



283
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12052-2023 (O&M)
Date of decision: 18.07.2024

Ram Kishan

...Petitioner

VERSUS

Dakshin Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Sheeva Dahiya, Advocate for
Mr. Kanwal Goyal, Advocate, for the petitioner.

Ms. Gehna Vaishnavi, 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 mandamus directing the respondents to release the withheld retiral benefits of service i.e gratuity, commuted pension alongwith other retiral benefits in accordance with statutory provisions of Haryana Civil Services (Pension) Rules, 2016 as adopted by DHBVNL with interest @ 18% per annum with a further prayer to issue a writ in the nature of certiorari for quashing of impugned order dated 04.03.2021 (Annexure P-3) whereby the petitioner has been reverted back from the post of Junior Engineer (JE) to the post of Assistant Foreman (AFM).

2. The brief facts of the present case are that the petitioner was appointed in the year 1980 as Helper on daily wage basis. Thereafter his



services were regularised after completion of 12 years of continuous satisfactory service as Workmate. Thereafter, the petitioner was promoted as ALM on 23.04.1993. On 17.06.1997, he was further promoted to the post of AFM. While he was serving as AFM, the respondent-Nigam considered the promotion of various AFMs including the petitioner. The petitioner was promoted to the post of Junior Engineer on 17.06.2020 vide Annexure P-1. Thereafter, the petitioner joined the aforesaid promotional post by submitting his arrival report vide Annexure P-2 on 22.06.2020. However, after more than 7 months, a show cause notice was issued to the petitioner on 05.02.2021 on the ground as to why the petitioner should not be reverted to the post of AFM as he did not possess the requisite qualification of Matric which is necessary for the post of Junior Engineer. To the aforesaid show-cause notice, the petitioner filed a reply vide Annexure P-4 dated 24.02.2021 in which he stated that he has submitted only his 4th class certificate and he never approached the higher authority for promotion from the post of AFM to JE and petitioner also took the ground that it was not his fault but the department themselves had promoted the petitioner to the post of JE. It was also requested by the petitioner in the reply that the show-cause notice be decided on its own merits.

3. Thereafter, vide Annexure P-3 dated 04.03.2021, an order was passed by the Superintending Engineer, HR reverting the petitioner from the post of JE to AFM with immediate effect. Thereafter, the petitioner retired on attaining the age of superannuation on 31.03.2021 and in this regard, an order was passed vide Annexure P-5 dated 01.04.2021 retiring the petitioner subject to Rule 10 & 12 of Haryana Civil Services (Pension) Rules, 2016 as adopted by the Nigam vide order dated 18.01.2017 and pending charge sheet/SCN



/Enquiry/court case/NDC etc, if any, against him. After the retirement of the petitioner on 31.03.2021, the Superintending Engineer, Administration issued a charge-sheet against the petitioner vide Annexure P-6 dated 02.08.2022 which was after about 16 months on the basis of the statement of allegations that at the time when he was promoted as JE, he had provided wrong information to the higher authorities and got promotion in an illegal manner, caused financial loss to the Nigam by taking promotion by supplying wrong information, negligence towards his official duties and for not following the instructions of the Nigam. Due to the pendency of the aforesaid charge-sheet, some of the retiral benefits of the petitioner were not released to him.

4. The present petition has been filed challenging the aforesaid order of reversion, charge-sheet and for seeking issuance of a direction to release the pensionary benefits.

5. Learned counsel appearing on behalf of the petitioner submitted that there are three fold prayers in the present petition. Firstly, for quashing of Annexure P-3 which is the order of reversion, secondly, the charge-sheet (Annexure P-6) which was issued after the retirement of the petitioner and thirdly, for release of the pension and pensionary benefits to the petitioner. She submitted categorically that since the petitioner did not have the qualification of 10th and was only 4th class pass, the petitioner did not conceal any fact from the authorities and the department themselves have promoted the petitioner to the post of JE and subsequently reverted him back.

6. She categorically submitted that she does not wish to press the first prayer for quashing of the order of reversion Annexure P-3 and her



remaining two prayers i.e. for quashing of Annexure P-6 and for release of pension and pensionary benefits may be considered by this Court.

