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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14443-2020

Date of Decision: 05.03.2024

Surinder Kumar Makkar

..... Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R. Kartikeya, Advocate and
Ms. R. Akanksha, Advocate
for the petitioner.

Mr. Lakshay Mehta, Advocate
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *Certiorari* or any other appropriate writ, direction or order, for quashing the impugned order dated 18.11.2019 (Annexure P-32), passed by the Punishing Authority, as well as the order dated 06.03.2020 (Annexure P-34) passed by the Appellate Authority.

2. The brief facts of the present case are that the petitioner was serving as an Executive Engineer in the respondent-Nigam. A charge-sheet dated 21.08.2018 was issued to the petitioner along with some other officers

including one SDO vide Annexure P-24 and as per the statement of allegations, the petitioner while remaining posted as XEN-Construction Division, UHBVN, Karnal from April, 2015 to April, 2016 had committed some acts of omission and commission and during vigilance investigation, it has been found that the work of supply, erection, testing and commissioning of new 11 KV lines, feeders in (OP) circle, Karnal was awarded to M/s Arvinder Electricals, Chandigarh and the petitioner being Executive Engineer issued 'No Defect Liability Certificate' to the firm on 30.09.2015 by ignoring the fact that Janeshro AP feeder and Bibipur AP feeder never worked properly since the date of taking over by the Nigam and resultantly the said feeders have not been put to use and the huge expenditure incurred by the Nigam on these feeders have gone waste due to his negligence. An enquiry officer after conducting the enquiry exonerated the petitioner vide Annexure P-26. The findings of the Enquiry Officer are reproduced as under:

“The reply furnished by the Charged Officer has been found to be satisfactory and the points mentioned by him in his defence behold good. Hence, he cannot be held responsible for Issuing No Defect Liability Certificate as the 11 KV lines, feeders in (OP) Circle, UHBVN, Karnal were commissioned/energized on 26.6.2014 after getting clearance from Chief Electrical Inspector, Chandigarh i.e. almost one year prior to his joining and moreover, the same was endorsed on the of report submitted by SDO/Construction. Sub-Division, UHBVN, Karnal, on 30.9.2015 i.e. almost after about one year period of liability period of the Contractor. That he took proper initiatives in taking up the matter

with the Firm when reference was made by SDO/Const. Sub-Division, UHBVN, Karnal vide his vide Memo No. Ch 181/CKD-210 Dated 29.4.2015 with CC to the concerned got rectified the defects pointed out by his office to the satisfaction of Operation Wing, as is evident from SDO/Const. Sub-Divn. Memo. No. 571/CSD/KNL Dated 22.06.2015. Also the Log Sheets record shows that the feeders were running on maximum load and Operation Wing had also generated the revenue from it after issuance of No Defect Liability Certificate. It is also an established fact that payment of the final bills of the contractor had already been released on 3.9.2014 i.e, prior to his Joining. As such, the charge does not prove against him.”

3. The aforesaid exoneration was based upon the fact that the aforesaid project was commissioned by way of taking over on 26.06.2014 after getting clearance from the Chief Electrical Inspector, Chandigarh and ‘No Defect Liability Certificate’ was issued by the petitioner on 30.09.2015 i.e. after about one year and the defect liability period was also one year and since the certificate has been issued after the completion of the one year of defect liability period, the petitioner was not responsible for the same. After the aforesaid enquiry officer submitted his report to the disciplinary authority, the disciplinary authority thought it fit to disagree with the enquiry report and consequently a disagreement note was prepared and a show-cause notice dated 20.03.2019 was issued to the petitioner vide Annexure P-27. In the disagreement note, various letters and records have also been mentioned on the basis of which the aforesaid show-cause notice was issued. The petitioner

replied to the aforesaid notice and thereafter, vide impugned order dated 18.11.2019 (Annexure P-32), the disciplinary authority decided to inflict punishment upon the petitioner by stopping two annual increments with future effect along with downgrading his ACR for the relevant period 2015-16 on account of misconduct and lapses committed by him. The operative part of the aforesaid punishment is reproduced as under:

“7. On careful consideration of the evidence and material on record as above, it is established that the charged officer Sh. S.K. Makkar, XEN is guilty for the charge of issuing 'No Defect Liability Certificate' to the firm M/s Arvindera Electricals, Chandigarh on 30.09.2015 without ensuring rectification of defects pointed out by Operation officers during the defect reliability period and by ignoring the fact that both Janeshro and Bibipur AP feeders remained most of the time under breakdown since the date of commissioning, leading to huge wrongful loss to the Nigam. Because of the said acts of omission and commission on the part of charged officer, the Performance Bank Guarantee amounting to ₹ 41.60 lacs was released to the contractor. The facts on record clearly prove the dishonest conduct and connivance of the charged officer with the contractor in extending wrongful gain to him and causing huge loss to the Nigam in the form of capital expenditure amounting to ₹97.18 lakhs going waste, loss of revenue and loss of goodwill of the consumers on account of poor quality of power supply. Therefore, the proposed punishment of stoppage of two increments with future effect along with downgrading of Annual Confidential Report for the relevant period i.e. 2015-16 ought to be affirmed.

