IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2316-2020 (O&M)
Date of Decision: 04.03.2025

Suresh Pal

....Petitioner(s)

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Arjun Pratap Atma Ram, Advocate and
Ms. Shefali Bahia, Advocate
for the petitioner(s) 19795-2024.

Mr. R. Kartikeya, Advocate
for the petitioner(s) in CWP-21593-2020.

Mr. Sunil Polist, Advocate
for the petitioner(s)
in CWP-1581, 19532, 19533, 19551, 19553, 19556, 19598, 19634, 19636-2024.

Ms. Anju Arora, Advocate
for petitioner(s) in CWP-13951-2023.

Mr. S.S. Sahu, Advocate and
Mr. Himanshu Seth, Advocate for the petitioner(s)
in CWP-22398-2021.

Mr. B.S. Patwalia, Advocate with
Mr. Gaurav Jagota, Advocate and
Mr. Abhishek Masih, Advocate,
for the petitioner(s) in CWP-23186-2024.

Mr. Balwinder Singh, Advocate
for the petitioner(s) in CWP-29214-2023.

Mr. Mohnish Sharma, Advocate,
for the petitioner in CWP-13410, 1308-2021,
CWP-4408, 8351-2022 & CWP-24743, 21692-2024
Mr. Naveen Sharma, Advocate
for petitioner(s) in CWP-9153-2015.

Mr. Naveen Daryal, Advocate
for the petitioner(s) in CWP-8790-2024.

Mr. Suresh Kumar Boudh, Advocate
for the petitioner(s) in CWP-20316-2024.

Mr. Sachin Jain, Advocate,
for the petitioner(s) in CWP-24293, 24289, 24290,
24296-2022.

Mr. U.K. Agnihotri, Advocate and
Ms. Anshul Agnihotri, Advocate
for the petitioner(s) in CWP-17507-2024.

Mr. Jitender S. Chahal, Advocate,
for the petitioner(s) in CWP-16465-2021.

None for petitioner(s) in CWP-914-2024.

Mr. Surender Kumar Sharma, Advocate and
Mr. Nilesh Bhardwaj, Advocate
for the petitioner(s) in CWP-13186-2022.

Mr. A.K. Virdi, Advocate for the petitioner(s)
in CWP-26639-2021.

Mr. Krishan Daaria, Advocate
for the petitioner(s) in CWP-5624-2023.

Mr. Ashwani Talwar, Advocate and
Mr. Nikhil Sehrawat, Advocate
for the petitioner in CWP-15530-1999.

Mr. Deepak Sonak, Advocate,
for the petitioner in CWP-2316-2020.

Mr. Ravinder Malik (Ravi), Advocate

for the petitioner in CWP-19466-2024.

Mr. Satya Pal Jain Additional Solicitor General of India with

Ms. Krishna Dayama, Senior Panel Counsel
for respondent-UOI.

Mr. B.R. Mahajan, Advocate General, Haryana with
Ms. Rajni Gupta, Addl. A.G. Haryana.

Mr. Puneet Jindal, Senior Advocate with
Mr. Arshnoor Singh, Advocate and
Mr. Puneet Bhushan, Advocate,
for the respondents/UHBVNL/DHBVNL/HVPNL
in all the cases.

Mr. Gaurav Jindal, Advocate
for the Respondents in CWP- 19466-2024

Mr. Jagbir Malik, Advocate,
for respondents - UHBVNL in CWP- 13410-2021,
CWPs-4408, 8351-2022 and CWP-13951- 2023.

Mr. Sartej Singh, Advocate,
for the respondents in CWP-22398-2021.

Ms. Rajni Gupta, Advocate
for respondent(s) in CWP- 20316, 21692,
17507, 24743 of 2024 and CWP-9153- 2015.

Ms. Geeta Rani, Advocate
for respondent(s) in CWP-15530-1999.

Mr. D.R. Singla, Advocate,
for the respondents No.3 to 5 in CWP-24289-2022,
CWP-24290-2022, CWP-24293-2022 and CWP-24296-2022.

Mr. Nayandeep Rana, Advocate
for respondent(s) in CWP-8790-2024.

Mr. Samarth Sagar, Advocate
for respondent(s) No.2 to 4 in CWP-1581-2024, 19532, 19533,
19551, 19553, 19556, 19598, 19634, 19636-2024 AND
for respondents No. 2 to 6 in CWP-914-2024.

Ms. Nikita Goel, Advocate
for respondent(s) in CWP-23186-2024.

Mr. Gaurav Jindal, Advocate and
Mr. Rajan Garg, Advocate for respondent(s)
in CWP-19795-2024.

Ms. Sarita, Advocate for
Mr. Abhilaksh Grover, Advocate
for respondents No.1, 2 and 4 in CWP-9153-2015.

Mr. Sidharth Grover, Advocate
for respondent(s) in CWP-22398-2021.

Mr. Sanjiv Kumar Jindal, Advocate
for respondent(s) in CWP-5624-2023.

Mr. Satyam Tandon, Advocate
for respondents No.1 to 5 in CWP-13186-2022 and
for respondents No.1 to 6 in CWP-26639-2021.

Mr. Rohit Rattewal, Advocate for
Mr. Ashish Yadav, Advocate,
for the respondents in CWP-2316-2020.

Mr. Jatin Verma, Advocate
for the respondent.

Mr. Shreya Shridhar, Advocate and
Mr. Lakshay Mehta, Advocate
for respondent(s) in CWP-21593-2020.

Ms. Gehna Vaishnavi, Advocate
for respondent(s) in CWP-3042-1999.

Mr. G. S. Madaan, Advocate
for respondents No.2 to 7 in CWP-16465-2021.

Mr. Ajay Kumar Dahiya, Advocate and
Mr. Sanjeev Majra, Advocate for respondent(s).

Mr. S.K. Mahajan, Advocate,
for the respondents in CWP No.1308-2021.

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JASGURPREET SINGH PURI, J.

For the sake of methodical elucidation and structure, this judgment is arranged under the following heads:-

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A. BACKGROUND

1. By this common judgment, a bunch of writ petitions bearing CWP-2316-2020, CWP-16465-2021, CWP-4408-2022, CWP-8351-2022, CWP-17507-2024, CWP-13186-2022, CWP-21593-2020, CWP-9153-2015, CWP-21692-2024, CWP-914-2024, CWP-8790-2024, CWP-1308-2021,

CWP-24743-2024, CWP-29214-2023, CWP-5624-2023, CWP-13410-2021, CWP-26639-2021, CWP-13951-2023, CWP-3042-1999, CWP-15530-1999, CWP-24289-2022, CWP-24290-2022, CWP-24296-2022, CWP-24293-2022, CWP-19466-2024, CWP-22398-2021, CWP-1581-2024, CWP-19532-2024, CWP-19533-2024, CWP-19551-2024, CWP-19553-2024, CWP-19556-2024, CWP-19598-2024, CWP-19634-2024, CWP-19636-2024, CWP-23186-2024, CWP-19795-2024 and CWP-20316-2024 are being disposed of.

2. In this bunch of 38 writ petitions, important issues in the field of administrative law emanating from service jurisprudence have been dealt with.

3. From the second half of the 20th Century, it was the judicial ingenuity which formed the basis of renaissance of the administrative law. Law and Society are never static and they are always dynamic. In England, there is no written Constitution and still the field of administrative law progressed through judge-made law. In India, there are three organs of the State i.e. the Judiciary, the Legislature and the Executive. None of the organs of the State is superior to the other. The sole superiority vests in the Constitution of India and hence, the Constitution of India is supreme. The basic structure of the Constitution of India and Part III of the Constitution of India incorporating Fundamental Rights are the most precious and integral part of the Indian Legal System. One of the basic and most important aspect of administrative law which developed over a period of time not only in England and America but also in India is "*Principles of Natural Justice*". Initially, twin principles of natural justice, namely, *Audi Alteram Partem* i.e.

hear the other side and *Nemo Judex in Causa sua* i.e. Doctrine of Bias were accepted but later on, through judicial precedents the scope was further expanded in multifarious dimensions.

4. Infringement or breach of principles of natural justice in any form need to be corrected through Courts and at the same time, these principles are required to be inculcated and imbibed in the deciding authorities, who are judicial, quasi-judicial and purely administrative authorities in order to meet the Constitutional goals and to uphold the Rule of Law. It is in this context that various instances of breach of the principles of natural justice are under consideration in the present bunch of cases. Therefore, efforts have been made with the able assistance of the learned counsels to identify the areas of breaches, rectifying them and taking measures to eradicate the same at the first instance by the authorities. '*Interest republicae ut sit finis litium*' which means it is in the interest of State to put an end to litigation and not to perpetuate the same. This Court has also in larger interest delved into the pre-emptory measures which can be taken by the administrative authorities through the methods of education, training, inbuilt robust legal support system and accountability. Judicial Review of administrative action is an integral part of Indian Legal System and at the same time the precious and valuable time of Courts must not be consumed only because the administrative authorities are ignorant of principles of law. Another issue pertaining to escaping from responsibility by the administrative authorities have been discussed under the heading of *"let the Court decide syndrome"*.

5. It all started when this Court was apprised in one of the cases

that order in appeal has not been passed by the appellate authority but it has been passed by the punishing authority. On 24.07.2024, in CWP-24293-2022 the original record pertaining to the aforesaid appeal which was dealt with by the Managing Director of the Nigam was produced before this Court and after perusing the same it was found that the appellate authority who was the Managing Director had only given a noting on the official file, "Appeal rejected. Detailed order annexed". On a query being raised to the learned Senior Counsel for the respondent-Nigam as to where was the detailed order passed by the Managing Director by which the appeal was rejected as aforesaid, to which he stated that there was no such order passed by the Managing Director, whereas the appellate order was in fact passed by the Chief Engineer/Admn., UHBVN, Panchkula vide Annexure P-28 and not by the Managing Director of the Nigam who was in fact the appellate authority and was supposed to pass the order. Therefore, this Court on the aforesaid date noted that the aforesaid state of affairs is extremely serious in nature having serious consequences and the Managing Director of the Nigam and the Chief Engineer/Admn., UHBVN were also impleaded as party in the present petition.

6. There are four power utilities in the State of Haryana and on 09.08.2024, all the remaining power utilities were also impleaded as party in the present petition and this Court requested the learned Advocate General, Haryana to assist this Court on these issues. This Court also on the aforesaid date took note of the fact that in large number of cases which may run into more than hundreds of cases, such kind of orders have been passed for a large number of years and rather decades, whereby the appellate authority

and the punishing authority are the same and therefore, this Court deemed it fit and necessary to understand as to why it has so happened because it was also possible that the officers who have adopted and followed such practice are not being properly trained and are not aware of the legal provisions besides the principles of natural justice. It was also not very clear as to whether the subject of administrative law was being taught to the senior officers who got trained at Lal Bahadur Shastri National Academy of Administration, Mussoorie, Uttarakhand and therefore, this Court impleaded Union of India as a party in the present petition so that the aforesaid position could be ascertained and corrective measures could be taken at the time of training of IAS Officers. Therefore, Mr. Satya Pal Jain, learned Additional Solicitor General of India was requested to assist this Court on behalf of Union of India.

7. On 04.09.2024, the learned Senior Counsel for all the power utilities apprised the Court that all the power utilities of the State of Haryana are now contemplating to take corrective and remedial measures in accordance with law, to which permission was granted.

B. CATEGORY-WISE ISSUES

8. On 15.10.2024, this Court in order to streamline various issues involved in the present bunch of cases categorized the cases into different categories based upon the subject matter and the breaches as alleged. The categorization was as follows :-

> *"**Category-A** The punishment order and appellate order are passed by the administrative officer/subordinate officer by stating that they have been passed with the approval of the punishing/appellate authority.*

Category-B *The punishment order and appellate order are passed by the administrative officer/subordinate officer by stating that they have been passed with the approval of the punishing/appellate authority wherein authority/subordinate authority who passed the punishment/appellate order is the same.*

Category-C *Punishment order is passed by Under Secretary with the approval of the punishing authority and the appellate order is passed by the punishing authority with the approval of appellate authority.*

Category-D *Punishment order is passed by the Under Secretary with the approval of the punishing authority i.e. Chief Engineer and the appellate order is passed by Chief Engineer.*

Category-E *Punishment order is passed by the Under Secretary with the approval of the punishing authority i.e. Chief Engineer and the appellate order is passed by Chief Engineer. Apart from the above there is no order passed by the appellate authority except for mentioning that the same is being rejected.*

Category-F *Order of the competent/appellate authority not communicated to the petitioner/employee but only informed by the lower administrative staff and therefore no reasons are conveyed.*

Category-G *The punishment order and appellate order are passed by the administrative officer/subordinate officer by stating that they have been passed with the approval of the punishing/appellate authority. Appellate authority has passed a non-speaking order, hence, no reason assigned at all.*

Category-H *Order on the Representation/Legal notices decided by lower administrative staff stated to be with the approval of the competent authority but no order of competent authority supplied.*

Category-I *One person who is Lower administrative authority*

passes both the punishment/appellate order stating that the decision has been taken by the appellate/punishing authority. ***Category-J*** *Regular employee is terminated only on the basis of show-cause notice without holding any regular enquiry or adhering to service rules."*

C. ADDITIONAL ISSUES

9. On 28.10.2024, three additional issues were also streamlined for consideration as follows:-

1. Many times the orders which are passed by the Administrative Authorities or the quasi-judicial authorities pertaining to the employees affecting the rights of the employees are communicated and passed by some subordinate authorities which are not the competent authorities by stating that the decision has been taken with the approval of the competent authority but the actual orders passed by the competent authority, if any, are never communicated to the employees with the result that they are not even able to make effective grounds of appeal and they do not come to know the reasons or the orders passed pertaining to them. Whether a subordinate officer, apart from merely forwarding the order passed by the competent authority, substitute his own order with the order issued by competent authority and in case the same has been done then what is the effect of the same.

2. The respondents-power utilities and many other public sector undertakings do not have robust legal assistance system in their organizations. Replies which have been filed are neither properly worded nor there is due application of mind. In order to reduce the litigation arising from the aforementioned reasons, it is necessary that each and every organization should have robust legal department to advise the competent authorities before passing the orders, if required.

3. There exists a "let the Court decide syndrome" amongst

Public Sector Undertakings, Boards and Corporations wherein the executive authorities abdicate their responsibilities and duties by preferring to pass adverse orders against the employees so as to evade their own responsibilities and leave it for the Courts to decide which has also led to increase in litigation. This is a big syndrome which is prevailing and needs to be rectified with the assistance of the learned counsels.

10. On 11.11.2024, learned Additional Solicitor General of India submitted that Lal Bahadur Shastri National Academy of Administration, Mussoorie, Uttarakhand is having faculty for the subject of Administrative Law and they are open to further improvements. On 14.11.2024, this Court interacted with the faculty members of Lal Bahadur Shastri National Academy of Administration, Mussoorie, Uttarakhand through video conferencing who assured that various improvements in the teaching system will be carried out and report will be submitted in this regard. On 18.11.2024, learned Senior Counsel for the power utilities produced a letter issued by Additional Chief Secretary to Government of Haryana dated 14.11.2024, which was taken on record as Mark-'X' by stating that some corrective measures have been taken, which are as follows:-

i. That the concerned official/officer must be given opportunity of personal hearing in a fair and transparent manner.

ii. That thereafter the case may be examined thoroughly on the basis of material on record.

iii. That every authority will pass a detailed well-reasoned speaking order referring to rules/procedents/settled law.

iv. That every page of that order must be signed by the authority passing the order.

v. That the final order passed by the competent authority

can be conveyed by a subordinate authority by way of endorsement.

vi. A template of order to be passed is enclosed for ready reference.

11. Thereafter, on 28.11.2024, action taken report was filed by learned counsel for the Union of India.

12. Before proceeding with the facts of individual cases in the present bunch of writ petitions, wherein various instances of breach of principles of natural justice and actions of arbitrariness have been alleged to have taken place, it will be necessary to throw light on the background of the aforesaid principles of natural justice, its evolution, adoption and implementation in India.

D. EVOLUTION OF PRINCIPLES OF NATURAL JUSTICE

I. INTERNATIONAL PERSPECTIVE

13. In America, “Due Process of Law” principle is followed especially after fifth and fourteenth Amendments to the Constitution. However, in England the English system was based upon the concept of “Natural Justice”. The aforesaid expression “Natural Justice” clearly suggests to be a general natural law concept but it also denotes specific procedural rights in the English system. In England there is no written Constitution. However, the principles of natural justice which emanated from the aforesaid concept of natural justice were duly recognised. The twin principles so recognised were *Audi Alteram Partem and Nemo Debet Esse Judex Propria Casua and Nemo Judex In Causa Sua.* Although in the modern nation of natural justice, the expression 'Natural Justice' has now got no connection with the concept of natural law because the expression

'Natural Justice' was pressed into service during the Seventeenth and Eighteenth Century in England since it was used as a synonym for "Natural Law". At that time, it was thought that the law of nature was a specific source of positive law which was to be applied by the Courts and therefore, the Courts often relied on the natural law to justify decisions where there was no statutory provision or any guiding precedent. Therefore, natural law was a part of the basic procedural rights which was preserved through commands of the Courts. One of the basic procedural rights was thought to be that of right of an unbiased Tribunal and therefore, in ***Thomas Bonham Versus College of Physicians***[1]**,** the principle that no man may be judge of his own cause is expressed as a tenet of 'common right and reason' which controls even a contrary act of Parliament. This principle was further recognized in ***City of London Versus Wood***[2], and also in ***Day Versus Savadge***[3]. The principle of doctrine against bias was thought to be so fundamental as to be the law of God and of nature in England. The other principle of natural justice i.e. *Audi Alteram Partem* also originated from the concept of natural law and was also recognized in ***R.Versus Chancellor of Cambridge (Dr. Bentley's case)***[4]**,** and it was thought that the laws of God and man both give a party an opportunity to make his defense, if he has any. The rule against bias was also elaborately discussed in a leading case in ***Dimes Versus Grand Junction Canal***[5]**,** decided by the House of Lords in 1852 wherein a suit was filed by a Corporation of which the Lord Chancellor was a substantial stockholder whereby the Lord Chancellor had affirmed the

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[1] 8 Co. Rep. 113b at 118a.
[2] 12 Mod. 669, 88 Eng. Rep. 1592 (K.B. 1701).
[3] Hob. 85, 80 Eng. Rep.235 (C.P.1614).
[4] 1 Str. 557, 93 Eng. Rep. 698 (K.B. 1723)
[5] 3 H.L.C. 759, 10 Eng. Rep. 301 (H.L. 1852).

granting of relief to the Corporation but the action was subsequently reversed because of his interest in the subject matter.

II. INDIAN PERSPECTIVE: DEVELOPMENT THROUGH JUDICIAL PRECEDENTS IN INDIA

14. In India, the principles of natural justice have gained much significance in the field of administrative law. Hon'ble Supreme Court of India rather categorized them as valuable, foundational and fundamental concepts which are part of legal and judicial procedures. Therefore, procedural fairness has been regarded as an integral part of administrative process. In this way, Indian Legal System saw evolution in adaptation of the principles of natural justice through judicial precedents.

15. In the case of ***State of Orissa Versus Dr. Binapani Dei***[6]***,*** , the date of birth of the petitioner was re-fixed and she was thereafter superannuated. A preliminary enquiry was conducted but the same was never disclosed to her. Hon'ble Supreme Court held that such enquiry and decision were contrary to the basic concept of justice and cannot have any value. It was further observed that although it is true that the order was administrative in character but even an administrative order which involves civil consequences must be made consistently with the rules of natural justice after informing the first respondent of the case, the evidence in support thereof and after giving an opportunity to her of being heard and meeting or explaining the evidence.