7. While referring to the reply to the show-cause notice (Annexure P-4), when the petitioner was promoted to the post of JE, she submitted that it was never stated by the petitioner to anybody that he is a Matriculate but it has come on record that a verification was made by the department themselves. While referring to the statement of allegations contained in the charge-sheet, she submitted that it is very clear from the statement of allegations itself that the department themselves undertook the exercise and after verifying the service record, the promotion was effected but the petitioner was never associated with the aforesaid exercise and therefore, the petitioner was not at fault. While referring to the aforesaid statement of allegations, she submitted that it has been so stated that during the month of May, 2020, the Superintending Engineer asked the concerned offices to give report regarding educational qualification and other conditions/informations in respect of 22 numbers of AFMs for their promotion to the post of JE. The Executive Engineer, OP Division, DHBVN, Mahindergarh vide letter dated 09.06.2020 intimated the Superintending Engineer, OP Circle, DHBVN, Narnaul that educational qualification of JE is Matriculation and it has also been mentioned that service particulars have been duly verified with the service book of the officials. This letter has been issued under the signature of the XEN. Learned counsel submitted that rather in the statement of allegations itself, it is very clear that the verification was done by the officials themselves and a letter was issued by the XEN to the Superintending Engineer after conducting verification on the basis of the service record of the officials including the petitioner, so how the fault could



have been fixed qua the petitioner because there is nothing on record to suggest that he had applied for the promotion or he had supplied any information. She submitted that a perusal of the aforesaid statement of allegations would show that on the face of it no fault was found on behalf of the petitioner but fault occurred due to the verification done by the XEN and he rather wrote a letter to the Superintending Engineer in this regard. She further submitted that a perusal of the aforesaid statement of allegations would show that a charge-sheet/statement of allegation has been issued after about 16 months of retirement but the same was not permissible under the law. She submitted that after the petitioner had retired from service, the master and servant relationship ceased to operate and an action can be taken only if there is an express provision of law. She also submitted that although the order of retirement was a conditional order subject to Rule 10 & 12 of Haryana Civil Services (Pension) Rules, 2016 but the same power has to be exercised in a diligent and proper manner within the authority of law.

8. While referring to the aforesaid statement of allegations, she submitted that when the Superintending Engineer, Administration issued the aforesaid charge-sheet to the petitioner by making statement of allegations, he had specifically stated in the allegations that the petitioner has been held guilty for the irregularities and once the Superintending Engineer who is the competent authority and who issued the charge-sheet himself has come to the conclusion at the time of issuance of charge-sheet that the petitioner is held to be guilty, then the remaining exercise, if at all to be carried out by the Enquiry Officer would be a futile exercise and the charge-sheet has been issued with a pre-determined mind and therefore, on this ground alone, the charge-sheet is



liable to be set aside. She submitted that in view of the pendency of the aforesaid charge-sheet, some of the retiral benefits have not been paid to the petitioner and therefore, a direction may be issued to the respondent-Nigam to release all the reitral benefits to the petitioner.

9. On the other hand, learned counsel appearing on behalf of the respondents submitted that so far as the issuance of the charge-sheet against the petitioner is concerned, the same was well within the rights of the respondent-Nigam because the Nigam has adopted the Haryana Civil Services Rules, wherein by virtue of Rule 12.2, the charge-sheet can be issued even after the retirement of an employee for an incident which took place within four years preceding the date of issuance of the charge-sheet and in the present case, the promotion was within the four years and therefore, it cannot be said that the charge-sheet was issued without the authority of law. She also submitted that she has sought instructions to state that the remaining pensionary benefits have been paid to the petitioner during the pendency of the present petition and so far as the aforesaid prayer of the petitioner for release of pensionary benefits is concerned, the same has become infructuous.

10. I have heard the learned counsel for the parties.

11. Out of the three prayers made in the present petition, learned counsel for the petitioner has specifically stated that so far as the challenge laid to Annexure P-3 i.e order of reversion is concerned, she is not pressing the same. Therefore, this Court would consider the remaining two prayers i.e. challenge to the charge-sheet (Annexure P-6) which was issued after 16 months of the retirement of the petitioner and also the third prayer of the petitioner for grant of retiral benefits along with interest.



