

(2018) 07 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 6281, 2203 Of 2017 (O & M)

Sukhminder Singh

APPELLANT

Vs

Punjab State Power Corporation Limited & Another

RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Limitation Act, 1963

Punjab Civil Service (Punishment and Appeal) Rules, 1970 — Rule 9

Constitution of India, 1950 — Article 16, 311

Citation : (2018) 07 P&H CK 0110

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Mayank Mathur, Mukul Aggarwal

Final Decision : Dismissed

Judgement

For reasons given in the application, delay of 148 days in filing the appeal is condoned.

Application stands allowed.

Main Appeals

This judgment shall decide aforementioned two connected appeals as they involve same questions of law and facts.

Through the instant regular second appeals, appellants have challenged the judgments & decrees rendered by the courts below.

Brief facts giving rise to the instant appeal are that Sukhminder Singh joined the service of Punjab State Electricity Board (PSEB) on October 08, 1985. Vide order dated December 19, 2000, a chargesheet was served upon him by the Superintending Engineer, Operation Circle, PSEB, Bathinda. Er. Charan Singh Gill was appointed as Enquiry Officer, who submitted his enquiry report Ex.D2 whereby he exonerated the appellant from some of the charges but found him

guilty for theft of electricity for his own use. Thereafter, again an enquiry was conducted by appointing Er. Gurbax Singh as Enquiry Officer who submitted his enquiry report Ex.P3 whereby appellant was fully exonerated from all the charges. The Punishing Authority, after considering both the enquiry reports and taking into account the remarks of Field Officers, vide order dated March 04, 2002 inflicted punishment of withholding annual grade increments for the remaining part of his service and treated the period of his suspension as leave of kind due. Sukhminder Singh challenged the punishment order before the Chief Engineer, PSEB, Bathinda by filing an appeal which was dismissed vide order dated December 31, 2003. Appellant, then, filed a review petition against the order of punishment which was rejected by the Secretary, Eng-2, PSEB, Patiala vide order dated October 19, 2009. Further, Sukhminder Singh was not granted 16 years' time bound promotional scale w.e.f. October 08, 2001 as per provisions of Finance Circular No.17/90 dated April 23, 1990.

In this backdrop of facts, Sukhminder Singh instituted a civil suit for declaration alleging that punishment order dated March 04, 2002 has been passed in illegal and arbitrary manner, that too, without giving any notice of disagreement with the earlier enquiry report. The appeal and review petition filed by him have also been dismissed/rejected illegally by the appellate authorities as well as action of respondents in withholding of 16 years' time bound promotional scale w.e.f. October 08, 2001 is also illegal, arbitrary, null & void, unconstitutional, without jurisdiction, malafide, against the principles of natural justice and contrary to rules, regulations & instructions in this regard. He also sought relief of mandatory injunction, directing the respondents - defendants to grant annual grade increments w.e.f. March 04, 2002 with all consequential benefits and for grant of 16 years' time bound promotional scale w.e.f. October 08, 2001 and for payment of arrears alongwith interest @ 18% from the date of accrual till realization.

Suit was contested by the defendants. Issues were framed from pleadings of the parties. Parties led their respective evidence.

After hearing learned counsel for the parties and perusing the record, the trial court, vide judgment & decree dated August 07, 2013 decreed the suit filed by the plaintiff; set aside orders dated March 04, 2002, October 31, 2003 and October 19, 2009 being disproportionate and non-supply of certain documents; and directed the defendants to pass fresh order after supplying the plaintiff with the requisite documents i.e. note of disagreement and comments of Field Officers. Defendants were further directed to consider the case of plaintiff for 16 years' promotional scale and to pass valid order regarding the same within a period of four months of passing of the judgment.

Both, plaintiff as well as defendants challenged the aforesaid decision of trial court by filing appeals, which were dismissed by the lower appellate court, vide judgment & decree dated October 04, 2016.

Heard learned counsel for the parties and perused the record available in the file.

Undisputably, Sukhminder Singh was chargesheeted vide order dated December 19, 2000. An order of punishment was passed by the Punishing Authority vide order dated March 04, 2002 (Ex.P4). Firstly, enquiry was conducted by Er. Charan Singh Gill, who submitted his report Ex.D2 exonerating the plaintiff from some of the charges and holding him guilty for theft of electricity for his own use. But, Punishing Authority again ordered a de novo enquiry by appointing Er. Gurbax Singh as an Enquiry Officer. Under the settled proposition of law, no de novo enquiry can be ordered. At the most, Punishing Authority after recording the reasons may remit the case to the same Enquiry Officer for further enquiry and report.

An identical issue with regard to the holding of de novo enquiry in the light of Rule 9 of 1970 Rules came up for consideration before this Court in case *Karnail Singh v. State of Punjab*, 1992 (2) SCT 27 and while placing reliance upon Hon'ble Apex Court's judgment delivered in *K.R. Deb v. Collector of Central Excise, Shillong*, 1971 (1) SLR 29 (SC), it was held as under:-

"Learned counsel for the petitioner submitted that there is no power with the Deputy Commissioner (the appointing authority of the petitioner) to order de novo inquiry against the petitioner. He further argued that under Rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (hereinafter called the 'Punishment and Appeal Rules'), the punishing authority can for the reasons to be recorded by it in writing remit the case to the inquiry authority for further inquiry or it has the power to record a finding itself when it disagrees with the finding of the inquiry officer and that too after recording reasons. The case of the petitioner is that even if the punishing authority had the power to order de novo inquiry, no reasons have been recorded for doing the same by the punishing authority. In support of his contention, the learned counsel has cited *K.R. Deb v. Collector of Central Excise, Shillong*, 1971 (1) SLR 29 (SC): (AIR 1971 SC 1447).