16. In ***A.K. Kraipak and others Versus Union of India and others***[7]***,*** a Larger Bench of Hon'ble Supreme Court laid down a law by observing that the dividing line between an administrative power and a

[6] AIR 1967 SC 1269

[7] 1969(2) SCC 262

quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look into the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. It was further observed that under our Constitution, the rule of law prevails over the entire field of administration and every organ of the State under our Constitution is regulated and controlled by the rule of law. It was further observed that in a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate and the concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner.

17. It was further observed that the aim of the principles of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These principles can operate only in areas not covered by any law validly made and they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in the recent years. In the past it was thought that it included just two rules namely,

(i) No one shall be a judge in his own case (*Nemo Debet Esse Judex Propria Casua*).

(ii) No decision shall be given against a party without affording him a reasonable opportunity of hearing (*Audi Alteram Partem).*

Thereafter a third rule was envisaged that is quasi-judicial enquiries must be

held in good faith, without bias, not arbitrarily or unreasonably. In the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.

18. In ***Maneka Gandhi Versus Union of India***[8]**,** a Constitution Bench of Hon'ble Supreme Court considered the scope of Article 14 of the Constitution of India and held that there can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our Democratic Republic and therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. It was held that where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well

[8] 1978(1) SCC 248

as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the best of reasonableness in order to be in conformity with Article 14. It must be "'right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

19. The Constitution Bench also dealt with the increasing importance of natural justice in the field of administrative law. It was observed that natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. It further observed that now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative enquiry as well as quasi-judicial enquiry is to arrive at a just decision and if a principle of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both. On what principle can distinction be made between one and the other is the requirement of 'fair play in action'. Sometimes an unjust decision in an administrative enquiry may have far more serious consequences than a decision in a quasi-judicial enquiry and hence the principles of natural justice must apply equally in an administrative enquiry which entails-civil consequences. Hon'ble Court also

referred to decisions in ***Ridge v. Baldwin[9], State of Orissa Versus Dr. Binapani Dei and others's (Supra)*** and ***A.K. Kraipak' case (Supra)*** and it observed that the net effect of these decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of, natural justice would be attracted. It was further observed that the decisions of the English Courts as followed in India were not the end of the development of law on this subject. The proliferation of administrative law provoked considerable fresh thinking on the subject and soon it came to be recognised that 'fair play in action' required that in administrative proceeding also, the doctrine of natural justice must be held to be applicable.

20. In ***Suman Gupta Versus State of J & K[10],*** Hon'ble Supreme Court observed that it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason. Relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. Reference was also made to the judgment of Hon'ble Supreme Court in ***Maneka Gandhi's case (Supra)*** wherein it was laid down in clear terms that Article 14 of the Constitution of India is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It was observed that it must be remembered that our entire

[9] 1964 AC 40

[10] 1983 (4) SCC 39

constitutional system is founded in the Rule of Law and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.

21. In ***Dev Dutt Versus Union of India***[11]***,*** Hon'ble Supreme Court observed that originally there were said to be only two principles of natural justice. Natural justice has an expanding content and is not stagnant. It is open to the Court to develop new principles of natural justice in appropriate cases. In the aforesaid case, Hon'ble Supreme Court developed principle of natural justice by holding that fairness and transparency in public administration requires that all entries in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation and observed that Article 14 of the Constitution of India will override all rules or government orders. Reference was also made to ***Canara Bank Versus V.K. Awasthy***[12] whereby it was held that Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values.

22. In ***M/s R.B. Shreeram Durga Prasad and Fatehchand Nursing Das Versus Settlement Commission (IT and WT) and another***[13]***,*** Hon'ble Supreme Court observed that an order which was passed in violation of the principles of natural justice was a nullity.

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[11] 2008(8) SCC 725
[12] 2005 (6) SCC 321
[13] 1989(1) SCC 628

23. In ***S.N. Mukherjee Versus Union of India***[14], a Larger Bench of Hon'ble Supreme Court referred to an earlier Constitution Bench in ***Bhagat Raja Versus Union of India***[15]**,** wherein while dismissing the revision petition , the same was done by use of a single word "rejected" or "dismissed" which was found to be an unsatisfactory method of dealing with the appeal. It was held by concluding that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

24. In ***M/s Kranti Associates Pvt. Ltd. And another Versus Masood Ahmed Khan and others***[16], Hon'ble Supreme Court discussed the importance of passing of a speaking order backed by reasons and held as under:-

> *"47. .....a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *b. A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*

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[14] 1990(4) SCC 594
[15] 1967(3) SCR 302
[16] 2010(8) SCC 496

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and

was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

25. In ***Union of India and others Versus Sanjay Jethi and another***[17]**,** Hon'ble Supreme Court observed that the principle that can be culled out from a number of authorities fundamentally is that the question of bias would arise depending on the facts and circumstances of the case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination. While dealing with the plea of bias advanced by the delinquent officer or an accused a Court or Tribunal is required to adopt a rational approach keeping in view the basic concept of legitimacy of interdiction in such matters, for the challenge of bias, when sustained, makes the whole proceeding or order a “nullity”, the same being “coram non-judice”.

26. In ***Amar Nath Chowdhury Versus Braithwaite and Co. Ltd. And others***[18]**,** Hon'ble Supreme Court was dealing with a case where the Chairman-cum-Managing Director of the Company acted as a disciplinary authority as well as appellate authority when he presided over and participated in the deliberations of the meeting of the Board while deciding

[17] 2013(16) SCC 116
[18] 2002(2) SCC 290

the appeal. It was observed that such a dual function is not permissible on account of established rule against bias. In a situation where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias. Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility.

27. In ***Union of India and another versus Tulsi Ram Patel and others***[19]**,** Hon'ble Supreme Court observed that the principles of natural justice are part of the Right to Equality under Article 14 of the Constitution of India, as violations lead to arbitrariness and discrimination as prohibited by Article 14 of the Constitution of India. While Article 14 of the Constitution of India invalidates unfair state actions or laws, natural justice also applies to any tribunal or authority deciding matters, ensuring fair and impartial decisions even if they are not classified as "State" under Article 12**.** Para No.95 of the aforesaid judgment is reproduced as under:-

> *"95. The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State Action, it is a violation of Article 14 : therefore, a violation of a principle of*

[19] 1985(3) SCC 398

> *natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially*."

28. In ***Hari Singh Versus State of Punjab and another***[20]**,** a Division Bench of this Court observed that the delinquent was informed with regard to the rejection order of appeal but he was not supplied with the order. It was observed that the aforesaid does not satisfy the requirement of a speaking order. It was further observed that recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flow from the concept of rule of law which constitutes one of the corner stones of our Constitutional set up. The administrative authorities charged with the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law.

III. DOCTRINE OF BIAS

29. The rule against bias has also originated from common law. There are different types of bias which includes pecuniary bias, personal bias, departmental or official bias, policy bias and judicial obstinacy. It is

[20] 2004(2) SCT 413

well accepted in every legal system that no law is absolute and is always subject to exceptions. Similarly, rule against bias is also not absolute in nature but has its roots emanating from an elementary principle of procedural law. Some of the exceptions can be carved out in case of extreme and unavoidable circumstances like applicability of the doctrine of necessity.

30. This doctrine of bias is also based upon following three principles:-

(i) No man shall be a judge in his own cause;

(ii) Justice should not only be done but manifestly and undoubtedly be seen to be done;

(iii) Judges, like Caesar's wife should be above suspicion.

31. The first principle is based upon conscious bias and the remaining two are based upon perceived bias which are also sometimes referred to as objective or presumed bias.

E. ARGUMENTS ADVANCED BY LEARNED COUNSELS ON THE ISSUES OF LAW

32. On the issues of law based upon categorization of the present writ petitions as so made vide order dated 15.10.2024 as reproduced above, it was submitted by Mr. Rajiv Atma Ram, learned Senior Advocate with Mr. Arjun Pratap Atma Ram, Advocate that when any administrative officer or subordinate officer to the punishment authority or the appellate authority passes any order by stating that it has been passed with the approval of the punishing/appellate authority, the same is impermissible under the law. He submitted that whenever any administrative or a quasi-judicial order is to be passed by any authority with the power under the law, then it is the same

authority who has to pass the order and it cannot be delegated to any subordinate authority. The practice which has been followed for a long period of time wherein the subordinate or administrative officers pass the orders by stating that the same has been passed with the approval of the competent authority/appellate authority is without jurisdiction and not permissible because the authority with whom the power vests is required to pass an order itself and not the subordinate authority. He submitted that in case a subordinate or an administrative authority passes an order by stating that it is with the approval of the higher/competent authority, then the same amounts to abdication of power by the competent/appellate authority which is also not permissible under law. Delegation of power can only be done when there is a statutory provision for delegation and in the absence of the same no such delegation is permissible under the law. He referred to a judgment of Hon'ble Supreme Court in ***Commissioner of Police, Bombay versus Gordhandas Bhanji***[21]**,** and submitted that it was held in that case that the public orders made by authorities are meant to have public effect and must be constructed objectively with reference to the language used in the order itself and it is the duty of the public authorities to pass an order in express and direct terms. He also referred to a judgment of Hon'ble Supreme Court in ***Baldev Raj Chadha Versus Union of India***[22]**,** and submitted that it was held in that case that the order of retirement must be passed only by the 'appropriate authority' and the authority must form the requisite opinion not subjective satisfaction but objective and bona fide and based on relevant material. He also referred to another judgment of

[21] 1952 AIR SC 16

[22] 1981 AIR SC 70

Hon'ble Supreme Court in ***Amar Nath Chowdhury's case (Supra)*** and a judgment of a Division Bench of this Court in ***Hari Singh's case (Supra)*** to support his contentions. He further submitted that when the appellate authority passes a non-speaking order and no reason has been assigned at all to support the same, such an order passed is impermissible under the law and also referred to a judgment *in* ***Ridge v. Baldwin (Supra).***

33. On the issue of permissibility of terminating a regular employee without holding any regular inquiry or adhering to the service rules, he submitted that it is a settled law that a regular employee cannot be terminated only on the basis of a show-cause notice without holding any regular inquiry because he holds a civil post and non-holding of a regular enquiry or adhering to the service rules will amount to violation of the principles of natural justice.

34. Learned Senior Counsel further submitted that the reasons are the soul of an order and an unreasoned order will amount to an order being passed in an arbitrary manner because it amounts to non-application of mind. He further submitted that the notings in the office files are only for the purpose of helping and supplementing the competent authority or the appellate authority to pass an order but notings itself cannot constitute an order which an authority is required to pass. He further submitted that when a subordinate authority passes an order by stating that it is with the approval of the competent/appellate authority, then it is in violation of the statutory provisions which provide and vest a power in a particular authority to pass an order but not to any subordinate officer. Since it goes to the root of the matter it is not only violative of the principles of natural justice but it

is also violative of the rules which govern the parties and therefore, an order which is passed by a subordinate officer stating that it is with the approval of the higher authority who is otherwise a competent officer, is without jurisdiction and should be considered as a nullity in law. Various other arguments were advanced by all the learned counsels for the parties which were on the same lines as that of the aforesaid submissions being made by learned counsels for the parties.

35. Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Power Utilities also advanced arguments on broader principles of law as so categorized aforesaid.

36. On the aforesaid issue of lack of jurisdiction of a subordinate officer who passes an order, he submitted that although there has been a long-standing practice in the Power Utilities of the State of Haryana to get orders passed by a subordinate officer with the approval of the higher authority/competent authority/appellate authority but now for the last few months this practice has stopped. He also referred to a circular dated 14.11.2024 which was issued by the Additional Chief Secretary to Government of Haryana contents of which have already been reproduced above whereby now corrective and remedial measures have been taken. He also submitted that even an office order has been issued by Managing Director of UHBVN dated 20.08.2024 wherein it has been observed that henceforth speaking orders passed under the Punishment Appeal Regulations as well as in related quasi-judicial/Court will be issued under the signature of the authority passing the same and it was also clarified that endorsements of the said order can be issued under the signature of the subordinate

authority. He submitted that in this way most of the issues which are involved in the present case stand resolved because henceforth the aforesaid practice which was being followed for a long period of time has now been discontinued. He further submitted that so far as the noting in the official file whereby an appellate authority writes one line order either accepting or rejecting the appeal is concerned, the same would be in accordance with law and would not amount to violation of the principles of natural justice or any other law. He submitted that it cannot be said that one line order in the noting amounts to non-application of mind because previous notings noted down by the subordinate officers at different levels are kept in mind and even if no reason is accorded by the appellate authority by rejecting the appeal by simply stating that it is rejected, then the same is always based upon detailed reasons which are considered for the purpose of arriving at a conclusion on the basis of the previous notings of the subordinate officers at different levels and therefore, it cannot be said there is any infirmity in the same. He further submitted that in other words even if no reasons have been accorded by the appellate authority in the office file, then the same does not amount to an arbitrary action. He also submitted that when a draft order is made by a subordinate officer and is approved by the competent authority or an appellate authority on file, then the same is sufficient because the authority applies its mind on the draft order and thereafter signs the order and therefore, it cannot be said to be a result of non-application of mind.

37. He further submitted that so far as the practice of conveying the orders by the subordinate officer to the delinquent employees by stating that the request or appeal etc. has been rejected by the competent authority and

not the main order passed by the competent authority is concerned, the same is only a communication of the order passed by the competent authority and therefore, the same cannot be said to be impermissible under the law and the same can always be communicated by a subordinate officer.

38. He further submitted that so far as the termination of a regular employee without holding an enquiry is concerned, the same is done when there is a specific condition imposed in the appointment letter which if violated, then by virtue of the aforesaid condition in the appointment letter, there is no need of holding any regular enquiry and simply on the basis of show-cause notice the services of a regular employee can always be terminated by pressing into service the aforesaid condition which has been violated. He submitted that in case a regular inquiry is held in such like cases then it will amount to undergoing voluminous work and that is the reason as to why a condition is incorporated in the appointment letter that in case the same is violated, then there is no need of holding a regular enquiry. He also referred to a judgment of Hon'ble Supreme Court in ***Regional Manager, Central Bank of India Versus Madhulika Guruprasad Dahir and others***[23]**,** and contended that when an employee is appointed to a post on the basis of wrong information or forged certificates, then services can always be terminated by invoking the clause in the appointment letter.

39. He also submitted that two separate affidavits have been filed pertaining to the status of various cases whereby during the pendency of the petition various actions have been taken according to the subject matter of the case by the respondents themselves.

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[23] 2008(13) SCC 170

F. ANALYSIS

I. CATEGORY-WISE

40. The issues raised while considering the present bunch of writ petitions, have although been dealt with individually depending upon the facts and circumstances of each and every case but the basic issues involved in the present bunch of petitions pertain to the method and procedure adopted by the quasi-judicial and administrative authorities in their decision-making process. The authorities seem to have departed from the basic law relating to service jurisprudence. In some of the cases the authorities which passed the orders were not even competent to pass the same but in order to circumvent by way of over stepping, a note was incorporated that the order is passed with the approval of the competent authority. In this way many orders were passed by authorities without jurisdiction. When the record of the cases was co-related with the facts and circumstances of each and every case, it was found that mostly the said approvals are in the nature of "Notings" on the record file and without passing any proper order what to talk of a speaking order. In some cases, the competent authority in the form of a noting passed orders with one stroke of a pen in just a line or a word on the basis of which detailed orders were passed by lower authorities by stating that it is with the approval of the competent authority. Similarly, in many cases there has been semblance of punishing authority and the appellate authority. Surprisingly in some cases the subordinate officer who passed the order by stating that it is with the approval of the competent authority is the same person who thereafter passed the appellate order and also the revisional order. The method adopted by the administrative authorities is *ex facie* hit by both the principles of

natural justice namely, *Nemo judex in Causa Sua* and *Audi Alteram Partem* besides being arbitrary and therefore violative of Article 14 of the Constitution of India. Many other similar instances also surfaced while perusing the record wherein even the appellate authorities have passed resolutions in a 'copy-paste' manner by simply changing description of order passed in some other case.

41. During hearing of these petitions, learned Senior Counsel for the respondent-Nigam apprised this Court that this kind of method adopted by the administrative authorities is prevalent and has been in practice for large number of years and at the same time also stated that corrective and remedial measures are now being taken and various instructions have also been issued in this regard so that such lapses do not occur in future. However, learned Senior Counsel on the issue of non-passing of detailed order by the competent authority/appellate authority was of the view that even though the orders passed are not detailed and are part of the notings on the noting file but the orders are to be read alongwith the notings, deliberations and discussions which have taken place earlier and even if a noting has been put up by a subordinate officer, the same is always considered and only thereafter an order is passed, even if it is a short order.

42. The law with regard to the decision-making process which has been noticed in these cases is well established**.** The doctrine of bias is based upon the principle that justice should not only be done but manifestly and undoubtedly be seen to be done and that the Judges, like Caesar's wife should be above suspicion. It is now a settled law that when even an administrative order involving civil consequences is to be passed, it must be

consistent with the principles of natural justice and should be a well-reasoned order. The procedure adopted should be just, fair and reasonable so as to be in conformity with Article 14 of the Constitution of India.

43. A Larger Bench of Hon'ble Supreme Court in ***A.K. Kraipak's case (Supra)*** laid down the law that a dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated and the aim of the principles of natural justice is to secure justice and also to prevent miscarriage of justice.

44. A Constitution Bench of Hon'ble Supreme Court in ***Maneka Gandhi's case (Supra)*** dealt in detail with the increasing scope of principles of natural justice in the field of administrative law by observing that it is a great humanising principle. Procedure adopted has to be just, fair and reasonable.

45. In ***Suman Gupta's case (Supra),*** Hon'ble Supreme Court observed that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason.

46. In ***Dev Dutt's case (Supra)***, Hon'ble Supreme Court also observed that natural justice has an expanding content and is not stagnant. It is open to the Court to develop new principles of natural justice in appropriate cases.

47. In ***M/s R.B. Shreeram Durga Prasad and Fatehchand Nursing Das's case (Supra),*** Hon'ble Supreme Court observed that an order passed in violation of the principles of natural justice is a nullity.

48. In ***S.N. Mukherjee Versus Union of India***, ***1990 (supra),*** a

Larger Bench of Hon'ble Supreme Court referred to an earlier Constitution Bench in ***Bhagat Raja Versus Union of India (supra),*** wherein while dismissing the revision petition , the same was done by use of a single word "rejected" or "dismissed" which was found to be an unsatisfactory method of dealing with the appeal.

49. In ***M/s Kranti Associates Pvt. Ltd. And another's case (Supra),*** Hon'ble Supreme Court discussed in detail the importance of reasons and passing of a speaking order.

50. In ***Union of India and others Versus Sanjay Jethi and another's (Supra)***, Hon'ble Supreme Court observed that in case a plea of bias is established and sustained then it makes the whole proceeding a nullity being *coram non-judice*.

51. In ***Tulsi Ram Patel's case (Supra)***, Hon'ble Supreme Court observed that the principles of natural justice are a part of Right to Equality under Article 14 since its violation leads to arbitrariness and discrimination.

52. On the basis of the aforesaid settled law and on the basis of the record produced by the learned Senior Counsel for the respondent-Nigam in the facts and circumstances of each and every case, all the individual writ petitions have been considered and dealt with in detail in the later part of this judgment.

53. In most of the cases, learned Senior Counsel for the respondent-Nigam has relied upon the notings on the noting file of the concerned department while advancing an argument that if a final note has been given by the competent authority, even if it is not a speaking or a detailed order, the same has to be read in conjunction with the earlier deliberations made

by the other authorities so as to arrive at a final conclusion and therefore, it cannot be said to be perverse or arbitrary.

