

2024.PHHC.134719



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

CWP-11798-2024 (O&M)
Date of decision :15.10.2024

Sukhpreet Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Pawan Kumar, Senior Advocate,
with Ms. Vidushi Kumar, Advocate,
for the petitioner.

Mr. TPS Walia, AAG, Punjab,
for the respondents.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the
Constitution, *inter alia*, with the following prayer:-

“Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari, Mandamus or any other writ/order/direction with a prayer to direct the respondents to open the sealed cover of the meeting of the Departmental Promotion Committee ('DPC' for brevity) held on 19.09.2023 and grant promotion to the petitioner to the post of Executive Engineer (Civil) with effect from 26.09.2023 along with all consequential benefits including all pay and allowances in view of the Government Circular dated 27.02.1998 (Annexure P-26) and various judgments of this Hon'ble Court and the sealed cover procedure that has been adopted by the respondents in the Departmental Committee

Proceedings dated 19.09.2023 (Annexure P-16) be quashed being non-est/null and void and arbitrary being in derogation of the Punishment and Appeal Rules, 1970 and relevant guidelines;

AND

with a further prayer to quash the following order(s):

A. Order dated 10.04.2024 endorsed on 12.04.2024 (Annexure P-24) passed by respondent No.1 vide which stoppage of one increment for two years (minor penalty) has been ordered against the petitioner in an arbitrary manner in derogation of the provisions of the Punishment and Appeal Rules, 1970 and also in utter violation of the relevant instructions with a pre-determined mind;

B. Order dated 13.02.2024 passed by respondent No. 3 (Annexure P-20) vide which the Punjab Public Service Commission ('PPSC' for brevity), in an arbitrary and unjust manner, without providing any opportunity of hearing, passed the order in derogation of the rules/law giving a blanket approval by way of a cryptic order for imposition of stoppage of one increment for two years (minor penalty);

C. Order dated 10.05.2023 passed by respondent No. 1 (Annexure P-9) without prior permission of respondent No. 3 (PPSC), thereby ordering stoppage of one increment for two years (minor penalty) in an arbitrary and unjust manner with a pre-determined mind;

D. Impugned Chargesheet dated 30.09.2022 (Annexure P-4) and all subsequent proceedings emanating therefrom being arbitrary and in derogation of the punishment and appeal rules, 1970

.....

AND

Any other order or direction that this Hon'ble Court deems fit may kindly be issued in the facts and circumstances of this case."

2. Additional affidavit dated 15.10.2024 of Mr. Vijay Kumar Chopra, Chief Engineer (HQ), Department of Public Works (B&R

Branch), Punjab, on behalf of respondent Nos.1 & 2 has been filed, which is taken on record. Copy thereof supplied to the other side.

Registry to do the needful.

3. **Brief facts with relevant dates:**

09.07.2012	After completion of Bachelor of Technology (Civil Engineering) [<i>for short, B. Tech. (Civil)</i>], petitioner being a Backward Class candidate, was selected & appointed as Sub Divisional Engineer (SDE), in the Department of Public Works, Punjab
18.03.2022	Government of Punjab notified Punjab Service of Engineers (Civil Wing), Department of Public Works (Buildings and Roads Branch) Group ‘A’ Service Rules, 2022 (<i>for short, ‘Rules of 2022’</i>) and according to Rule 6, read with Appendix-B thereof, a member of service shall become eligible for promotion to the post of Executive Engineer (Civil), after completion of 08 years’ service as SDE.
07.06.2022	Respondent No.1, while exercising powers under Rule 4 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (<i>for short, ‘Rules of 1970’</i>), placed the petitioner under suspension.
15.06.2022	Aggrieved against the above suspension order, petitioner submitted reply.
30.08.2022	After consideration of the aforesaid reply, suspension order was revoked and petitioner stood reinstated subject to pending enquiry.
30.09.2022	Petitioner was issued charge-sheet under Rule 8 of the Rules of 1970 for imposition of “Major Penalty”.
17.10.2022	Petitioner submitted reply to the above charge-sheet.
15.11.2022	Respondent No.1 sent a communication to respondent No.2- Chief Engineer, asking his comments in the matter.

