(2019) 03 P&H CK 0255

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3258 Of 2019 (O&M)

Vijay Paul Singh APPELLANT

Vs

Punjab State Power Corporation Ltd. & Others RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Punjab State Electricity Board Employees (Punishment And Appeal) Regulations, 1971 — Regulation 5, 8, 10

Punjab State Electricity Board Employees (Punishment And Appeal) Regulations, 1971 — Rule 9, 9(2)

Citation : (2019) 03 P&H CK 0255

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Rajbir Singh, Sahil Sharma

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.

Petitioner who is serving on the post of Assistant Engineer under the Punjab State Power Corporation Limited has filed the instant petition assailing the order dated 15.06.2015 (Annexure P-11) passed by respondent No.2/competent authority and in terms of which a major penalty of stoppage of three annual increments with cumulative effect was imposed. Further challenge is to the order dated 23.11.2017 (Annexure P-13), whereby the Appellate Authority has reduced the punishment to stoppage of two annual increments with cumulative effect.

Brief facts of the case are that departmental proceedings were initiated against the petitioner under the provisions of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations 1971 (herein after to be referred to 'the 1971 Regulations') in terms of issuance of a charge sheet dated 07.04.2014 (Annexure P-4). The precise article of charge formulated against the petitioner was to the following effect:

"You (Er. Vijaypaul Singh A.E.) have been posted as Sub Division Incharge from 05/2011 to 04/2013 (till date) and it was your duty to check the connection of consumer for less consumption, which was not checked by you. As a result, financial loss has been caused to PSPCL and you are responsible for this loss in the position of Sub Division Incharge.

Accordingly, you (Er: Vijaypaul Singh A.E.) are directly responsible for these acts of omission and commission and are liable for punishment under Section 5 (v-ix) read with Regulation-8 of Punishment and Appeal Regulations 1971 of Punjab State Power Corporation Limited."

The reply filed by the petitioner to the charge sheet having not been found to be satisfactory, Inquiry Officer was appointed. Inquiry report dated 05.01.2015 (Annexure P-8) was furnished by the Inquiry Officer exonerating the petitioner of the charge.

Apparently, the Punishing Authority has chosen to differ with the findings recorded by the Inquiry Officer and proceeded to impose upon the petitioner the major penalty of stoppage of three annual increments with cumulative effect vide order dated 15.06.2015 (Annexure P-11) by observing that the petitioner has been negligent and has caused a heavy financial loss to the Corporation amounting to Rs.48 lakhs approximately.

Petitioner having availed of the statutory remedy of appeal, the same stands dealt with in terms of the impugned order dated 23.11.2017 (Annexure P-13), watering down the penalty to stoppage of two annual increments with cumulative effect.

Counsel representing the petitioner would vehemently contend that the action of the respondent/Corporation is patently unjust and unfair.

The inquiry proceedings had culminated in a report dated 05.01.2015 furnished by the Inquiry Officer exonerating the petitioner of the charge levelled against him. Counsel contends that the Punishing Authority was obligated to record a 'Dissenting Note' in the eventuality of differing with the findings recorded by the Inquiry Officer and has to afford an opportunity of hearing in such regard and which procedure had not been followed. Further argued that even though the Appellate Authority has passed order dated 23.11.2017 (Annexure P-13) reducing the penalty to stoppage of two annual increments with cumulative effect but even such order is bereft of reasons and as such, cannot sustain.

Per contra, learned counsel appearing on behalf of the Corporation would submit that the Punishing Authority has recorded reasons in the impugned order dated 15.06.2013 (Annexure P-11) and has even indicated the extent of financial loss caused to the Corporation on account of negligence of the petitioner in discharge of his official duties. Learned counsel has further contended that the Appellate Authority prior to passing of the the order dated 23.11.2017 (Annexure P-13) had afforded to the petitioner an opportunity of personal hearing and thereafter a lenient view has been taken whereby the penalty stands reduced and under such circumstances, no interference in the matter is called for.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

Rule 9 of the 1971 Regulations regulates the procedure/action to be taken on the inquiry report and would be relevant to the issue at hand.

Rule 9 of the 1971 Regulations reads in the following terms:

"ACTION ON THE INQUIRY REPORT

9. (1) The punishing authority if it is not itself the inquiring authority may for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Regulation 5 should be imposed on the employee, it shall, notwithstanding anything contained in Regulation 10, make an order imposing such penalty.