54. Law regarding sanctity and enforceability of a noting is also well settled. In **Union of India and another Versus Ashok Kumar Aggarwal**[24]**,** Hon'ble Supreme Court observed that the notings in the files could not be relied upon by the Tribunal and the Court. Reference was made to an earlier judgment of Hon'ble Supreme Court in **Shanti Sports Club Versus Union of India**[25]**,** wherein it was held that a noting recorded in the file is merely a noting simpliciter and nothing more and it merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The nothing in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). Hon'ble Supreme Court also referred to another judgment in **Sethi Auto Service Station Versus DDA**[26]**,** wherein it was held that a nothing by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. The internal nothings are not meant for

[24] 2013(16) SCC 147
[25] 2009(15) SCC 705
[26] 2009(1) SCC 180

outside exposure and nothings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

55. Although the aforesaid judgment pertains to the notings which were sought to be enforced but no order was passed by the designated authority who was either the Governor or the President but the principle of law with regard to the sanctity and enforceability of notings on the file is the same and is equally applicable to the service jurisprudence wherein action is required to be taken against a delinquent employee. Therefore, the argument which was raised by learned Senior Counsel for the respondent-Nigam is not sustainable.

Category-wise issues are answered as under:

CATEGORY-A Where the punishment order and appellate order are passed by the administrative officer/subordinate officer by stating that they have been passed with the approval of the punishing/appellate authority.

56. It is impermissible for any authority to pass any order whereby that authority is not competent to pass such order under the respective Service Rules or any authority of law. If an order is passed by any administrative officer /subordinate officer by stating that the order has been passed with the approval of the punishing /appellate authority, the same is impermissible, a nullity and *coram non-judice* being without the authority of law. In other words, any quasi-judicial or administrative order which is required to be passed can only be passed by the competent authority under the law and not by any subordinate authority by simply stating that the

competent authority has approved the same.

CATEGORY-B Where the punishment order and appellate order are passed by the administrative officer/subordinate officer by stating that they have been passed with the approval of the punishing/appellate authority wherein authority/subordinate authority who passed the punishment /appellate order is the same.

57. In some cases, punishment and appellate authority orders are passed by an administrative officer/subordinate officer by stating that it is passed with the approval of the punishing/appellate authority and the aforesaid administrative officer/subordinate officer is the same in both the orders i.e. the punishment order and the appellate order. Such kind of orders are impermissible under the law and a nullity, apart from being hit by the doctrine of bias because one officer being an administrative officer passes an order on behalf of both punishing authority and appellate authority.

CATEGORY-C Where punishment order is passed by Under Secretary with the approval of the punishing authority and the appellate order is passed by the punishing authority with the approval of the appellate authority.

58. In those cases where punishment order is passed by the Under Secretary by stating that it is with the approval of the punishing authority and thereafter the aforesaid punishing authority passes an order on behalf of the appellate authority by stating that it is with the approval of the appellate authority, the same is impermissible and is a nullity in law.

CATEGORY-D Where punishment order is passed by the Under Secretary with the approval of the punishing authority i.e. Chief Engineer and the appellate order is passed by Chief Engineer.

59. When an officer subordinate to the punishing authority passes an order with the approval of the punishing authority and thereafter the appellate order is passed by the same punishing authority, the same is impermissible and is a nullity.

CATEGORY-E Where punishment order is passed by the Under Secretary with the approval of the punishing authority i.e. Chief Engineer and the appellate order is passed by Chief Engineer. Apart from the above there is no order passed by the appellate authority except for mentioning that the same is being rejected.

60. This category overlaps with category-A and D with an extension that when the appellate authority does not pass any order except for mentioning in noting that the appeal is being rejected. Simple rejection of appeal by use of one word or a line without backed by reasons is impermissible under the law and is violative of the principles of natural justice and is also violative of Article 14 of the Constitution of India being arbitrary.

CATEGORY-F Where orders of the competent/appellate authority are not communicated to the petitioner/employee but only informed by the lower administrative staff and therefore no reasons are conveyed.

61. When an administrative staff of a department communicates to a delinquent employee regarding approval or non-approval of his grievance /appeal then the same is not permissible under the law unless the actual order which has been passed by the competent/punishing/appellate authority is communicated to the employee. In other words when the competent /punishing/appellate authority passes an order, the same has to be

communicated to the concerned employee which can be done by way of attaching the order alongwith the forwarding letter. In this way an employee will be able to know the reasons behind the orders passed. Conveying of such orders must be done within reasonable time. In case the actual order is not conveyed to the employee, the same will be deemed to have not been communicated.

CATEGORY-G Where the punishment order and appellate order are passed by the administrative officer/subordinate officer by stating that they have been passed with the approval of the punishing/appellate authority. Appellate authority has passed a non-speaking order, hence, no reason assigned at all.

62. In some cases, the administrative officer/subordinate officer conveys to the employee that the orders have been passed with the approval of the punishing/appellate authority but the orders of the competent /punishing/appellate authority are non-speaking orders passed without assigning any reason and therefore, the same is also not permissible under the law.

CATEGORY-H Where order on the Representation/Legal notices decided by lower administrative staff stated to be with the approval of the competent authority but no order of competent authority supplied.

63. When representation/legal notices/demand justice notices are served upon the competent authorities and in case the lower administrative staff conveys to the employee that his representation/legal notice has been rejected and the aforesaid letter by which the same is conveyed states that it is with the approval of the competent authority but in fact there is no order of the competent authority supplied to the employee, then the same is

impermissible under the law and such a communication by which the administrative staff conveys to the employee without supplying the actual order is impermissible and therefore deemed to be not communicated.

CATEGORY-I Where one person who is Lower administrative authority passes both the punishment and appellate order stating that the decision has been taken by the appellate/punishing authority.

64. When a lower administrative authority passes both the punishment and appellate order by stating that the decision has been taken by the punishing/appellate authority, then it is clearly impermissible and violative of doctrine of bias.

II. ADDITIONAL ISSUES

65. Three additional issues were framed by this Court vide order dated 28.10.2024. The first issue has already been dealt with in the aforesaid categories. The remaining two issues are answered as follows:-

> ***Issue No.2.*** *The respondents-power utilities and many other public sector undertakings do not have robust legal assistance system in their organizations. Replies which have been filed are neither properly worded nor there is due application of mind. In order to reduce the litigation arising from the aforementioned reasons, it is necessary that each and every organization should have robust legal department to advise the competent authorities before passing the orders, if required.*

66. It has been noticed that the respondent-Power Utilities and many other Public Sector Undertakings do not have any robust legal support system in their respective organizations. Replies are filed in a routine mechanical manner without due application of mind and sometimes the

same are not even properly worded and the same not only wastes the time of the Court but also affects the rights of the petitioners who being aggrieved by the action of the State Agencies have preferred to knock the doors of the Court. Sometimes replies are filed in a mechanical manner especially by taking routine preliminary objections with a result that even in those cases where the relief claimed is either covered by various judicial precedents like in pensionary matters etc. or can be addressed by the administrative departments themselves, gets perpetuated once replies are filed without application of mind. Therefore, in order to reduce the litigation arising out of the aforesaid reasons it is imperative that each and every organization should have a robust legal department to advice the competent authorities before filing replies particularly on the position of law.

> ***Issue No.3.*** *There exists a "let the Court decide" syndrome amongst Public Sector Undertakings, Boards and Corporations wherein the executive authorities abdicate their responsibilities and duties by preferring to pass adverse orders against the employees so as to evade their own responsibilities and leave it for the Courts to decide which has also led to increase in litigation. This is a big syndrome which is prevailing and needs to be rectified with the assistance of the learned counsels.*

67. "Let the Court decide syndrome" has cropped up amongst the Public Sector Undertakings, Boards and Corporations. The administrative authorities abdicate their responsibilities and duties and prefer to pass adverse orders against the employees in order to evade their responsibility and leave it for the Courts to decide. This syndrome has led to increase in

avoidable litigation. It is high time that the Public Sector Undertakings, Boards and Corporations etc. and all administrative authorities of the State realize that abdication of their responsibilities not only has adverse effects on their own employees but it also leads to increase in litigation. The maxim "*interest republicae ut sit finis litium"* which means that it is in the interest of the State to reduce litigation and not to perpetuate it should aptly be applied. These Public Sector Undertakings etc. are instrumentalities of the State and therefore, it is their duty to redress the grievances of their employees in accordance with law and not to become a cause for increasing litigation. The inbuilt robust legal support system in their organizations can be one of the methods for achieving the aforesaid objectives. Additionally, education, training and accountability can also curb this menace considerably.

III. INDIVIDUAL CASE-WISE EVALUATION

This court would now proceed to decide the individual writ petitions after considering the facts of each case in the light of law laid down in the above-said judgments and the above-mentioned principles/conclusions.

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68. The present writ petition has been filed seeking issuance of a writ in the nature of certiorari for quashing the impugned order dated 08.05.2019 (Annexure P-10) and order dated 16.12.2019 (Annexure P-11).

69. The petitioner in the present case was working as an Assistant Foreman and he retired on 31.03.2019 on attaining the age of superannuation. Before retirement of the petitioner an Enquiry Officer was appointed to enquire into various allegations levelled against him pertaining

to various irregularities being committed by him with the result that the respondent-Nigam suffered a loss of Rs. 2,00,000/-. Vide Annexure P-3, the Enquiry Officer exonerated the petitioner from all the charges. Thereafter, the Superintending Engineer being the competent authority of the petitioner passed an order dated 18.04.2019, as per record produced in the Court vide which he stated that the Enquiry Officer has wrongly exonerated the petitioner as he has committed serious irregularities causing loss to the exchequer and therefore, a penalty of 20% cut in the pension was imposed upon him after his retirement for a period of two years. Thereafter the aforesaid penalty of 20% cut in the pension was reduced to 1 year. Admittedly, there was no dissent note or any disagreement note by the competent authority. The competent authority proceeded straightaway without issuing any notice or recording any dissent note and rather only issued a show-cause notice to the petitioner. Thereafter, vide impugned order (Annexure P-10), a punishment order was passed for cut of 20% of pension for one year. The impugned order (Annexure P-10) has been signed by the Superintendent and not by the Superintending Engineer but on the file which has been shown to the Court, the Superintending Engineer has taken a decision with regard to 20% cut in pension. Thereafter on appeal being filed by the petitioner, the same was dismissed vide Annexure P-11 by the Administrative Officer on behalf of the Chief Engineer by stating that it is with the approval of the Chief Engineer.

70. The punishing authority in the present case i.e., Superintending Engineer was one Mr. A.K. Raheja who was later on promoted to the post of Chief Engineer and when the appeal was filed, it was heard by the same

officer i.e. Mr. A.K. Raheja as an appellate authority and appeal was dismissed by him.

71. Learned Senior Counsel appearing on behalf of the respondent-Nigam submitted while referring to the affidavit dated 26.10.2024, that the appellate order may be set aside since it was passed by the same authority and may be remanded back to the concerned appellate authority at that stage so that fresh decision may be taken. He further submitted that although the impugned order (Annexure P-10) is signed by the Superintendent but on the file, it can be seen that the order in fact has been passed by the punishing authority i.e. Superintending Engineer and therefore, it cannot be said that the impugned order (Annexure P-10) was an erroneous order.

72. So far as the appellate order (Annexure P-11) is concerned, the same has been passed by the Administrative Officer by stating that it was passed with the approval of the Chief Engineer. The Chief Engineer was the same person i.e. Mr. A.K. Raheja who was earlier the punishing authority while working as Superintending Engineer. The punishment order (Annexure P-10) is also passed by the Superintendent by stating that it was with the approval of the Superintending Engineer who has only so ordered on the file that penalty of one year be imposed upon him.

73. There is an additional issue involved in the present case wherein admittedly after the exoneration of the petitioner by the Enquiry Officer, the punishing authority who was the Superintending Engineer neither issued any disagreement note/dissent note nor did he record any reason for disagreement and therefore on this ground also, it was violative of the law laid down by Hon'ble Supreme Court in ***Punjab National Bank Versus Kunj***

Bihari Misra[27]**.**

74. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned orders dated 08.05.2019 (Annexure P-1) and dated 16.12.2019 (Annexure P-11) are hereby set aside. The case is remanded back to the punishing authority from the stage when report of the Enquiry Officer was received by him. Further process be carried out within a period of three months from the date of receipt of the certified copy of this order and strictly in accordance with law.

75. Since in the affidavit filed by the respondent-Nigam it has been so conceded that the appellate order was passed by the same authority and the petitioner has already retired from service w.e.f. 31.03.2019, he is also entitled for costs of Rs. 20,000/- which shall be paid by the respondent-Nigam within a period of three months from the date of receipt of the certified copy of this order.

CWP-16465-2021

76. The present petition has been filed for quashing of letter dated 25.01.2021(Annexure P-10) vide which an order of recovery amounting to Rs. 63,337/- and Rs.18,549/- has been passed from the pensionary benefits of the petitioner after issuance of memorandum dated 28.10.2020 (Annexure P-5). Further prayer has been made for the release of the remaining pensionary benefits alongwith interest.

77. It was the case of the petitioner that Annexure P-10 has been passed by the Administrative Officer by stating that it is with the approval of the Chief Engineer who was the competent authority/punishing authority.

78. Learned counsel for the respondents stated that during the

[27] 1998 (7) SCC 84

pendency of the present petition the aforesaid order dated 25.01.2021 has since been withdrawn with liberty to process the same in accordance with law. This decision was taken by the Superintending Engineer on 09.12.2024.

79. In the present case the petitioner retired on 31.03.2020 as AFM and as per certificate (Annexure P-1), he is a person with disability of 86% and he became person with disability while discharging his duties regarding which there is no dispute. After his retirement, vide Annexure P-5 a charge-sheet was issued against him on 28.10.2020 and thereafter, the punishment order was passed on 25.01.2021 which has now been withdrawn with a liberty to process in accordance with law. Record was also shown to the Court in which a noting was prepared by the subordinate staff for considering the charge-sheet which was placed before the Chief Engineer who was the punishing authority in which he had so stated that he agrees with the findings of the Enquiry Officer and since the allegations are proved, an amount of Rs. 63,337/- and Rs. 18,549/- be recovered from the pensionary benefits of the concerned official. However, the aforesaid order was unreasoned order and was only based on the noting of the department. Thereafter, the order which was conveyed to the petitioner vide Annexure P-10 was not issued by the punishing authority but it was issued by the administrative officer by stating that it is with the approval of the Chief Engineer. By withdrawing the aforesaid order of punishment which was based upon the charge-sheet issued after the retirement, the respondent-Nigam realized their mistake and therefore, it was withdrawn. However, with a liberty to proceed fresh in accordance with law.

80. Considering the peculiar facts and circumstances of the present

case whereby the petitioner has already retired in the year 2020 and is a person with disability of 86% and the only amount involved is Rs. 63,337/- and Rs. 18,549/- and also the fact that some of the remaining pensionary benefits have also not been released to the petitioner as per the counsel for the petitioner, no such liberty can be granted to the respondent-Board to initiate the process of considering whether penalty should be imposed or not with regard to the aforesaid amount. It is further directed that in case any pensionary/retiral benefits are due or have been recovered, then the same shall be paid to the petitioner within a period of three months from the date of the receipt of certified copy of this order alongwith interest @ 6% per annum (simple).

81. The petition stands disposed of accordingly.

CWP-4408-2022 &
CWP-8351-2022 (O&M)

82. CWP No.4408 of 2022 has been filed for quashing of order dated 02.02.2022 (Annexure P-12) and order dated 11.01.2021 (Annexure P-7) and CWP No.8351 of 2022 has been filed for quashing of order dated 02.02.2022 (Annexure P-10) and order dated 05.03.2021 (Annexure P-6).

83. Learned counsel appearing on behalf of the petitioner submitted that it is a case where an order was passed by the Superintending Engineer vide Annexure P-7, whereby it was directed that the suspension period of the petitioner is regularized as leave of kind due, the same was without any legal basis in view of the fact that once the petitioner was acquitted, the suspension period could not have been regularized as a period of leave of kind due and rather the petitioner is entitled for the monetary benefits. He referred to Rule 89 of the Haryana Civil Services Rules, 2016 in this regard

whereby all the benefits have to be given and also submitted that rather the petitioner was exonerated in the departmental proceedings as well.

84. Learned counsel submitted that so far as the writ petition filed by the petitioner Rajesh Kumar is concerned, a similar kind of order was passed vide Annexure P-6. He submitted that in both the cases the appeals were filed before the Chief Engineer who was the competent authority to pass the appellate order and in CWP No.4408 of 2022, the impugned order purported to have been passed by the Chief Engineer is Annexure P-12 and in CWP No. 8351 of 2022 is Annexure P-10. He submitted that a perusal of the orders Annexure P-12 and P-10 would show that the appellate orders are purported to have been passed by the Administrative Officer for the Chief Engineer and it incorporates that it is issued with the approval of the Chief Engineer who is the competent authority and by way of the aforesaid orders, the appeals have been rejected. He submitted that such kind of method adopted by the Administrative Officer to pass an order in lieu of the competent authority is highly improper and illegal because it is the appellate authority who has to pass the order and not the Administrative Officer and neither any power has been delegated to the Administrative Officer nor the same could have been delegated in the absence of any special provision of delegation and especially in view of the fact that the Administrative Officer is rather a subordinate officer as that of the Superintending Engineer who passed the order against which the appeal was filed. He submitted that therefore the appellate orders i.e Annexure P-12 in CWP No.4408 of 2022 and Annexure P-10 in CWP No. 8351 of 2022 are liable to be quashed.

85. On the other hand, learned Senior Counsel appearing on behalf

of the respondent-Nigam submitted that although the orders (Annexure P-12) in CWP No.4408 of 2022 and Annexure P-10 in CWP No. 8351 of 2022 are issued by the Administrative Officer with the approval of the Chief Engineer but as per the original record, the Chief Engineer has approved the aforesaid orders and once there is an approval on the file, the orders are deemed to be the orders passed by the Chief Engineer and not by the Administrative Officer and therefore the argument raised by learned counsel for the petitioners is not sustainable.

86. Learned Senior Counsel has produced the original record of the present appeals and has also supplied a photocopy of the same which shows that the draft orders were made by the Administrative Officer which are exactly the same as that of Annexure P-12 in CWP No.4408 of 2022 and Annexure P-10 in CWP No. 8351 of 2022 which were thereafter sent to the Chief Engineer for approval and by a tick the Chief Engineer has approved the same.

87. After hearing the learned counsels for the parties and perusing the original record in both the cases, this Court is of the considered view that the appellate orders dated 02.02.2022 i.e. Annexure P-12 in CWP-4408-2022 and dated 02.02.2022 i.e. Annexure P-10 in CWP-8351-2022 have not been passed by the appellate authority and have been passed by a subordinate officer i.e. administrative officer on behalf of the Chief Engineer and thereafter sent for approval. Before the passing of the aforesaid orders by the administrative officer, the Chief Engineer had sent the draft orders which were prepared by the administrative officer and the Chief Engineer only tick marked the same by indicating that he has approved the same.

Such kind of practice being adopted by the appellate authority for considering appeal is impermissible and illegal. The mere fact that a draft was prepared by a subordinate officer and sent to the appellate authority for approval who simply tick marked the same is not correct method of hearing the appeal and decide the same. The appellate authority has to apply its own mind and pass an order of his own and cannot abdicate the responsibilities by only tick marking the draft order prepared by a subordinate officer and thereafter actual order of appeal is passed by the subordinate officer who is the administrative officer.

