefore the orders at Annexures P-3 and P-5 are liable to be set aside.

4. On the other hand, Mr. Jagbir Malik, learned counsel for the respondents submitted that so far as the aforesaid proposition of law as laid down by a Full Bench of this Court in ***Dr. K.J. Tiwari's case (supra)*** is concerned, the same is not applicable to the facts and circumstances of the present case and is distinguishable. He referred to another judgment of Hon'ble Supreme Court in ***DHBVNL Vidyut Nagar, Hisar & ors. vs. Yashvir Singh Gulia 2013(11) SCC 173***, wherein it was observed that there is a specific provision in the respondents-Nigam Regulations, wherein if in case a charge-sheet is issued with a proposal to inflict major punishment and in case the authority so is of the opinion that a minor punishment is to be inflicted then for the reasons recorded, there is no need to commence an enquiry and in this regard he referred to Regulation No.7 (27) which is so appended with the present petition as Annexure P-6. The aforesaid Regulation 7(27) is reproduced as under:-

“27. 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(B) 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 4(A) of the ibid

regulation by a speaking order.”

5. While referring to the aforesaid Regulation, he submitted that it is very clear that when an employee has been charge-sheeted under the regulation and when the competent authority on the receipt of the reply to the charge-sheet, is of the opinion that no major punishment as laid down in regulation 4(B) is called for then it may dispense with the holding of enquiry and inflict straight-away any of the minor penalties as laid down in Clause 4(A) of the Regulation by passing a speaking order. He further submitted that in the present case the aforesaid provision has been invoked and therefore there was no need to hold an enquiry in terms of the aforesaid regulation and therefore it cannot be said that the aforesaid impugned orders were in violation of any law laid down by this Court. He further submitted that in the order of punishment it has been so found by the competent authority that the loss was attributed to the petitioner.

6. I have heard learned counsel for the parties.

7. The first submission which has been made by learned counsel for the petitioner is with regard to the applicability of the Full Bench judgement of this Court in ***Dr. K.J. Tiwari's case (supra)***. The learned counsel for the respondents referred to a judgment of Hon'ble Supreme Court in ***Yashvir Singh Gulia's case (supra)*** in this regard and a perusal of the judgement would show that once there is a specific regulation and even when the charge-sheet is with a proposal to inflict a major punishment then the enquiry can be dispensed with and minor punishment can be passed by passing a speaking order.

8. Even after applying the aforesaid Regulation 7 (27) as reproduced above in the facts and circumstances of the present case, the

action of the respondents and illegality of the impugned orders at Annexure P-3 and P-5 are to be considered and analyzed by this Court. The punishment order at Annexure P-3 and the appellate order at Annexure P-5 are reproduced as under:-

(Annexure P-3)

“Sh. Hukam Singh, CA was charge sheeted vide this office memorandum No.122/UDC-52 dated 04.04.2011 on account of allegations/charges as contained therein.

The defence reply submitted by the official to the ibid charge sheet has been considered by the competent authority in the light of comments offered by the field offices as well as material available on record and it has been observed that the loss worth Rs.97,642/- on account of short assessment of theft of energy has been sustained by the Nigam due to the negligency of Sh. Hukam Singh. As such, it has been decided to recover the pecuniary loss worth Rs.97,642/- caused to the Nigam from the official. Two annual increments without future effect are also stopped of the official for his misconduct in discharging his official duties.

Accordingly the charge sheet bearing this office memo No.122/UDC-52 dated 04.04.2011 served upon Sh. Hukam Singh, CA is hereby decided by inflicting the punishment of recovery of pecuniary loss worth of Rs.97,642/- caused to the Nigam alongwith stoppage of two annual increments without future effect.

This carries the approval of SE/HR DHBVN, Hisar.

*Sd/- Under Secretary/HR-IV,
DHBVN, Hisar*

(Annexure P-5)

Sh. Hukam Singh, CA has preferred an appeal against this office order No.411 dated 29.05.2015 vide which punishment for recovery of pecuniary loss worth Rs.97,642/- caused to the Nigam alongwith stoppage of two annual increments without future effect respectively was inflicted upon him while deciding the charge sheet bearing No.122/UDC-52 dated 04.04.2011.

