211 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

CWP-1604-2015 (O&M)
Date of Decision:06.05.2024

Suresh Kumar

......Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Shivam Malik, Advocate and
Mrs. Santosh Malik, Advocate for the petitioner.

Mr. Puneet Jindal, Sr. Advocate with
Ms. Navroop Jawanda, Advocate for respondents.

*****

JASGURPREET SINGH PURI J.(Oral)

1. The present writ petition has been filed under Articles 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned punishment orders dated 03.04.2014, 07.05.2014 and 09.05.2014 (Annexures P-8, P-9 and P-10) passed by respondent No.2 and further for quashing the impugned action of the respondents for recovery of Rs.1,99,567/-from the retiral benefits of the petitioner and Rs.8707/- on account of an audit para and further issuance of a writ in the nature of mandamus directing the respondents to release the with-held amount of retiral benefits alongwith interest.

2. Brief facts of the case are that the petitioner was working as Commercial Assistant in the department of respondent-Uttar Harayana Bijli Vitran Nigam Limited (hereinafter to be referred to as 'Nigam') and had retired on 31.03.2013 after attaining the age of superannuation. However, prior to his retirement, two charge-sheets were issued against the petitioner.. The first

charge-sheet was served on 02.05.2011 vide Annexure P-1, which culminated into passing of the punishment order vide Annexure P-9 dated 07.05.2014 i.e. after the retirement by which it was directed that one increment of a sum of Rs.13,000/- be recovered from the pensionary benefits of the petitioner. Second charge-sheet was served upon the petitioner on 03.04.2012 vide Annexure P-2 and which culminated into passing of punishment order dated 03.04.2014 vide Annexure P-8 i.e. also his retirement and by which it was directed that 50% of the loss be recovered from the retiral benefits of the petitioner. Third charge-sheet was served upon the petitioner on 09.09.2013 after his retirement vide Annexure P-5 in which the punishment order was passed vide Annexure P-10 whereby it was ordered to recover Rs.13,000/-from the pensionary benefits of the petitioner. In this way the total amount which has been recovered from the pensionary benefits of the petitioner is Rs.1,99,567/-.

3. Apart from the aforesaid charge-sheets, there was one more recovery of Rs.8707/- on 21.05.2014 vide Annexure P-12 on account of some objections raised by the audit para. Although, there was no proceeding pending against the petitioner pertaining to the same.

4. One more grievance of the petitioner was that his commutation of pension was made by applying wrong multiplier because the multiplier which was to be applied was pertaining to the age of 59 years but was applied of the age of 60 years. The remaining retiral dues have already been paid to the petitioner.

5. Learned counsel for the petitioner submitted that the when the petitioner was in service, two charge-sheets were served against him vide Annexure P-1 and Annexure P-2 and thereafter no departmental enquiry was conducted against him and in the meanwhile he retired on 31.03.2013. It was thereafter, that considering the reply of the petitioner, two punishments orders

came into being i.e. Annexures P-9 and P-8 respectively which were in the nature of minor penalties. He submitted that so far as the first charge-sheet dated 02.05.2011 is concerned, punishment order was with regard to stoppage of one increment from the pensionary benefits. He submitted that once the petitioner had already retired from the service, such kind of punishment order could not have been passed because there is no power with the respondents-Nigam to pass an order of stoppage of an increment from a retired employee because increments are earned at the time when a person is in service and, therefore, such kind of order was without the authority of law and was impracticable. He further submitted that both the aforesaid punishment orders which had emanated from the issuance of charge-sheets were in the nature of minor punishment. He further asserted that minor penalties have been defined in Haryana State Electricity Board Employees (Punishment & Appeal) Regulations 1990 (hereinafter to be referred to as 'Regulation') which were in force at that point of time. He further submitted that as per Regulation 4 which defines penalties, it is mentioned that recovery from pay and recovery from pay or whole or part of any pecuniary loss is covered under minor penalties. He submitted that in this way both the aforesaid charge-sheets were issued to the petitioner prior to his retirement and on the basis of replies filed by the petitioner to the chargesheets, he was inflicted the minor penalties without holding any disciplinary enquiry at all, which is an admitted position. So far as the third charge-sheet which was also issued on 09.09.2013 (Annexure P-5) after the retirement of the petitioner, is concerned, again it culminated into passing of the punishment order vide Annexure P-10 and a sum of Rs.13,000/- was ordered to be recovered, which was also a minor penalty without conducting any departmental enquiry.