13.01.2023	Respondent No.2-Chief Engineer forwarded his comments to respondent No.1, thereby recommending to drop the charge-sheet issued to the petitioner.
13.02.2023	Petitioner received a letter from respondent No.1 for personal hearing fixed for 28.02.2023.
10.05.2023	Respondent No.1 decided to convert the charge-sheet issued to petitioner under Rule 8 (major penalty) to Rule 10 (minor penalty) of the Rules of 1970 and for stoppage of 01 annual increment for a period of 02 years.
16.06.2023	Although, the decision dated 10.05.2023 (<i>supra</i>) was addressed only to respondent No.2-Chief Engineer, but when petitioner came to know about the same, he preferred an appeal thereagainst before respondent No.1.
24.07.2023	Petitioner sent a reminder to respondent No.1 as well as to the Minister-in-charge for recalling of the decision dated 10.05.2023.
25.07.2023	Respondent No.1 sent a letter to the Punjab Public Service Commission-respondent No.3 (<i>for short, 'PPSC'</i>) for seeking approval to implement the decision dated 10.05.2023.
24.08.2023	PPSC demanded the complete records along with relevant documents from respondent No.1.
05.09.2023	Petitioner apprised the PPSC that against the decision dated 10.05.2023, he has already preferred an appeal before the Minister-in-charge; therefore, requested to defer the approval.
21.09.2023	In response to the aforesaid letter dated 24.08.2023 of the PPSC, relevant documents along with noting dated 22.03.2023 (approval of the Minister-in-charge) were sent to the PPSC by respondent No.1.

13.02.2024	In terms of Article 323 of the Constitution, PPSC gave its approval to the decision dated 10.05.2023 for stoppage of 01 annual increment for a period of 02 years of the petitioner.
05.03.2024 16.03.2024	Some junior SDEs to the petitioner (Seniority Nos.119, 123, 130, 131 to 136, 138, 140, 141 & 142) were promoted to the post of Executive Engineer (Civil); however, the name of petitioner (Seniority No.109) was kept in a “sealed cover”.
22.03.2024	Petitioner made a representation against the above action of respondents being <i>de hors</i> the instructions dated 27.02.1998, which deals with “sealed cover” procedure.
10.04.2024 [endorsed on 12.04.2024],	Petitioner received (under the RTI Act) impugned order of punishment for stoppage of 01 increment for a period of 02 years.
26.04.2024	Petitioner preferred an appeal against the above punishment order before Minister-in-charge, but no decision has been taken so far.

4. **Contentions on behalf of the petitioner:**

4.1 Learned Senior counsel contends that impugned charge-sheet dated 30.09.2022 was issued to the petitioner under Rule 8 of the Rules of 1970 for imposition of Major Penalty; respondent No.2-Chief Engineer vide letter dated 13.01.2023 recommended to drop the proceedings against the petitioner, but despite that, respondent No.1 without affording any opportunity of hearing, straightway decided to impose penalty for stoppage of 01 annual increment for a period of 02 years.

4.2 Further contends that in view of the Full Bench judgment of this Court reported as “*Dr. K.G. Tiwari Vs. State of Haryana*”, 2002(4) SLR 329, it is well settled that once a charge-sheet is issued for imposition of Major Penalty and if subsequently, the competent authority has converted the same attracting Minor Penalty, then procedure prescribed to impose Major Penalty be followed. However, in the present case, such a course has not been adopted by respondent No.1 while passing the impugned order(s),

4.3 Again contends that in terms of Article 323 of the Constitution, an approval for implementation of the decision dated 10.05.2023 was accorded by the PPSC on 13.02.2024; therefore, the action of respondents to deny promotion to the petitioner for the post of Executive Engineer (Civil) prior thereto, i.e. on 26.09.2023, was wholly illegal.

4.4 Also submitted that in view of the Punjab Government Instructions dated 27.02.1998, mere pendency of charge-sheet was not a valid ground to keep the promotion case of petitioner in ‘sealed cover’ despite recommendations of the DPC held on 19.09.2023.

4.5 Learned Senior counsel while relying upon the Instructions dated 06.09.2001, further submits that Benchmark criteria for promotion to the post of Executive Engineer (Civil) is Seniority-cum-Merit while considering the ACRs for last 05 years and minimum Benchmark is specified as ‘Very Good’. Since petitioner was duly fulfilling the Benchmark; hence he has wrongly been denied promotion being senior to other SDEs who stood promoted on 26.09.2023.

4.6 Again contends that meeting of the DPC for promotion to the post of Executive Engineer (Civil) was held on 19.09.2023; approval by the PPSC was granted on 13.02.2024; impugned order imposing 'Minor Penalty' against petitioner for stoppage of 01 annual increment for a period of 02 years was passed on 10.04.2024; therefore, there was no occasion for the respondents to deny him promotion and/or to keep his case in a 'sealed cover' on 26.09.2023.

4.7 Also contends that taking as a worst proposition against the petitioner, impugned order of minor punishment dated 10.04.2024 can be applied prospectively; whereas the petitioner was denied promotion on 26.09.2023; thus action of the respondents is wholly illegal and reference in this regard has been made to the Full Bench of this Court judgment reported as "*High Court of Punjab & Haryana Vs. Jaswant Singh, 2019(4) PLR 311*".

