IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 9th OF OCTOBER, 2023

WRIT PET. (SERVICE) No. 11059 of 2004

BETWEEN:-

P.P.MISHRA, S/O LATE SHRI P.D. MISHRA, AGED ABOUT 59 YEARS, C/O MISHRA STD PCO GANESHPURA, MORENA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI RAJNEESH GUPTA - ADVOCATE)

AND

M.P.STATE ELECTRICITY BOARD, THROUGH ITS SECRETARY, POST OFFICE, RAMPUR, DISTRICT JABALPUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI H.K. UPADHYAY - ADVOCATE)

This appeal coming on for hearing this day, the court passed the following:

ORDER

This petition has been filed by the petitioner while praying for the following reliefs:-

"(i) That, a writ in the appropriate nature may kindly be issued to quash the order dated 26th April 2004 (Annexure P-1) in the interest of justice.

(ii) That, this Hon'ble Court may be pleased to set aside and quash the order dated 24.7.2004 (Annexure P-2) passed by the appellate authority.

Signature Not Verified
Signed by: PRADYUMNA BARVE
Signing time: 10/13/2023 12:13:37 PM

(iii) That, this Hon'ble Court may be further pleased to quash the departmental enquiry held against the petitioner in the interest of justice.

(iv) Any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be also issued."

2. The facts, in nut shell, reveal that the present petitioner, who was working as Additional Executive Engineer with the respondent, was issued a charge-sheet dated 7.2.200, contained in Annexure P-3, in which as many as four charges were levelled against the petitioner. In Charge No. (III), it was stipulated that the petitioner had failed to comply with the Standing Instructions issued by the E.D. (O&M), Jabalpur regarding installation of metering equipment near main gate and providing ABC cable in the last span of Overhead line. The said charge-sheet was enquired into. The Enquiry Officer concluded that Charge Nos. (I), (II) and (IV) were not proved and Charge No. (III) was found to be partly proved. Accordingly, after submission of the enquiry report, the Authority had passed the impugned order dated 26.4.2004, contained in Annexure P-1, by which an order of reduction of 10% of the pension for a period of 3 years, was passed. Assailing the said order dated 26.4.2004 (Annexure P-1), this petition has been filed by the petitioner. The petitioner also moved an application for review of the said order, but the same has been dismissed vide order dated 24.7.2004, contained in Annexure P-2. The said order dated 24.7.2004 is also under challenge in this petition.

3. The counsel for the petitioner contends that in the present case, only Charge No. (III) was found to be partly proved by the Enquiry Officer against

Signature Not Verified
Signed by: PRADYUMNA BARVE
Signing time: 10/13/2023 12:13:37 PM

the petitioner and rest of the charges were not found proved. It is contended that the enquiry report reflects that while dealing with Charge No. (III), the Enquiry Officer specifically concluded that the Standing Instructions were not communicated to the petitioner, yet for the reasons best known to the Enquiry Officer, he opined that Charge No. (III) was partly proved. It is further contended by the counsel for the petitioner that if the entire analysis regarding Charge No. (III) is carefully perused, same reveals that Charge No. (III) was also not found proved. It is also contended that in the present case various other employees were also confronted with almost similar set of charges but minor penalties were imposed on them, as evident from the orders, which have been brought on record by the respondents Annexure R-3. It is also contended that as the order impugned has been passed against the petitioner, without any application of mind, thus same deserves quashment. The counsel has placed reliance on the decision in **Union of India & others Vs. J. Ahmad - AIR 1979 SC 1022, Narmada Prasad Yadav Vs. State of M.P. & others - (2007) 1 SCC 681** and **Ram Dayal Rai Vs. Jharkhand State Electricity Board & others - (2005) 3 SCC 501.**

4. *Per contra*, the counsel for the respondents submits that the petition filed by the petitioner deserves to be dismissed. It is contended that Charge No. (III), which was levelled against the petitioner, was serious in nature, inasmuch as, the specific Standing Instructions were issued by the respondents and in terms of those Standing Instructions, which have been brought on record as (Annexure R-4), it was incumbent upon the petitioner to ensure that ABC cable were provided in order to prevent pilferage of the electricity. Yet, as there was complete defiance on the part of the petitioner to the Standing Instructions, the order impugned has been rightly passed, which requires no interference. It is

Signature Not Verified
Signed by: PRADYUMNA BARVE
Signing time: 10/13/2023 12:13:37 PM

further contended that the HT Meter Checking Report has been brought on record along with the record, which itself contains a suggestion by the petitioner that there has to be insulating layer around Overhead line. Thus, in view of the aforesaid contentions, it is submitted that the present petition deserves to be dismissed.

5. No other point is argued or pressed by the counsel for the parties.

6. Heard the submissions advanced on behalf of the parties and perused the record.

7. A perusal of the record reflects that the petitioner herein was issued a charge-sheet in which as many as four charges were levelled against the petitioner. So far as charge Nos. (I), (II) and (IV) are concerned, they have not been found proved against the petitioner and only vharge No. (III) was found to be partly proved. Charge No. (III) is reproduced herein:-

> *"CHARGE NO. III.*
>
> *He failed to comply with the "standing instructions" issued by the E.d. (O&M), Jabalpur, regarding installation of metering equipment near main gate and providing ABC cable in the last span of Overhead line."*

8. A perusal of charge No. (III) reflects that the allegation against the petitioner was that he failed to comply with the Standing Instructions issued by the E.D. (O&M), Jabalpur regarding installation of meter equipment near main gate and providing ABC cable in the last span of Overhead line. The said charge was enquired into by the Enquiry Officer. The Enquiry Officer while discussing Charge No. (III) referred to the Standing Instructions dated

