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**(2001) 03 P&H CK 0127**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 13768 of 1998

R.L. Chhokar

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 12-03-2001

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

Haryana State Electricity Board Conduct Regulations, 1984 — Rule 21

**Citation :** (2001) 03 P&H CK 0127

**Hon'ble Judges :** R.S. Mongia, J;K.C. Gupta, J

**Bench :** Division Bench

**Advocate :** Mr. H.L. Sibal and Ms. Reeta Kohli, for the Appellant; Mr. H.S. Hooda, Senior Advocate and Mr. Pratap Singh, for the Respondent

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## **Judgement**

K.C. Gupta, J.—Briefly stated the facts of the case are that the petitioner was employed as Executive Engineer in the Haryana State Electricity Board (for short "the Board") in May 1982. He was elected for the second time as General Secretary of the Association for the period 1990-1995 and also the Vice Chairman of Northern India Power Engineers' Federation and Secretary (Organisation) of the A.I.P.E.F.

2. On 3.1.1997, the Haryana Government, in exercise of powers under the Haryana Essential Supplies Maintenance Act, 1974, prohibited strike in the Board. On 16.1.1997, the Board, following the said notification of the Haryana Government, issued a circular, prohibiting strike in the Board.

3. In January 1997, a call for one day strike on 13.2.1997 in all Government Offices of Haryana was given by the Haryana Sarav Karamchari Sangh. Later on, the Joint Action Committee, Haryana Karamchari Sangh, Karamchari Mahasangh and Haryana State Electricity Board Workers had given a call for strike on 6.2.1997 (2nd half), 13.2.1997 and Dharna in front of D.C. Office on 27.2.1997.

4. In February, 1997, the Executive Committee of the Engineers Association

nominated the petitioner as nominee of the Association to represent them on the Joint Action Committee (Bijli Nijikaran Virodhi Manch). On 1.3.1997, the petitioner was unanimously appointed as Convener of the Manch. However, the said Manch was disbanded in May 1997.

5. On 21.4.1997, the petitioner was served with a charge-sheet on the allegations of misconduct warranting major penalty. On 5.5.1997, he was served upon another charge-sheet on the allegations of misconduct warranting major penalty.

6. The petitioner denied these allegations vide his reply submitted to the charge-sheets. However, the competent authority decided to hold an enquiry into the charges and accordingly, Sh. Kirat Gopal, Officer of the Board, was appointed as Enquiry Officer vide order dated 25.6.1997, who, on 30.3.1998, after conducting enquiry, submitted his report to the competent authority holding that the petitioner was not guilty of misconduct as charges levelled against him were not proved.

7. The competent authority did not agree with the report of the Enquiry Officer and after having considered the case tentatively decided to remove him from the service of the Board, but before removing him from service, the petitioner was afforded an opportunity to show cause against the proposed action on 25.6.1998. The petitioner submitted his reply to the show cause notice denying the allegations of misconduct on 14.8.1998. The punishing authority, vide his order dated 7.8.1998, Annexure P-1, removed the petitioner from service.

8. Aggrieved by the said order of removal from service, the petitioner has filed the present writ petition in the nature of certiorari, seeking to quash the impugned order dated 7.8.1998, Annexure P-I, vide which the punishing authority, without hearing him personally, had removed him from service for alleged misconduct as it was based upon no evidence and also prayed that he be reinstated in service with continuity of service and all other benefits.

9. Vide order dated 31.8.1998, notice of motion was issued for 26.10.1998. Respondent Nos. 3 and 4 filed reply on 28.7.1999. The writ petition was admitted to be heard by D.B.

10. Counsel for the petitioner, Sh. H.L. Sibal, Senior Advocate alongwith Ms. Reeta Kohli, Sh. H.S. Hooda, Senior Advocate alongwith Mr. Partap Singh, Advocate, counsel for respondent Nos. 3 and 4 were heard and the record was gone through with their assistance.

11. It is an admitted fact that Sh. R.L. Chhokar, petitioner, was posted as Executive Engineer in Thermal Power Station, Faridabad. There is no denying the fact that the Haryana Government in exercise of powers under the Haryana Essential Supplies Maintenance Act, 1974, had prohibited the strike in the Board on 3.1.1997. Consequently, on 16.1.1997, the Board while following the said notification of the Haryana Government also issued a circular prohibiting strike in

the Board.

12. The petitioner was served charge-sheets, Annexures P-4 dated 21.4.1997 and P-5 dated 5.5.1997, which read as under :-

"Summary of charges against Shri R.L. Chhokar, Executive Engineer.