4.8 Lastly contends that respondent No.1 as well as the Minister-in-charge have completely negated the principles of natural justice, breached the Rules of 1970; violated Articles 14 & 16 of the Constitution while taking decision dated 10.05.2023 as well as passing the impugned order dated 10.04.2024 and ultimately keeping the promotion case of petitioner in a "sealed cover".

5. **Contentions on behalf of the respondents:**

5.1 *Per contra*, learned State counsel while relying upon the noting page Nos.27 & 28 (R-1), submits that before passing the impugned order(s), report dated 13.01.2023 of respondent No.2-Chief

Engineer was duly considered by the competent authority-respondent No.1; hence no interference is required by this Court.

5.2 Further submits that before taking the decision dated 10.05.2023, procedure prescribed under the Rules of 1970 has been duly followed and moreover, prior thereto, an approval in this regard was granted by the Minister-in-Charge on 01.04.2023. Learned State counsel also submitted that in terms of Article 323, respondent No.3-PPSC granted approval vide communication dated 13.02.2024 and thereafter, the impugned punishment order was passed by respondent No.1 on 10.04.2024.

5.3 Also submitted that petitioner has already filed an Appeal before Minister-in-charge on 26.04.2024 and which is pending; therefore, present petition is liable to be dismissed being premature.

6. Heard learned counsel for the parties and perused the records.

7. **Findings & observations:**

7.1 Before proceeding further, it is necessary to reproduce the charges levelled against the petitioner and which read as under:-

“Details of charges against Shri Sukhpreet Singh son of Shri Baghel Singh Sub Divisional Engineer

Shri Sukhpreet Singh son of Shri Baghel Singh Sub Divisional Engineer during his deployment at Construction Division No. 2, Punjab Public Works Department (B & R), Branch Bathinda, while execution of work of new construction of link road village Bangi Nihal Singh Wala to Sukhladhi, has committed the following irregularities and negligence in performing his duty: -

1. During the year 2022 Shri Sukhpreet Singh Sub Divisional Engineer got the work of execution of the aforementioned road. On this road at 2.80 Kms there were two electric poles. At this site the work of stone consolidation had been completed and the laying of P.C. work was to be executed after shifting of these electric poles. But the work of laying P.C. was executed prior to shifting of the electric poles. These poles being in middle of the road and due to traffic on the road/path any untoward incidence could have happened. Whereas the work of laying of P.C. should have executed only after the poles should have been shifted by the electricity department. But this was not done. Hence you while getting the work of P.C. laying, you committed negligence while performing your duty and you failed to comply with the responsibilities of a Sub Divisional Engineer. Hence Shri Sukhpreet Singh Sub Divisional Engineer due to negligence in duty/ carelessness and dereliction of duty, you have made yourself liable to be punished under Punjab Civil Services (Punishment and Appeal) Rules 1970 section 8.

Sd/ -
Chief Secretary, Govt. of Punjab
Public Works Division (B & R)
Chandigarh
Dated 30.09.2022”

7.2 Precisely, the charges levelled against the petitioner are for laying Premix Carpeting (PC) before removing two Electric Poles which were standing in the middle of a ‘link road’ from Village *Bangi Nihal Singh Wala* to *Sukhladhi*.

7.3 In response to charge-sheet, petitioner submitted reply dated 17.10.2022 and thereafter, respondent No.1 vide Memo. dated 15.11.2022, sought comments from respondent No.2-Chief Engineer. In furtherance of the same, respondent No.2 on the basis of reports received from two officers i.e. (i) Superintending Engineer, Construction Division No.II (B&R), Bathinda and (ii) Executive Engineer, Division No.II

(B&R), Bathinda, sent his recommendations to respondent No.1 vide Memo. dated 13.01.2023 for dropping the impugned charge-sheet. For reference, the operative part of recommendations made by respondent No.2-Chief Engineer, read as under:-

“Here it is pertinent to mention that the contractor executed the PC task on date 03.06.2022 at the site where electric poles were erected. Whereas Sub Divisional Engineer around 2 ½ months back had written letter to the electricity department to shift the existing poles. On date 17.03.2022 a written instruction was passed to the contractor (Copy attached) that until the electric poles are not shifted by the electricity department till then no PC work should be executed near the poles.

But the contractor ignored the instruction passed by the Sub Divisional Engineer and he was asked to explain the reason regarding the execution of PC work around the electric pole at site. Then the contractor had submitted in writing that the PC work was executed by his labour due to their ignorance and ignoring the instructions. Here it is pertinent to mention that the road being constructed was not connected at both the ends and this road being constructed is at different site from the rasta already being used by the village. Hence there was no traffic. However, as a precaution, the Sub-Divisional Engineer asked the contractor should make safety arrangements by placing sandbags and reflective tape around the poles. The electricity department shifted the electricity poles only 3 days after the PC was laid down. The PC work was done properly at that place by the contractor.