88. Consequently, the present petitions are partly allowed. The impugned order dated 02.02.2022 (Annexure P-12) in CWP-4408-2022 and impugned order dated 02.02.2022 (Annexure P-10) in CWP 8351-2022 are hereby set aside. Both the cases are remanded back to the appellate authority to pass fresh orders in accordance with law, within a period of three months from the date of receipt of the certified copy of this order.

CWP-17507-2024

89. The present petition has been filed for quashing the impugned order dated 27.07.2023 (Annexure P-6) passed by respondent No.2 whereby the services of the petitioner have been terminated.

90. Learned counsel for the petitioner has argued that the petitioner was appointed as Lower Division Clerk (LDC) on 10.06.2019 and was put on two years' probation which was subject to a clause that verification of details and documents is to be done. On 08.12.2020, a show-cause notice was issued to the petitioner. Thereafter, the present order of termination dated 27.07.2023 was conveyed to the petitioner vide Annexure P-6.

91. Learned counsel for the petitioner has argued that the petitioner was a regular employee of the respondent-Nigam and neither any charge-sheet was issued nor any disciplinary proceedings were initiated against her, although a show-cause notice was issued to her. He submitted that the impugned order (Annexure P-6) has not been passed by the competent authority, who was the Chief Engineer-cum-Chief General Manager/Admn. but it has been passed by a subordinate authority i.e. Under Secretary by stating that it is with the approval of the Chief General Manager/Admn. He also submitted that in the absence of any order being passed by the competent authority/punishing authority who is the Chief Engineer-cum-Chief General Manager/Admn, the impugned order (Annexure P-6) is *non-est* and impermissible being passed by a subordinate authority and therefore, the same is liable to be set aside.

92. On the other hand, Mr. Puneet Jindal, learned Senior Counsel for the respondent-Nigam submitted that although the aforesaid Annexure P-6 has been issued by the Under Secretary by stating that it is with the approval of the competent authority but on the file reasons exist alongwith the signatures of the competent authority and therefore it cannot be said that the impugned order has been passed by the authority or the officer who was not competent to pass the order. He submitted that once the competent authority has put its signatures on the noting file, then the order Annexure P-6 is only a communication of the order to the petitioner. The original record was also shown to the Court.

93. This Court has heard the learned counsels for the parties and has also perused the record produced by the learned Senior Counsel for the

respondent-Nigam.

94. A perusal of the record would show that a notice was issued to the petitioner that at the time of the appointment she did not possess the requisite qualifications for the post of LDC. After the reply was filed by the petitioner the same was again put up before the administrative staff of the Nigam who processed the reply of the petitioner. The notings prepared by the subordinate staff were put up before the competent authority and opinion of the legal department was also taken who at one stage had so opined that the Nigam can consider her claim by taking a sympathetic view and take an administrative decision in the present matter to avoid uncalled litigation. Thereafter it was also noted by some of the officers that let a charge-sheet for her termination from service be issued for proceeding further. By way of official noting matter was put up before the competent authority to consider and decide the show-cause notice of the petitioner and it also came up in the noting that personal hearing was also allowed to the petitioner. Thereafter some official was also deputed for verification of the certificates of the petitioner. After adopting the aforesaid course of action including personal hearing etc. and verification of the certificates on 13.06.2023 some administrative officer put up a noting which appears at page No.48 of the file by advising that the petitioner did not fulfil the requisite qualifications for the post of LDC at the time of appointment and therefore the Chief General Manager/Admn. was requested to consider and decide the show-cause notice issued to the petitioner. The file went to different authorities/officers including Deputy Superintendent, Under Secretary and Superintendent Engineer etc. and thereafter it came before the

Chief General Manager/Admn. who is the punishing authority/competent authority on 13.07.2023 who recorded a noting as under:-

> *" In view of the advice of LR, HPU at 'X' above, the services of Ms. Anita Borma LDC be dispensed with.*
>
> *Sd/- 13.7.23"*

95. Thereafter on page No.49 of the file, it was so recorded by one Assistant of the respondent-Nigam that as per the approval given at page No.48, a draft order of termination in respect of Smt. Anita Borma is placed for approval and thereafter the noting was again routed through different officers including Superintending Engineer who noted that if agreed then the draft be sent for legal vetting which was vetted by the legal team. The draft order was put up before the Chief General Manager who initialed the same on 27.07.2023 which appears at page No.50 of the file and thereafter the aforesaid order which was drafted and conveyed to the petitioner by the Under Secretary. A perusal of the aforesaid file would very clearly show that the entire exercise has been done by the subordinate officers of the respondent-Nigam from the level of Assistant till the level of Superintending Engineer and from time to time the matter was only placed before the Chief General Manager/Chief Engineer at different stages. The Chief Engineer/Chief General Manager who was the competent authority himself never passed any order for terminating the services of the petitioner. He only by way of a noting as reproduced above ordered that the services of the petitioner be dispensed with and that too by stating that it is in view of the advice which was tendered by the other officers. In other words no order of

termination has been passed by the competent authority but the same was drafted by the Under Secretary and the draft termination order was put up before the competent authority for approval who just by putting his initials approved the same on 27.07.2023 and thereafter the order which was so passed by the administrative officer was conveyed to the petitioner vide Annexure P-6. The argument which was raised by the learned Senior Counsel for the respondent-Nigam that in the file reasoning exist alongwith the signature of the competent authority is not only a fallacious argument but it is also absolutely contrary to law and is impermissible. The competent authority is itself supposed to pass an order and cannot delegate its powers to a subordinate officer to make a draft order and thereafter to put up before it and approve the same by way of initials. Such kind of system adopted by the respondent-Nigam is unknown to service jurisprudence and is unsustainable. The mere fact that at different stages the competent authority was consulted for the purpose of consideration and deliberations from time to time does not mean that he can delegate his powers to any subordinate officer. Not only this, even the noting as reproduced above would show that he decided to terminate the services of the petitioner on the basis of some advice but not on the basis of his application of mind. No order has been passed by the competent authority to terminate the services of the petitioner.

96. Consequently, the present petition is allowed. The impugned order dated 27.07.2023 (Annexure P-6) is hereby set aside. The respondent-Nigam is directed to take the petitioner on duty forthwith with all consequential benefits. The petitioner is entitled for the salary for the period for which she was kept out of service in view of the judgment of Hon'ble

Supreme Court in ***Commissioner, Karnataka Housing Board Versus C.Muddaiah***[28]***.***

97. The respondent-Nigam shall be at liberty to pass fresh orders by proceeding on the basis of the show-cause notice issued to the petitioner strictly in accordance with law and by adopting proper procedure.

CWP-13186-2022

98. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 08.09.2021 (Annexure P-22) to the extent of imposing punishment of 5% cut in pension per month for one year upon the petitioner in pursuance of the charge-sheet dated 24.02.2020, with a further prayer to direct the respondents to restore the pension of the petitioner to 100% for the period from 01.08.2020 to 31.07.2021 and release the arrears of pension recovered to the petitioner. It was further prayed that the respondents be directed to promote the petitioner to the post of Superintendent w.e.f. 01.01.2020 and release all consequential benefits of such promotion alongwith interest @ 12% per annum.

99. Learned counsel appearing on behalf of the petitioner submitted that the petitioner in the present case retired on 31.07.2020 and just before his retirement i.e. 30.07.2020, the purported punishment order has been passed against him vide Annexure P-20 and purported appellate order has been passed against him vide Annexure P-22. While referring to the aforesaid two orders, he submitted that a perusal of both the orders would show that the same have not been passed by the authorities who were supposed to pass the orders being the competent authority/appellate

[28] 2007(7) SCC 689

authority but have been passed by the subordinate officers by stating that it is with the approval of the punishing authority/appellate authority. He submitted that the punishment order (Annexure P-20) would clearly show that it has been passed by the Administrative Officer on behalf of the Chief Engineer by writing that this is issued with the approval of the Chief Engineer. Similarly, the appellate order (Annexure P-22) has been passed by the Under Secretary on behalf of the Chief Engineer. He submitted that it also states that it is issued with the approval of the Director/OP. He submitted that the aforesaid two officers were not authorised to pass such an order because the power to pass an order vests with the authority who has the power under the statutory provisions to pass an order and there can neither be any delegation of power nor any delegation which in fact has been done in the present case nor it has been shown by the respondents as to whether the delegation was done or not.

100. Learned counsel further submitted that even otherwise also a perusal of the order (Annexure P-20) would show that the order has been passed by the Administrative Officer for the Chief Engineer wherein admittedly the Chief Engineer was the punishing authority and a perusal of the purported appellate order (Annexure P-22) would show that it has been passed by the Under Secretary for the Chief Engineer (Administration) which is of the same rank. He submitted that the aforesaid orders have not been passed by the concerned competent authority/appellate authority and therefore, the same are liable to be quashed. He also submitted that as per Annexure P-20, 5% cut in pension for one year has been imposed upon the petitioner and the same has been deducted from his pension and considering

the aforesaid facts and circumstances whereby Annexures P-20 and P-22 have not been passed by the competent authority/appellate authority, the same is liable to be refunded back to the petitioner alongwith interest.

101. On the other hand, learned Senior Counsel appearing on behalf of the respondent-Nigam submitted photocopy of the notings which are taken on record and while referring to the aforesaid notings, he submitted that in fact notings have been given by both the Chief Engineer who was the competent authority of the petitioner and also by the Director/OP who was the appellate authority of the petitioner. He while referring to the aforesaid photocopy of the notings submitted that the punishing authority i.e. the Chief Engineer has dealt with the case of the petitioner on the file and has so recorded the following in the file:-

> *Heard the official on 27/7/2020. Considered his reply to SCN dt 7/7/20. Official has not given any defence and nigam has suffered loss of Rs.2,63,912/= plus interest. So the punishment proposed in SCN dt 30/6/20 is upheld and be implemented.*
> *Ssp* *sd/-*
>
> *27/7/20*

102. Learned Senior Counsel submitted that the same has been duly signed by the Chief Engineer and therefore, the aforesaid order has been passed by the Chief Engineer and not by the Administrative Officer. Similarly, when the matter came before the appellate authority, the appellate authority also considered the same and he himself has given the noting in the official file at page No.6 and has signed the same which is also reproduced as under:-

> *"Heard Sh. Dharamveer Singh CA (Dy. Suptt. Retd.) on 25.08.2021 through V.C. After going through material available on record it is seen that the matter relates to breach of bond by*

Sh. Dhan Ram ALM who has joined the Govt. Service. The matter of breach of bond is pending with Hon'ble High Court Punjab & Haryana hence it may not be fair to recovery the bond amount from Sh. Dharam Veer Singh till the court case is decided. Hence, the matter of recovery be decided after decision of Court case. However Sh. Dharamveer Singh has made a lapse by not getting the approval of competent authority before returning the original documents to Sh. Dhan Ram. Hence it is decided to amend the punishment awarded vide o/o No. 723/EPF-15494 dated 30.7.2020 as under:

A punishment of cut of 5% (Five Percent) of pension per month for one year may be awarded to Sh. Dharamveer Singh CA (Retd.)

CE/Admin

sd/-

3.9.2021"

103. Learned Senior Counsel submitted that therefore it cannot be said that the punishing authority and the appellate authority have not passed the orders and therefore, the present petition is liable to be dismissed.

104. After hearing the learned counsels for the parties and perusing the record so produced by the learned counsel for the respondent-Nigam, again it becomes very interesting to note as to how the case of the petitioner was processed by both the punishing and the appellate authority. From the record it is very clear that both the aforesaid orders i.e. Annexure P-20 and Annexure P-22 are not passed by the punishing authority and appellate authority and regarding which no dispute has even been raised by learned Senior Counsel for the respondent-Nigam. It was only the argument of learned Senior Counsel for the respondent-Nigam that on the file reasoning has been mentioned by way of a noting and therefore, no fault can be found in the impugned orders because Annexure P-20 and Annexure P-22 are only

the communications made to the petitioner. A perusal of the entire file would show that when the matter was to be considered by the competent authority, he recorded his noting as reproduced above by stating that the proposed punishment in the show-cause notice is upheld and be implemented. However, he did not pass any order of imposing of any punishment but only gave his views on the aforesaid issue based upon the notings and the notings were prepared by the subordinate staff at different stages. A perusal of the order Annexure P-20 would show that it has been passed by the administrative officer by stating that it is with the approval of the Chief Engineer and a bare reading of the same would show that it is drafted in the nature of an order but not passed by the competent authority and only states that competent authority has upheld the tentative punishment. Similar was the position in the case of appellate order (Annexure P-22), wherein a perusal of the same would show that the same has been passed by the Under Secretary by stating that it is with the approval of the appellate authority i.e. Director/OP and the aforesaid order (Annexure P-22) shows that it is in the form of an order as if the same is passed by the appellate authority but it was never passed by the appellate authority. The appellate authority only gave its opinion on 03.09.2021, which has been reproduced above and plain reading of the same would show that in the last two lines he has so stated that cut of 5% pension per month for one year may be awarded to the petitioner and therefore it was only in the nature of a proposal and not an order passed by the appellate authority.

105. It is imperative and important to note that both the authorities never passed the orders which they were required to pass either as a

punishing authority or appellate authority but only gave notings on the record file on the basis of the notings of subordinate staff. Such kind of practice is also unsustainable and illegal. Where a competent authority or appellate authority is vested with the power to decide and pass an order then it is its duty to pass an order itself which is thereafter to be transmitted to the employee. From the record file it is also very clear that a draft order at both times i.e. at the time of consideration before the competent authority and at the time of consideration before the appellate authority was prepared by subordinate staff and the draft order after being prepared was put up before the competent authority and appellate authority at different stages, who by just signing the draft orders approved the same vide Annexure P-20 and Annexure P-22.

106. Consequently, the present petition is allowed. The impugned orders dated 30.07.2020 (Annexure P-20) and dated 08.09.2021 (Annexure P-22) are hereby set aside. The petitioner in the present case has already retired on 31.07.2020 and therefore, it would not be appropriate to remand the case back to the competent authority to pass a fresh order. Consequently, it is further directed that the amount which has already been recovered from the petitioner be refunded back to him alongwith interest @ 6% per annum (simple), within a period of three months from the date of receipt of the certified copy of this order.

CWP-21593-2020 (O&M)

107. The present writ petition has been filed seeking issuance of a writ in the nature of certiorari for quashing the impugned orders dated 13.01.2020 (Annexure P-17) and order dated 08.07.2020 (Annexure P-19).

108. Learned counsel appearing on behalf of the petitioner submitted that vide Annexure P-17 the punishment order has been passed by an authority who was neither the competent authority nor was any power delegated to it by the Chairman-cum-Managing Director and it was passed only by the Under Secretary and similarly, the order of the appellate authority Annexure P-19 has been passed by the authority who was not authorized to do so because the appellate authority was the Board of Directors and the order has been passed by the Under Secretary and therefore, the aforesaid orders cannot be sustained in the eyes of law.

109. Learned Senior Counsel appearing on behalf of the respondent-Nigam submitted while referring to the record which he has produced before this Court that the orders which have been passed by the punishing authority i.e. the CMD and also the appellate order which has been passed by the Board of Directors cannot be said to have not been passed by the competent authority or the appellate authority because there is no delegation of powers since the orders are already available on the file and therefore, the argument which has been raised by the learned counsel for the petitioner is misconceived.

110. After hearing the learned counsels for the parties and a perusal of the record, it can be seen that the orders have been passed by the punishing authority i.e the CMD which is on the file and therefore, it cannot be said that the power was delegated by him. It has also been stated by the learned Senior Counsel for the respondent-Nigam that even the Board of Directors had passed the orders and therefore, on the ground that no orders have been passed by the competent authority/appellate authority, no case is

made out in favour of the petitioner. However, it was argued by the learned counsel for the petitioner during the course of arguments that so far as the Board of Directors are concerned, they have not considered the grounds taken in the appeal while passing the order dated 08.07.2020 (Annexure P-19). He referred to the grounds of appeal (Annexure P-18), whereby specific ground was taken regarding plea of discrimination that the other co-employees have been let off whereas petitioner has been discriminated against. The ground was taken in para-No.19 of the grounds of appeal but the same was not considered by the appellate authority. A perusal of the order (Annexure P-19) would show that the ground taken by the petitioner with regard to discrimination was not considered by the Board of Directors in the aforesaid order.

111. In view of the above, the present petition is partly allowed. The appellate order dated 08.07.2020 (Annexure P-19) is hereby set aside with a direction to the appellate authority to pass a fresh speaking order by considering all the grounds which have been taken by the petitioner in the grounds of appeal and strictly in accordance with law, within a period of six months from the date of receipt of the certified copy of this order.

CWP-9153-2015

112. Mr. Puneet Jindal, learned Senior Counsel has stated on instructions from Mr. Varinder Singh, Under Secretary that the petitioner has already been dismissed from service in some other case vide order dated 28.05.2021 and therefore, nothing would survive in the present case because it would only be academic in nature.

113. In view of the above, the present petition is dismissed.

CWP-21692-2024

114. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned orders dated 29.07.2019 (Annexure P-12) passed by the respondents whereby punishment to recover the sharing portion of surcharge amounting to Rs.43,310/- alongwith stoppage of one annual increment with future effect was imposed, order dated 13.03.2021/15.03.2021 (Annexure P-14) passed by the appellate authority whereby appeal filed by the petitioner was rejected and order dated 30.07.2024 (Annexure P-18) passed by the respondents.

115. Learned counsel appearing on behalf of the petitioner submitted that in the present case the punishment order (Annexure P-12) has been passed by the competent authority. However, the appellate order (Annexure P-14) was not passed by the competent authority but as per Annexure P-14, it was passed by the Under Secretary and stated to be with the approval of the appellate authority who was the Director/OP. He submitted that the petitioner was not at fault and the order passed by the appellate authority was not even a reasoned order because the same is not supported by any reason.

116. Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has supplied a photocopy of the notings of the appellate authority to state that the appellate authority has passed the order which was conveyed by the Under Secretary. He submitted that in this way it is not a case that the appellate authority or competent authority has not passed the order on the file and submitted that in view of the aforesaid position, the present petition is liable to be dismissed.

117. After hearing the learned counsels for the parties and perusing the record which was produced before this Court by the learned Senior Counsel for the respondent-Nigam, it is very clear that the appellate order which has been supplied to the petitioner vide Annexure P-14 dated 13.03.2021/15.03.2021 is passed by one Ajay Kumar Khanna, Under Secretary/ HR-1 by stating that it is with the approval of the Director/OP, UHBVN, Panchkula. A perusal of the aforesaid order would show that the order has been passed by the Under Secretary himself because the tenor of the same shows very clearly that the order is passed by the officer who has signed the order, who is the Under Secretary and not the appellate authority. However, as per the record file was put before the appellate authority in which the appeal had gone to various subordinate officers starting from page No.3 of the noting file and there is a noting given by the appellate authority on 08.03.2021 by noting that the petitioner has been heard through V.C and after going through the record and the submission made by the petitioner it is seen that there had been glaring supervisory lapses on behalf of the petitioner due to which the Nigam has suffered financial loss and therefore, it has been decided to reject the appeal filed by the petitioner and uphold the order of punishment.

118. A perusal of the aforesaid noting given by the appellate authority would show two things. Firstly, there is no reason assigned by the appellate authority but it only states that as per the material available on the record and verbal and written submissions, he has committed glaring supervisory lapses. Secondly, the aforesaid method by which the appellate authority has decided the appeal in the form of a noting is not permissible

under the law and raises a very important issue. For the sake of convenience, the aforesaid noting which has been so called as an appellate order by the respondent-Nigam which is at page No.5 of the noting is reproduced as under:-

> *"Heard Sh. Kharaiti Lal Asst. FM on 5/3/2021 through V.C. After going through the material available on record and verbal & written submissions made by Sh. Kharaiti Lal. It is seen that there has been a glaring supervisory lapses on his part due to which there has been a financial loss to Nigam.*

119. A perusal of the aforesaid clearly shows that the appellate order has been passed by way of a noting on a file and the appellate authority who was to pass an order has not passed any such order in the form of an appellate order. Very interestingly, when the order which has been attached as Annexure P-14 is perused, it shows that it is passed in the form of an appellate order and therefore, it appears that the appeal was decided only in the form of a noting and not in the form of an order.

