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

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**CWP-26408-2021 (O&M)
Date of Decision: 12.02.2024**

Ajmer Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Pawan Kumar, Senior Advocate assisted by
Ms. Vidushi Kumar, Advocate &
Mr. Surya Kumar, Advocate,
for the petitioner.

Mr. Samarth Sagar, Addl. A.G., Haryana.

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JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 21.11.2019 (Annexure P-5) passed by respondent No.5 vide which the comments have been sought on inquiry report with a view of major penalty and also the impugned order dated 25.12.2018 (Annexure P-10A) whereby the Chairman-cum-Managing Director directed to review the order by which the charges were dropped and directed that the disciplinary proceedings should be conducted against the

petitioner.

2. The brief facts of the present case are that the petitioner is working in the respondent-Nigam and was appointed as Assistant Lineman in the year 1997 and thereafter he was promoted as a Lineman on 20.03.2008. While he was in service an FIR was registered against him on 22.02.2014 under the Prevention of Corruption Act at Police Station Hisar. The allegation against the petitioner was pertaining to a demand of Rs.8,000/- as illegal gratification from one Mr. Amit Kumar for not involving him in a false electricity theft case. Consequent upon the lodging of the FIR, the petitioner was suspended on 13.03.2014. Vide Annexure P-1, a charge-sheet dated 20.05.2014 was served upon the petitioner on the aforesaid allegation which was the subject matter of the FIR i.e. he had demanded an amount of Rs.8,000/- from Mr. Amit Kumar as illegal gratification. After the aforesaid charge-sheet, no disciplinary proceedings had commenced against the petitioner because of the pendency of the criminal trial against him and ultimately, the learned Additional Sessions Judge, Jind vide judgment and order dated 10.03.2017 (Annexure P-3), acquitted the petitioner from the charges. As per the learned counsel for the parties, the aforesaid order of acquittal was never assailed by the State.

3. After the acquittal of the petitioner, the Superintending Engineer, who was the competent as well as the punishing authority of the petitioner vide Annexure P-4 dated 16.06.2017 dropped the charge-sheet against the petitioner and his suspension period was treated as duty period. The aforesaid order of dropping the charges is reproduced as under:-

OFFICE OF THE
Superintending Engineer 'OP' Circle, DHBVN, Jind
Ph.01681-225001, 01681-225037 (FAX), Email Id:-
seopdhbvn@gmail.com

Office Order No.291 Dated: 16.06.2017

Sh. Ajmer Singh, LM S/o Sh. Jai Singh was placed under suspension vide this office Order No.133 dated 13.03.2014 and served upon a Charge sheet bearing No. Ch.35/PF-3130 dated 20.05.2014 on account of allegations leveled therein while he was working as LM under SDO S/U S/Division No.1, DHBVN, Jind under XEN OP Division, DHBVN, Jind.

The reply submitted by the official in response to the charge sheet has been considered by the competent authority in light of comments offered by XEN Op. Division, DHBVN, Jind/SDO S/U S/Division No.1, DHBVN, Jind as well as material available on the file, it has been decided to drop the charge sheet and treat his suspension period as duty period.

Accordingly Charge Sheet No.35/PF-3130 dated 20.05.14 is hereby dropped and suspension period of the official is treated as duty period.

Sd/-
S.E. 'OP' Circle,
DHBVN, Jind.

Endst. No.Ch-64/PF-3130 Dated: 16.06.17."

4. Thereafter, on 30.09.2018, the petitioner was promoted by the respondent-Nigam to the post of Assistant Foreman. However, on 25.12.2018 vide impugned order (Annexure P-10A), the Chairman-cum-Managing Director of the respondent-Nigam passed an order while exercising its power of review and set aside the earlier decision of dropping of the charges dated 16.06.2017 (Annexure P-4) and it was further directed

that disciplinary proceedings be conducted as per procedure laid down in the Regulations from the stage of receipt of defence reply. The aforesaid impugned order (Annexure P-10A) is reproduced as under:-

