

D.H.B.V.N.L. VIDYUT NAGAR, HISAR & OTHERS

A

v.

YASHVIR SINGH GULIA

(Civil Appeal No. 6150 of 2013)

JULY 30, 2013

B

**[K.S. RADHAKRISHNAN AND
PINAKI CHANDRA GHOSE, JJ.]***Service Law:*

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Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1999 – Regulation 7(8) – Initiation of proceedings under regulation 7 for imposition of major penalty – But after considering the reply of the delinquent imposition of minor penalty without holding departmental enquiry – Whether full fledged departmental inquiry was required – Held: Under regulation 7(8) the competent authority is empowered to dispense with departmental inquiry, even though it has contemplated major penalty proceedings – On being satisfied with the reply of the delinquent, can follow the procedure for imposing minor penalty.

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The question for consideration in the present appeal was whether once a charge-sheet has been issued for imposition of a major penalty under Regulation 7 of the Haryana State Electricity Board Employees (Punishment & Appeal) Regulations, 1990, is it obligatory on the part of the Disciplinary Authority to conduct a full fledged departmental inquiry, even if, after considering the reply of the delinquent, the authority decides to impose a minor penalty, for which no departmental inquiry is provided under the Regulations.

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Allowing the appeal, the Court

A HELD: 1.1. Regulation 7(8) of Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1990 clearly indicates that the competent authority has got the power to dispense with the procedure for holding a departmental inquiry, even
B 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
C 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. [Para 12] [509-H; 510-A-B]

D 1.2. In the instant case, the procedure provided under regulation 7(8) 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
E a minor penalty, i.e. barring one increment without cumulative effect, for which no full-fledged departmental inquiry is contemplated. The District Judge as well as the High Court has committed a grave error in interfering with the punishment imposed by the Board which is perfectly
F legal. [Para 13] [510-C-E]

G 2. If imposition of a minor penalty is not a bar in granting promotion to the respondent, due promotion be granted to him in accordance with the Rules and Regulations applicable to him. [Para 15] [510-F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6150 of 2013.

From the Judgment and Order dated 24.07.2012 of the

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YASHVIR SINGH GULIA**

High Court of Punjab & Haryana at Chandigarh in Regular A
Second Appeal No. 3094 of 2011 (O&M)

Narender Hooda, AAG. Surender Singh ,Hooda, Kamal
Mohan Gupta for the Appellants.

Surbhi Mehta, Gaurav Sharma, for the Respondent. B

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. The question that arises for consideration in this appeal C
is whether once a charge-sheet has been issued for imposition
of a major penalty under Regulation 7 of the Haryana State
Electricity Board Employees (Punishment & Appeal)
Regulations, 1990 [for short "the Regulations 1990"], is it D
obligatory on the part of the Disciplinary Authority to conduct a
full fledged departmental inquiry even if, after considering the
reply of the delinquent, the authority decides to impose a minor
penalty, for which no departmental inquiry is provided under the
Regulations.

3.The respondent herein who was working as an Assistant E
Law Officer, was served with a charge-sheet on 14.8.1992
alleging that he had exceeded his power by directing
implementation of an arbitration award dated 10.9.1991 without
getting approval of the superior Authorities. Respondent filed F
three replies to the charge-sheet and the replies submitted by
the respondent were considered by the Board and it was
decided to impose only a minor penalty vide its order dated
4.7.1994, the operative portion of which reads as follows:

"HARYANA STATE ELECY. BOARD G

OFFICE ORDER NO. 144/COMF-2407 DATED 4.7.94

Having considered the reply submitted by Sh. Y.S. Gulia,
A.L.O. through his letters dated 20.1.93, 24.1.94 & dated H
27.4.94 to the charge sheet served upon him vide this

A office Memo No. Ch-4/Conf-2497 (IB-2(1010) dt. 14.8.92
in light of the comments given by L.B., BSEB, Panchkula
through his note dated 6.6.94 and record/material
available with this office, it has been decided to stop his
one increment without future effect as Sh. Y.S. Gulia, ALO
B has been found responsible for not seeking the approval
of L.R., HSEB, Panchkula before conveying the advice to
Xen(OP) Divn., HSEB, Gurgaon to implement the award
dt. 30.9.91 amount to Rs.26 lacs of the Arbitrator given in
M/s. Kegg Farm.

C As such one increment of Sh. Y.S. Gulia, Asstt. Law
is hereby stopped without future effect.

This issues with the approval of MA&PF, HSEB,
Panchkula.”

D 4. Respondent preferred an appeal before the Appellate
Authority of the Board. The same was, however, rejected by the
Appellate Authority vide its order dated 22.5.1995.

E 5. Respondent, after a lapse of 10 years, filed a Civil Suit
No. 157 of 2005 before the Civil Judge (JD), Gurgaon for a
declaration that the order dated 4.7.1994 and the Appellate
Authority’s order dated 22.5.1995 were illegal and void and also
for mandatory injunction directing the Board to refund the
amount of one increment deducted from his salary with 18%
F interest. The Civil Judge dismissed the suit vide his judgment
dated 29.1.2009.

G 6. Aggrieved by the same, respondent preferred an
appeal being C.A. No. 34 of 2009 before the District Judge,
Gurgaon. It was contended before the learned District Judge
that the Board had committed a gross illegality in not holding
a regular departmental inquiry after having initiated major
penalty proceeding under Regulation 7 of the Regulations
1990. This argument was accepted by the learned District
H Judge holding that having invoked Regulation 7, the Board

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should have conducted a regular departmental inquiry and A
inflicting minor punishment without holding a regular
departmental inquiry was illegal. Holding so, the order passed
by the Civil Judge was set aside and the suit was decreed.