120. Apart from the above, it is not understandable as to how the Under Secretary of the Nigam could have passed such an order by using the terminology which he has used as if he is the person who is deciding the appeal, whereas it was the job of the appellate authority to pass such an order and convey the same to the petitioner, which has not been done. Such kind of practice is absolutely impermissible and contrary to the Service Law.

121. This aspect also get substantiated from the fact that after giving of noting dated 08.03.2021 by the appellate authority it has been noted on 15.03.2021 that a draft order has been added for approval of the appellate authority and a draft order was put up before the appellate authority which

was approved by the appellate authority on 15.03.2021 by making initials. Therefore, what has happened in the present case is that the appeal was heard by the appellate authority but he instead of passing an order just made a noting on the noting file by stating that the appeal of the petitioner is to be rejected and the order of punishment will hold and thereafter, the actual order which was required to be passed by the appellate authority in the form of an appellate order was drafted by the Under Secretary and a draft of the same was presented before the appellate authority later on for its approval who approved the same. Such kind of method adopted by the appellate authority is absolutely impermissible under the law. This procedure did not stop here and rather on the revision petition being filed by the petitioner to the Managing Director of the Nigam, the same procedure was adopted and order was passed by the Under Secretary by stating that it is being passed by the Managing Director and likewise, draft order was put up before the Managing Director, who approved the draft on 30.07.2024 and the actual order was passed by the Under Secretary on the same date.

122. Although the order of revision is not under challenge but since it has come on the record that even the revision petition against the appellate order was dismissed, therefore the order of revision dated 30.07.2024 is also set aside as a consequence.

123. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The impugned appellate order dated 13.03.2021/15.03.2021 (Annexure P-14) is hereby set aside. Matter is remanded back to the appellate authority to pass a fresh order strictly in accordance with law after affording adequate opportunity of hearing to the

petitioner, within a period of three months from the date of receipt of the certified copy of this order.

CWP-914-2024

124. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 12.12.2022 (Annexure P-6) vide which the petitioner has been dismissed from service.

125. Nobody has caused appearance on behalf of the petitioner.

126. Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has stated that in the present case the punishment order (Annexure P-6) is under challenge. He submitted that although from the perusal of Annexure P-6, it is clear that the order has been conveyed by the Under Secretary but the actual order has been passed by the competent authority i.e. Superintending Engineer by approving the draft proposal made by the subordinate officer. He has also supplied a copy of the record in that regard to this Court.

127. A perusal of the record which was produced before this Court by the learned Senior Counsel for the respondent-Nigam would show that at page No.55 of the noting file, the case of the petitioner has been dealt with. The punishing authority of the petitioner was Superintending Engineer but a noting was prepared by a subordinate staff of the level of Upper Division Clerk (UDC) on 05.12.2022 with a proposal to the competent authority that, if agreed, then the official may be dismissed from service. On the aforesaid proposal, he marked on the side line as “A” so as to put up before the competent/punishing authority as to whether “A” is to be approved or not. This was put up on 05.12.2022 before the punishing authority, who wrote on

the noting file "Approved as proposed" on 08.12.2022 and thereafter the aforesaid approval was granted by just writing that the proposal is approved. The actual order of dismissal has been passed vide Annexure P-6 by the Under Secretary by stating that it carries the approval of the Superintending Engineer.

128. This Court is of the considered view that such kind of method adopted by the competent authority is absolutely impermissible and contrary to the service jurisprudence. The competent authority, who is the punishing authority has to apply its mind and pass an order on its own and cannot just put a note on the noting file by stating that the draft proposal at "A" is approved by using only three words i.e. "Approved as proposed". Such kind of practices are being adopted in various departments and this Court is of a firm view that this kind of practice of approval of the proposal is not only illegal but also amounts to abdication of the powers by the competent authority and such method of granting of approval by accepting the proposal of an Upper Division Clerk (UDC) is unconstitutional besides being violative of the Service Rules. No competent authority or punishing authority can abdicate the duty of passing of punishment orders by delegating it to any subordinate staff which in the present case is Under Secretary.

129. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 12.12.2022 (Annexure P-6) is hereby set aside. Since the petitioner was purportedly dismissed from service on the ground of his conviction, the competent authority/punishing authority is directed to pass a fresh order on its own and not by delegating it to

anybody else, within a period of three months from the date of receipt of the certified copy of this order. Although the petitioner will not be entitled for the re-instatement because he has been convicted under Sections 7 and 13 of the Prevention of Corruption Act but since the illegality committed by the Superintending Engineer is writ large, the petitioner is entitled for costs of Rs.25,000/- (Twenty Five Thousand), which shall be paid by the Superintending Engineer, who had put a noting as aforesaid on 08.12.2022 from his own pocket to the petitioner, within a period of three months from the date of receipt of the certified copy of this order.

CWP-8790-2024

130. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 31.01.2024 (Annexure P-5) passed by the respondents whereby punishment of 5% cut in pension for one year has been imposed upon the petitioner, with a further prayer to direct the respondents to allow full pension to the petitioner with all consequential benefits along with interest.

131. Learned counsel appearing on behalf of the petitioner submitted that it is a case where vide Annexure P-5, a punishment has been inflicted upon the petitioner. He submitted that a perusal of Annexure P-5 would show that the punishment order has not been passed by the competent authority i.e. Superintending Engineer but it has been passed by a lower authority i.e. Under Secretary with the approval of the Superintending Engineer. He also submitted that the petitioner had already retired and the punishment was of 5% cut in pension for one year. He submitted that even otherwise also, the Superintending Engineer who was the competent

authority has although heard the petitioner but no reason has been assigned by him as to why the punishment should be inflicted upon the petitioner.

132. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has supplied a photocopy of the notings and while referring to page No.18 of the aforesaid submitted that the Superintending Engineer himself has passed an order of 5% cut in pension for one year after hearing the petitioner in person. He submitted that since the order itself has been passed by the competent authority which is on the noting file, it cannot be said that the order has not been passed by the competent authority. He also submitted that the enquiry report was also submitted alongwith the second show-cause notice.

133. After perusing the record which was produced before the Court it becomes clear that the case pertaining to the petitioner was processed at different levels. An enquiry was conducted by issuance of charge-sheet vide Memo No.4/TPM-1563 dated 03.11.2021 and thereafter enquiry report was supplied to the petitioner and he was heard by the competent authority who was the Superintending Engineer/HR, UHBVN. A perusal of page No.18 of the noting file shows very clearly that after the petitioner was heard the Under Secretary namely, Amit Kumar on 23.01.2024 put up the case before the Superintending Engineer who was the punishing authority by stating that the case of charge-sheet is submitted for taking final decision and on the side of the same noting he marked the same 'B'. Thereafter after two days the Superintending Engineer who is the competent authority made a noting on the file with regard to 'B' as follows:-

"After hearing in person, 5% cut in pension for

one year be inflicted".

134. In this way, the competent authority by just one stroke of a pen imposed the punishment on the basis of the proposal of the Under Secretary for taking a final decision. It was thereafter that the Under Secretary on 31.01.2024 vide Annexure P-5 passed an order by stating that the same is passed with the approval of the Superintending Engineer. A perusal of Annexure P-5 would show that it is in the form of an order having a tenor of an order by the Under Secretary who was not even competent to pass an order being a subordinate officer. So far as the competent/punishing authority is concerned, it only by one stroke of a pen gave a noting on the file that 5% cut in pension for one year be inflicted. This method adopted by the competent authority by not passing the order itself but delegating the same to a subordinate officer is absolutely impermissible and illegal besides being violative of the Service Rules and the Constitution of India. It is the duty of the competent/punishing authority to pass the order itself which should be a speaking order backed by reasons especially when such an order has civil consequences. This shortcut method adopted by the Superintending Engineer of putting just a noting deserves to be condemned.

135. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 31.01.2024 (Annexure P-5) is hereby set aside.

136. The petitioner retired on 31.03.2023 and the impugned order has been passed after his retirement and has not been passed by the competent authority but a subordinate authority and therefore, it will not be just and proper to direct the competent authority to pass a fresh order since

the petitioner has already retired. In case any recovery has been affected from the petitioner, the same shall be refunded to the petitioner alongwith interest @ 6% per annum (simple) within a period of three months from the date of receipt of the certified copy of this order.

CWP-1308-2021

137. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 30.01.2017 (Annexure P-10) passed by respondent No.4 whereby punishment of stoppage of one annual increment with future effect was passed, order dated 15.06.2018 (Annexure P-12) passed by the appellate authority i.e. respondent No.3 whereby appeal filed by the petitioner was dismissed and enquiry report dated 16.01.2017 (Annexure P-7).

138. Learned counsel appearing on behalf of the petitioner submitted that vide Annexure P-10, a punishment order was passed and thereafter when the appellate order was passed vide Annexure P-12, it is stated to have been passed with the approval of the Director and no order has been passed by the Director himself who was the appellate authority. He submitted that even otherwise also on merits, the punishment order (Annexure P-10) has been passed against which the appeal was filed and the allegation in the charge-sheet was pertaining to negligence committed by the petitioner with regard to non-recovery from one industrial consumer namely, K.K. Spinners and because of his negligence, the charge-sheet was issued against him. He submitted that the punishment order dated 30.01.2017 (Annexure P-10) was passed and thereafter he filed an appeal but, in the meantime, the aforesaid industrial consumer namely, K.K. Spinners had filed a Civil Suit against

the respondent-Nigam before the learned Civil Judge that the amount cannot be recovered from the aforesaid plaintiff namely, K.K. Spinners which were decreed on 19.07.2017. He submitted that it was after the aforesaid decree of the suit that the appellate order (Annexure P-12) was passed but the appellate authority failed to consider the effect of the aforesaid decree which was passed in which it was held that no amount could have been recovered from the aforesaid K.K. Spinners. He submitted that the aforesaid decree was a judicial order passed by learned Civil Judge and it was incumbent upon the appellate authority to have at least considered the effect of the aforesaid decree which has not been considered by the appellate authority and because of that reason as well, the order of the appellate authority is liable to be set aside.

139. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam submitted that a perusal of Annexure P-10 would show that the punishment order has been passed by the Chief Engineer himself who was the competent authority and there is no dispute with regard to the same. So far as the appellate order is concerned, he has supplied a copy of record from where it is very clear that the order itself has been passed by the appellate authority who was the Director and therefore, it cannot be said that the appellate order has not been passed by the appellate authority because Annexure P-12 is a mere communication of the order passed by the appellate authority. So far as the merits of the case are concerned, while replying to the arguments raised by the learned counsel for the petitioner that the appellate authority has not considered the judicial order passed by the learned Civil Judge on 19.07.2017, he submitted that the

delinquency of the petitioner has been established by the Enquiry Officer when the charges were proved against him and consequent upon the same, the punishing authority has passed the punishment order which was upheld by the appellate authority and therefore, there was no requirement to have considered the judicial order passed by the learned Civil Judge in this regard.

140. Learned Senior Counsel has stated that the aforesaid decree passed by learned Civil Judge was not accepted by the respondent-Nigam and rather an appeal was filed against the aforesaid decree which was dismissed being time barred but thereafter even a revision was filed before this Court which is still pending.

141. A perusal of the record would show that so far as the punishment order and the appellate order are concerned, they have been passed by the concerned officers on their own and therefore on this ground no interference can be made by this Court. However, the only aspect which is to be seen in the present case is that after the punishment order was passed which was based upon the fact that the petitioner did not recover some money from one K.K.Spinners and due to his negligence, he was charge-sheeted and the aforesaid K.K. Spinners filed a Civil Suit against the respondent-Nigam which was decreed on 19.07.2017 and therefore, so far as the charges against the petitioner are concerned, the same had to be considered in view of the aforesaid decree passed by the Court of Civil Judge which was challenged by the respondent-Nigam before the Appellate Court but the appeal was also dismissed. It has been so stated by the learned counsels for the parties that the appeal of the petitioner against the

punishment order was decided after the aforesaid decree being passed and the decree was passed in a Civil Suit and was in the nature of a judicial order which goes to the root of the issue and the subject matter but the appellate authority failed to consider the same.

142. In view of the above, it will be just and proper to set aside the order passed by the appellate authority and the same is set aside. The appellate authority is directed to decide the matter afresh by giving adequate opportunity to the petitioner after considering the effect of the aforesaid decree on the subject matter of the disciplinary proceedings against the petitioner. The appellate authority shall decide the same within a period of four months from the date of the receipt of the certified copy of this order.

143. The present petition stands partly allowed.

CWP-24743-2024

144. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 13.05.2024 (Annexure P-9) passed by respondent No.2, order dated 07.03.2023 (Annexure P-5) passed by respondent No.3 whereby punishment of 5% cut in pension for two years was imposed upon the petitioner, order dated 24.11.2023 (Annexure P-7) whereby punishment of 5% of cut in pension for two years was upheld and the appeal was rejected, with a further prayer to direct the respondents to grant interest to the petitioner on delayed payment of retiral benefits i.e. gratuity, arrears of difference of pay and delayed pension payment.

145. At the outset, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam with Mr. Arshnoor Singh,

learned counsel stated that the charge-sheet (Annexure P-2) has been issued after the retirement of the petitioner and without sanction of the Government which was not in accordance with Haryana Civil Services (Pension) Rules, 2016 because the sanction of the Government is a pre-requisite after the retirement of an employee for issuance of a charge-sheet. He submitted that since the charge-sheet was not in accordance with law as a consequence of the same, punishment order (Annexure P-5) and appellate order (Annexure P-7) would also not survive. He submitted that so far as the aforesaid issue with regard to the legality of the issuance of charge-sheet and the consequential punishment order (Annexure P-5) and appellate order (Annexure P-7) is concerned, the same is not in dispute and the same cannot sustain. He submitted that however liberty may be granted to the respondents to proceed against the petitioner from the initial stage i.e issuance of fresh charge-sheet against the petitioner in accordance with law.

146. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has already retired on 30.11.2021 and the subject matter of the punishment order comes out to be around Rs. 34,000/- and as per the stand taken by the respondents, issuance of charge-sheet and subsequent punishment orders both are illegal and therefore, it will cause hardship for the petitioner if again he will have to face the rigor of the charges, if any, are framed against him by the respondents and has submitted that such liberty may not be granted to the respondents in this regard. He also submitted that the petitioner has been paid the retiral benefits after a period of two years because of the aforesaid pendency of charge-sheet which was otherwise illegal even as per the stand taken by the respondents and he is

therefore entitled for the interest upon such delayed payment of retiral benefits.

147. After hearing the learned counsels for the parties and in view of the stand taken by the learned Senior Counsel for the respondent-Nigam that the charge-sheet was not in accordance with law being issued after the retirement of the petitioner and without the sanction of the Government and the punishment order as well as the appellate order are also not in accordance with law and would not survive, the present petition is allowed. The impugned punishment order dated 07.03.2023 (Annexure P-5) and appellate order dated 24.11.2023 (Annexure P-7) are hereby set aside. Further, it will not be in the interest of justice to direct the initiation of fresh proceedings against the petitioner because the petitioner has already retired on 30.11.2021 and subject matter of the punishment order, as per learned counsel for the petitioner was Rs. 34,000/- only. It is further directed the amount, if any, recovered from the petitioner shall be refunded back to him alongwith interest @ 6% per annum(simple) within a period of three months from the date of receipt of the certified copy of this order. In case any other pensionary benefit is not paid to the petitioner because of the impugned punishment order, then the same shall also be paid to the petitioner alongwith interest 6% per annum (simple) within the aforesaid stipulated period.

CWP-29214-2023

148. Mr. Puneet Jindal, learned Senior Counsel for the respondent-Nigam has stated on instructions that he may be permitted to withdraw the appellate order to pass a fresh order.

149. Considering the aforesaid submissions made by the learned Senior Counsel for the respondent-Nigam, the respondent-Nigam is permitted to withdraw the appellate order and to pass an appropriate order in accordance with law.

150. The present petition stands disposed of accordingly.

CWP-5624-2023

151. The present writ petition has been seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 14.11.2022 (Annexure P-3) vide which the petitioners have been reverted on the post of ALM and recovery of alleged excess amount paid as salary has been ordered from the salary of the petitioners.

152. Learned counsel appearing on behalf of the petitioners submitted that impugned order in the present case is Annexure P-3 which is an order of cancellation of the promotion of all the six petitioners. He submitted that the aforesaid order has not been passed by the Superintending Engineer who is the competent authority but has been passed by the Superintendent on behalf of the Superintending Engineer and before cancelling the promotion order of the petitioners no notice was even issued to the petitioners and principles of natural justice have not been complied with and on that ground as well, the aforesaid order Annexure P-3 is liable to be set aside.

153. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam stated that the principles of natural justice by issuing notice were not required to be followed because as per the appointment letter, the petitioners are required to pass the safety

test which they have not passed and therefore, in accordance with the condition stipulated in the appointment letter, they could not have been promoted and subsequently they have been promoted from the date, they have passed the test.

154. Learned Senior Counsel has supplied original record to this Court which has been perused. A perusal of the aforesaid record would show that there is no order which has been passed by the Superintending Engineer on the file. The notings have been carried on and ultimately when the matter went to the Superintending Engineer who was the competent authority, he just tick marked the proposal of a Superintendent. There is nothing on record to show that there was any application of mind by the Superintending Engineer.

155. After hearing the learned counsels for the parties and perusing the record so produced, it is evident that no notice was issued to all the six petitioners before withdrawing their order of promotion from the post of Assistant Lineman to the post of Lineman. Apart from the above, the Superintending Engineer who was the competent authority to consider the cancellation of promotion, if any, has not passed any order on the file but he has only tick marked the proposal of the Superintendent and thereafter vide Annexure P-3 the Superintendent passed the order by stating that it is with the approval of the Superintending Engineer who was the competent authority.

156. In view of the above, the present petition is allowed. The impugned order dated 14.11.2022 (Annexure P-3) is hereby set aside. The recovery, if any, made from the petitioner shall be refunded to the petitioner

alongwith interest @ 6% per annum (simple) within a period of three months from the date of receipt of certified copy of this order.

157. The respondent-Nigam shall be at liberty to pass a fresh order after giving adequate opportunity of hearing to the petitioners in accordance with law.

CWP-13410-2021

158. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 09.01.2020 (Annexure P-14) passed by respondent No.3 whereby punishment of stoppage of one annual increment without future effect was passed and order dated 17.05.2021(Annexure P-16) passed by the appellate authority i.e. respondent No.3 whereby appeal filed by the petitioner was rejected.

159. Learned counsel appearing on behalf of the petitioner submitted that it is a case where the punishment order was passed vide Annexure P-14 whereby a punishment of stoppage of one annual increment without future effect was imposed and submitted that the aforesaid impugned order of punishment has been passed by the Under Secretary which is clear from the language used in Annexure P-14 but is stated to have been passed on behalf of the Director. He submitted that when an appeal was filed by the petitioner, as per Annexure P-16 it was decided by the same officer i.e Under Secretary but this time on behalf of the Managing Director. He submitted that both the orders have been drafted by the aforesaid Under Secretary on behalf of the punishing authority as well as appellate authority which is unknown to the service jurisprudence. He also submitted that the

method adopted by the Under Secretary and the competent authority was not in accordance with law because there was neither any application of mind nor any order if at all was passed by the appellate authority on the file was supplied to the petitioner nor any order passed by the punishing authority was supplied to the petitioner but Annexures P-14 and P-16 are the only orders which were passed by the Under Secretary from where it is clear that the same have been drafted by the Under Secretary and have been supplied to the petitioner and therefore, the aforesaid orders are liable to be set aside.

160. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has produced the original record of the aforesaid case and a perusal of the aforesaid record would show that the punishment order has been passed by the Director, which is there on the file. However, a perusal of the file would further reveal that the appellate authority has only considered the notings which were made by the subordinate staff and at the end of the noting it has been so stated by the appellate authority that the appeal is devoid of any merit and rejected the same. However, there is neither any reasoned nor detailed order passed by the appellate authority showing application of mind.

161. I have heard the learned counsels for the parties and perused the record produced by the learned Senior Counsel for the respondent-Nigam.

162. Page No.23 of the noting file which was produced before this Court would show that on 06.05.2021, Managing Director, UHBVN noted in the file that personal hearing granted today and appeal is devoid of any merit and hence rejected and the same is reproduced as under:-

"i) Personal hearing granted today.

ii) The appeal is devoid of any merit and hence rejected."

163. After the aforesaid noting was given by the Managing Director a purported order of dismissal of appeal was passed by the Under Secretary on 17.05.2021 which is the impugned order Annexure P-16 and the tenor of the order shows that the same has been passed by the Under Secretary but in pursuance of the order passed by the Managing Director. Therefore, the noting which has been given by the appellate authority on the file as aforesaid cannot be said to be any order in exercise of powers of an appellate authority but the order (Annexure P-16) in fact has been passed by the Under Secretary which is totally impermissible.

164. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The order of the appellate authority dated 17.05.2021 (Annexure P-16) is hereby set aside. The matter is remanded back to the appellate authority to pass a fresh order in accordance with law after hearing the petitioner within a period of three months from the date of receipt of the certified copy of this order.

CWP-26639-2021

165. The present writ petition has been filed for quashing of impugned order dated 31.08.2020 (Annexure P-1) passed by the punishing authority and order dated 05.04.2021 (Annexure P-2) passed by the appellate authority whereby the punishment of stoppage of four annual increments without future effect was inflicted upon the petitioner.

166. Learned counsel appearing on behalf of the petitioner submitted that vide Annexure P-1 a punishment order is purported to have been passed

for stoppage of four annual increments without future effect which although is a minor punishment but the competent authority to pass the order was the Chief Engineer but a perusal of Annexure P-1 would show that the same has been passed by the Deputy Superintendent/Works by stating that it is with the approval of the Chief Engineer/OP and similarly on appeal vide Annexure P-2 a purported appellate order has been passed again not by the competent authority who was the Director/OP, DHBVN, Hisar but it was passed by the Deputy Superintendent/Works and therefore, both the orders have been passed not by authorities which were competent authorities and therefore, the same are liable to be set aside.

167. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam produced the record and submitted that on the file reasoning exists which were put before the competent authority and the appellate authority and on the basis of the reasoning, the orders have been passed, although they have been conveyed by subordinate officers vide Annexures P-1 and P-2.

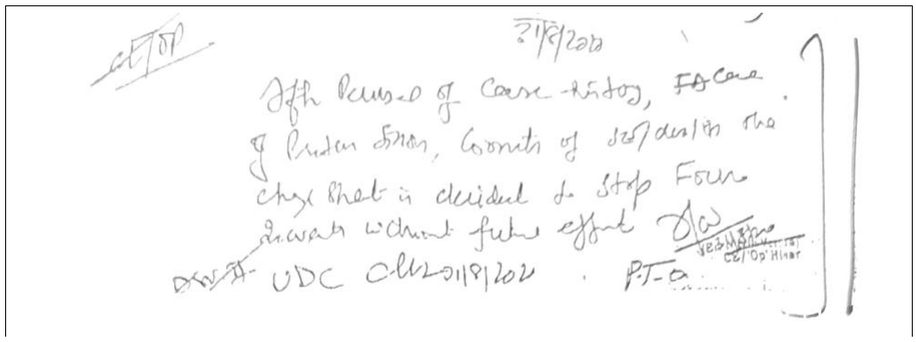
168. I have heard the learned counsels for the parties and perused the record produced by the learned Senior Counsel for the respondent-Nigam.

169. A perusal of the record would show that at page No.5 of the noting sheet, an Upper Division Clerk after giving brief background of the case had put up the file before the Chief Engineer/OP on 31.08.2020 and on the same date, the Chief Engineer gave a note that after perusal of the case history, the charge-sheet is decided and punishment to stop four increments without future effect was imposed.

170. The petitioner Mukesh Kumar was charged with taking life of a

human being and not maintaining the transformer & LD system properly and bringing bad name to the Nigam. However, the defence of the petitioner was that the private person namely, Sh. Pritam son of Sh. Jangu Ram himself climbed on the H-pole to set right the jumper without any prior intimation to the official of the Nigam and was electrocuted and died on the spot and rather the maintenance of the transformer was carried out recently before the date of the accident.

171. This is another interesting case as to how the respondent-Nigam has dealt with the case of the petitioner. The noting given by the punishing authority who is the Chief Engineer as contained in page No.5 of the noting after taking photographs of the same is inserted as under:-



172. Now on the basis of this noting passed of Chief Engineer who is the punishing authority, the order was passed vide Annexure P-1 by the Deputy Superintendent/Works, which is of the same date i.e. 31.08.2020 and is reproduced as under:-

"**DAKSHIN HARYANA BIJLI VITRAN NIGAM**

Office Order No.3021/CE/O/HSR Dated: 31.08.2020

After having considered the Charge Sheet No.01/JE/CE/OP /DH-76 dated 28.02.2020 served upon Sh. Mukesh Kumar, JE, reply thereto, comments of SE/OP Circle, DHBVN, Fatehabad and other relevant facts, the competent authority has decided that the charged official is responsible for taking a life of human being namely Sh. Pritam. As such, it has been decided to stop four

annual increments of the charged official without future effect.

Accordingly, four annual increments of the official Sh. Mukesh Kumar, JE is hereby stopped without future effect.

This issues with the approval of Chief Engineer/OP DHBVN, Hisar.

Sd/- 31/8/2020
Dy. Suptd./Works
for Chief Engineer/OP
DHBVN, Hisar"

173. A comparison of the aforesaid noting given by the punishing authority and the aforesaid order Annexure P-1 which was passed by the Deputy Superintendent/Works would show that what is written in the order Annexure P-1 does not reflect in the noting given by the punishing authority. In Annexure P-1, the Deputy Superintendent has stated that the charge official is responsible for taking life of a human being namely Sh. Pritam and as such, it has been decided to stop four increments, whereas a perusal of the noting given by the punishing authority does not state so that the petitioner has taken life of a person and therefore, it has decided to stop the annual increments. This is precisely the reason as to why such kind of practices are deprecated and condemned by this Court. Firstly, such kind of method being adopted by the punishing authority of giving a noting on the file and without passing an order is absolutely illegal and secondly when the order is conveyed to the concerned delinquent employee, it contains various additional factors or it may have omitted various additional factors but the fact remains that such an order which is passed by a subordinate authority is conveyed to the delinquent official which is totally unacceptable being illegal and contrary to the basic service jurisprudence.

174. Another aspect also requires to be seen in the present case that

even the noting which has been given by the punishing authority is not properly legible. It is not understood as to why such noting has to be given by writing and not in a typed format. It is not understood as to what is the use of giving noting especially by a senior officer of the rank of Chief Engineer which cannot even be read properly with naked eyes. Such kind of practice is also deprecated and condemned by this Court.

175. When an appeal was filed, again a similar kind of practice was repeated. From a perusal of noting page No.8 it can be seen that the appellate authority who is the Director although had given a noting by way of a little detailed order and fortunately it was legible but such practice of passing order on the noting file is not permissible and it was on the basis of this noting which although may be on a little better footing as compared to other cases, Annexure P-2 was passed by the Deputy Superintendent by stating that this has been passed with the approval of the appellate authority i.e. Director/OP. In this way, both the orders Annexures P-1 and P-2 are passed and conveyed by one authority i.e. Deputy Superintendent /Works which is impermissible.

176. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order of the punishing authority dated 31.08.2020 (Annexure P-1) is hereby set aside. Since the order of the punishing authority is set aside, the order passed by the appellate authority dated 05.04.2022 (Annexure P-2) is also liable to be set aside, although some reasons were given by him on the noting file. Therefore both the orders i.e. Annexures P-1 and P-2 are hereby set aside. The case is remanded back to the punishing authority with a direction to pass a fresh order strictly

in accordance with law after giving opportunity of hearing to the petitioner, within a period of four months from the date of receipt of the certified copy of this order.

177. Considering the peculiar facts and circumstances of the present case whereby the punishing authority has only given a noting on the file in a handwriting which is not properly legible and the Deputy Superintendent /Works who passed Annexure P-1 by superimposing his own words, the petitioner is entitled for costs of Rs. 20,000/- (Twenty Thousand) which shall be paid to the petitioner within the aforesaid period of fours months from the date of receipt of the certified copy of this order. Out of the aforesaid costs of Rs. 20,000/-, Rs. 10,000/- shall be paid by the Chief Engineer from his own pocket who passed the order on the noting file at page No.5 as reproduced above and similarly, the remaining Rs. 10,000/- shall be paid by the Deputy Superintendent/Works from his own pocket who passed Annexure P-1.

CWP-13951-2023

178. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned charge-sheet dated 12.04.2016 (Annexure P-13), enquiry report dated 13.01.2020 (Annexure P-16), order dated 22.05.2020 (Annexure P-20) passed by respondent No.5, order dated 22.10.2020 (Annexure P-23) passed by the first Appellate Authority and order dated 17.03.2023 (Annexure P-27) vide which the second appeal of the petitioner has been dismissed and has prayed that the petitioner be reinstated in service with all consequential benefits and the order dated 12.04.2023 (Annexure P-28) be set aside, with a further

prayer to direct the respondents to release the retiral benefits of the petitioner including leave encashment, gratuity, provident fund etc. alongwith the interest @ 12% per annum.

179. Learned counsel appearing on behalf of the petitioner has submitted that it is a case where vide Annexure P-20, punishment order has been passed by the Superintending Engineer /Administration for the Chief Engineer/HR & Admn. and thereafter, appellate order dated 22.10.2020 (Annexure P-23) has been passed again by the Superintending Engineer /Administration on behalf of the Director/OP, who is the first appellate authority and vide Annexure P-27 dated 17.03.2023, the order has again been passed by the Superintending Engineer/Administration on behalf of the Managing Director of the Nigam, who is the second appellate authority. She further submitted that all the aforesaid three orders have been passed by the same authority and therefore, the same cannot sustain. She further submitted that it is a case where earlier the second appellate authority had passed an unreasoned order and the petitioner had filed a writ petition before this Court and the second appellate order was set aside and thereafter, direction was issued to the second appellate authority to consider and decide the second appeal by passing a speaking order. She also submitted that in the present case although as per the enquiry report, charges were proved against the petitioner but similarly the charges were also proved against other co-delinquent officers and even punishment was also inflicted upon them but the first appellate authority had exonerated all the other co-delinquents and on the other hand in the case of petitioner, the punishment awarded by the punishing authority has been enhanced by the appellant authority.

180. She has argued that as per Rule 11(1)(c) of DHBVN Employees (Punishment and Appeal) Regulations, 2019 it has been specifically provided that in case the punishment is to be increased/enhanced by the appellate authority then the same cannot be done unless an opportunity is given to the person concerned to show cause as to why such penalty may not be increased/enhanced. She submitted that in the present case no such notice or opportunity was given to the petitioner by issuing a show cause notice as to why penalty be not increased/enhanced. However, straightaway the first appellate authority i.e. the Director/OP has enhanced the punishment from Rs.4.99 lakhs to Rs.14.97 lakhs in derogation of the aforesaid express provision of Rule 11(1)(c) of DHBVN Employees (Punishment and Appeal) Regulations, 2019 and on this ground as well the order passed by the first appellate authority may be set aside.

181. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam submitted that so far as the aforesaid orders i.e. Annexures P-20, P-23 and P-27, which have been attached with the present petition are concerned, although it depicts that the same have been forwarded by the Superintending Engineer/Administration but actually on the file, separate detailed and reasoned orders have been passed. He has produced the record to show that the detailed orders have been passed and there is no defect in the aforesaid orders but so far as Annexures P-20, P-23 and P-27 are concerned, although they have been forwarded by one officer but it cannot be said that all the aforesaid three orders have been passed by the same authority.

182. He further submitted that so far as Rule 11(1)(c) of DHBVN

Employees (Punishment and Appeal) Regulations, 2019 is concerned, he has instructions to state that at the time when the first appellate authority had heard and decided appeal of the petitioner, then no separate notice was given to the petitioner to show cause as to why penalty may not be enhanced. However, the penalty has in fact been enhanced from Rs.4.99 lakhs to Rs.14.97 lakhs. He has however submitted that the aforesaid non-issuance of notice to show cause in pursuance of Rule 11(1)(c) of DHBVN Employees (Punishment and Appeal) Regulations, 2019 would not be fatal to respondents in view of the fact that earlier when the petitioner had filed a writ petition before this Court, the order of the second appellate authority was set aside and remanded back and the petitioner ought to have taken the aforesaid plea but he did not take the aforesaid plea at that point of time and therefore, the plea taken by the petitioner is barred by the doctrine of estoppel. He also submitted that once the order by the second appellate authority has been passed in pursuance of the order passed by this Court, the doctrine of merger will apply and therefore, now the aforesaid order passed by the first appellate authority cannot be set aside only on the ground of violation of Rule 11(1)(c) of DHBVN Employees (Punishment and Appeal) Regulations, 2019.

183. At this stage, learned counsel for the petitioner submitted that the second prayer made in the present writ petition is for challenging the order dated 12.04.2023 (Annexure P-28), whereby the claim of the petitioner for grant of Old Pension Scheme has been rejected. She further submitted that although direction was issued by this Court to pass a speaking order but one of the basic issues which has already been noted by the Chief Engineer,

the same has not been considered in accordance with law. She further submitted that it has come in the order itself that the petitioner was working in Rajya Sainik Board, Haryana as a regular employee, which is a Government Organization much prior to 01.01.2006 and even though the date of appointment of the petitioner in the present department is stated to be after 01.01.2006 still the petitioner was entitled for the benefit of aforesaid employment which was on regular basis in Rajya Sainik Board, Haryana and this aspect although noted by the Chief Engineer but has neither been considered nor any instruction in this regard has been issued. She further submitted that the aforesaid order is absolutely a non-speaking order in this regard. She also submitted that even otherwise also the petitioner although was selected prior to 01.01.2006 but due to the stay order passed by this Court in some other case, the petitioner could not join the department but it was only in the year 2009 when the stay order was vacated and the petitioner was permitted to join. She further submitted that no such details have been given in the aforesaid order as to what was the stay order and when the stay order was vacated and as to how the petitioner could have been discriminated against with regard to other co-employees who were given the benefit.

184. After hearing the learned counsels for the parties, this Court is of the considered view that although as per the record and as per learned Senior Counsel for the respondent-Nigam, all the three orders i.e. Annexure P-20, P-23 and P-27 are available on the record but the orders which were conveyed to the petitioner were not passed by the aforesaid authorities and rather the aforesaid orders were passed by one and the same authority i.e. the

Superintending Engineer/Admn./DHBVN. The practice of passing the order by the same authority which is conveyed to the employee by any subordinate officer and that too by the same officer for all the three authorities is not permissible. However, on this ground the aforesaid orders cannot be set aside because the detailed orders are stated to have been there on the file passed by the concerned competent authority/appellate authority. However, at the same time, it was argued by the learned counsel for the petitioner that when an appeal was filed against the punishment order, the appellate authority enhanced the punishment from Rs. 4.99 lakhs to Rs. 14.97 lakhs without following the procedure because no notice to show cause was given as to why the penalty should not be enhanced and therefore, it was violative of Rule 11(1) (c) of DHBVN Employees (Punishment and Appeal) Regulations, 2019. The Regulation 11 is reproduced as under:-

> *"11. Order which may be passed by the appellate authority.*
> *(1) In the case of appeal against an order under regulation 9 or any penalty specified in regulation 4, the appellate authority shall consider whether the-*
> *(a) facts on which the order was based have been established;*
> *(b) facts established afford sufficient ground for taking action; and*
> *(c) Penalty is excessive or adequate and after such consideration, shall pass such order as it thinks proper:*
> *Provided that no penalty shall be increased unless opportunity is given to the person concerned to show cause why such penalty may not be increased.*
> *(2) An Authority, against whose order an appeal is preferred, shall given effect to any order passed by the appellate authority.*

185. A perusal of the aforesaid would show that when the appellate authority is to consider for enhancement of punishment, then an opportunity of hearing and show-cause notice has to be given. It was a conceded position by the learned Senior Counsel for the respondent-Nigam that no notice was given to the petitioner. Therefore, on the face of it, the appellate order was violative of the aforesaid Rule. So far as the plea taken by the learned Senior Counsel for the respondent-Nigam that when earlier the second appellate authority order was set aside and the matter was remanded back, the petitioner ought to have taken the aforesaid plea which he has not taken and therefore, the same was barred by the doctrine of estoppel is concerned, the same is unsustainable because the matter was only remanded back and there can be no estoppel against law. Even otherwise also, once there is a direct infringement of the Statutory Rules i.e. Rule 11(1)(c) of DHBVN Employees (Punishment and Appeal) Regulations, 2019, then the appellate order cannot sustain.

186. Another issue was raised by the learned counsel for the petitioner with regard to Annexure P-28 whereby the claim of the petitioner for grant of Old Pension Scheme was rejected. It was the plea of the learned counsel for the petitioner that the petitioner was working in Rajya Sainik Board, Haryana as a regular employee prior to 01.01.2006. The New Pension Scheme came into force w.e.f. 01.01.2006 and even though in the present department, the date of appointment of the petitioner was after 01.01.2006 but he was entitled for the grant of benefit of the aforesaid earlier service on regular basis which required consideration. It was also the case of the learned counsel for the petitioner that for the present appointment

also, the petitioner was selected prior to 01.01.2006 but due to stay order passed by this Court in some other case, the petitioner could not join the department and it was only in the year 2009 when the stay order was vacated then he was permitted to join in the year 2009. It was the case of the learned counsel for the petitioner that all the aspects have not been considered by passing order Annexure P-28 and therefore, the aforesaid order is liable to be set aside being a non-speaking order.

187. This Court is also of the considered view that all the aforesaid aspects which go to the root of the matter for the purpose of grant or non-grant of benefit of Old Pension Scheme were required to have been considered while passing the order Annexure P-28 by thorough application of mind. Therefore, Annexure P-28 is also liable to be set aside with a direction to pass a fresh order in accordance with law.

188. In view of the aforesaid facts and circumstances of the present case, the present petition is partly allowed. The impugned order dated 22.10.2020 (Annexure P-23), order dated 17.03.2023 (Annnexure P-27) and order dated 17.04.2023 (Annexure P-28) are hereby set aside. The matter is remanded back to the first appellate authority pertaining to the punishment order passed by the punishing authority to decide the same within three months from the date of receipt of the certified copy of this order. Since Annexure P-28 is also set aside, the matter is remanded back to the competent authority/Chief Engineer to pass a fresh order pertaining to the representation of the petitioner within a period of three months from the date of receipt of the certified copy of this order.