> "*After going through the office note, it is observed that the charge sheet was served upon Sh. Ajmer Singh, LM by the SE/OP Circle DHBVN, Jind. Vide his office memorandum No.35/PF-3130 dated 20.05.2014 on the allegations of corruption in the trap case vide FIR No. 10 dated 22.02.2014 under section 7/8/13 PC Act by the State Vigilance Bureau, Hisar The Hon'ble Session court of Sh. Vijay Singh ADJ Jind acquitted the charged official by giving him benefit of doubt on dated 10.03.2017. The official submitted his reply to the ibid charge sheet served upon him by SE/OP Circle DHBVN, Jind on 25.08.2014. The SE/OP Circle, DHBVN, Jind decided the charge sheet vide his office order No.291 dated 16.06.2017 solely on the basis of the said judgment of acquittal. Department proceedings as per Punishment & Appeal Regulations were never conducted.*
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> *Criminal proceedings and disciplinary proceedings are independent of each other. There is a plethora of Judgments to support that. Moreover, standard of proof required in a criminal trial and disciplinary proceedings is entirely different. While guilt of the accused has to be proved beyond reasonable doubt in a criminal case, misconduct of a delinquent public servant in disciplinary proceedings is required to be judged on the basis of preponderance of probability. In the instant case the departmental proceedings were not conducted in accordance with Regulation-7 of the Punishment & Appeal regulations and the delinquent*

was held non guilty only on the basis of the Judgment of the trial court.

In view of the above, in exercise of my powers under regulation 14B of P&A Regulations-2006 and Notification No.48 dated 08.03.2018, I hereby set aside the decision of the competent authority conveyed vide office order No.291 dated 16.06.2017 passed by SE/OP Circle, DHBVN, Jind and direct disciplinary proceeding to be conducted as per procedure laid down under regulation-7 of DHBVN P&A regulation 2006 from the stage of receipt of defence reply.

Sd/-
25.12.2018
Chairman cum Managing Director
DHBVN, Hisar"

5. Thereafter, the inquiry officer conducted an inquiry, vide Annexure P-6 and submitted inquiry report to the competent authority by observing that there was something black in the lentil and the charged official cannot be completely absolved from the charges. The concluding part of the aforesaid report of the inquiry officer is reproduced as under:-

"....... From the description above, admittedly the prosecution fail to prove the charges before the Hon'ble Court and ultimately the accused was acquitted giving the benefit of doubt. But there have been a number of questions raised here during the investigation whose answers are urgent to search:-

1. *The first query is that why were the complainant and his colleagues turned away from their statements recorded under Section 164 before JMIC Jind at the time of cross examination whereas here at the time of departmental enquiry, their earlier alleged charges are being kept*

repeating in a tone. Did they do this before the Hon'ble Court with any pressure or greed?

2. *The charged official in his reply arguing that he was not present on the spot during the checking rather on call from home, he turned back leaving the checking team on the middle of the way. Whether the charged official has any merit in this argument? No issues at all, as the statements of the then SDO as well as other checking team officials are clearly testify that he was present on the spot during the checking and later on went out from there saying that phone has come I have some work. Though, both the LL-1 filled on that day are without having signature of charged official and he did not have permanent duty in that area as referred by the Hon'ble Court in para 40, 41 of its decision, is not a solid proof on the grounds of which he can be exonerated. Normally the checking team is constituted on verbal basis even, during this there should not be any conclusion therefore, the officials deployed in other area also incorporated.*
3. *On the basis of all the aforesaid facts which have been disclosed during the enquiry report, I have come to the collusion that the Hon'ble Court may have acquitted the charged official by giving benefit of doubt but after conducting the departmental enquiry it may be clearly stated that there was something black in the lentil and the charged official cannot be completely absolved from the charges.*"