It is self-evident from the above situation that no negligence or any dereliction of duty has been committed by Mr. Sukhpreet Singh, Sub Divisional Engineer and by Naveen Kumar Jr. Engineer.

In this regard the work executed was by the contractor at his own discretion and hence the contractor is held responsible for voluntarily executing the work and for that it was the contractor's mismanagement and since due to the bad image suffered by the department, the amount of 1% of Rs.1765246/- of the Agreement amount should be paid as liquidity damages as have been imposed on the contractor vide Office letter No.2283 dated 12.8.2022 and a

warning has also been issued for future. This amount was recovered in the contractor's bill. Therefore, the denial of the charge alleged in the chargesheet by the concerned Sub-Divisional Engineer and Junior Engineer is absolutely justified.

The position indicated above by the Superintending Engineer, Construction Circle, Bathinda, and in view of the response given by the concerned Sub-Divisional Engineer and Junior Engineer, the work of the existing electric pole by the contractor was done due to negligence of the contractor's labor. Mr. Sukhpreet Singh, Sub-Divisional Engineer and Mr. Naveen Kumar, Junior Engineer had given written instructions two and a half months before the work was done that PC work should be done at this place only after shifting the electric poles. According to the report of the Superintending Engineer and position explained therein, Sub Divisional Engineer, Mr. Sukhpreet Singh and Mr. Naveen Kumar Jr. Engineer are not at fault in any respect and for which they should not be held responsible for the work done by the contractor negligently. As in charge No. 1 It has been written that despite the fact that the contractor was stopped in writing by Mr. Sukhpreet Singh, Sub- Divisional Engineer and Mr. Naveen Kumar Jr. Engineer, the labour of the contractor executed the work without the electric poles being shifted, it should not be considered as negligence or dereliction of duty on the part of these Sub-Division Engineer Sukhpreet Singh and Junior Engineer Mr. Naveen Kumar since they are not responsible in any way due to the mistake of the contractor.

By taking into consideration the aforementioned situation and by the annotated remarks/report submitted by Superintending Engineer, Construction Circle, Bathinda, this office is also in agreement with the above said report as well. Therefore, considering the matter at the level of the government, the charge sheet issued against the concerned be closed and the head office may consign the record of the chargesheet to the office.”

7.4 From perusal of the above recommendations, it is clearly discernible that two months back, petitioner had written letter to the Electricity Department, for shifting the electric poles and written instructions were also issued in this regard on 17.03.2022 to the

contractor, wherein, it was specifically mentioned that no PC work be executed until electric poles are shifted by the Electricity Department; but, Contractor ignored the same. As a result thereof, explanation was called from the Contractor and he acknowledged that PC work was done by his labourers and thereafter both the poles were shifted, immediately, after 03 days of the PC work. Consequently, the Contractor was held responsible for executing the PC work in disregard of the instructions issued by the petitioner and due to that, vide office memo dated 12.08.2022, liquidity damages of 1% of contract amount were imposed against him. Also discernible that amount of damages was recovered from the Contractor without any delay. Thus, in these circumstances, respondent No.2-Chief Engineer rightly observed, *inter alia* “that no negligence or any dereliction of duty has been committed by Mr. Sukhpreet Singh, Sub Divisional Engineer”. But respondent No.1, while passing the impugned order, completely ignored this aspect of the matter.

7.5 Of course, respondent No.1 while conveying the impugned decision dated 10.05.2023 to respondent No.2-Chief Engineer, converted the charge-sheet from Rule 8 (Major Penalty) to Rule 10 (Minor Penalty), but at the same time, decided to impose penalty against the petitioner for stoppage of 01 annual increment for a period of 02 years without affording any opportunity of hearing. Thus, there is a complete disregard of the procedure prescribed under the Rules of 1970. For reference, the decision dated 10.05.2023 is recapitulated as under:-

*“Government of Punjab
Public Works Department
(B&R 01 Branch)*

To

Chief Engineer (HQ)
Public Works Department (B & R) Patiala

Memo No. 10/47/2022-ESI (4) / 1789 Date Chandigarh 10.05.2023

Subject: Construction on new link road Bangi Nihal Singh to Sukhladhi in MC Raman District Bathinda - Regarding Social Media Reports of Premix Carpet laid on the road without shifting the electric pole in the new carriageway of the road.

In reference to your memo No. 322/ Inv. Dated 10.02.2023 on the aforementioned subject.

2. In connection with the case mentioned in the subject the competent authority while converting the charge sheet issued to Shri Sukhpreet Singh, Sub Divisional Engineer and Shri Naveen Kumar Junior Engineer under Punjab Civil Services (Punishment and Appeal) Rules 1970 Rule 8 is being converted to rule 10 for minor penalty, it has been decided to impose stoppage of one annual increment for two years for Shri Sukhpreet Singh, Sub Divisional Engineer and stoppage of two annual increments for two years for Shri Naveen Kumar Junior Engineer so that the charge sheet issued to the officer/employee is concluded.

