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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14593-2016 (O&M)
Date of decision: 06.05.2024

VIKAS KUMAR

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM & ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ashish Kumar, Advocate
for the petitioner.

Mr. Hitesh Pandit, 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 seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 31.05.2016 (Annexure P-12), vide which the appeal of the petitioner has been rejected, charge-sheets dated 01.04.2013, 07.04.2013 and 30.04.2013 (Annexure P-6 colly), recovery order dated 27.08.2015 (Annexure P-8) and order dated 07.10.2015 (Annexure P-10), vide which recovery has been ordered against the petitioner within a period of two years with a further prayer to restrain the respondents from recovering the amount as mentioned in the recovery order dated 07.10.2015 (Annexure P-10).

2. Learned counsel for the petitioner submitted that it is a case where the petitioner is working as a Junior Engineer in the respondent-Nigam and he



has been served with a charge-sheet dated 30.04.2013 (Annexure P-6) under Regulations No.7 of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 on the allegation that theft of some material took place due to his negligence, which caused loss to the respondent-Nigam. The statement of charges against him is reproduced as under:-

Statement of Charges in r/o Sh. Vikas JE OP S/Divn. Kalanaur.

Shri Vikas, JE OP S/Divn. Kalanaur has committed the following act of omission and commission unbecoming an employee of UHBVNL

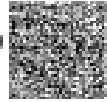
1. On dated 18/4/2011, 3253 meter ACSR of 0.75 mm² was drawn by you, vide SR no 17/524 dated 15/4/11 by vehicle no HR-46-A-7083 & was unloaded in the yard of S/divn. for deposit estimate for widening of road. The cost of this ACSR is Rs 128340/-. On dated 21/4/11 vide S/divn office memo no 153, it was said ACSR has been stolen on the night of 18-19/4-2011. FIR no 142 dated 10/5/11 was registered with police station Kalanaur. The material was unloaded in open yard without arranging any watch & ward of this material due to which the material was stolen on the same night & Nigam has suffered a financial loss of Rs 128340/-.

Due to your sheer negligence & carelessness. You are responsible for the thefted material amounting to Rs. 128340/-.

The above acts on your part of tantamount to grave misconduct and warrants strict disciplinary action against you under punishment and appeal rules, 1990.

Sd/-

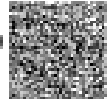
*Chief Engineer (OP)
UHBVN, Rohtak.*



3. Learned counsel for the petitioner further submitted that charge-sheet has been issued to the petitioner under Regulations No.7 of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 and despite charge-sheet being served for inflicting major punishment, the respondent-Nigam has passed the impugned order of punishment dated 27.08.2015 (Annexure P-8), whereby on the basis of reply submitted by the petitioner, minor punishment has been imposed for recovery of an amount of Rs.1,02,740/- from him, within a period of two years and recovery of the aforesaid amount was ordered to be effected vide Annexure P-10 dated 07.10.2015 in pursuance to the punishment order. He further submitted that thereafter, the petitioner filed an appeal against the aforesaid punishment order, which was also dismissed vide Annexure P-12. He further submitted that Annexure P-8, Annexure P-10 and Annexure P-12 are liable to be set aside on the ground that the same are without any reason and cryptic orders.

4. Learned counsel for the petitioner submitted that once charge-sheet has been issued for inflicting major punishment, then in that situation without holding a departmental enquiry, minor punishment could not have been inflicted upon the petitioner merely on the basis of reply filed by him. He further submitted that law in this regard has been settled by a Full Bench of this Court in **Dr. K. J. Tiwari versus State of Haryana, 2002 (2) SCT 915**. He submitted that however with regard to DHBVNL, the matter came up before Hon'ble Supreme Court in **DHBVNL Vidyut Nagar, Hisar and others versus Yashvir Singh Gulia, 2013 (11) SCC 173** in which it was held that the aforesaid proposition will not apply in case there is a specific provision in the

Rules/Regulations for inflicting of minor punishment without holding a



departmental enquiry when charge-sheet is for a major punishment. He further submitted that the services of the petitioner are governed by the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 and as per the aforesaid Regulations, a specific provision has been incorporated vide Regulation No.7(8), wherein it has been so provided that when an employee has been charge-sheeted under this Regulation and the competent authority on receipt of his reply to the charge-sheet is of the opinion that no major punishment as laid down in Regulation-4 (vi to x) is called for, it may dispense with the holding of enquiry and inflict straightaway any of the minor penalties as laid down in Clause (i) to (v) of the ibid Regulation by passing a speaking order. He further submitted that the aforesaid provision has not been complied with and the punishment order (Annexure P-8) is absolutely contrary to the aforesaid provision since it is neither speaking order nor it has been so stated that the enquiry has been conducted and therefore, the punishment order is liable to be quashed.