6. This inquiry report was of 30.05.2019 and was supplied to the

petitioner along with a notice to which he filed a detailed reply vide Annexure P-7. However, instead of considering the reply filed by the petitioner to the aforesaid inquiry report (Annexure P-6), the inquiry officer submitted another report dated 26.07.2019 which is more than two months after the earlier inquiry report to the competent authority vide Annexure P-9. Now vide Annexure P-9, the inquiry officer dealt with each and every charge for the purpose of arriving at conclusion and submitted the report to the Superintending Engineer by observing that the charges were proved against the petitioner. The aforesaid new report was sent purportedly in response to a letter issued by Superintending Engineer to him which is so mentioned in the aforesaid report (Annexure P-9) and it was so stated by the inquiry officer that this may be treated as a part of the earlier inquiry report. In other words, the basic inquiry report was submitted vide Annexure P-6 wherein it was so observed by the inquiry officer that there was something black in the lentil and the charged official cannot be completely absolved from the charges, but there was no charge-wise finding or otherwise that the charges against the petitioner were proved and the inquiry report was silent with regard to the same, but it only created doubt and nothing beyond that. However, vide Annexure P-9, another report was sent to the Superintending Engineer/competent authority by which now charge-wise observation has been made by the inquiry officer that the charges stand proved.

7. The aforesaid fresh report which was sent vide Annexure P-9 which was purportedly on the asking of the Superintending Engineer was sent by the inquiry officer to him without issuance of any notice to the petitioner or providing him any opportunity of hearing or in any way

associating him in the aforesaid fresh application of mind. However, there was a remarkable departure from the first report. Consequent upon the aforesaid second inquiry report (Annexure P-9), a show-cause notice (Annexure P-11) has been issued to the petitioner which is also impugned in the present petition.

8. Mr. Pawan Kumar, Senior Advocate assisted by Ms. Vidushi Kumar and Mr. Surya Kumar, Advocates, appearing on behalf of the petitioner, submitted that the petitioner has been prejudicially effected by the arbitrary action on the part of the respondent. He submitted that when on the same set of charges which only pertain to Rs.8,000/-, a trial had commenced which culminated into the acquittal of the petitioner and had attained finality, the respondent-Department thought it fit to drop the charges against the petitioner but the aforesaid decision which was taken vide Annexure P-6 was not only based on the basis of acquittal of the petitioner but also on merits and the same is reflected in the order (Annexure P-4) itself. He submitted that although it is a settled law that departmental proceedings and criminal proceedings can continue parallelly but it is the prerogative of the respondent-competent authority to take a decision as to whether the disciplinary proceedings should be conducted or not. He further submitted that in the present case although charge-sheet was served upon the petitioner vide Annexure P-1 but the inquiry did not commence because of the pendency of the criminal trial and thereafter when the petitioner was acquitted, the disciplinary authority/punishing authority thought it fit to drop the charges on its own merits and it was not a consequence of the acquittal of the petitioner which is so reflected in the order (Annexure P-4) and once

the competent authority has exercised its power for dropping of the charges then thereafter, the same could not have been revived by exercising the power of review unless there were strong and exceptional circumstances with cogent reasons to do the same. He also submitted that after Annexure P-4, when the charges were dropped against the petitioner, he was rather promoted to the post of Assistant Foreman on 30.09.2018 and it was after his promotion that the impugned order (Annexure P-10A) has been passed on 25.12.2018 whereby the Chairman-cum-Managing Director directed to review the order by which the charges were dropped and directed that the disciplinary proceedings should be conducted against the petitioner.

9. Learned Senior Counsel further submitted that the aforesaid order (Annexure P-10A) was not only arbitrary and perverse but it was also without the authority of law. He also submitted that a perusal of the aforesaid order would show that the reason which has been so given by the Chairman-cum-Managing Director was that the criminal proceedings and disciplinary proceedings are independent of each other and they can go simultaneously and the dropping of the charges was only on the basis of the judgment of the trial Court. The aforesaid reasoning is contained in Para No.2 of the aforesaid order dated 25.12.2018 (Annexure P-10A) wherein it has been observed that in the instant case the departmental proceedings were not conducted in accordance with Regulation-7 of the Punishment & Appeal Regulations and the delinquent officer was held not guilty only on the basis of the judgment of the trial Court. He further submitted that the aforesaid reasoning given by the Chairman-cum-Managing Director while reviewing the order passed by the disciplinary authority vide Annexure P-4 was a non-

existent reason. He again referred to Annexure P-4 to state that nowhere it can be found in it that the dropping of the charges were on the basis of the acquittal but the dropping of charges were on its own merits because the disciplinary authority thought it fit not to continue with the disciplinary proceedings on its own merits. He submitted that the reason on the basis of which the impugned order dated 25.12.2018 (Annexure P-10A) was passed, was non-existent.