12. Before proceeding further, the statement of allegations and the charge-sheet which is a part of Annexure P-6 and the summary of allegations are reproduced as under:-

“STATEMENT OF ALLEGATIONS AGAINST SH. RAM KISAN, JE

Sh. Ram Kisan while posted as JE in the O/o XEN/OP Divn. DHBVN, Mohindergarh has committed the following acts of omission & commission which are un-becoming an official of the Nigam.

A complaint made by Krishan, AFM O/o Power House, DHBVN, Kanina against him on account of taking promotion on behalf of fake matriculation certificate. The matter was investigated by XEN/Vigilance HPUs, Rewari that he posted in the O/o SDO/OP S/Divn., DHBVN, Kanina was appointed in the Nigam as work mate in compliance of memo no. Ch. 01/PF/1015 dated 23.04.1993. He got promotion up to post of AFM. During the month of May/2020, the SE/HR, DHBVN, Hisar vide memo No. Ch. 216/CEN-5/VoI-XIII dated 12.05.2020 asked the concerned offices to give report regarding educational qualification and other conditions /informations in respect of 22 nos. AFMs for their promotion to the post of JE. The XEN/OP Divn., DHBVN, Mohindergarh vide memo No. Ch. Spl-01 dated 09.06.2020 intimated to the SE/OP Circle, DHBVN, Narnaul that educational qualification of he is matriculation and it has also been mentioned that the "service particulars have been duly verified with the service book of the officials". This letter has been issued under the signature of XEN. Due to supply of wrong information. He got promotion to the post of JE. In last he has admitted that he passed 4th class only where as the minimum qualification for promotion AFM to JE is matric.

Thus, Sh. Ram Kisan, JE has been held guilty for the following irregularities:-

- 1. For providing wrong information to the higher authority.*
- 2. For getting promotion by illegal manner.*



3. *For causing financial loss to the Nigam by taking promotion on wrong information.*

4. *For negligency towards his official duties.*

5. *For not following the instruction of the Nigam.*

The above acts of omission and commissions on the part of Sh. Ram Kisan, JE tantamount to grave misconduct and warrants strict disciplinary action against him under Regulation-7 of DHBVN Employees (Punishment & Appeal) Regulations-2019.

Sd/-

*SE/Administration,
DHBVN, Hisar*

Summary OF ALLEGATIOINS AGAINST SH. RAM KISAN, JE

Sh. Ram Kisan while posted as JE in the O/o XEN/OP Divn. DHBVN, Mohindergarh has committed the following acts of omission & commission which are un- becoming an official of the Nigam.

1. He has been held guilty *for providing wrong information to the higher authority.*

2. He has been held guilty *for getting promotion by illegal manner.*

3. He has been held guilty *for causing financial loss to the Nigam by taking promotion on wrong information.*

4. He has been held guilty *for negligency towards his official duties.*

5. He has been held guilty *for not following the instruction of the Nigam.*

The above acts of omission and commissions on the part of Sh. Ram Kisan, JE tantamount to grave misconduct and warrants strict disciplinary action against him under Regulation-7 of DHBVN Employees (Punishment & Appeal) Regulations-2019.

Sd/-

*SE/Administration,
DHBVN, Hisar*

(emphasis supplied)



13. The petitioner retired on 31.03.2021 subject to application of Rule 10 & 12 of Haryana Civil Services (Pension) Rules, 2016 as applicable to the respondent-Nigam. It has been so stated by the learned counsel for the respondent-Nigam that in view of the application of the aforesaid Rules which permits the respondent-Nigam to issue charge-sheet even after retirement but for a incident pertaining to four years preceding the retirement, the same is within its power. None of the parties have either supplied or placed on record the Rules and Regulations of the respondent-Nigam. So far as the aforesaid aspect with regard to competence to issue charge-sheet is concerned, Haryana Civil Services Rules 12.2 provide as under:-

“12. Right of appointing authority to withhold or withdraw pension:-

(1)

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

(b) The departmental proceedings, if not instituted while the Government employee was in service, whether before his retirement, or during his re-employment,—

(i) shall not be instituted save with the sanction of the Government,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of



dismissal from service could be made in relation to the Government employee during his service”.