7. Aggrieved by the said order, the Board preferred R.S.A. B
No. 3094 of 2011 before the High Court of Punjab & Haryana.
The appeal was dismissed holding that no substantial question
of law arose for its consideration. Further, it was also held that
the Board was bound to hold a regular departmental inquiry and
minor punishment could not have been imposed merely C
considering the reply submitted by the respondent. Aggrieved
by the same, this appeal has been preferred.

8. Shri Narender Hooda, Additional Advocate General
appearing for the Board, submitted that the High Court has not D
properly appreciated the scope of Regulations 1990. Shri
Hooda submitted that the Board was within its rights in not
holding regular departmental inquiry since it was decided to
impose only a minor penalty which is permissible under
Regulations 1990. Shri Hooda also submitted that the rule does
not provide for regular departmental inquiry for imposing minor E
punishment, consequently, non-conducting of regular
departmental inquiry against the respondent cannot be a reason
for interfering with the punishment imposed by the Board which
is barring of one increment without cumulative effect. Further,
it was also pointed out that there was considerable delay in F
approaching the Civil Court, the order imposing the punishment
was passed on 4.8.1994, but the suit was filed only after a
period of 10 years i.e. 13.6.2005 and hence the suit itself was
barred by time.

9. Ms. Surbhi Mehta, learned counsel appearing for the G
respondent, on the other hand, submitted that there is no
illegality in the order passed by the High Court calling for
interference by this Court. Learned counsel pointed out that
once the charge-sheet has been issued under Regulation 7, the
Board is duty bound to conduct a regular departmental inquiry, H

- A since major penalty proceeding has been contemplated against the respondent. Learned counsel also submitted merely by examining the replies submitted by the delinquent, the authority cannot impose a minor penalty without holding a regular departmental inquiry. The High Court, according to the learned
B counsel, was, therefore, justified in not interfering with the judgment of the learned District Judge.

10. We have heard the counsel on either side and examined various contentions raised by them. In order to properly appreciate the various contentions raised and to
C examine the correctness or otherwise the views expressed by the High Court, it is necessary to examine the relevant provisions of the Regulations 1990. Regulations 1990 was issued by the Board in exercise of its power conferred under Clause (c) of Section 79 of the Electricity (Supply) Act, 1948
D for governing the conditions of the service of the employees of the Board. The term "Punishing Authority" has been defined under Regulation 2(g) as an authority notified under the Service Regulations to inflict on a Board employee any of the penalties specified in Regulation 4. Regulation 4 deals with both minor
E penalties as well as major penalties. The relevant portion of Regulation 4 is extracted for an easy reference:

"4. PENALTIES:

- F The following penalties may, for good and sufficient reasons, and as hereinafter provided, be inflicted on an employee:-

A. MINOR PENALTIES:

- G (i) Warning with a copy to be placed in the personal/ (Character roll) File;
(ii) Censure;
(iii) Withholding/stoppage if increments of pay without
H cumulative effect;

(iv) Withholding of promotion for a specific period; A

(v) Recover from pay of the whole or part of any pecuniary loss, caused by negligence or breach of orders of the Board or Central Government or a State Government or to a Company Association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government or to a local authority set-up by an Act of Parliament or the Legislature of a State, during discharge of official duty. B
C

B. MAJOR PENALTIES:

(vi) Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of post-pending the future increments of his pay. D

(vii) Reduction to a lower scale of pay or grade, post or service, which shall ordinarily be a bar to the promotion of the employee to the time scale of pay or grade or post or service, from which he was reduced with or without further directions regarding conditions of restoration to the grade or post or service from which the employee was reduced and seniority and pay on such restoration to that grade or post or service; E
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(viii) Compulsory retirement; G

(ix) Removal from service which shall not be a disqualification for future employment under the Board;

(x) Dismissal from service which shall ordinarily be a H

A disqualification for future employment under the Board/State Govt./State Govt. Undertakings.”

The procedure for inflicting major penalties is provided in Regulation 7. The relevant portion of the same is extracted hereunder:

B “7. PROCEDURE FOR INFLICTING MAJOR PENALTIES:

C (1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850; no order of inflicting a major penalty, shall be passed against a person to whom these Regulations are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

D (2) (a) The grounds on which it is proposed to take such action, shall be reduced to the form of definite charge or charges which shall be communicated in writing to the person charged, together with a statement of allegations on which each charge is based alongwith a list of documents and witnesses to be relied-upon and of any
E other circumstances which it is proposed to take into consideration in passing orders on the case and he shall be required within a reasonable time to state in writing whether he admits the truth of all or any, of the charges, what explanation of defence, if any, he has to offer and
F whether he desires to be heard in person. If he so desires, or if the authority empowered to inflict major penalty upon him so directs, an enquiry shall be held at which all evidence(s) shall be heard as to such of the charges as are not admitted.”

G The procedure for inflicting minor penalties is proved in Regulation 8, which reads as follows:

“8. PROCEDURE FOR INFLICTING MINOR PENALTIES:

H (a) Without prejudice to the provisions of Regulations 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 record it may be allowed and opportunity of personal hearing be also given. Request for personal hearing may be rejected by the punishing authority by passing a speaking order.

(b) Provided that this condition shall not apply in a case where an order based on facts, has led to his conviction in a Criminal Court or an order has been passed superseding him for promotion to a higher post on the grounds of his unfitness for that post on account of the existence of unsatisfactory record."

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

- A 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
- B 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.

- C 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
- D 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.

- E 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.

- F 15. Learned counsel for the respondent submits that, by virtue of the punishment imposed, he has not been given his due promotion. We are of the view that if imposition of a minor penalty is not a bar in granting promotion to the respondent, due promotion be granted to him in accordance with the Rules and Regulations applicable to him.

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K.K.T.

Appeal allowed.