10. Learned Senior Counsel further submitted that even otherwise also the Chairman-cum-Managing Director had invoked the provision of Section 14-B of the P&A Regulations-2006 and Notification No.48 dated 08.03.2018 by which the order (Annexure P-4) was set aside but the Chairman-cum-Managing Director had no power to do so because the aforesaid Notification No.48 was passed on 08.03.2018 whereas the order (Annexure P-4) was prior to that i.e. on 16.06.2017 and therefore, it could not have operated retrospectively. He also submitted that before exercising the power of review even under Regulation 14B, the *principles of natural justice* were not complied with and since the order prejudicially affected the rights of the petitioner at least notice was required to have been given to the petitioner because it visits with the civil consequence to the petitioner. He submitted that on this ground as well, the order dated 25.12.2018 (Annexure P-10A) is liable to be set aside being violative of the *principle* of *audi alteram partem.*

11. On the other hand, Mr. Samarth Sagar, learned counsel appearing on behalf of the respondent-Nigam submitted that after the writ petition has been amended, there is no need to file a fresh reply since the

amendment is only to the prayer clause and the reply filed earlier may be considered for final adjudication. He submitted that so far as the report which was again submitted by the inquiry officer vide Annexure P-9 is concerned, the same cannot be considered as second inquiry report because it was only in continuation of the earlier inquiry report (Annexure P-6). He further submitted that the reason as to why the report which was in continuation of the earlier report thought to be given to the disciplinary authority, was that in the earlier report (Annexure P-6), no definite conclusions were indicated and in order to seek clarification, the disciplinary authority thought it fit to ask the inquiry officer to clarify with regard to what was the finding and therefore, in continuation with the earlier report, the findings were submitted to the disciplinary authority and therefore, there is no fault in the procedure adopted by the inquiry officer and by the disciplinary authority in this regard.

12. Learned counsel for the respondent-Nigam further submitted that so far as the grievance of the petitioner with regard to the fact that when the aforesaid inquiry report (Annexure P-9) was submitted to the disciplinary authority, no notice or opportunity of hearing was given to the petitioner is concerned, the same was not required because it was not a case of *de novo* inquiry, but it was only a continuation of the earlier report and therefore, no opportunity of hearing was required and it cannot be said that there was a violation of *principles of natural justice*.

13. Learned counsel for the respondent-Nigam further submitted that so far as the invoking of the powers under Regulation 14B and that of the Notification dated 08.03.2018 is concerned, the Chairman-cum-

Managing Director was well within his powers to invoke his extraordinary powers of review which are so contained in Regulation 14B of the Regulations-2006. While referring to the aforesaid regulations which are attached as Annexure P-12, he submitted that any other authority specified by the Nigam by a general or special order and within such time as may be prescribed in such general or special order may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and review any order made under these regulations and even to pass any such order as it may deem proper. He submitted that the Chairman-cum-Managing Director would, therefore, be covered in the aforesaid officers, who are competent to review any order passed by the subordinate officers and also referred to Annexure R-5/3 dated 08.03.2018 whereby various authorities were authorized for appointment/punishment/decision of the charge-sheets/show-cause notices/explanation calls etc. which are applicable to all non-gazetted employees to which the petitioner belongs and while referring to Note No.4, it has been so stated that the CMD or the MD may call for the records of the decisions given by their subordinates and confirm, enhance, modify or annul the same or make further inquiry or direct such to be made before passing the orders. The aforesaid Clause-4 is reproduced as under:-

> "*4. The CMD or the MD may call for the records of the decisions given by their subordinates and confirm, enhance, modify or annul the same or make further inquiry or direct such to be made before passing orders.*"

14. While referring to the aforesaid Notification, he submitted that the CMD or the Managing Director was well within his powers to call for

the records and even to annul any order made. He submitted that the power has been exercised not only under Regulation 14-B but also under the Notification dated 08.03.2018 and therefore, it cannot be said that the CMD was not empowered to pass an order.