CWP-3042-1999 (O&M)

189. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 09.03.1998 (Annexure P-3) vide which three increments of the petitioners have been stopped without cumulative effect and order dated 05.02.1999 (Annexure P-5) vide which the appeal preferred by the petitioner has been rejected.

190. Learned counsel appearing on behalf of the petitioner submitted that in the present case the punishment order has been passed vide Annexure P-3 and the appellate order has been passed vide Annexure P-5. He submitted that both the orders Annexures P-3 and P-5 have been passed by the same authority. He also submitted that there is no speaking order passed by the appellate authority nor any reasons have been assigned.

191. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has produced the original record and a perusal of the same would show that the punishment order has been passed by the competent authority which does exist on the file. He has also produced the file pertaining to the decision taken by the Whole Time Directors. He while referring to page No.227 of the record submitted that the Whole Time Directors approved the decision as per Annexure-B and therefore, the Whole Time Directors have also passed a speaking order.

192. After hearing the learned counsels for the parties and perusing the record, it is evident that so far as the punishment order dated 09.03.1998 (Annexure P-3) is concerned, the same has been passed by the punishing authority and the order is available on the record and therefore, there can be no dispute with regard to the same.

193. However, another interesting aspect has cropped up in the present petition pertaining to the order passed by the appellate authority. The appellate authority was the Whole Time Directors of HPVNL. As per page No.227 of the record file, the Company Secretary of the HVPNL recorded the decision of the appellate authority in which it was so stated that after due deliberations, Whole Time Directors did not find any merit in the appeal and confirmed the punishment as awarded by the competent authority and rejected the appeal by passing orders as per Annexure 'B'. At page No.228 the aforesaid Annexure 'B.' is attached which is an order passed by the Under Secretary in which he again gave his own version which was not a part of the aforesaid decision of the Whole Time Directors at page No.227 of the record in which he so stated that it was established that the petitioner was responsible for releasing additional load connection without appropriate documentation and concealed the factual loading position of the transformer. He further stated in the order that after due deliberation the Whole Time Directors did not find any merit in the appeal of the petitioner and '**they**' were of the opinion that there is no need either to modify/reduce or amend the punishment and rejected the appeal Thereafter the aforesaid Annexure-B was conveyed in verbatim to the petitioner vide Annexure P-5. The decision of the Whole Time of Directors at page No.227 and Annexure -B which is also referred to in the decision of the Whole Time Directors which is attached at page No.228 of the record, both are reproduced as under:-

> *"The appeal preferred by Shri Hari Krishan, AEE was considered in the light of facts as brought out in the memorandum and as explained by the officer before the Whole Time Directors in his personal hearing. After detailed*

deliberations, the Whole Time Directors did not find any merit in his appeal and confirmed the punishment as awarded by the competent authority and rejected the appeal by passing orders as per Annexure-'B' attached".

ANNEXURE-'B'

HARYANA VIDYUT PRASARAN NIGAM

OFFICE ORDER NO._____/CONF-1063 DATED:

The appeal dated 24.4.98 preferred by Sh. Hari Kishan AEE against punishment of stoppage of his three increments without cumulative effect awarded vide this office order no.98/Conf-1063 dated 9.3.98 was submitted to the Whole Time Directors, HVPN in their meeting held on 20/21.1.99 for consideration and decision.

It was considered by the WTDs on the basis of material available on record and hearing the officer in person, it was established that he was responsible for releasing additional load connection without appropriate documentation and concealed the factual loading position of the Transformer. After due deliberation the WTDs did not find any merit in the appeal of Sh. Hari Kishan, AEE and they were of the opinion that there is no need either to modify/reduce or amend the punishment already ordered vide this office order dated 9.3.98 and rejected the appeal and confirmed the punishment already awarded.

Hence the appeal of Sh. Hari Kishan, AEE, is hereby rejected.

This issues in pursuance of Whole Time Directors HVPN, decision taken in their meeting held on 20/21.1.99.

Under Secretary/S-III.

For CE/Admn. HVPN, Panchkula"

194. When the decision of the Whole Time Directors who were the appellate authority is perused, it is so stated that they are rejecting the plea by passing order as per Annexure-B and this decision is dated 27.01.1999 and a bare perusal of Annexure-B at record page No.228 shows that it is undated and unsigned. Therefore, it is not clear as to whether the aforesaid Annexure-B was passed prior to the decision of the Whole Time Directors or afterwards. Taking both the probable factors into consideration, the same can be considered and are also to be viewed seriously. In case Annexure-B which is undated was drafted and passed after the aforesaid decision of the Whole Time Directors, then the same is of no use because it may not have been placed before the Whole Time Directors. In case the aforesaid Annexure-B was available with the Whole Time Directors at the time of the taking a decision on 27.01.1999, then the aforesaid Annexure-B is purported to be passed by the Under Secretary which is also unsigned and therefore there could be no application of mind by the Whole Time Directors. The language which is used in Annexure-B shows very clearly that the same has not been considered and passed by any of the Whole Time Directors because it is so stated in Annexure -B that after due deliberation, the Whole Time Directors did not find any merit in the appeal of Sh. Hari Kishan and '**they**' were of the opinion that there is no need either to modify/reduce or amend the punishment order which means that with the use of expression '**they**' it becomes clear that the order is passed by the Under Secretary and not by the Whole Time Directors. Therefore, the expression used by the Whole Time Directors at page No.227 of the decision that the appeal is rejected by passing orders as per Annexure-B would clearly mean that the

reasons are not of the Whole Time Directors but the reasons are given by the Under Secretary. It becomes more substantiated from the facts that at Annexure-B it has been so stated that it was established that the petitioner was responsible for releasing additional load connection without appropriate documentation and concealed the factual loading position of the transformer whereas nothing comes out in the decision of the Whole Time Directors dated 27.01.1999 at page No.227. Such kind of practice adopted by the Whole Time Directors clearly shows non-application of mind and abdication of responsibilities and delegation of their powers to an Under Secretary. This system adopted by the Whole Time Directors is also unknown to service jurisprudence and impermissible in law.

195. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The appellate order dated 05.02.1999 (Annexure P-5) is hereby set aside. The case is remanded back to the appellate authority i.e. Whole Time Directors to pass a fresh order in accordance with law after affording adequate opportunity of hearing to the petitioner, within a period of four months from the date of receipt of the certified copy of this order.

CWP-15530-1999

196. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 29.01.1999 (Annexure P-4) vide which penalty of stoppage of two increments with future effect along with recovery of Rs. 3,77,250/- has been imposed upon the petitioner and order dated 20.09.1999 (Annexure P-6) vide which the appeal preferred by the petitioner has been dismissed.

197. Learned counsel appearing on behalf of the petitioner submitted

that it is a case where a punishment order has been passed against the petitioner vide Annexure P-4 and thereafter vide Annexure P-6, an appellate order has been passed rejecting the appeal of the petitioner. He submitted that as per the aforesaid two documents which have been attached as Annexures P-4 and P-6, both the punishment order and the appellate order have been passed by the same authority i.e. Under Secretary on behalf of Chief Engineering /Administration. He further submitted that it is a case where semblance of the punishing authority and the appellate authority is in one and the same person and therefore is hit by the Doctrine of Bias.

198. Learned counsel further submitted that it is a case where the punishment order cannot be sustained even on merits because as per the charge-sheet issued against the petitioner vide Annexure P-1, allegations were pertaining to petitioner's negligence in supervisory capacity regarding some other subordinate officers who had committed fraud and caused loss to the State exchequer and when the departmental enquiry was conducted, then the Enquiry Officer vide Annexure P-2 also came to the conclusion that it could not be proved that by adopting any method, fraud could have been detected by any of the SDOs including the petitioner. It was further recorded by the Enquiry Officer that the SDOs being incharge of Operation Sub Division, the action, if any, to be taken against these SDOs on the mere fact that the fraud took place when they were incharge of OP Sub Division may be decided by the competent authorities. He submitted that in this way the allegation of any embezzlement or fraud was neither alleged against the petitioner in the charge-sheet nor it was proved in the enquiry report but only on the ground of lapse of supervisory capacity, the disciplinary

authority proceeded against the petitioner. He submitted that however when a show-cause notice was issued to the petitioner vide Annexure P-3, the disciplinary authority in the show-cause notice wrongly stated that the petitioner was held responsible by the Enquiry Officer for embezzlement and it was on the basis of the aforesaid show-cause notice which was factually incorrect and against the record that the disciplinary authority vide Annexure P-4 imposed a punishment of stoppage of two annual increments with future effect and a recovery of 15% of the embezzled amount of Rs.25.15 lacs in equal monthly installments of Rs. 5,000/- per month from his pay till recovery of the amount which was ascertained as Rs.3,77,250/- is made and it was further directed that if some amount is left , the same be recovered from his gratuity after the retirement. He submitted that even the disciplinary authority in the aforesaid Annexure P-4 also stated that the petitioner was held responsible for embezzlement of an amount of Rs. 3,77,250/-, whereas there is no recording of any fact by the Enquiry Officer and in fact the show-cause notice and the aforesaid order of punishment were totally against the record. He submitted that at the most the petitioner could have been held liable for lapse in discharging his duties in supervisory capacity for which the punishment of stoppage of two annual increments with future effect was inflicted upon the petitioner but by no stretch of imagination it can be said that the petitioner embezzled the amount in view of categorical finding of the Enquiry Officer. He submitted that the show-cause notice and the punishment order (Annexure P-4) are totally contrary to the record and also contrary to the findings of the Enquiry Officer. He also submitted that in case any penalty amount with regard to embezzlement was

to be imposed upon the petitioner contrary to the finding of the Enquiry Officer, then a dissent note had to be given and the punishing authority had to differ from the report of Enquiry Officer and thereafter show-cause notice was required to have been given to the petitioner by adopting an appropriate procedure which admittedly was not followed.

199. Learned counsel further submitted that so far as the aforesaid part of the punishment pertaining to the stoppage of two annual increments with future effect is concerned, he accepts the same and he will not dispute the same in the larger interest. He submitted that when he filed an appeal before the Whole Time Directors, then as per Annexure P-6 which was issued by the Under Secretary on behalf of the Chief Engineer it was stated that the same has been rejected by the Whole Time Directors and no order of Whole Time Directors was supplied to the petitioner and therefore, not only the appellate order is liable to be set aside being non-speaking and on the ground of non-supply of the same to the petitioner but also a part of the punishment order to the extent of imposing of penalty of Rs. 3,77,250/- is also liable to be set aside by this Court.

200. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has produced the original record before this Court and this Court has perused the same. He submitted that a perusal of the same would show that so far as the punishment order against the petitioner is concerned, the same has been passed by the Chief Engineer himself by way of an order and therefore, nothing wrong can be pointed out with regard to the aforesaid punishment order as the Chief Engineer is the competent punishing authority. He also submitted that so far

as the order which has been passed by the appellate authority is concerned, the Whole Time Directors have considered the aforesaid appeal themselves and they have approved Annexure-A which is a draft order passed by the Under Secretary and therefore, it cannot be said that it is not a reasoned order.

201. On merits, learned Senior Counsel also submitted on instructions that he has no objection in case a part of the punishment order to the extent whereby an amount of Rs. 3,77,250/- imposed against the petitioner is set aside since learned counsel for the petitioner has himself stated that so far as the first part of the punishment order i.e. stoppage of two annual increments with future effect is concerned, the same may be sustained and only the latter part be set aside. He submitted that in view of the finding of the Enquiry Officer and the show-cause notice issued to the petitioner, he has no objection in case the punishment order is set aside only to the limited extent of imposing of penalty of Rs.3,77,250/-.

202. Learned counsel for the petitioner has stated that in view of the aforesaid statement made by the learned Senior Counsel for the respondent-Nigam, the respondent-Nigam may also be directed that the aforesaid amount of Rs. 3,77,250/- which was withheld by the respondent-Nigam at the time of retirement of the petitioner be released to the petitioner alongwith interest @ 6% per annum (simple).

203. After hearing the learned counsels for the parties and a perusal of the record, it becomes clear that so far as the order of punishment is concerned which is Annexure P-4, although as per Annexure P-4 the same has been signed by the subordinate officer but on the file, there exists an

order passed by the punishing authority i.e. Chief Engineer and regarding which there is no dispute.

204. So far as the appellate order is concerned, the appellate authority was the Whole Time Directors and the position in the present case is same as that of the previous case i.e. CWP-3042-1999. Very interestingly the language adopted by the Whole Time Directors in verbatim is same in the present case as well except for change in the name of the delinquent official and number of the Annexure. The decision of the Whole Time Directors in the present case which is available on the record file at page No.123 is reproduced as under:-

> *"The appeal preferred by Shri R.S. Kundu, AE was considered in the light of facts as brought out in the memorandum and as explained by the officer before the Whole Time Directors during his personal hearing. After detailed deliberations, the Whole Time Directors did not find any merit in his appeal and rejected the same by passing orders as per Annexure-'A' attached".*

205. Thereafter Annexure-A is also appended with the aforesaid decision and it is by the Under Secretary, though undated and unsigned and thereafter the same has been conveyed to the petitioner vide Annexure P-6. For the sake of brevity, this Court would not go into detail as to how the order Annexure P-6 and Annexure-A were not in accordance with law because on the point of law it is on the same position as that of the previous case i.e. CWP-3042-1999 and on the same reasoning the present order is also liable to be set aside.

206. So far as the punishment order (Annexure P-4) is concerned,

since it consists of two parts i.e. stoppage of two increments with future effect and recovery of Rs. 3,77,250/-, it was so stated by the learned counsel for the petitioner that so far as the first part is concerned, he does not wish to agitate the same in the larger interest but so far as the recovery of Rs. 3,77,250/- is concerned, the same cannot be recovered because it was not proved before the Enquiry Officer. Learned Senior Counsel for the respondent-Nigam has also stated that on that aspect the recovery of Rs. 3,77,250/- can be set aside to that extent so that fresh order can be passed.

207. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The appellate order dated 20.09.1999 (Annexure P-6) is hereby set aside. The punishment order is also set aside to a limited extent of recovery of Rs. 3,77,250/- from the petitioner. The matter is remanded back to the appellate authority to pass a fresh order in accordance with law after affording adequate opportunity of hearing to the petitioner within a period of four months from the date of receipt of the certified copy of this order. Any amount recovered from the petitioner in pursuance of aforesaid recovery of Rs. 3,77,250/- be refunded to him alongwith interest @ 6% per annum (simple), within a period of three months from the date of receipt of the certified copy of this order.

CWP-24289-2022

208. At the outset, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam stated that that the appellate order (Annexure P-23) has been withdrawn by the Nigam and now fresh order will be passed.

209. Learned counsel appearing on behalf of the petitioner has stated

that he may be permitted to withdraw the present petition in order to challenge the fresh order, in case it is so required.

210. Ordered accordingly.

CWP-24290-2022 &
CWP-24296-2022

211. At the outset, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam stated that the impugned orders in both the petitions have been withdrawn and after hearing the petitioners in both the cases fresh orders have been passed.

212. Learned counsel appearing on behalf of the petitioners has stated that since fresh orders have been passed against the petitioners, they may be permitted to challenge the same in accordance with law after withdrawing the present petitions.

213. Ordered accordingly.

CWP-24293-2022

214. At the outset, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam stated that in the present petition the impugned orders have been withdrawn and after hearing the petitioner fresh orders have been passed.

215. Learned counsel appearing on behalf of the petitioner has stated that since fresh orders have been passed against the petitioner, he may be permitted to challenge the same in accordance with law after withdrawing the present petition.

216. Ordered accordingly.

CWP-19466-2024

217. At the outset, Mr. Puneet Jindal, learned Senior Counsel

appearing on behalf of the respondent-Nigam stated that in the present case the impugned orders have already been withdrawn and fresh order will be passed in due course.

218. Learned counsel appearing on behalf of the petitioner has stated that he may be permitted to withdraw the present petition in order to challenge the fresh order, in case it is so required.

219. Ordered accordingly.

CWP-22398-2021

220. The present writ petition has been filed seeking issuance of a writ in the nature of *certiorari* for setting aside the preliminary enquiry report dated 18.02.2018 (Annexure P-6), charge-sheet dated 10.04.2018 (Annexure P-7), enquiry report dated 27.05.2019 (Annexure P-16), show case notice dated 07.02.2020 (Annexure P-12), order of dismissal dated 13.05.2020 (Annexure P-20) as well as the order dated 12.03.2021 (Annexure P-23) passed by the Appellate Authority without affording an opportunity of hearing as well as without considering the material facts and relevant documents on record by passing a non-speaking and unreasoned order, with a further prayer to direct respondent No.4 to provide detail proceedings regarding the appeal filed by the petitioner in pursuance to his representations dated 30.03.2021 (Annexure P-24) and 12.04.2021 (Annexure P-25) as well as to reinstate the petitioner back in service with all consequential benefits as the petitioner may be entitled.

221. Learned counsel appearing on behalf of the petitioner submitted that in the present case, the punishment order has been passed whereby the petitioner has been dismissed from service by the CMD but the same is not

reflected from the order Annexure P-20 because it has only been forwarded by the subordinate officer. He also submitted that when he filed an appeal, the same was dismissed by the appellate authority vide Annexure P-23 without even affording an opportunity of hearing to the petitioner and even otherwise also, the same was only forwarded by the subordinate officer but there is nothing on the record shown by the respondents that the appellate authority has applied any mind and passed any order.

222. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has referred to the original record which was produced before this Court in which it is clear that so far as the punishment order (Annexure P-20) is concerned, the same has been passed and signed by the CMD himself and therefore, there is no dispute with regard to the same, although the same was forwarded and conveyed by the subordinate officer and therefore, it cannot be said that the punishment order has not been passed by the competent authority. So far as the appellate order (Annexure P-23) passed by the appellate authority which is the Board of Directors is concerned, he also produced a Resolution of the Board of Directors. He submitted that the Board of Directors not once but 2/3 times deliberated upon the issue and after due deliberation, the appeal was rejected by the Board of Directors, although Annexure P-23 was conveyed by the subordinate officer but the order of the Board of the Directors is actually on the file.

223. Learned counsel appearing on behalf of the petitioner submitted that a perusal of the aforesaid record shown by the learned Senior Counsel for the respondent-Nigam would show that Board of Directors have passed

an order which is a short order without application of mind and without giving any opportunity of hearing to the petitioner which is in violation of Regulation 11 of the DHBVN Employees (Punishment and Appeal) Regulations, 2019 and on this ground, the appellate order cannot sustain because none of the ingredients contained in Regulation 11 of the DHBVN Employees (Punishment and Appeal) Regulations, 2019 has been satisfied.

224. I have heard the learned counsels for the parties and perused the record produced by the learned Senior Counsel for the respondent-Nigam.

225. So far as the punishment order (Annexure P-20) is concerned, the same has been passed by the CMD on the file as well and therefore, the same cannot be disputed that it has not been passed by the competent authority. However, so far as the appellate authority (Annexure P-23) is concerned, the Board of Directors were the competent authority constituting appellate authority. The record which was shown to the Court with regard to the appeal pertains to two resolutions of the Board of Directors whereby they deferred the deliberation of the matter. Thereafter, it appears that some meeting had taken place on 17.02.2021 because the same date is reflected in Annexure P-23 of which reference has been given but the record which has been shown to the Court does not have any such resolution of the Board but so far as the earlier Board of Directors resolutions are concerned, the same were so mentioned in the record. From time to time the matter was placed before the concerned authorities in the form of a draft agenda but as to what was passed by the Board of Directors the same has not been shown in the record as produced before this Court nor the same has been attached alongwith the reply which has been filed by the respondent-Nigam. Rather

as per the noting sheet at page No.118 the petitioner had specifically requested that he be provided the real facts on record regarding his appeal and be provided a certified copy of the proceedings/documents while deciding the appeal. Thereafter the matter was put up but there is nothing to show as to what happened to the aforesaid request of the petitioner. In this way, the actual order passed by the Board of Directors is not on record but it can be deduced from the order Annexure P-23 that some meeting took place on 27.02.2021.

