

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

Neutral Citation No. 2024:PHHC:038324-DB

(107)

LPA-2029-2023 (O&M)

Decided on : 18.03.2024

Managing Director/Chairman-cum-Managing Director, Dakshin Haryana
Bijli Vitran Nigam Limited, Vidyut Nagar, Hisar and others

.....Appellant(s)

Versus

Ghanshyam Dass

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-5072-LPA-2023

Application for condonation of delay of 75 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of the official. Delay of 75 days in filing the appeal is condoned.

CM stands disposed of.

LPA-2029-2023 (O&M)

Consideration in the present letters patent appeal is sought of the judgment of the learned Single Judge dated 04.07.2023 passed in **CWP-24349-2021 ‘Ghanshyam Dass Vs. Dakshin Haryana Bijli Vitran Nigam and others’**. Vide the said judgment, the learned Single Judge quashed the order dated 30.04.2019 (Annexure P-1) passed by the Punishing Authority whereby three annual increments were withheld without future effect and also the consequential order whereby the appeal filed by the writ petitioner was dismissed on 29.11.2019 (Annexure P-2)

by a non-speaking order by noticing that the facts/records placed on the file as well as oral submissions made by the official had been taken into consideration.

2. The Learned Single Judge has gone into the gambit of facts as such regarding whether there was an alternative source of supply to the consumer and whether punishment was rightly to be imposed as the electricity meter and cable of the defaulting consumer had not been removed, which was not within his purview, while exercising powers of judicial review. However, for other reasons then recorded by the Learned Single Judge, we are also of the considered opinion that the punishment order is not liable to be sustained.

3. The factual matrix as set out in the writ petition would go on to show that the charge-sheet dated 22.07.2016 (Annexure P-7) had been issued under Regulation 4-B for major penalty read with Regulation 7 of the Dakshin Haryana Bijli Vitran Nigam Employees (Punishment & Appeals) Regulations, 2006. The statement of allegations and summary of charges in principle were regarding not effecting the PDCO No.1/204, after a lapse of 7 months being area Incharge and not dismantling the 100 KVA T/F and HT line after disconnection of supply on defaulting amount for long 27 months. The same was on the basis of a preliminary inquiry which had been conducted by the Executive Engineer, Shri M.L. Rohilla on 25.02.2016 (Annexure R-4), wherein it was found that one Rice Mill was directly running from the Nigam's 100 KVA T/F installed inside its premises. The liability of the writ petitioner and also one Jagir Singh, Junior Engineer was fixed. Apparently, the Inquiry Officer was never

appointed and after a period of 3 years, the punishment order was passed on 30.04.2019.

4. Mr. Balyan has tried to justify the punishment order by referring to Rule 8 (a) of the said Regulations, on the ground that it was a minor penalty as such. The said rule reads as under:-

“8. PROCEDURE FOR INFLICTING MINOR PENALTIES

(a) Without prejudice to the provisions of Regulation-7, an order for inflicting minor penalty shall not be passed on an employee unless he has been given a show cause notice thereof and a reasonable opportunity of making representation there-against. If he requests for access to relevant hearing, be also given. Request for personal hearing, may be rejected by the punishing authority by passing a speaking order.”

5. We have also gone through the paper-book and found that apparently the said laid out procedure was never adverted to, as no show cause notice was issued and the fact that the appellant had, accordingly, been charge-sheeted after following the procedure as such under Regulation-7, which provides for imposing a major penalty and the procedure is, accordingly, laid down. The employee was, thus, never put to notice and did not get a chance to represent against the change of procedure. It has also come on record that he had already represented against the charge-sheet by a detailed objection dated 28.09.2016 (Annexure P-5) and followed up the same on 05.06.2017 (Annexure P-6) that the charge-sheet should be withdrawn. Instead of putting the employee to notice the impugned order was passed on 30.04.2019 (Annexure P-1), on the basis of charge-sheet dated 22.07.2016 (Annexure P-7). Thus, the procedure laid down under Regulation 8 has been openly violated.

6. In similar circumstances in **DHBVNL & others Vs. Yashvir Singh Gulia, (2013) 11 SCC 173**, the Apex Court had allowed the appeal of the employer by noting that the procedure under Regulation-7 can followed, but an opportunity has to be given and a reply as such has to be permitted to be filed and, accordingly, orders of the Courts below had been set aside. Relevant portion of the said judgment reads as under:-

“11. The abovementioned provisions would indicate that an employee can be charge-sheeted for inflicting major penalties as well as minor penalties. In a given case even if a major penalty has been proposed on getting the reply from the delinquent, if the competent authority feels that no major penalty proceeding need be initiated, it can always switch over to initiate proceeding for inflicting minor penalties. Such a power is conferred on the Board vide Sub-regulation 8 of [Regulation 7](#), which reads as follows:

“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. Above referred regulations, especially [Regulation 7\(8\)](#) clearly indicates that the competent authority has got the power to dispense with the procedure for holding a departmental inquiry, even though it had contemplated major penalty proceedings, on being satisfied with the reply submitted by the delinquent officer. In such a case, it can always follow the procedure for imposing minor penalty. Minor penalty, as per the Regulation, can be inflicted without holding any departmental inquiry, by giving only a show-cause-notice and a reasonable opportunity to make a representation to the show-cause-notice. Personal hearing can also be afforded and also can be dispensed with by a speaking order.

13. We are of the view that the procedure referred to hereinbefore has been followed by the Board. The delinquent officer was given an opportunity to submit his reply to the show-cause-notice which was considered and the Board took a conscious decision to impose only a minor penalty, i.e. barring one increment without cumulative effect, for which no full-fledged departmental inquiry is contemplated. Learned District Judge as well as the High Court, in our view, has committed a grave error in interfering with the punishment imposed by the Board which, in our view, is perfectly legal, going by the regulations referred to hereinbefore.

14. Consequently, the appeal is allowed and the judgment of the learned District Judge as well as that of the High Court is set aside.”

7. Keeping in view the above, once the said procedure has not been followed, we are of the considered opinion that the Nigam could not switch over from minor penalty to major penalty, without putting the employee to notice having failed to appoint a Enquiry Officer. Resultantly, there is no merit in the present appeal and the same is dismissed in limine.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

18.03.2024
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	