



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-11704-2016 (O&M)
Date of Decision:06.05.2024

Balbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Devender Arya, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G. Haryana.

Mr. Ashish Yadav, Advocate for respondents No.2 to 5-Nigam.

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 chargesheet dated 21.02.2012 (Annexure P-1) issued after retirement, recovery of Rs.3,76,346/-vide order dated 05.05.2015 (Annexure P-2) and order dated 18.08.2015 (Annexure P-3) vide which recovery of Rs.3,77,924/- was made by the respondents due to shortage of oil, parts and damaged transformers/material from the gratuity of the petitioner.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was working as Sub Station Attendant in the office of respondents- Dakshin Haryana Bijli Vitran Nigam (hereinafter to be referred to as 'Nigam') and he retired on 31.03.2011. He further contended that while the petitioner was in service, neither any charge-sheet nor any show cause notice was issued



against him but immediately after his retirement, one show cause notice/memorandum dated 21.02.2012 was issued to him vide Annexure P-1 on the allegations that there was some shortage of transformer parts and oil while he was in service. Thereafter, vide Annexure P-2 dated 05.05.2015 an order of punishment was issued for recovery of an amount of Rs.3,76,346/- from the gratuity of the petitioner. He further submitted that while the petitioner was in service, no action was taken against the petitioner and after the retirement, the respondent-Nigam has no authority to take such action. He further submitted that alongwith show cause notice/memorandum (Annexure P-1), the respondent-Nigam also served statement of allegations against the petitioner including summary of charges which are although not on record but the same have been supplied now which are hereby taken on record as Mark 'X'. The summary of charges against the petitioner as aforesaid are reproduced as under:-

***“Summary of Charges against Sh. Balbir Singh, SSA
(Retired)***

Sh. Balbir Singh, SSA (Retired) while remained posted under AGM Sub Urban Sub Division, DHBVN, Mohindergarh, has committed the following acts of omission and commission which are unbecoming of an official of the Nigam.

- 1. That Sh. Balbir Singh, SSA (Retired) has failed to tender his records and accounts of materials amounting to Rs.8678743/- even after a lapse of 3 months of his retirement due to which his pension case is held up and Nigam sustained a revenue loss of Rs.8678743/-.*
- 2. That Sh. Balbir Singh, SSA (Retired) has failed to render his records and accounts of materials received through vouchers even after a lapse of 3 months of his retirement. Thus, he has sustained revenue loss of Rs.215918/- to the Nigam.*
- 3. That he failed to make the shortage of oil, parts and interest of*



DTF amounting to Rs.538268/- good even after lapse of 3 months of his retirement due to which he has sustained a revenue loss of Rs.538368/- to the Nigam.

4. *That he failed to return the damaged T/F to the Nigam Store amounting to Rs.992000/-even after a lapse of 3 months of his retirement. Thus he has sustained a revenue loss of Rs.992000/-to the Nigam.*
5. *Thus he is negligent and careless towards Nigam's duties.*

sd/-

*Superintending Engineer/HR
DHBVN Delhi-35”*

3. Learned counsel further submitted that there is nothing in the aforesaid memorandum of charges or the summary of charges to show that at what point of time and in which year the aforesaid shortfall had taken place and by way of an evasive memorandum of charges the aforesaid show cause notice was issued in the nature of memorandum and ultimately vide Annexure P-2 a punishment order was passed by directing a recovery of an amount of Rs.3,76,346/- from the gratuity of the petitioner. He further asserted that such a course adopted by the respondent-Nigam was not only without the authority of law but it was also in violation of settled law. In this regard, he referred to a judgment of a Division Bench of this Court in ***Ashok Kumar Dhamija versus Dakshin Haryana Bijli Vitran Nigam Limited and others***, CWP-7949-2005 decided on 21.09.2006 and the same is pertaining to the present respondent-Nigam as well.

4. On the other hand, Mr. Yadav, learned counsel for the respondent-Nigam submitted that there was a remedy of appeal available to the petitioner and the same was not availed by the petitioner. He further submitted that in case

the petitioner approaches the appellate authority, then his appeal will be decided

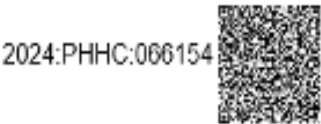


within a period of one month.

5. I have heard learned counsels for the parties.

6. In the present case, the petitioner retired on 31.03.2011. Before his retirement, there was no disciplinary proceedings initiated against the petitioner. However, after his retirement, the impugned punishment order dated 05.05.2015 vide Annexure P-2 was passed in pursuance of the show cause notice/memorandum dated 21.02.2012 (Annexure P-1) which is also after his retirement. A perusal of the aforesaid summary of charges, which have been reproduced as above, do not suggest that at what point of time or event, shortfall of any transformer parts and oil took place. Admittedly, there was no enquiry or disciplinary proceedings pending against the petitioner at the time when he was in service and the allegations have been made after his retirement. The proposition of law on this subject is no longer res-integra. A Division Bench of this Court in the case of **Ashok Kumar Dhamija versus Dakshin Haryana Bijli Vitran Nigam Limited and others (supra)** held as under:

“Having heard the learned counsel for the parties, we are of the considered view that the respondents could not have withheld any amount of gratuity payable to the petitioner on account of allegations which have emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of Hans Raj Sharma vs. Uttar Haryana Bijli Vitran Nigam Limited and others 9Civil Writ Petition No.152 of 2004, decided on October 29, 2004) has allowed the writ petition by following the judgment of Hon'ble Supreme Court in P.R. Naik vs. Union of India, AIR 1972 SC 554. It has been laid down in the aofrementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.”



DHBVNL. This Court is of the considered view that the case of the petitioner is squarely covered by the aforesaid judgment passed by a Division Bench of this Court.

8. So far as the objection raised by learned counsel for respondent-Nigam that the petitioner had an alternate remedy to file an appeal before the Appellate Authority is concerned, this Court is of the considered view that although the remedy of appeal may be available to the petitioner but since the action of the respondents-Nigam was without jurisdiction and also contrary to the law settled by a Division Bench of this Court in which respondents were the same as in the present case, it will not be in the interest of justice to relegate the petitioner to the Appellate Authority.

9. In view of the above, the present petition is hereby allowed and Annexure P-2 is hereby quashed and set aside. The respondent-Nigam is directed to refund the with-held gratuity amount of the petitioner amounting to Rs.3,76,346/- alongwith interest @6% per annum (simple) within a period of four months from today. If the abovesaid amount is not paid to the petitioner within the stipulated time frame then the petitioner will be entitled for future rate of interest @9% per annum (simple).

(JASGURPREET SINGH PURI)
JUDGE

06.05.2024
shweta

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