3. Before implementation of this order on Shri Sukhpreet Singh, Sub Divisional Engineer, approval of the Punjab Public Services Commission is mandatory. Hence, it should be ensured that the prescribed proforma with complete documents (02 copies) within one week's time is sent to the government. So that approval of the commission can be procured.

Sd/-
Superintendent”

8. Aforesaid decision nowhere indicates that recommendations dated 13.01.2023 (*ibid*) were at all considered by respondent No.1; rather straightway, the petitioner was punished in gross violation of the Rules of 1970 and he was denied promotion to the post of Executive Engineer (Civil) without any basis. Even one Iqbal Sarif,

SDE, who was junior to the petitioner (Sukhpreet), had been promoted as Executive Engineer (Civil) on 26.09.2023.

8.1 It seems that petitioner has been victimized by respondent No.1, merely on the basis of so-called approval given by the Minister-in-charge on 01.04.2023 and punishment for stoppage of 01 annual increment for 02 years was imposed, without following the due procedure prescribed under the Rules of 1970; otherwise there was no occasion to take such a drastic step in these circumstances.

8.2 Also noteworthy that in response to an application under RTI Act, petitioner received information on 06.08.2024 (A-1) to the effect that he was recommended for promotion to the post of Executive Engineer (Civil) by the DPC in its meeting held on 19.09.2023 in the following manner:-

“FINDINGS REGARDING SUITABILITY FOR PROMOTION TO THE POST OF EXECUTIVE ENGINEER (CIVIL) IN RESPECT OF SHRI SUKHPREET SINGH, SDO (CIVIL)

In the chargesheet regarding not shifting 3 electricity poles during the construction of four roads from village Bangi Nihal Singh Wala, the authority decided on 10.05.2023 to inflict a penalty of stoppage of one annual increment for two years. Before inflicting the penalty, on 25.07.2023, your case was sent to the Commission for approval. In this case, the employee has only been given a minor penalty but there is no penalty for withholding promotion. After considering the name of the employee by the Departmental Promotion Committee, following recommendations for promotion is being made:-

<i>S. No.</i>	<i>Name of Employee</i>	<i>Seniority No.</i>	<i>Recommendation of the Committee</i>
<i>1.</i>	<i>Sukhpreet Singh</i>	<i>109</i>	<i>The employee fulfills the 12 point bench mark for promotion and his record is good. There is no pending departmental/ vigilance/ court case</i>

			<i>pending against the employee and his probation period is also over. The DPC has considered the case on facts as well as the overall service record in light of Para 13 of the DPC Guidelines. The committee has found the employee eligible for promotion and his name is recommended for promotion. It is also recommended by the committee that the advice of the Personnel Department be sought after conveying all the facts. After the appropriate advice is sought, decision regarding opening the sealed cover be taken as per the Rules/Instructions.</i>
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*Sd/-
19/09/23
(Priyank Bharti),
IAS
PWD (B&R) Punjab*

*Sd/-
19.09.2023
(Vijay Kumar Chopra)
Chief Engineer
(Public Works Department,
Punjab)*

*Sd/-
19.09.2023
(Kuldeep Singh)
Additional Secretary
(Social Security and
Women and Child
Development*

*Shailja Goud Sd/-
(Shailja Goud)
Superintendent
(Personnel Department)*

*Sd/- Gurjit Singh
(Gurjit Singh)
Superintendent
(Social Security and
Women and Child
Development)”*

8.3 Above extract clearly indicates that petitioner was found eligible for promotion to the post of Executive Engineer (Civil) and his name was duly recommended by the DPC; but still, denied the lawful claim by respondent No.1 without any reason. Also noteworthy that decision dated 10.05.2023 was not conveyed to the petitioner; rather it

had been addressed to respondent No.2-Chief Engineer for seeking approval from the PPSC-respondent No.3. Thus, the action of respondent No.1 is apparently running *de hors* the Instructions dated 27.02.1998, which *inter alia* says that 'sealed cover' procedure is not to be adopted in a case where an employee has been issued show cause notice under Rule 10 of the Rules of 1970 for awarding a minor penalty. For reference, relevant part of the aforesaid Instructions reads as under:-

“Copy of Punjab Government Circular Letter No. 3/27/97-3PPI/2087, dated 27th February, 1998 from the Department of Personnel and Administrative Reforms, addressed to all the Heads of Departments etc. in the State of Punjab.

Subject:- Promotion of Government employees against whom disciplinary/court proceedings are pending or whose conduct is under investigation procedure and guidelines to be followed.

1. to 3.