6. He submitted that the aforesaid three punishment orders were passed

not only without the authority of law but also contrary to the Full Bench judgment of this Court in ***Dr. K.J. Tiwari Vs. State of Haryana 2002 (2) SCT 915*** wherein it was held that when a charge-sheet is issued for a major punishment then even if ultimately minor punishment is imposed, the same cannot be imposed without holding departmental enquiry. He further submitted that the aforesaid proposition of law is not in dispute as the aforesaid Full Bench judgment had attained finality. He further submitted that so far as the present respondent-UHBVNL is concerned they are governed by their own regulations of ***Haryana State Electricity Board (HSEB) Employees (Punishment & Appeal) Regulations, 1990*** wherein there is a specific provision of Regulation 7 (8) which provides that 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 then 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. He further submitted that even if the ratio of the aforesaid Full Bench judgment was directly not applicable to the present case because of the aforesaid Regulations, the conditions precedent which are *sine quo non* for invoking the aforesaid Regulation 7(8) were not satisfied. In this regard he referred to a judgment of Hon'ble Supreme Court in ***DHBVNL Vidyut Nagar, Hisar & ors. vs. Yashvir Singh Gulia 2013 (11) SCC, 173,*** wherein a similar Regulation No.7 (27) of the Dakshin Haryana Bijli Vitran Nigam Limited Employees (Punishment & Appeal) Regulation 2006 was under consideration and the Regulation 7 (8) of present respondent-UHBVNL and DHBVNL are in verbatim. He further submitted that in the aforesaid judgment of the Hon'ble Supreme Court it was so observed that there is a specific provision with regard to the respondents-Nigam's Regulation, wherein if in case a charge-sheet is issued with a proposal to inflict major punishment and in case the authority is of the opinion that a minor punishment is to be inflicted then for the reasons recorded, there is no need to commence an enquiry. He further submitted that in this way even if the provision of Regulation 7(8) was to be invoked in the present case then it has to be done by way of passing of a speaking order and it cannot be done by passing a cryptic and non-speaking order. In this regard, he again referred to impugned orders Annexures P-8 to P-10 wherein with a one stroke of pen straight-away minor punishments were inflicted without recording even a single reason by not passing a speaking order in pursuance of the aforesaid Regulation 7(8) and therefore on the face of it the aforesaid orders cannot be sustained because the same were contrary to the mandatory provision of Regulation 7 (8). In this regard he also referred to judgment passed by this Court in ***CWP-9976-2019*** titled as ***Hukam Singh Vs. Dakshin Haryana Bijli Vitran Nigam Haryana*** and others decided on 19.03.2024 wherein on the aforesaid ground the impugned orders were set aside.

7. Learned counsel for the petitioner further submitted that after the retirement of the petitioner, the respondents recovered another amount of Rs.8707/- from his retiral benefits pertaining to some objections in the audit para but neither any enquiry was conducted on the aforesaid issue nor any specific order was passed by any of the competent authority for the recovery of the same which was therefore without the authority of law.

8. He further contended that so far as his grievance with regard to the wrong calculation of the commutation of pension by applying wrong multiplier is concerned, he may be granted liberty to make a comprehensive representation before the respondents-Nigam and direction may be issued to consider and decide the same in accordance with law by passing a speaking order.

9. On the other hand, learned Sr. Counsel appearing on behalf of the respondents-Nigam submitted that the punishment orders have been passed with the authority of law because there was a power vested with the respondents-Nigam to pass an order. He further submitted that against the order of punishments, the petitioner has not exhausted/availed the remedy of filing an appeal and, therefore, the writ petition is not maintainable. He further submitted that in view of the judgment of the Hon'ble Supreme Court in ***Yashvir Singh Gulia's (case)*** when there is specific provision in the Regulations for imposing of minor penalty even though the charge-sheets were of major penalty then the same was within the powers of the respondent authorities to inflict minor penalties.