14. A perusal of the aforesaid would show that there is a power vested in the Nigam to issue a charge-sheet after the retirement subject to the aforesaid conditions and therefore, this Court would not consider the aforesaid aspect with regard to competence to issue charge-sheet in the present case.

15. However, this Court would certainly consider the exercise of power by the Superintending Engineer for issuance of charge-sheet after the retirement with a pre-determined mind. A perusal of the aforesaid statement of allegations and the summary of allegations would show that strangely enough the Superintending Engineer who is the competent authority rather in clear terms stated that the petitioner has been held guilty for the irregularities and in the summary of allegations in each and every item it has been repeatedly so stated that the petitioner has been held guilty. A perusal of the aforesaid would show that the Superintending Engineer who is the competent authority has issued the charge-sheet with a clear pre-determined mind by holding the petitioner to be guilty. Once an authority who issues charge-sheet for further enquiry and pre-supposes with a pre-determined mind that the delinquent employee is a guilty employee, then what will the Enquiry Officer do? All the consequential procedure will be of no significance in the face of the observations made by the competent authority who issues the charge-sheet. It is, therefore, held that the aforesaid charge-sheet has been issued purely with a pre-determined mind of the Superintending Engineer who issued the charge-sheet. In ***Hans Raj Gupta Versus State of Punjab, 1991 SCC Online P&H 1891***, the aforesaid issue was



considered by this Court wherein it was held that in such like cases where the charge-sheet was issued with a pre-determined mind by writing words to indicate that the delinquent is held guilty, then the charge-sheet is liable to be quashed. Reliance was also placed upon a judgment of Hon'ble Supreme Court in ***Khem Chand Versus Union of India and others, 1957 SCC OnLine SC 6*** wherein the aforesaid proposition was also discussed. The relevant portion of the aforesaid judgment is reproduced as under:-

“22.....If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the government servant concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the subject-matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done”.

16. There is another aspect of the matter. A perusal of the statement of allegations as reproduced above would show that at nowhere a fault has been attributable to the petitioner in the sequence of events which led to the promotion of the petitioner and rather a letter was written by the Executive Engineer to the Superintending Engineer that the particulars of all the officials have been duly verified with the service book of the officials. It is a categorical case of the petitioner that he has never stated anything to any official that he is a Matriculate but he has been promoted on the basis of the verification made by the XEN himself. Even otherwise also, the petitioner has now been reverted to the post of AFM vide Annexure P-3 and therefore, it is clear that when the



Superintending Engineer has issued the charge-sheet against the petitioner after 16 months of his retirement, the same is done in a *mala fide* manner and with a pre-determined mind. So far as the second prayer of the petitioner is concerned, the same pertains to the grievance that all the pensionary benefits have not been released to the petitioner till date. However, counsel for the respondent-Nigam today has stated that the same has now been released during the pendency of the present petition.

17. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The impugned charge-sheet (Annexure P-6) is hereby set aside and quashed especially being issued with a pre-determined mind. It is directed that all the remaining pension and pensionary benefits shall be released to the petitioner forthwith. Apart from the above, whatever benefits have been paid to the petitioner, if they are paid with delay, then the petitioner shall be entitled for interest @ 6% per annum (simple). The respondents are directed to calculate all the remaining pensionary benefits of the petitioner and also the interest as aforesaid and pay the same to the petitioner within a period of three months from today. In case the aforesaid amount is not paid within a period of three months from today, then the petitioner shall be entitled for a future rate of interest @ 9% per annum (simple).

18. Considering the facts and circumstances of the present case whereby an officer of the level of Superintending Engineer (Administration) of the respondent-Nigam has issued the aforesaid charge-sheet (Annexure P-6) which is *ex facie* with pre-determined mind by specifically stating repeatedly that the petitioner is held guilty, the petitioner is also entitled for costs which are assessed as Rs. 50,000/- which shall also be paid to the petitioner within a



period of three months from today. The aforesaid costs shall be paid by the respondent-Nigam at the first instance and thereafter liberty is granted to the respondent-Nigam to fix the responsibilty and to recover the same in accordance with law from the concerned officer(s) by adopting appropriate procedure.

18.07.2024

(JASGURPREET SINGH PURI)

rakesh

JUDGE

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