4. It is also clarified that 'sealed cover' procedure is not to be adopted in a case where an employee has been issued show cause notice under Rule 10 of the Punishment and Appeal Rules for awarding a minor penalty.”

8.4 Apart that, as per the stand of respondents itself, approval of PPSC was received on 13.02.2024 and thereafter, vide impugned order dated 10.04.2024, punishment for stoppage of 01 annual increment for 02 years was imposed upon the petitioner. After going through impugned order dated 10.04.2024, this Court does not find any reason, much less to say “good and sufficient reasons”; rather the order is absolutely non-speaking. For reference, the order dated 10.04.2024 reads as under:-

*“Government of Punjab
Public Works Department
(B&R - 01 Branch)*

Office Order

During the construction of new link road between Bangi Nihal Singh Wala to Sukhladhi (3.80 KM), a video went viral where it was seen that the premix carpet was laid on the road without shifting of electricity poles due to which the image of the department was tarnished and for negligence/irresponsibility in performing of his duty, Shri Sukhpreet Singh Sub Divisional Engineer (Civil) was suspended from the service with immediate effect vide Government order No. 10/47/2022-4ES1/967-969 dated 07.06.2022 under Punjab Civil Services (Punishment & Appeal) Rules 1970 Rule 4.

2. *Chief Engineer (HQ) Public Works Department (BR) Branch Patiala through letter dated 24.08.2022 made a recommendation to reinstate the officer pending enquiry and vide government order 10/47/2022-4ES1/2078-2082 dated 30.08.2022 the officer was reinstated in the service pending enquiry.*

3. *Charge sheet was issued to Shri Sukhpreet Singh Sub Divisional Engineer (Civil) vide government order No. 10/47/2022-451/2556 dated 30.09.2022 under Punjab Civil Services (Punishment and Appeal) rule 1970 rule 8. After considering the reply of the officer to the charge sheet issued to him, he was given an opportunity of personal hearing on 28.02.2023 11:30 AM. As per the records/documents that came to light at the time of personal hearing, the competent Authority considered Shri Sukhpreet Singh Sub Divisional Engineer (Civil) as responsible for the mistake his punishment was changed to Punjab Civil Services (Punishment & Appeal) Rules, 1970 rule No. 10 and it was decided to stop his one annual increment for two years. To get the approval for implementation of this punishment of this was forwarded to Punjab Public Service Commission, Patiala and Punjab Public Service Commission, Patiala, vide their Letter dated 13.02.2024 agreed to the proposal of the department and approved the stoppage of one year increment for two years.*

6. *Keeping in view the documents and facts that came to light during the personal hearing of Shri Sukhpreet Singh Sub Divisional Engineer (Civil), as per the decision of the competent Authority and the approval accorded by the Punjab Public Service Commission, it*

has been decided to impose stoppage of one annual increment for two years upon Shri Sukhpreet Singh Sub Divisional Engineer (Civil).

Date 10.04.2024
Chandigarh

Priyank Bharti, I.A.S.
Secretary Government of Punjab
Public Works Department (B&R)

Endorsement No. PWD-BRI02/62/2024-BR1/820537/1-3 dated 12.04.2024”

From bare perusal of the aforesaid order, there would be no hesitation to observe that same has been passed by respondent No.1, without application of mind.

8.5 It is worthwhile to mention here that as per Rule 5 of the Rules of 1970, penalties including “withholding of increment of pay without cumulative effect” may be imposed on a government employee for “good and sufficient” reasons; but in the present case, as already noticed, no reason has been assigned while passing the impugned order dated 10.04.2024. In support of the above opinion, reference can be made to the Division Bench judgment of this Court reported as **“Sarupinder Singh Vs. Punjab State Electricity Board and another”, 2007(2) ILR Punjab and Haryana 159**, and para Nos.8 & 9 of the same read as under:-

*“(8) A perusal of Regulation 5 makes it abundantly clear that the minor penalties could be inflicted on an employee ‘for good and sufficient reasons’ and not otherwise. The question is not res integra as the expression good and sufficient reasons has been interpreted by a number of judgments of this Court including the cases of **Ram Dass Chaudhary v. State of Punjab, (1); State of Punjab v. Dr. Ram Kishan Chopra, (2); and Dr P.K. Mittal v. State of Punjab, (3).** The Division Bench in the case of **Dr. Ram Kishan Chopra (supra)** has opined that mere use of word ‘considered’ in the impugned order did not fulfil the requirement of the rule which provided for consideration of the reply submitted by an employee. Likewise in **Dr. P.K. Mittal’s case (supra)** this Court has taken the view that an order without*

disclosing reasons and application of mind cannot meet the requirement of the rules, which provide for consideration of the reply to the charge sheet submitted by the employee. The view of the learned Single Judge in Dr. P.K. Mittal's case (supra), is discernible from para 2 of the judgement and the same reads as under:—