Signature Not Verified
Signed by: PRADYUMNA BARVE
Signing time: 10/13/2023 12:13:37 PM

12.7.1996 and 6.5.1997. According to the Enquiry Officer, the standing instructions were contained in the aforesaid letters dated 12.7.1996 and 6.5.1997 and concluded the enquiry report as follows:-

"…….आरोपी श्री पी0पी0 मिश्रा ने अपने लिखित बयान दिनांक 3.7.2002 के पेज क्रमांक 57(सम) के अंतिम पैरा में कहा है कि उपरोक्त दोनों पत्र क्रमशः 572 दिनांक 12.7.96 एवं 367 दिनांक 6.5.97 न तो प्राप्त हुए थे और न ही उनसे नोट कराये गये इस प्रकार इन निर्देशों की उन्हे जानकारी ही थी। इन दोनों पत्रों को यद्यपि आरोप पत्र से संलगन दस्तावेजों की सूची में क्रमांक 10 एवं 11 पर दर्शाया गया है किन्तु दस्तावेजी साक्ष्य के रूप में केवल पत्र क्रमांक 5727 दिनांक 12.7.96 को प्रदर्श पी–10 बनाकर प्रस्तुत किया गया है।

प्रदर्श पी–10 पत्र क्रमांक 5727 दिनांक 12.7.96 के अवलोकन से ज्ञात हुआ कि इस पत्र की प्रतियॉ संभागों को संबोधित ही नही की गई है अभियोजन पक्ष के गवाह श्री एस0एस0 पवार के परीक्षण से यह कही नही जाहिर हुआ है कि अधीक्षण यंत्री कार्यालय से भी इन पत्रों की प्रतिलिपि संभागों को भेजी गई स्थिति में आरोपी का यह कथन कि यह पत्र न तो प्राप्त हुए है और न ही उनसे नोट कराये गये है विश्वास करने योग्य है इसके अतिरिक्त श्री पी0पी0 मिश्रा के कार्यपालन यंत्री पद के अतिरिक्त चार्ज की जो अवधियॉ आरोप पत्र में दर्शायी गई है उनके अनुसार यह उपरोक्त दोनों पत्र दिनांक 12.6.97 एवं 6.5.97 को जारी हुए थे उस समय आरोपी के पास संभाग का अतिरिक्त चार्ज भी नही था।''…….

……अतः अभियोजन पक्ष के गवाह बचाव पक्ष का प्रतिवाद को ध्यान में रखते हुए यह निष्कर्ष निकलता है कि उपरोक्त दोनो पक्षों ने एरियल बंच केबल लगाने के बारे में यदि कोई निर्देश थे तो उनकी

Signature Not Verified
Signed by: PRADYUMNA BARVE
Signing time: 10/13/2023 12:13:37 PM

जानकारी आरोपी को नहीं थी।....."

9. Therefore, the Enquiry Officer in unequivocal terms concluded that if there were any instructions regarding making provision of Arial Bench Cable (ABC), those were not made available to the petitioner, yet the Enquiry Officer concluded that the statements of the witnesses of the Department since not fully controverted/rebutted by the petitioner, therefore, Charge No. (III) was partly proved.

10. The aforesaid enquiry report reveals that Charge No. (III) referred to the Standing Instructions and also contained an allegation regarding petitioner's failure to comply with the said Standing Instructions. The said Standing Instructions according to the respondents were contained in the letters dated 12.7.1996 and 6.5.1997. The Enquiry Officer in no uncertain terms concluded that the aforesaid letters were not provided/supplied to the petitioner and, therefore, the petitioner was not in the knowledge of the said instructions. The said enquiry report was required to be taken note of by the Disciplinary Authority while passing the impugned order dated 26.4.2004. The Disciplinary Authority while considering the enquiry report decided to impose a major penalty of reduction of 10% in pension for a period of 3 years. The said major penalty apparently did not commensurate with the charges levelled against the petitioner in respect of Charge No. (III).

11. The Enquiry Officer's report ought to have been taken into consideration by the Disciplinary Authority while passing the impugned order. The Disciplinary Authority should have taken into consideration that some other employees were also issued more or less similar charge-sheet but they were only punished with the order of minor penalties whereas in the present case, the

Signature Not Verified
Signed by: PRADYUMNA BARVE
Signing time: 10/13/2023 12:13:37 PM

petitioner was confronted with the major penalty and that too in absence of any incriminating material against the petitioner. When the Enquiry Officer in unequivocal terms concluded that the Standing Instructions were not supplied to the petitioner and the petitioner was not in the knowledge of the Standing Instructions, Charge No. (III) even could not have been found to be partly proved, therefore, in the considered view of this Court the impugned order dated 26.4.2004 contained in Annexure P-1 deserves to be set aside.

12. Accordingly, the order impugned dated 26.4.2004 (Annexure P-1) and 27.4.2004 (Annexure P-2) stands quashed. The respondents are directed to forthwith refund the entire amount towards 10% reduction of pension, which was withheld on the strength of impugned order dated 26.4.2004 (Annexure P-1) to the petitioner within 90 days from the date of submission of certified copy of this order.

13. With the aforesaid, **the petition stands allowed and disposed of**. No costs.

(MANINDER S. BHATTI)
JUDGE

PB

Signature Not Verified
Signed by: PRADYUMNA BARVE
Signing time: 10/13/2023 12:13:37 PM