Not only this, similar question arose before Andhra Pradesh High Court, in case captioned as *R. Rama Rao v. A.P. State Agro Industries Development Corporation Ltd.*, (1997) 5 Serv LR 508, in which, following observation was made while dealing with the identical issue:-

"A. Constitution of India, Articles 16 and 311.-Departmental enquiry-De novo Enquiry-Once a departmental enquiry is conducted, unless the rules applicable to the case so provide, second inquiry or a de novo enquiry into the same charges cannot be initiated. In the instant case, Enquiry Officer returned a finding of "not guilty" as no evidence adduced in support of charges -Not open to the Disciplinary Authority to order for a de novo enquiry by another Enquiry Officer, when the service rules do not provide for the same."

In another case, captioned as *B. Balakrishnan Reddy v. Andhra Pradesh State Electricity Board*, (1997) 8 Serv LR 347, in which, it has been held as under:-

"Constitution of India, Article 311- Departmental enquiry - De novo enquiry- First inquiry report found in favour of the delinquent. It does not suffer from any infirmity. No provision in the relevant rules giving any power to the disciplinary authority to ignore the report of Enquiry Officer submitted to it and to direct a de novo enquiry. Order of the disciplinary authority to ignore the first enquiry report without as-signing any reasons and appointing another enquiry officer not sustainable. Holding of second enquiry band and unwarranted"

Thus, from the aforesaid statutory law as well as authoritative pronouncements, it can be safely concluded that conducting of de novo inquiry is impermissible. The only option left with the Punishing Authority is that, in case, he does not agree with the enquiry report, he can take dissenting view, pass a speaking order and take further necessary action for the imposition of penalty etc. or can order for further inquiry and report.

In the instant case, punishing authority opted to order for conducting de novo inquiry which is not proper as per rules. As such, punishment order dated March 04, 2002 is not sustainable in the eyes of law and deserves to be set aside.

Moreover, Punishing Authority, vide impugned order dated March 04, 2002 passed the punishment order after considering both the enquiry reports and remarks of Field Officer. It has come on record as well as noticed by the courts below that neither plaintiff was supplied with the remarks of Field Officer which were relied upon by the punishing authority while passing the punishment order nor any note of disagreement was issued to him. This Court is of the considered view that non-supply of remarks of Field Officer and non-supply of note of disagreement, though, do not vitiate whole of the departmental proceedings but parties should be relegated to the stage from which the illegality or irregularity took place and proceed afresh in accordance with law after supplying the requisite documents to the delinquent official. For taking this view, reference can be made to judgment passed by the Hon'ble Apex Court in Managing Director, ECIL, Hyderabad & others vs. B. Karunakar & others, 1993(4) SCC 727. Thus, trial court rightly set aside the impugned orders and directed the Punishing Authority to pass a fresh order after supplying plaintiff with the copy of note of disagreement and remarks of Field Officers.

As far as grant of 16 years' promotional scale w.e.f. October 08, 2001 is concerned, though an employee can never claim it as a matter of right but it is to be seen by the competent authority regarding entitlement of an employee for promotional scale. It is the right of an employee that his case be considered for promotional scale. Mere stoppage of increments cannot be a ground to reject the claim of an employee for promotional scale. Moreover, neither any such record showing non-satisfactory work of plaintiff has been produced nor any order showing consideration of plaintiff's claim to 16 years' promotional scale by the department has been placed on record. As such, defendants have been rightly directed to consider the appellant's claim for promotional scale and pass appropriate order as per rules.

As regards the contention of defendants that civil suit was barred by time. Admittedly, punishment order was passed on March 04, 2002. Appeal against this order was dismissed by the appellate authority vide order dated October 31, 2010. Thereafter, plaintiff moved review application before the Chairman which was dismissed and conveyed to plaintiff on October 09, 2009. It was thereafter, that present suit came to be filed on December 23, 2009. Now, it is to be seen when did right to sue accrued to plaintiff and what is the period of limitation for filing the suit for declaration challenging the order whereby annual grade increments with cumulative effect have been stopped. Section 113 of the Limitation Act, 1963 provides that in case no limitation period has been provided specifically, then same is to be filed within three years. However, in case State of Punjab vs. Shri Premjit & another, 2010(3) RSJ 513, this Court has observed that when increment which was due, was not granted on the basis of punishment, then it would give rise to recurrent cause of action every month and there would be no limitation to challenge such an order. Thus, in the case in hand, cause of action being recurring one, it cannot be said that suit has not been filed within the period of limitation.

In the light of aforesaid discussion, there is no merit in both the appeals and the same are dismissed.

No order as to costs.