The same has been considered in the light of material available on record and hearing the official in person on dated 09.03.2016 & 04.04.2016. It has been observed that the punishment inflicted upon the official is in order and no relaxation can be given to him.

Accordingly, the appeal preferred by Sh. Hukam Singh, CA against this office order dated 411 dated 29.05.2016 is hereby rejected.

This carries the approval of Director/OP, DHBVN, Hisar.

*Sd/-
Under Secretary/HR-IV,
DHBVN, Hisar”*

9. A perusal of the appellate order would show that the appeal has been dismissed and not even a single reason has been mentioned and it has been dismissed in a very arbitrary and cryptic manner, therefore so far as the impugned appellate order (Annexure P-5) is concerned, it is ex-facie, cryptic and non-speaking order and therefore on the face of it, it deserves to

be set aside.

10. So far as the impugned order at Annexure P-3 is concerned, a perusal of the same would show that the competent authority while passing the punishment order for inflicting minor punishment has only stated that the defence reply of the petitioner has been considered and the comments of the field offices as also the material available on record has been considered and it is observed that a loss of Rs.97,642/- on account of short assessment of theft of energy has been sustained by the Nigam due to negligence of the petitioner and therefore the penalty of Rs.97,642/- was imposed upon the petitioner and also two increments without future effects were directed to be stopped due to mis-conduct.

11. During the course of arguments learned counsel for the petitioner has drawn the attention of this Court to the reply (Annexure P-2) which was filed by the petitioner in response to the charge-sheet. A perusal of the Annexure P-2 would show that the petitioner has given a very detailed and elaborate reply as to how he was not responsible for the aforesaid allegations and rather it was a team work and other officials were also responsible for the same and even no loss had been caused to the respondents-Nigam. While filing the appeal, same ground has also been taken that the punishing authority has not considered the reply submitted by him at all. A perusal of the aforesaid punishment order would show that the punishing authority has only considered the chargesheet against the petitioner and comments of the field offices had been seen. However, there is not even a single reason mentioned that as to how the punishing authority has come to the conclusion that petitioner was responsible.

12. A perusal of the Regulation 7(27) as reproduced above and so

relied upon by learned counsel for the respondents-Nigam would show that there are two conditions precedent *sine qua non* contained in the aforesaid provision; (i) first is that in case the competent authority is of the opinion that major punishment is not to be given and minor punishment is to be granted then it may dispense with the holding of the enquiry; (ii) second condition is that minor penalty can be imposed by passing of a speaking order. Both the conditions which co-exist and they have to be adhered with. However, a perusal of the punishment order would show that none of the two conditions have been satisfied. There is no recording of satisfaction by the punishing authority that it is a case where holding of the enquiry is to be dispensed with. Apart from the above, a perusal of the aforesaid order would show that it cannot be termed as a speaking order at all and not even a single reason has been mentioned but it only states that after perusing the documents i.e. chargesheet, reply and comments of the field offices, the punishment order is inflicted and therefore both the aforesaid two mandatory conditions have been violated by the respondents-Nigam. Therefore, this Court is of the view that the aforesaid punishment order is totally contrary to the Regulation 7(27).

13. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned orders at Annexures P-3 and P-5 are hereby set aside and quashed.

14. At this stage, learned counsel for the petitioner stated that the amount in question of Rs.97,642/- has already been recovered from the petitioner and the same may be refunded to the petitioner. It is, therefore, directed that since the order itself has been quashed, the respondents-Nigam shall refund the aforesaid amount to the petitioner alongwith interest

@6% per annum. The respondents-Nigam are also directed to notionally fix the last pay drawn of the petitioner and to refix the pension of the petitioner as a consequence. Since the order pertaining to the stoppage of increments is also quashed by this Court now, the petitioner shall also be entitled for the arrears of the salary, which shall also be paid to the petitioner to him alongwith interest@6% per annum. The entire exercise shall be completed within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

19.03.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No