10. I have heard learned counsels for the parties.

11. So far as the grievance of the learned counsel for the petitioner that all the impugned orders, were contrary to the Regulation 7(8) is concerned, before proceeding further it would be appropriate to reproduce the same. Regulation No.7 (8) 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."*

12. All the three charge-sheets were issued by invoking the provisions of Rule 7 pertaining to the major penalty and admittedly in all the charge-sheets neither any further disciplinary proceeding had commenced nor any enquiry was

conducted at all and ultimately in all the charge-sheets punishment orders were passed in the nature of a minor penalties and that too after the retirement of the petitioner. In case the respondents-Nigam wanted to invoke the aforesaid provisions of Regulation 7 (8) which were although within their competence then the conditions precedent *sine qua non* for invoking the same had to be followed by them. A perusal of the aforesaid Regulation 7(8) would show that in a situation where although chargesheet is issued for a major punishment and thereafter on the basis of the reply, minor punishment is to be inflicted then the same can be done straight-away by passing a speaking order and apart from the above the concerned authority/competent authority has to form an opinion that no major punishment is called for and to dispense with the holding of the enquiry. In this way, there are two conditions which co-exist with each other; (i) first is that in case the competent authority is of the opinion that major punishment is not to be given and minor punishment is to be granted then it may dispense with the holding of the enquiry; (ii) second condition is that minor penalty can be imposed by passing of a speaking order. However, in the present case, both the aforesaid conditions have not been fulfilled and satisfied. Therefore, there was a direct infringement of the aforesaid provisions of Regulation 7(8) of the Regulations.

13. Not only this two of the aforesaid punishments are pertaining to stoppage of increments and orders of deduction of Rs.13,000/-respectively have been passed. It is very surprising to see as to how punishment of stoppage of an increment of a retired employee who is getting pension can be passed. Therefore, all the punishment orders (Annexures P-8 to P-10) are contrary to Regulation 7(8) of the Regulations and are set aside and quashed.

14. So far as the second prayer of the petitioner with regard to recovery of Rs.8707/- vide Annexure P-12 is concerned, the same was deducted from the

pensionary benefits of the petitioner on the basis of objections raised by audit. Since neither any enquiry was initiated nor any order was passed by competent authority for the aforesaid recovery, this Court is the considered view that merely on the basis of the audit para, nothing can be recovered from the pensionary benefits/retiral benefits of an employee because pensionary benefits and retiral benefits are not bounty of the State and in case any recovery is to be effected then a procedure has to be followed and specific order has to be passed by the competent authority as to why an amount is to be recovered from the pensionary benefits which has not been done in the present case and, therefore, the aforesaid action for recovery of Rs.8707/- is also bad in law and as such Annexure P-12 is hereby set aside.

15. So far as the third prayer of the petitioner with regard to the wrong calculation of the commutation of pension by applying wrong multiplier is concerned, the learned counsel for the petitioner during the course of arguments submitted that he may be granted liberty to file a comprehensive representation, before the respondents-Nigam/competent authority with a direction to decide the same in accordance with law within a time frame. This Court is of a considered view that the prayer of the petitioner deserves to be accepted.

16. Consequently, liberty is hereby granted to the petitioner to file a comprehensive representation with regard to his grievance of wrong calculation of the commutation of pension, to the respondents No.3 and 4/competent authority within a period of three months from today. In the event of the petitioner filing such representation as aforesaid, the respondents No.3 and 4/competent authority shall consider and decide the same within a period of three months thereafter by passing a well-reasoned speaking order in accordance with law after affording an opportunity of personal hearing to the petitioner or his

counsel.

17. In view of the aforesaid facts and circumstances, the present petition is partly allowed. It is directed that the aforesaid amount which has been recovered from the pensionary benefits of the petitioner shall be refunded back to him within a period of 04 months from today alongwith interest @ 6% per annum. In case the aforesaid amount is not paid to the petitioner within a stipulated time frame then the petitioner shall be entitled for future rate of interest @9% per annum. However, there shall be no order as to costs.

(JASGURPREET SINGH PURI)
JUDGE

06.05.2024
shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No