(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Regulation-5 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed."

Perusal of Rule 9(2) reproduced hereinabove clarifies that in the eventuality of the Punishing Authority disagreeing with the findings of the Inquiring Authority on any article of charge, it would be obligated to record reasons for each disagreement and to record its own findings on such charge subject to the evidence on record being sufficient for the purpose.

In the facts of the present case, against the specific article of charge formulated against the petitioner, the finding recorded by the Inquiry Officer exonerating the petitioner was to the following effect:

"Third witness Er. Gafoor Mohd., the then Senior Executive Engineer/Admin. Division Malerkotla, has also admitted during his cross-examination that during checking of Enforcement Wing on dated 16.10.2012, when consumer's CT/PT was burnt, the meter was found correct and on dated 09.04.2013 direction was given to seal pack and take the meter at M.E. Lab, and thereafter, theft case came to the fore. As far as the consumption of consumer is concerned, consumption has been compared during the period of Er: Vijaypaul Singh A.E. with same period preceding year and it is found that consumption was more during the tenure of Er: Vijaypaul. Hence, any suspicion could not be raised.

In view of above, it is evident that the inner faults of meter could not be inspected at the spot, which can be inspected only in M.E. Lab after breaking the seals. Therefore, this power theft case was declared only after the report of M.E. Lab. Hence, the allegations pointed out against the defendant are not proved.

Sd/-

Enquiry Officer-cum-Superintending Engineer/Enquiry, PSPCL, Patiala.

Dt.5/1/15."

The impugned order dated 15.06.2015 (Annexure P-11) passed by the Punishing Authority and in terms of which three annual increments with cumulative effect had been stopped merely recites that the petitioner had caused heavy financial loss to the Corporation. In the considered view of this Court, the mandate of Rule 9 (2) of the 1971 Regulations of recording reasons for disagreement with the findings of the Inquiry Officer and then for the Punishing Authority to record its own findings for such disagreement on the basis of evidence available on record has been given a complete go by.

It is by now well settled that it would be open for the Disciplinary Authority to differ with the findings recorded by the Inquiry Officer but in this regard reasons have to be recorded for such disagreement and the delinquent official has to be served with the 'Disagreement/ Dissenting Note' so as to afford an opportunity to represent and to persuade the Disciplinary Authority to accept the favourable conclusion recorded by the Inquiry Officer. Reference in this regard may be made to the decisions of the Apex Court in Punjab National Bank Vs. Kunj Behari Misra, (1998) 7 SCC 84 and State Bank of India Vs. Arvind K. Shukla, (2001) 3 SCT 776. The Disciplinary/Punishing Authority in the present case having in the first instance not recorded a specific Disagreement/Dissenting Note and consequently having not put the same to the petitioner, the order dated 15.06.2015 (Annexure P-11) as such cannot sustain.

This Court having taken a view that the order of punishment itself suffers from a patent infirmity and illegality, there would have been no occasion to proceed further. Since the basic order of punishment has been held to be bad in law, the order passed by the Appellate Authority also cannot sustain. Such view is further fortified for the reason that even the order passed by the Appellate Authority dated 23.11.2017 is completely bereft of reasoning. Suffice it to observe that the Appellate Authority was obligated to record cogent and valid reasoning even as regards sustaining of a lesser penalty against the petitioner. In the case of

Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney & others, (2009) 3 SCT 39, the Apex Court considered the scope of judicial and quasi-judicial authorities in passing non-speaking orders and made the following observations with regard to the order passed by the Appellate Authority:

"8. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

9. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N. Mukherjee v. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities.

10. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even it is an order of affirmation.

No doubt, in S.N. Mukherjee's case (supra), it has been observed (vide para 36) that:

"...The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

11. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority."

In view of the reasons recorded above, the action of the respondent/Corporation of imposing the penalty of stoppage of three annual increments with cumulative effect in the first instance and thereafter reducing the penalty to stoppage of two annual increments with cumulative effect are held to be bad in law. The impugned orders dated 15.06.2015 (Annexure P-11) and 23.11.2017 (Annexure P-13) are quashed.

It is further directed that any financial benefits, which the petitioner has been denied on account of passing of the impugned orders would be restored to him forthwith.

Petition is allowed in the aforesaid terms.