“2. The only contention raised by Mr. J.L. Gupta, learned counsel, for the petitioner in support of the petition is that order Annexure P—16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on Ram Dass Chaudhary v. State of Punjab, 1968 S.L.R. 792, wherein P.C. Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in Bhagat Raja v. Union of India, A.I.R. 1967 S.C. 1606, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi-judicial in nature. The case before P.C. Jain J. arose from an appellate order of the Government, but here the impugned order is on the original side. In State of Punjab v. Dr. R.K. Chopra, 1978 (1) I.L.R. 1, a Division Bench of this Court approved P.C. Jain, J's view in Ram Dass Chaudhary's case (supra). To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court ex facie, something has to be available on the face of the order from which the Court of correction has to go by, In the instant case, as in plain, the order was that the reply of the petitioner had been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be

true, that it indicates the reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner. The arena for the respective two spheres is well marked. And though permitted to over-shadow to some extent, cannot have the effect of superimposition to wipe out the ultimate aspect altogether.”

(9) When the principles laid down in the aforementioned judgments are applied to the facts of the present case and the order impugned, it becomes crystal clear that the punishing authority has failed to consider the reply of the petitioner submitted by him in response to the charge-sheet. In the first recital of the order, only mention with regard to reply has been made that the petitioner did not admit the allegation levelled against him. There is no other reason given for rejecting the reply and, therefore, the impugned order suffers from the same legal flaw which has been pointed out by this Court in the cases of Ram Dass Chaudhary (supra), Dr. Ram Kishan Chopra (supra) and Dr. P.K. Mittal (supra). Moreover, Regulation 8(5) of the Regulations use the expression ‘consider’, which was subject matter of adjudication of this Court in the aforementioned judgments, whereas the impugned order does not show any consideration of the reply submitted by the petitioner. Therefore, the irresistible conclusion is that the impugned order does not disclose any ‘good and sufficient reasons’ to record the findings that the petitioner was guilty of the charges as contained in the charge-sheet. It is well settled that in cases where the allegations of misconduct are contested by an employee then even for inflicting minor penalty an inquiry may have to be held by following the procedure contemplated by Regulation 8(3) to 8(24) of the Regulation as has been provided by Regulation 10(1)(b) of the Regulations. Therefore, the impugned order does not meet the requirement of Regulation 8(5) of the Regulations and, thus, the same is liable to be quashed.”

8.6 Still further, as per Rule 8.4-A of the Rules of 1970, *“If on receipt of written statement of defence, the punishing authority 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 and for that reason the*

punishing authority does not consider it necessary to enquire into the articles of charges for imposing any of the penalties in clause (v) to (ix) of Rule 5, it shall after following the procedure specified in Rule 10, make an order imposing any of the penalties specified in Clause (i) to (iv) of Rule 5.

8.7 Again under Rule 10(1), which deals with procedure for imposing minor penalties, reads as under:-

Rule 10. - Procedure for imposing minor penalties

(1) Subject to the provisions of Sub-Rule 3 of Rule 9, no order imposing on a Government employee any of the penalties specified in clauses (i) to (iv) of Rule 5 shall be made except after -

- (a) informing the Government employee in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;*
- (b) holding an inquiry in the manner laid down in Sub-Rules (3) to (23) of Rule 8, in every case in which the punishing authority is of the opinion that such inquiry is necessary;*
- (c) taking the representation, if any submitted by the Government employee under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;*
- (d) recording a finding on each imputation of misconduct or misbehaviour; and*
- (e) consulting the commission where such consultation is necessary.*

9. There is no dispute that approval of the PPSC had been received on 13.02.2024; thus, it was absolutely wrong to deny promotion

to the petitioner despite the recommendations of DPC held on 19.09.2023, on the premise that penalty of stoppage of 01 increment for 02 years was imposed against him.

10. Above all, before passing the impugned order dated 10.04.2024, there is no inquiry, nor any opportunity of hearing was afforded to the petitioner; thus respondent No.1 has completely violated Rules 5, 8 & 10 of the Rules of 1970. Apart that, it is well settled by the Full Bench of this Court in ***Dr. K.G. Tiwari's judgment*** (supra) that in case a government employee is issued charge-sheet for imposition of major penalty and subsequently same is converted to attract minor penalty, then procedure prescribed to impose Major Penalty is to be followed. For reference, para Nos.2 & 28 of the above judgment are reproduced as under:-

“2. The legal question which arises for consideration, and has been referred to the Full Bench, is as to whether, after issuing the charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (hereinafter referred to as the Rules), for imposition of a major penalty, for which the Rule envisages holding of a regular departmental enquiry, the authority can, after examining the reply to the charge sheet, inflict a minor punishment, without holding a regular departmental enquiry.

