

Before Tejinder Singh Dhindsa, J.

BHUPINDER PAL SHARMA—Petitioner

versus

PUNJAB STATE POWER CORPORATION LTD. & OTHERS—

Respondents

CWP No. 2215 of 2017

July 02, 2019

Constitution of India, 1950—Arts. 226 and 227—Punjab State Electricity Board Employees Punishment and Appeal Regulations, 1971—Rl. 9—Petitioner Senior Executive Engineer—Charge sheeted for bogus inspection—Exonerated by Inquiry Officer—Punishing Authority imposed major penalty—No dissenting note, no further inquiry—Appeal dismissed—Principles of natural justice violated—Petition allowed.

Held that after an inquiry report is furnished, it was open for the punishing authority to remit the matter to the inquiring authority for further inquiry after recording reasons in support of such decision or if the punishing authority was to disagree with the findings returned by the inquiring authority on any Article of Charge, to record its reasons for each disagreement and record its own findings on such charge, if, the evidence on record is sufficient for the purpose.

(Para 10)

Further held that the impugned order at Annexure P-7 and the operative part of which has already been reproduced above, would show that a penalty of stoppage of two increments with cumulative effect has been imposed without recording any reasons. It is a completely non-speaking and cryptic order. It is by now well settled that any order which entails adverse civil consequences has to be a self-speaking order justifying the decision taken for imposition of a major penalty.

(Para 12)

Animesh Sharma, Advocate
for the petitioner.

Vivek Sharma, Advocate
for the respondents.

TEJINDER SINGH DHINDSA.J oral

(1) Petitioner, who was serving under the respondent-Corporation has retired on 30.9.2018 from the post of Additional Superintending Engineer.

(2) Challenge in the instant petition is to the order dated 28.8.2015 (Annexure P-7) passed by the Joint Secretary/Technical-I, P.S.P.C.L, Patiala and whereby a major penalty of stoppage of two annual increments with cumulative effect was imposed upon the petitioner. Also assailed in the petition is the order dated 18.11.2016 (Annexure P-9) whereby the appellate authority has affirmed the major penalty imposed upon the petitioner by the punishing authority.

(3) Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the impugned orders cannot sustain.

(4) Brief facts and on which there is no dispute may be noticed.

(5) While serving on the post of Senior Executive Engineer, the petitioner was charge sheeted on 10.9.2012 and the following Article of Charge was formulated against him:-

“He (Er. Bhupinder Pal Sharma, Senior Executive Engineer) conducted bogus inspection in premises of M/s Shiva Electrical Industries, Pippal Wala (Himachal Pradesh) during the period from 11.5.2012 to 13.5.2012 against Purchase Order No.HH2660/PSPCL/QQ-2197/PO (Poles) dated 13.6.2011. Hence he prepared bogus enquiry report regarding said so called inspection and not only committed breach of trust with Corporation but the Supplier also supplied 350 Nos. poor quality G.O. Switches to the Stores of Corporation, which caused heavy loss to Corporation, for which he (Er. Bhupinder Pal Sharma) is solely liable.”

(6) The response filed to the charge sheet having been found to be not satisfactory, an Inquiry Officer was appointed. Placed on record at Annexure P-5 is the inquiry report dated 22.4.2015 at the hands of the Inquiry Officer-cum-Chief Engineer/Stores and Workshops, P.S.P.C.L,Ludhiana exonerating the petitioner and specifically recording a finding that the charges leveled against the delinquent are not proved. Thereafter vide impugned order dated 28.8.2015 (Annexure P-7) the major penalty of stoppage of two annual increments with

cumulative effect has been imposed and the operative part of the order reads as follows:-

“Whereas after perusal of reply submitted by said officer, comments of senior officers, enquiry report submitted by Inquiry Officer and rebuttal of said officer, the competent authority passed order to seize two annual increments of Er. Bhupinder Pal Sharma, Senior Executive Engineer (Code No.5706) with future effect.

Hence Punjab State Power Corporation Ltd. do hereby issues order to seize two annual increments of Er. Bhupinder Pal Sharma, Senior Executive Engineer (Code No.5706) with future effect.”