8. Accordingly, punishment of stoppage of two

increments with future effect along with downgrading of Annual Confidential Report for the relevant period i.e. 2015-2016 is hereby imposed upon the charged officer.”

4. The present petition has been filed for challenging the aforesaid punishment order passed by the disciplinary authority after he disagreed with the enquiry report of the enquiry officer.

5. Mr. R. Kartikeya, learned counsel for the petitioner has submitted that it is a case where the enquiry officer has very clearly exonerated the petitioner on the basis of the facts and record which were available before him. He referred to the definition and meaning of the ‘Defects Liability Certificate’ and the ‘Defect Liability Period’ which has been so reproduced in Para No.4 of the present petition and submitted that the ‘Defect Liability Period’ was only one year and admittedly the commissioning of the taking over of the two projects was on 26.06.2014 and one year period extinguished on 25.06.2015. However, the petitioner joined as an Executive Engineer on 22.04.2015, which was about two months before the expiry of the ‘Defect Liability Period’. He further submitted that however the certificate was issued on 30.09.2015, which was after the ‘Defect Liability Period’ of one year and it was on this basis, that the enquiry officer had exonerated him. He also submitted that once an enquiry was conducted on the basis of the records of the case, the disciplinary authority when in disagreement with the enquiry officer had issued a dissent note, the same was based upon various other documents which were not a part of the enquiry and were never put to the petitioner during enquiry and therefore the punishment order which has been passed by the disciplinary authority vide

impugned order dated 18.11.2019 (Annexure P-32) is liable to be set aside because it is based upon those documents which includes some log books, some other records, letter which has been so given in the dissent note vide Annexure P-27 and also the punishment authority has now made an observation that the petitioner was negligent whereas no such returning has been found by the enquiry officer. He further submitted that be that as it may, once the disciplinary authority was considering the documents which were not even considered and which were beyond the scope of the enquiry, then the disciplinary authority could not have passed the punishment order because this affected the rights of the petitioner because had it been put to the petitioner at the time of enquiry by the Presenting Officer, then he would have confronted the same and therefore the order of punishment is liable to be set aside.

6. Learned counsel for the petitioner also submitted that at the starting of the disciplinary proceedings, a charge sheet was also issued to the SDO, namely, Satinder Singh on the similar allegations and a common enquiry was conducted, but so far as the aforesaid Sub Divisional Officer is concerned, he filed a separate writ petition before this Court bearing CWP No.11178 of 2023, decided on 04.07.2023 and on the aforesaid grounds that the petitioner of that case had joined even after the expiry of the 'Defect Liability Period', the punishment order qua the aforesaid petitioner has been set aside by a Co-ordinate Bench of this Court and since the petitioner is also similarly situated as the aforesaid Sub Divisional Officer, the present petition may also be allowed and the punishment order dated 18.11.2019 (Annexure P-32) qua the present petitioner is also liable to be set aside on the similar grounds and on the

basis of which the aforesaid order of punishment pertaining to the aforesaid SDO, namely, Satinder Singh was set aside by a Co-ordinate Bench of this Court.

7. On the other hand, Mr. Lakshay Mehta, learned counsel for the respondent-Nigam submitted that so far as the plea raised by the learned counsel for the petitioner that the relief claimed in the present petition is similar to that of the aforesaid Sub Division Officer, namely, Satinder Singh is concerned, is misconceived. He submitted that the aforesaid Satinder Singh, SDO had joined the department on 11.09.2015, which was after the expiry of one year of the 'Defect Liability Period' which expired on 25.06.2015 and the Defect Liability Certificate was issued after about 3 months and 5 days i.e. on 30.09.2015 and submitted that the Defect Liability Certificate was issued by both the officers together. He further submitted that the aforesaid judgment of a Co-ordinate Bench of this Court in the aforesaid Satinder Singh's case passed in CWP-11178-2023, decided on 04.07.2023, the respondent-department has already decided to challenge the same by way of filing a LPA and the same is still in process. He also submitted that the aforesaid judgment would also not be applicable to the present petitioner in view of the fact that so far as the present petitioner is concerned, he joined the concerned Nigam on 22.04.2015 which was at least two months prior to the expiry of one year period and when he issued 'No Defect Certificate', then it was duty of the petitioner to have at least seen that the projects were not even working and this exercise was undertaken by the disciplinary authority and not by the enquiry officer. He submitted that since the present petitioner had joined on 22.04.2015 in the

respondent-Nigam and the aforesaid SDO, namely, Satinder Singh had joined on 11.09.2015, after the expiry of one year of the 'Defect Liability Period' which expired on 25.06.2015, the present petitioner is not at similar footing as that of the aforesaid Satinder Singh and therefore the petitioner cannot be permitted to take the benefit of the aforesaid judgment.