28. We hold that once the chargesheet is issued under Rule 7 of the Rules 1987 for the imposition of a major penalty, which envisages holding of a regular departmental enquiry, the disciplinary authority cannot by merely examining the reply to the chargesheet, inflict even a minor punishment without holding a complete departmental enquiry.”

11. In view of the factual position noticed hereinabove, it is evident that even Minister-in-charge also, granted approval on 01.04.2023 for imposition of penalty for stoppage of 01 annual

increment for 02 years without following the procedure prescribed under the Rules of 1970; thus, both of them, i.e. respondent No.1 as well as Minister-in-charge while passing the impugned order(s) committed gross illegality.

12. Although, learned State counsel raised an objection regarding maintainability of the present writ petition on the premise that appeal of the petitioner is still pending against the impugned order(s), but that is not acceptable for the following reasons: -

- (i) As noticed above, the Minister-in-charge had already granted approval on 01.04.2023 for imposition of penalty for stoppage of 01 annual increment for 02 years and on the basis thereof, decision dated 10.05.2023 and impugned order dated 10.04.2024 were passed by respondent No.1. Therefore, when the Minister-in-charge has already expressed his opinion in the matter, then pursuing of appeal before him, would be an exercise in futility and reference in this regard can be made to the judgment of Hon'ble the Supreme Court in ***Ram and Shyam Company Vs. State of Haryana and others, (1985)3 SCC 267***, wherein, it was held as under:-

“9. Before we deal with the larger issue, let me put out on the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in *Assistant Collector of Central Excise v. Jainson Hosiery Industries* rejected the writ petition observing that “the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him”. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and

discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. If fact in the very decision relied upon by the High Court in State of U.P. v. Mohammad Nooh it is observed “that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy”. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation of this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The cliché of appeal from Caesar to Caesar’s wife can only be bettered by appeal from one’s own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court.”

- (ii) Even otherwise, when circumstances so warrant, mere availability of an alternative remedy of appeal would not oust the jurisdiction of the High Court under Article 226 of the Constitution rendering the writ petition not maintainable and reference in this regard can be made to ***M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and others, 2023 SCC OnLine SC 95*** and relevant part of the same reads as under:-

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high

courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be

entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.”

13. Still further, it is not in dispute that petitioner was denied promotion on the basis of recommendations of DPC dated 19.09.2023; despite the fact that impugned order of minor punishment was passed by respondent No.1 much later, i.e. on 10.04.2024. Therefore, the action of respondents amounts to applying the punishment order retrospectively; which would be contrary to the law laid down in ***Jaswant Singh’s case (supra)*** and for reference, para Nos.1 & 48 of the same are reproduced as under:-

“1. This Full Bench has been constituted consequent upon an order dated September 22, 2016, whereby when admitting this Letters Patent Appeal, the Division Bench doubted the correctness of the ratio of the judgment of this Court in ***Major Singh Gill vs State of Punjab, 1992(1) SCT 436***, wherein it had been held that the punishment when awarded to an employee in departmental proceedings “would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected.”

48. In the light of the aforesaid it has necessarily to be held that the judgment in *Major Singh Gill* holding that the punishment imposed in departmental proceedings “would relate back to the period when the alleged offence/misconduct was committed or in any case when the same was detected” does not lay down the correct law. The punishment/penalty takes effect prospectively from the date of its imposition.”

14. **Conclusion:**

14.1 In view of the above discussion, there would be no hesitation to hold that action of the respondents is grossly illegal and the impugned decision/order were passed just to deprive the petitioner from his lawful claim for promotion to the post of Executive Engineer (Civil).

15. Consequently, the decision dated 10.05.2023; the approval granted by PPSC on 13.02.2024; and the impugned order dated 10.04.2024; are held to be legally unsustainable; hence deserve to be quashed.

16. Resultantly, writ petition is allowed; decision dated 10.05.2023, approval of PPSC dated 13.02.2024 as well as the impugned order dated 10.04.2024 passed by the respondent No.1 are hereby quashed and set aside. Respondents are directed to open the 'sealed cover' of the petitioner on the basis of recommendations dated 19.09.2023, made by DPC, forthwith and to proceed further in accordance with law, without any further delay.

17. However, respondent No.1, if so advised, would be at liberty to proceed further on the basis of impugned charge-sheet dated 30.09.2022, in accordance with law.

18. Since the action of the respondents is found to be grossly illegal, therefore, in order to mitigate the miseries of petitioner and as a deterrence to the respondents for future, costs of Rs.1,00,000/- (Rupees one lakh only) are imposed. Costs be paid to the petitioner by respondent

No.1 within a period of 03 months from receipt of certified copy of this order.

Pending application(s), if any, shall also stand disposed off.

15.10.2024
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No