(7) The petitioner having preferred a statutory appeal before the Whole Time Directors of the respondent-Corporation dated 28.8.2015(Annexure P-8) the same has also not found favour and the same stands rejected vide order dated 18.11.2016 (Annexure P-9). The decision of the Whole Time Directors of the Corporation/Appellate Authority is coined in the following terms:-

“Resolved that considering the gravity of charges leveled, magnitude of punishment awarded, reply of official, appeal of official in respect of office, order no.564/D-9969/T-1 dated 28.08.2015, comments of higher officer and view of Director/Distribution given after personal hearing, Committee of Whole Time Director found no merit in the appeal of Er. Bhupinder Pal Sharma, Add, SE (Code No.5706) in respect of office order no. 564/D-9969/T-1 dated 28.08.2015 hence rejected.”

Hence the appeal filed by Er. Bhupinder Pal Sharma, Senior Executive Engineer (Code No.5706), is dismissed vide this office order.”

(8) During the course of hearing it has gone uncontroverted that even though the Inquiry Officer had completely exonerated the petitioner of the charge leveled, yet, the punishing authority has proceeded to impose the major penalty without even recording a dissenting note. Such action apart from being contrary to settled law and principles of natural justice is also in violation of the Punjab State Electricity Board Employees Punishment and Appeal Regulations, 1971 (hereinafter to be referred to as the 1971 Regulations). Suffice it

to observe that learned counsel representing the respondent Corporation does not dispute the applicability of such regulations.

(9) Regulation 9 governs the action to be taken on an inquiry report and reads as follows:-

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 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.”

(10) Perusal of the afore-reproduced regulation makes it amply clear that after an inquiry report is furnished, it was open for the punishing authority to remit the matter to the inquiring authority for further inquiry after recording reasons in support of such decision or if the punishing authority was to disagree with the findings returned by the inquiring authority on any Article of Charge, to record its reasons for each disagreement and record its own findings on such charge, if, the evidence on record is sufficient for the purpose.

(11) Undisputedly the punishing authority has chosen not to adopt either of the afore two courses of action as was envisaged under Rule 9(1) and Rule 9(2). On such ground alone the order of imposing the major penalty of stoppage of two annual increments with cumulative effect cannot sustain.

(12) Even otherwise, the impugned order at Annexure P-7 and the operative part of which has already been reproduced above, would show that a penalty of stoppage of two increments with cumulative effect has been imposed without recording any reasons. It is a completely non-speaking and cryptic order. It is by now well settled that any order which entails adverse civil consequences has to be a self speaking order justifying the decision taken for imposition of a major penalty.

(13) This Court has also perused the appeal dated 28.8.2015 (Annexure P-8) that the petitioner had preferred against the order of major penalty imposed by the punishing authority. Apart from having raised other grounds/contentions it had been specifically averred that the major penalty imposed was in violation of the principles of natural justice as also in violation of the 1971 Regulations. The order passed by the Appellate Authority dated 18.11.2016 (Annexure p-9) suffers from the same very infirmity as the order passed by the punishing authority inasmuch as the contentions/grounds raised in the appeal have not even been noticed much less dealt with.

(14) For the reasons recorded above, the writ petition is allowed. Impugned orders dated 28.8.2015 (Annexure P-7) and dated 18.11.2016 (Annexure P-9) are quashed.

(15) In ordinary circumstances this Court while setting aside the order of the punishing authority as also the appellate authority would have granted liberty to the respondent-Corporation to proceed afresh in the matter in accordance with law. However, such liberty is being denied in the present case. Such view is being taken on two counts. (i) The petitioner already stands superannuated w.e.f. 30.9.2018. (ii) Learned counsel representing the respondent-Corporation has conceded during the course of hearing that in response to an information sought under the provisions of the Right to Information Act the Corporation has admitted that against the backdrop of the Article of Charge(s) formulated against the petitioner no financial loss has been caused.

(16) All consequential benefits emanating on account of the setting aside of the impugned orders at Annexures P-7 and P-9 be released to the petitioner forthwith.

(17) Petition is allowed in the aforesaid terms.

Shubreet Kaur