15. Learned counsel for the respondent-Nigam further submitted that to the grievance of the petitioner that Chairman-cum-Managing Director did not give any opportunity of hearing to the petitioner before passing of the aforesaid order, the same was also not required since there is no such provision under the Regulations for providing an opportunity of hearing and in that regard, the Chairman-cum-Managing Director was within his power to have himself called for the records and pass any order as he deemed fit, to which he has exercised his powers under the law and therefore, no fault can be found on the same, in view of doctrine of empty formality.

16. To the argument raised by the learned Senior Counsel for the petitioner that if the Notification dated 08.03.2018 was to be invoked then it could not be invoked retrospectively, learned counsel for the respondent-Nigam submitted that the Notification is of 08.03.2018 and according to the Notification any order could have been called for and modified or annulled and the mere fact that the order was passed prior to the aforesaid Notification will not make any difference since the power vested under Section 14-B of the P&A Regulations-2006 which was exercised by the Chairman-cum-Managing Director and the Notification dated 08.03.2018 identified the officers, who could have exercised the powers.

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

18. The factual position pertaining to the dates and the orders

passed are not in dispute. Only mixed question of law and facts appear to have been involved in the present case. The first issue which has arisen in the present case is that as to whether when vide Annexure P-4, the charges against the petitioner were dropped by the comptent authority by taking a conscious decision then whether the same could have been revived by the Chairman-cum-Managing Director vide impugned order dated 25.12.2018 (Annexure P-10A) or not and especially without affording an opportunity of hearing to the petitioner. Secondly, whether once the inquiry officer had sent a report to the competent authority vide Annexure P-6 without observing anything that as to whether the charges were proved or not then as to whether, the inquiry officer was within his rights to have sent another report vide Annexure P-9 with different observations and proving the charges and that too, without giving an opportunity of hearing to the petitioner and as to whether any prejudice was caused to the petitioner or not.

19. So far as the first issue in the present case is concerned, when the petitioner was issued with the first charge-sheet (Annexure P-1), the respondent-department did not commence with any further proceedings on the disciplinary side for about three years. It is not in dispute that the allegation against the petitioner in the charge-sheet (Annexure P-1) and that of the criminal trial were identical which was pertaining to the allegation of demand of Rs.8,000/- as illegal gratification. No action was taken on the charge-sheet (Annexure P-1) when the trial was being commenced. Vide Annexure P-3, on 10.03.2017, the petitioner was acquitted by the trial Court and which according to the learned counsel for the petitioner, the judgment of acquittal had attained finalty. When Annexure P-4 was passed although

after the acquittal then a perusal of the aforesaid order (Annexure P-4), which has been reproduced above, would show that the competent authority has so observed that the reply which was submitted by the petitioner in response to the charge-sheet has been considered by the competent authority in the light of the comments of the XEN, OP Division, DHBVN, Jind and also the material available on the file and it has been decided to drop the charge-sheet and treat his suspension period as duty period. On the aforesaid contents of the order (Annexure P-4), it was the submission of the learned Senior Counsel for the petitioner that the aforesaid dropping of the charges vide Annexure P-4 were on its own merits and a conscious decision was taken on the basis of the reply filed by the petitioner and also the entire material which was available on the file and the competent authority by taking a conscious decision, decided to drop the charges and nowhere it has been mentioned in the order dated 16.06.2017 (Annexure P-4) that it was on account of the acquittal of the petitioner in the criminal trial. However, the submission of the learned counsel for the respondents was that the aforesaid dropping of charges were based upon acquittal since it happened after the acquittal of the petitioner. Thereafter, the petitioner was rather promoted to the post of Assistant Foreman on 30.09.2018 and it was thereafter the impugned order dated 25.12.2018 (Annexure P-10A) was passed by the Chairman-cum-Managing Director by invoking his powers. A perusal of the aforesaid order would show that it appears that the Chairman-cum-Managing Director has exercised his powers by assuming that the charge-sheet was dropped against the petitioner vide Annexure P-4 as a consequence of acquittal. However, a perusal of the order (Annexure P-4) would show that nothing finds mentioned in the aforesaid order pertaining to the same. The reason for review by the Chairman-cum-Managing Director was only the aforesaid reason and no other reason. However, such a reason was non-existent on a bare reading of order Annexure P-4.