8. On merits, he submitted that it is a case where 'No Defect Certificate' was issued by the petitioner and other officers. But at the time when the petitioner had joined which was two months prior to the expiry of one year period, then it was duty of the petitioner to have seen that as to whether the aforesaid projects were working or not. He further submitted that the expenditure on the aforesaid projects came out to be Rs.98 lacs and they were not functioning at all even after their commissioning and the same was so reflected in the order which has been passed by the disciplinary authority and the disciplinary authority by although considering many other facts especially the Log Books wherein it was found that even after the commissioning the aforesaid two projects of Janeshro and Bibipur were not functioning and consequently, a loss was caused to the Nigam. The disciplinary authority disagreed with the report of the enquiry officer and therefore, inflicted the punishment of stoppage of two annual increments with future effect along with downgrading of his ACR. He also submitted that there is no bar for the disciplinary authority to have considered the material placed before him. In this way, no fault can be found in the order which has been passed by the disciplinary authority.

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

10. So far as one of the arguments raised by the learned counsel for the petitioner that one of the other employee against whom the enquiry was conducted jointly with the present petitioner is concerned, he also filed a petition before this Court as aforesaid and the order of punishment has been set aside and the petitioner is at par and similarly situated with that of the aforesaid SDO, namely, Satinder Singh is concerned, a perusal of the aforesaid judgment passed by a Co-ordinate Bench of this Court would show that the petitioner of that case, namely, Satinder Singh had joined the concerned department on 11.09.2015 which was after the expiry of one year of Defect Liability Period and this also weighed in the mind of the Co-ordinate Bench when the order of punishment was quashed. However, so far as the present petitioner is concerned, he joined the relevant department two months prior to the expiry of one year period of 'No Defect Liability Period'. Therefore, on the face of it, this Court is of the view that the present petitioner is not at par and is not similarly situated with that of the aforesaid SDO, namely, Satinder Singh.

11. On merits, when at the time the enquiry was conducted, the enquiry officer returned a finding in which the petitioner was exonerated on the basis of the record which was available and the petitioner and the other witnesses were put to examination and cross-examination it was specifically reported in enquiry report that charges are not proved. However, when the dissent note was put by the disciplinary authority for the purpose of disagreement with the enquiry officer, then at that point of time, various letters and other records were also put in the dissent note vide Annexure P-27.

Thereafter, at the time when the disciplinary authority had passed the

punishment order dated 18.11.2019 vide Annexure P-32, various aspects have been dealt with including the record which was not even a part of the enquiry. Although some of the records including the log books, the letters which have been so depicted in the order of dissent note (Annexure P-27) and various other records which may have been so stated in the reply to the show-cause notice, but they were never subjected to the enquiry. In nut-shell, it was a case of learned counsel for the petitioner that the disciplinary authority vide disagreeing with that of the enquiry officer has travelled beyond its scope and has passed the order of punishment on those documents and records which were never scrutinized by the enquiry officer. However, the contention of the learned counsel for the respondents-Nigam was that the petitioner was well aware of all the records.

12. This Court is of the view that when the disciplinary authority while disagreeing with the report of the enquiry officer, who had exonerated the petitioner had put plethora of various documents including log books, letters which have been so stated in the dissent note and various other records as so stated by learned counsel for the petitioner and has now inflicted a punishment of stoppage of two annual increments to the petitioner with future effect along with downgrading of his ACR, then the petitioner was never afforded any opportunity to confront with the aforesaid documents in the enquiry because they was never placed on record by the Presenting Officer and therefore, prejudice has been caused to the petitioner in that regard.

13. In view of totality of circumstances of the present case, the present petition is partly allowed. The impugned order dated 18.11.2019 passed by the

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Punishing Authority vide Annexure P-32 is, hereby, set aside. Liberty is granted to the disciplinary authority to pass a fresh order in accordance with law and in the light of aforesaid observation made by this Court. Furthermore, disciplinary authority shall also be at liberty to direct a *de novo* enquiry in case circumstances so warrant.

05.03.2024

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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| 1. Whether speaking/reasoned | Yes/No |
| 2. Whether reportable: | Yes/No |