Shri R.L. Chhokar while remained posted as Executive Engineer/Thermal, Faridabad, has committed the following acts of omission and commission :-

1. That he in violation of Rule 21 of the HSEB Conduct Regulations has given Press Statements inciting HSEB Employees to agitate for the fulfilment of their illegal demands causing embarrassment to Board and straining relationship between the Board and its employees.

2. That he delivered speeches against the Government/Board and inciting Board's employees to join gate meetings on 14.3.1997, sit on dharna and resort to go on strike on 18.3.1997 in protest against the Reform and Restructuring programme undertaken by HSEB.

Sd/- Secretary, Haryana State Electricity Board, Panchkula."

"Summary of charges against Shri R.L. Chhokar, Executive Engineer.

. Shri R.L. Chhokar while remained posted as Executive Engineer/Thermal, Faridabad, has committed the following acts of omission and commission :-

1. That he in violation of Rule 21 of the HSEB Conduct Regulations has given speeches inciting HSEB Employees to agitate for the fulfilment of their illegal demands causing embarrassment to Board and its employees.

2. That he delivered speeches against the Reforms and Restructuring Programme undertaken by HSEB and incited Board's employees during rallies/meetings on/at the dates/stations given below :-

Date Station

22.2.1997 Faridabad

28.2.1997 Rohtak

6.3.1997 Sonapat

7.3.1997 Thermal Plant, Panipat

10.3.1997 Yamuna Nagar

10.3.1997 Ambala

11.3.1997 Panchkula. Thus he lowered down the image of HSEB in the eyes of public/employees.

Sd/- Secretary, Haryana State Electricity Board, Panchkula."

13. The petitioner filed reply denying the allegations mentioned in the charge-sheets. Dissatisfied with the reply of the petitioner, the disciplinary authority appointed Sh. Kirat Gopal, Chief Engineers, Thermal Design, Panchkula, as Enquiry Officer. The petitioner made statement before the Enquiry Officer denying the allegations against him in both the charge- sheets. He further stated that he was elected as Convenor of Bijli Niji Karan Virodhi Manch as already intimated to the Board by various recognised Associations, Federations and Unions representing HSEB Engineers, other officers and all employees and he had acted according to the programme of the Manch from time to time in the capacity of its Convenor as directed by the Manch. He also stated that Bijli Niji Karan Virodhi Manch could not be called a body, rather it was a sort of Steering Committee or joint platform of all the recognised Association; Federations and Unions of HSEB. He further stated that he did not recollect whether he had exactly made any statement or not unless he is shown his signed statement or tape recorded statement.

14. The proceedings before the Enquiry Officer dated 10.12.1997 vide Annexure P6/2 show that an audio recorded tape which was received from the office of DIG (CID) was played and after hearing the tape, the petitioner denied the voice played before him by the audio tape. He also denied various press statements attributed to him until and unless the statements were produced. After the completion of the enquiry and hearing the parties, the Enquiry Officer submitted his report, Annexure P-9 dated 30.3.1998, and stated that the allegations against the petitioner were not proved. However, vide Annexure P-9, the competent authority, through the Secretary of the Board, issued show cause notice dated 25.6.1998, after disagreeing with the findings of the Enquiry Officer and held that the charges against the petitioner were proved and tentatively decided to proceed against him and to remove him from service of the Board. The petitioner submitted reply to the said show cause notice vide Annexure -P-10 dated 14.7.1998. However, the competent authority, after considering the reply to the show cause notice, removed the petitioner from service vide order dated 7.8.1998, Annexure P-1.

15. Counsel for the petitioner contended that the charges against him were not proved at all as held by the Enquiry Officer and the findings given by the competent authority were based on no evidence. In our opinion, the contention of the learned Counsel appears to be correct. The first charge against the petitioner vide Annexure P-4 dated 21.4.1997 is that he violated Rule 21 of the HSEB Conduct Regulations by giving press statements, inciting HSEB Employees to agitate for the fulfilment of their illegal demands causing embarrassment to the Board and straining relationship between the Board and its employees. No written statement, which was allegedly given by the petitioner to the press, has been placed on the file or before the Enquiry Officer. No press correspondent of any newspaper, to which the petitioner had allegedly given statements, had been produced before the Enquiry Officer to prove that the petitioner had given such statements to the press. No witness has been examined before the Enquiry

Officer to prove that he had delivered speeches against the Government/Board and had incited Board's employees to join gate meetings on 14.3.1997, to sit on Dhama and resort to go on strike on 18.3.1997 in protest against the reform and restructuring programme undertaken by the Board. The Board had not even examined any of its employees to prove that he had heard the speeches of the petitioner and by those speeches he had incited the Board's employees to join gate meeting on 14.3.1997, sit on dharna and resort to go on strike on 18.3.1997.