21. So far as the power of the Chairman-cum-Managing Director to exercise his powers for review under Section 14-B of the P&A Regulations-2006 and Notification No.48 dated 08.03.2018 is concerned, this Court does not deem it fit to go into the aforesaid issue pertaining to the power of the Chairman-cum-Managing Director to exercise his powers in view of the fact that even if assumingly the Chairman-cum-Managing Director had a power to review then the Chairman-cum-Managing Director could have exercised the powers in a reasonable manner and in accordance with law and not in an arbitrary and capricious manner. In other words, without observing anything with regard to the power of the Chairman-cum-Managing Director to review, in fact the order (Annexure P-10A) cannot sustain on the ground that the exercise of power if at all was vested with the Chairman-cum-Managing Director was an arbitrary exercise of power. The ground of exercise of power was that since the dropping of the charges were based upon the acquittal of the petitioner, he deemed it fit and proper to review and recall the order dated 16.06.2017 (Annexure P-4) whereas no such reasoning finds mentioned in the aforesaid order (Annexure P-4) whereby the charges were dropped against the petitioner and therefore, this Court is of the view that the exercise of power by the Chairman-cum-Managing Director was not in accordance with law and it was arbitrary and perverse being also against the record and rather based on non-existent reasons.

22. So far as the another corollary from the aforesaid order as to whether an opportunity of hearing was required or not before exercising the powers by the Chairman-cum-Managing Director or not is concerned, the same issue is also not required to be adjudicated and is left open in view of the aforesaid observations that the exercise of power in the present case was bad in law.

23. So far as the second issue involved in the present case as to whether once the inquiry officer conducted an inquiry even after the passing of Annexure P-10A and has submitted his report to the competent/punishing authority then as to whether any second report could have been submitted vide Annexure P-9 by making observations regarding the proving of the case against the petitioner to the prejudice of the petitioner and without affording an opportunity of hearing to the petitioner or not. A perusal of concluding part of Annexure P-6 would show that the inquiry officer did not give any finding of proving of any case against the petitioner at all. After two months on the asking of the competent authority, he gave another report vide Annexure P-9 and now he gave charge-wise report by stating that all the charges stand proved against the petitioner. Such kind of report definitely goes to prejudice of the petitioner particularly when the petitioner had rather on the earlier report (Annexure P-6) had replied to the show-cause notice issued to him by the competent authority and instead of considering the reply filed by the petitioner to the second show-cause notice, Annexure P-9 was passed whereby a report was sent for the second time and now with a totally changed report. This Court is of the view that whenever any order or any such kind of report is to be filed then at least an opportunity of hearing

has to be given to the delinquent officer. It is a case where the inquiry officer submitted a report without making any observation regarding proving of charges but thereafter after about two months at the back of the petitioner, another report was sent vide Annexure P-9 although may be in the nature of clarification but the observation and the conclusion in the second report were totally different and now in clear terms, it was so observed that all the charges stood proved against the petitioner. This second report (Annexure P-9) even if it is in the nature of clarification report visits with civil consequences to the petitioner and therefore, in case, it was sent at the back of the petitioner then certainly it violates the cardinal principle of *audi alteram partem*. Therefore, the second inquiry report vide Annexure P-9 submitted by the inquiry officer at the back of the petitioner deserves to be set aside on this score alone which is in violation of the *principles of natural justice* viz *audi alteram partem.*

24. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order/notice dated 21.11.2019 (Annexure P-5) and order (Annexure P-10A) are set aside and quashed. However, there shall be no order as to costs.

12.02.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

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