5. On the other hand, Mr. Hitesh Pandit, learned counsel for the respondents submitted that so far as the applicability of the aforesaid Regulations of 1990 is concerned, it is correct that the aforesaid Regulations are applicable to the present petitioner which govern his service conditions. He further submitted that when the petitioner filed the reply, in which although he denied the allegations, but the tenor of the reply would show that he had rather admitted his guilt and therefore, there was no occasion for holding any disciplinary enquiry against him and therefore, the aforesaid impugned order cannot be said to be passed in an illegal manner. He also submitted that even



when appeal was filed by the petitioner, the same had also been dismissed by holding that the petitioner is responsible for theft.

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

7. The issue involved in the present case is as to whether when a charge-sheet is issued for inflicting major punishment, then can the respondents pass an order of minor punishment without holding departmental enquiry or not. A Full Bench of this Court in **Dr. K. J. Tiwari's case (supra)** held that whenever any charge-sheet is issued for inflicting major punishment, then even if minor punishment is inflicted, then the same cannot be done without holding a departmental enquiry. However, there was another matter before the Hon'ble Supreme Court in **Yashvir Singh Gulia's case (supra)** pertaining to Dakshin Haryana Bijli Vitran Nigam Limited, wherein it was so observed by Hon'ble Supreme Court that in case there is a specific provision in the Regulations/Rules for inflicting of a minor punishment, even though the charge-sheet was for a major punishment, then the same can be done. However, when there is no such provision, then the same cannot be done without holding the departmental proceedings.

8. Therefore, the aforesaid provision which has been so referred to by the learned counsel for the petitioner i.e Regulation No.7(8) of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 needs to be reproduced here and the same is reproduced as under:-

“Regulation 7(8)- Where an employee has been charge-sheeted under this regulation and the Competent Authority, on receipt of his reply to the charge sheet, is of the opinion that no major punishment as laid down in Regulation-4 (vi to x) is called for, it may dispense with the holding of



enquiry and inflict straight-away any of the minor penalties as laid down in Clause (i) to (v) of the ibid Regulation by a speaking order.”

9. A perusal of the aforesaid provision would show that although the aforesaid Regulations provide for a specific provision for imposing of a minor punishment straightaway but it is subject to two conditions. Firstly, that the concerned authorities dispense with the holding of the enquiry and secondly, it can be done only by passing a speaking order. However, a perusal of the impugned order of punishment (Annexure P-8) would show that none of the aforesaid two conditions, which were the conditions precedent and *sine qua non* have been complied with, neither there is any order nor even a reflection of the same for dispensation of the enquiry and a perusal of the impugned order of punishment would show that punishment order has been passed in one stroke of pen and not even a single reason has been assigned and therefore, *ex facie* it was a non-speaking order. Therefore, both the two conditions which are co-existent have been violated by the respondents. Therefore, in case the aforesaid Rule/Regulation No.7(8) is to be invoked by the respondents, then the same can be invoked only by following the procedure contained therein and in accordance with law but the aforesaid provision has been violated by the respondents as aforesaid. Even the order passed by the appellate authority i.e. the Managing Director of the respondent-Nigam vide Annexure P-12 dated 31.05.2016 was a cryptic and non-speaking order.

10. This Court also had an occasion to deal with similar kind of situation, although pertaining to a retired employee in **Hukam Singh versus**

Dakshin Haryana Bijli Vitran Nigam Haryana and others, CWP-9976-2019,



19.03.2024, wherein on the aforesaid ground, the impugned orders were set aside.

11. After hearing the learned counsel for the parties, this Court is of the view that the action of the respondents was contrary to Regulation No.7(8) of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990.

12. Consequently, the present writ petition is allowed. The impugned orders dated 27.08.2015 (Annexure P-8), dated 07.10.2015 (Annexure P-10) and dated 31.05.2016 (Annexure P-12) are hereby set aside and quashed. The respondents are directed to refund the recovered amount from the petitioner, along with interest @ 6% per annum (simple), within a period of four months from today. In case the aforesaid amount is not refunded to the petitioner within a period of aforesaid four months, then the petitioner shall be entitled for future rate of interest @ 9% per annum (simple). However, there shall be no order as to costs.

(JASGURPREET SINGH PURI)
JUDGE

06.05.2024
Chetan Thakur

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