16. It is further alleged that, an audio recorded tape was played before the Enquiry Officer which was received by the Board from DIG (CID). That audio tape was played before the petitioner in the presence of Enquiry Officer and he had denied his voice. No witness was produced to prove that the voice in the audio tape was that of the petitioner. The person in the office of DIG (CID) who had recorded the audio tape had not been examined to prove that he knew the petitioner personally and it was his voice which was recorded by him. From the mere producing of the tape having blurred voice, it cannot be said that the said voice belongs to the petitioner. The petitioner had categorically stated that the audio tape recorded did not contain his voice and further he had not given press statements to various papers. No signed statement of the petitioner had been produced on file to prove that he had given such statements to the press.

17. It is also alleged vide charge-sheet dated 5.5.1997, Annexure P-5, that the petitioner had given speeches inciting HSEB employees to agitate for the fulfilment of their illegal demands causing embarrassment to the Board and its employees and, thus, violated Rule 21 of the HSEB Conduct Regulation. Charge No. 1 in Annexures P-4 and P-5 is the same. It has already been discussed that there is no evidence to prove before the Enquiry Officer that he had given such speeches whereby he had incited Board's employees to agitate for the fulfilment of their illegal demands causing embarrassment to the Board and its employees. There is also no evidence that he had held rallies and meetings on the dates and the stations as given in Charge No. 2, Annexure P-5, against the reforms and restructuring programme undertaken by the HSEB and incited the Board's employees. There is also no evidence on file that due to the alleged inciting done by the petitioner, the Board's employees committed various offences and caused, damage to the property of the Board. No oral or documentary evidence has been produced before the Enquiry Officer that he delivered such speeches on the dates mentioning at various places. The reasoning of the competent authority to find the petitioner guilty are based on misconceptions. In fact, there is no evidence on file to hold that the Enquiry Officer has not conducted the enquiry fairly, judicially and charge-wise and in fact there was no reason for the competent authority to hold otherwise.

18. In view of the discussion above, we hold that the charges against the petitioner are not proved at all.

19. Counsel for the petitioner next contended that the petitioner had been singled out for taking punitive action against him while other persons who were

similarly situated were let off i.e. he has alleged discrimination at the hands of the authorities in dealing with him. A perusal of Annexures Z, Z1 and Z2 attached to C.M. No. 25573-A of 2000 shows that Sh. R.C. Jagga working as Divisional Accountant was charge-sheeted for giving call to the employees of the Board to proceed on strike on 11.12.1998 which was declared illegal by the Haryana Government notification dated 3.9.1998 and further he instigated the employees of the Nigam to proceed on illegal strike and due to his instigation, employees of the Nigam proceeded on strike, resulting in loss of Rs. 15 lacs to the Nigam. An enquiry in this regard was entrusted to Sh. B.K.. Jain, which was subsequently dropped vide Annexure Z2 dated 28.10.1999. Similarly, Annexures X1 and X2 attached to the C.M. No. 24040 of 2000 show that one Sh. Amrik Singh, C.A., was placed under suspension and was charge- sheeted vide charges-sheet dated 16.3.1998 for issuing press statements against the Chairman and making adverse criticism of the policy or action of HVPNL or the Government. An Enquiry Officer was appointed and ultimately he was removed from service vide order dated 22.10.1998. However, vide annexure X2, he was reinstated and the order of removal was set-aside and the suspension as well as re- moval period of 1998-99 was treated as duty period with full pay and allowances. Similarly, Annexure Y1 shows that Sh. Dhara Singh, C.A., was placed under suspension vide order dated 22.8.1998 on the same charges as were levelled against Amrik Singh. After enquiry, he was removed from service but later on vide order dated 27.10.1999, Annexure Y, he was reinstated in service and the suspension/ removal period during the year 1998-99 was treated as duty period with full pay and allowances. It is not clear that when the aforesaid persons against whom serious charges were proved were taken back in service, as to why the petitioner has been discriminated. It speaks volume A against the working of the Board.

In view of the above discussion, the writ petition as accepted and we hold that the order Annexure P-1 dated 7.8.1998 cannot be sustained and the same is quashed. The petitioner is reinstated in service with continuity of service and all consequential benefits.

20. Petition allowed.