226. It was the argument of the learned counsel for the petitioner that Annexure P-23 which was conveyed to the petitioner is not passed by the appellate authority who are the Board of Directors but it is passed by the Superintending Engineer who is a subordinate authority but reference has been made to one meeting of the Board of Directors held on 27.02.2021 regarding which no document has been supplied to the petitioner. Learned counsel also referred to Regulation 11 whereby it has been so provided that when an order is to be passed by the appellate authority, then what procedure is to be adopted. The same is reproduced as under:-

> *"11. Order which may be passed by the appellate authority.*
> *(1) In the case of appeal against an order under regulation 9 or any penalty specified in regulation 4, the appellate authority shall consider whether the-*
> *(a) facts on which the order was based have been established;*
> *(b) facts established afford sufficient ground for taking action; and*
> *(c) Penalty is excessive or adequate and after such consideration, shall pass such order as it thinks proper:*
> *Provided that no penalty shall be increased unless*

opportunity is given to the person concerned to show cause why such penalty may not be increased.

(2) An Authority, against whose order an appeal is preferred, shall given effect to any order passed by the appellate authority.

227. A perusal of the aforesaid regulations would show that while deciding the appeal various parameters are to be borne in mind and the Board 'shall' consider the three factors which have been shown there as (a), (b) and (c) as reproduced aforesaid. In the absence of any order placed on record or shown to the Court with regard to the decision of the Board of Directors dated 17.02.2021, the impugned order (Annexure P-23) cannot sustain because the same has not been passed by the Board of Directors but by a subordinate officer. Therefore, it is a case of apparent violation of Rule 11(1)(c) of DHBVN Employees (Punishment and Appeal) Regulations, 2019.

228. In view of the aforesaid facts and circumstances, the present petition is partly allowed. The impugned order dated 12.03.2021 (Annexure P-23) is hereby set aside. The matter is remanded back to the Board of Directors i.e. the appellate authority to consider the appeal of the petitioner afresh after affording an opportunity of hearing to the petitioner with a period of four months from the date of receipt of the certified copy of this order.

CWP-1581-2024, CWP-19532-2024, CWP-19533-2024, CWP-19551-2024, CWP-19553-2024, CWP-19556-2024, CWP-19598-2024, CWP-19634-2024 & CWP-19636-2024

229. All the nine cases are taken up together since as per learned counsels for the parties, the facts involved in all the nine cases are similar

and identical in nature and the punishment order etc. arise out of the same enquiry pertaining to different persons.

230. The facts are being taken up from *CWP No.1581 of 2024, titled as Sukhdev Singh Versus State of Haryana and others*.

231. Learned counsel appearing on behalf of the petitioners submitted that it is a case where the impugned punishment order (Annexure P-8) has not been passed by the authority who was competent to pass the order because it has been stated in the aforesaid Annexure P-8 that it has been passed by the Superintendent, whereas the competent authority is the Superintending Engineer and so far as the appellate order (Annexure P-10) is concerned, prima facie, the same is a totally unreasoned and cryptic order wherein no reason has been assigned and similarly, the revisional order (Annexure P-12) is also an unreasoned order. He submitted that when the punishment order has to be passed, the same has to be backed by at least some reasons by way of application of mind by the concerned competent authority but the competent authority /punishing authority has not applied its mind in the present case. He also submitted that the petitioner has raised a grievance with regard to discrimination because two other XENs have been exonerated and all these aspects were required to be considered by the punishing authority by way of passing of an order but the same has not been done.

232. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has produced the record of the present cases and while referring to the record of aforesaid Sukhdev Singh's case which is similar to the other cases submitted that the punishing

authority who is the Superintending Engineer has himself passed the order of punishment. While referring to page No.10 of the record, he submitted that it has been so ordered by the Superintending Engineer himself who is the punishing authority that the reply of the petitioner to the show-cause notice is not satisfactory and therefore, the punishment is imposed and it cannot be said that the order has not been passed by the punishing authority, although Annexure P-8 would reflect that the same is forwarded by the Superintendent and not by the Superintending Engineer but that would not make the case of the respondents fatal. While further referring to the aforesaid record, he submitted that the Superintending Engineer had applied his mind on the basis of the detailed noting prepared by the concerned dealing hand pertaining to the allegations against the petitioner and reply filed by the petitioner to the show-cause notice and it was only after taking into consideration the aforesaid detailed noting that there was a proper application of mind by the Superintending Engineer who was the competent authority. Therefore, it cannot be said that the Superintending Engineer passed the order without due application of mind.

233. Learned Senior Counsel also submitted that so far as the appellate order (Annexure P-10) is concerned, the appellate order is certainly without any reasons and similarly the revisional order is also not a reasoned order and he has instructions to state that the respondent-Nigam will withdraw the appellate order and the revisional order in the present case as the same has not been passed backed by any reasons and it was the duty of the appellate authority to have passed a reasoned order.

234. On the ground of discrimination as so submitted by the learned

counsel for the petitioners, learned Senior Counsel for the respondent-Nigam submitted that so far as the grievance of the petitioners with regard to discrimination is concerned, the same will be considered by the appellate authority when a fresh order is passed.

235. After hearing the learned counsels for the parties and perusing the record which has been produced before this Court, it is clear that the dealing hand/LDC had put up a note before the punishing authority who was a Superintending Engineer/OP Circle and the Superintending Engineer made the following notings on the file which are at page No.10 of the record file:-

> *"Reply of SCN marked 'X' at NP-9 has not been found satisfactory, as such to recover embezzled amount of Rs. 748448/- alongwith interest thereon @ 18% till its realization from the pay of the aforesaid official as well as stoppage of one annual increment without future effect".*

236. A bare perusal of the aforesaid would show that it cannot be termed as an order passed by the Superintending Engineer but it is only an opinion given by him in the form of a noting but by no stretch of imagination it can be said that the Superintending Engineer who is the punishing authority has passed any order after application of mind. Apart from the above, it clearly shows that it is only so stated that the reply of the show-cause notice has not been found to be satisfactory and therefore punishment was awarded. Such kind of method adopted by the punishing authority of not passing any order of punishment itself but only giving a noting of his opinion is also impermissible under the law and is deprecated by this Court. This amounts to abdicating of his powers and therefore the

same is unsustainable.

237. On the basis of the aforesaid noting, one Superintendent who is a subordinate officer thereafter issued the order to the petitioner vide Annexure P-8, in which he has given details as if he is the punishing authority. It is a matter of grave concern that Superintendent has projected himself to be the punishing authority which is clear from the tenor of the order which he has passed vide Annexure P-8.

238. In view of the aforesaid facts and circumstances, all the nine petitions are hereby partly allowed. The punishment order (Annexure P-8) and appellate order (Annexure P-10) in CWP-1581-2024, punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19532-2024, punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19533-2024, punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19551-2024, punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19553-2024, punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19556-2024, punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19598-2024, punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19634-2024 and punishment order (Annexure P-4) and appellate order (Annexure P-5) in CWP-19636-2024 are set aside.

CWP-23186-2024

239. The present petition has been filed for quashing the order dated 01.07.2024 (Annexure P-16). Learned counsel appearing on behalf of the petitioner submitted that it is a case where when the petitioner earlier filed a writ petition before this Court, then this Court vide Annexure P-15 had

directed the respondents to take a conscious decision with regard to the rights of the petitioner who was promoted to the post of Information Assistant in the year 1997 i.e. about 27 years ago for providing promotional avenues by taking suitable measures including amendment of H.S.E.B. Employees of Public Relations Wing, Regulations, 1991 in accordance with law in this regard and thereafter, to undertake consequential exercise, if any, regarding consideration for promotion of the eligible candidates. He submitted that Annexure P-16 has been passed in pursuance of the aforesaid order however the same has been passed by the Under Secretary of the respondent-Nigam and it is so stated that it has been issued with the approval of the competent authority and it is very clear from the same that the competent authority himself has not applied his mind and the order has been passed by the Under Secretary.

240. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has produced the original record before this Court and has also supplied a photocopy of the same. He submitted that at page No.106, the competent authority who is the Chairman has passed an order and has even applied his mind and thereafter draft order was prepared by the Under Secretary which was approved by the Chairman and even the order which has been attached as Annexure P-16 was countersigned by the Chairman and therefore, it cannot be said that there was no application of mind by the Chairman.

241. After hearing the learned counsels for the parties and perusing the record so produced by the learned Senior Counsel for the Nigam, another important issue pertaining to the service jurisprudence has arisen in this

case. The petitioner had earlier filed a petition i.e. CWP-24545-2015 seeking issuance of direction to the respondents to consider and promote the petitioner to the post of Chief Public Relations Officer by amending the Haryana State Electricity Board Employees of Punjab Relations Wing Regulations, 1991 because these Rules did not provide for promotional avenues for the post on which the petitioner was appointed and therefore, stagnation was created for the petitioner. This Court vide order dated 30.01.2024 (Annexure P-15) disposed of the writ petition with a direction to the respondents to take a conscious decision with regard to the rights of the petitioner for providing promotional avenues by taking suitable measures including measure for amendment of the aforesaid Regulations in accordance with law and thereafter, to undertake consequential exercise, if any, regarding consideration for promotion of eligible candidates. This Court further directed that the aforesaid decision shall be taken by the competent authority of the respondent-Nigam in light of the judgments relied upon by the learned counsel for the petitioner within a period of four months and be communicated to the petitioner. It was further observed that in case the petitioner is aggrieved of any adverse decision taken by the respondent-Nigam, then he shall be at liberty to challenge the same in accordance with law.

242. Thereafter, impugned order dated 01.07.2024 (Annexure P-16) was passed by Under Secretary/HR-1, HVPNL, Panchkula, whereby the representation of the petitioner was rejected by stating that it is issued with the approval of the competent authority, although the order is a lengthy order running into about 5 pages.

243. The interesting issue which is to be considered in the present case is as to when this Court had earlier directed the competent authority to take a conscious decision with regard to the claimed rights of the petitioner, then whether the Under Secretary/HR-1, HVPNL, Panchkula could have passed the aforesaid impugned order or not.

244. Status report by way of an affidavit was filed by the respondent-Nigam in the present case dated 28.10.2024, which is taken on record and in which the following stand has been taken by the Nigam:-

> *Remarks*
>
> *After scrutiny of original file it was found by the Committee that as per the order dated 30.01.2024 passed by the Hon'ble High Court in CWP No.24545 of 2015 titled as Sanjeev Kumar Vs. HVPNL & others, the competent authority i.e. Addl. Chief Secretary (Energy)-cum-Chairman, Haryana Power Utilities, after due application of mind upon representation had passed the order that the representation of the petitioner for modification of the Rules/Policy guidelines for grant of promotional avenues is not tenable and accordingly liable to be rejected. A look at the original file reveals as under:-*
>
> *1. Seen.*
>
> *2. Approved as "F/X" - One copy countersigned be kept in the record file. Sd/- ACS on 01.07.2024.*
>
> *The order No.128 dated 01.07.2024 was only conveyed by the Under Secretary/HR-I, HVPNL, Panckhula and in fact, all the pages of the order bears initials of the ACS-cum-Chairman, HPU.*
>
> *Since in the file reasoning exists and the signatures of ACS(Energy) have been appended on each page of order,*

therefore, there is no need to withdraw the same.

Conclusion

The writ petition is to be decided on merits. The copy of Committee's report is annexed.

245. The aforesaid status report has also been filed by the same authority who passed the aforesaid impugned order (Annexure P-16).

246. Learned Senior Counsel appearing on behalf of the respondent-Nigam while referring to the record which was shown to the Court submitted that although Annexure P-16 has been sent by the Under Secretary/HR-1, HVPNL, Panchkula to the petitioner but it cannot be said that the same has been passed by the Under Secretary/HR-1, HVPNL, Panchkula because a perusal of the record would show that a conscious decision was taken by the competent authority who was the Additional Chief Secretary-cum-Chairman of the respondent-Nigam and after taking a conscious decision the draft speaking order was approved by the aforesaid competent authority but was sent by the Under Secretary/HR-1, HVPNL, Panchkula to the petitioner, which is Annexure P-16 and therefore, it cannot be said that it was a case of non-application of mind by the competent authority to whom the directions were issued by this Court.

247. Learned Senior Counsel appearing on behalf of the respondent-Nigam supplied a copy of the report of a Committee constituted during the pendency of the present petition to look into this issue as to whether the method adopted was correct or not to which the Enquiry Committee consisting of four members i.e. Director/Technical, HVPNL, Panchkula (Chairman), Joint Secretary/Legal, HVPNL, Panchkula (Member), SE/Admn-I, HVPNL, Panchkula (Member) and SE/Admn-II, HVPNL,

Panchkula (Member), opined that the proposal was approved on file by Additional Chief Secretary (Energy) and signatures have been appended on each and every page of the draft order, which has been conveyed by the Under Secretary/HR-I, HVPN, Panchkula dated 01.07.2024 and therefore, the status report may be placed before the Court. The relevant portion of the Report of the Committee is reproduced as under:-

> *"Having given thoughtful and conscious consideration to the contentions raised and after going through the facts & record as put by the office and after hearing the petitioner in person, the proposal has been approved on file by ACS (Energy) (copy of the noting is annexed as Annexure-A). Signature have been appended on each page of the draft order (copy of draft order is annexed as Annexure-B), which has been conveyed by Under Secretary/HR-1, HVPN, Panchkula vide office order no.128/GS-134/Loose dated 01.07.2024. Therefore, status report may be placed before the Hon'ble High Court.*
>
> | (Member) | (Member) | (Member) | (Chairman) |
> |---|---|---|---|
> | Joint Secretary/Legal, HVPNL, Panchkula | SE/Admn-II, HVPNL, Panchkula | SE/Admn-I, HVPNL, Panchkula | Director/Technical, HVPNL, Panchkula |

248. A perusal of the aforesaid would show that when during the pendency of the present petition it was considered by the respondent-Nigam whether the method adopted by the competent authority to whom direction to take a conscious decision was issued by this Court, the same was correct or not, it appears that the Committee has come to the conclusion that the same was correct because the Additional Chief Secretary (Energy), who was the competent authority had appended signatures on each page of the draft order. The Committee Members appear to be senior officers as stated aforesaid including officer of legal department. A perusal of the record,

whereby the aforesaid order (Annexure P-16) has been passed by the Under Secretary/HR-1, HVPNL, Panchkula and what was the procedure adopted prior to that as so supplied by the learned counsel for the respondent at pages No.113 to 117 of the record file shows that earlier a proposal was prepared for consideration and approval of the Additional Chief Secretary (Energy) on the basis of legal opinion tendered by the learned Advocate General, Haryana and the Additional Chief Secretary (Energy) considered the office note which has been referred to at Page No.105 and 106, whereby he in his own handwriting wrote on the noting file as follows:-

> *"The directions of the Hon. High Court is only to decide the representation and pass a reasoned speaking order in the most judicious manner.*
>
> *The whole matter has been delayed by over 03 months and was submitted on 28.04.2024 on which Ld' AG's opinion was directed to be sought. The same has been recd. On 13.05.2024 as at NP-87. The matter of promotion is not a right and the State of Haryana and the erstwhile HSEB and now the HPUs are at various times, taking a step and adopting policies for employees welfare. ACP is one such policy for cadres which are small with limited or no promotional avenues. In this case, there was one promotion post and the employee was considered and promoted on the same. Thereafter he has been granted the benefits of two ACPs, as per the provisions of ACP scheme, and the same were duly granted at the appropriate time. Thus, the employee has been given all benefits as are due to him and the company has achieved and fulfilled its mandate in this case. The request for diverting a post is not desireable and shall be bad precedent administratively and it is not agreed to.*

> *Piecemeal reorganization is a poor administrative policy and the same should be done in a concerted manner and comprehensively and only once in 10 years (or more). Thus, the representation, on pure administrative ground is liable to be rejected and is hereby rejected.* ***Put up fair DFA for approval and issue."***

249. From the aforesaid it is clear that the proposal was put to the competent authority and he so put a noting that the representation of the petitioner on pure administrative ground is liable to be rejected and is hereby rejected, although some reasons have been mentioned but at the same time he also directed to put up fair DFA for approval and issue, which clearly means that he wanted an order to be drafted and put up before him for approval, although he has given his mind that the representation is to be rejected and thereafter, to issue the same to the petitioner.

250. A perusal of page No.117 of the record further shows that the aforesaid note which was prepared by the subordinate staff which consisted of three officers i.e. Deputy Superintendent, Superintendent/HRD and Under Secretary/HR-I and was put up before Superintending Engineer/Admn-I, who thereafter put up the same before the Chief Engineer/Admn with a request that the aforesaid note be perused along with side Mark-X in the draft speaking order duly vetted by LR/HPU and be submitted for approval of the Additional Chief Secretary (Energy) to Government of Haryana-cum-Chairman. The aforesaid noting alongwith one draft speaking order which was drafted by some subordinate authority but approved through legal department was put up before the competent authority who was the Additional Chief Secretary (Energy) to Government of Haryana-cum-Chairman and in this way, the competent authority gave a noting on the file

by stating that he has seen and approved as F/X and that one copy countersigned be kept in the record.

251. It was thereafter on the same date that the aforesaid impugned order dated 01.07.2024 (Annexure P-16) which was draft order approved by the competent authority was issued by the Under Secretary/HR-1, HVPNL, Panchkula, which was sent to the petitioner.

252. The aforesaid sequence of events would clearly show that after a direction was issued by this Court to the competent authority to take a conscious decision, the competent authority was presented with a proposal by some subordinate staff and he by way of aforesaid noting expressed his mind that the representation of the petitioner is rejected but that noting given by the competent authority was never supplied to the petitioner but a novel method was adopted by the competent authority whereby subordinate staff was asked to put up a draft order for approval of the competent authority and in turn, some subordinate officer who appears to be Under Secretary /HR-1, HVPNL, Panchkula drafted the order and put up the draft order before the competent authority which was simply approved by one line. The noting of the competent authority as aforesaid by which the competent authority stated that he rejects the representation of the petitioner is one paragraph only, whereas the order (Annexure P-16) passed by Under Secretary/HR-1, HVPNL, Panchkula runs into 5 pages giving the entire details. It is not a case where some subordinate officer has reproduced the order of the competent authority but a perusal of order (Annexure P-16) would show that the same has been passed by the Under Secretary/HR-1, HVPNL, Panchkula and he was not competent to pass the order because the

directions were issued to the competent authority, who was the Additional Chief Secretary (Energy) to Government of Haryana-cum-Chairman and was to pass the order and not the Under Secretary/HR-1, HVPNL, Panchkula even if it is based upon some noting of the Additional Chief Secretary (Energy) to Government of Haryana-cum-Chairman, whereby he has given his mind that the representation of the petitioner is to be rejected.

253. Such kind of practice adopted by the State functionaries is impermissible, illegal, against the Rules, amounting to abdication of their powers and therefore, unsustainable. Additionally, it can also be construed to be contemptuous in nature since direction was issued to the competent authority to take a conscious decision and the decision of the competent authority was never conveyed to the petitioner but some draft order made by some other authority and approved by the competent authority was sent to the petitioner, which is under challenge in the present petition. However, taking a lenient view, this Court would not proceed against the aforesaid officer for contempt.

254. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 01.07.2024 (Annexure P-16) is hereby set aside. A direction is issued to the competent authority i.e. the Additional Chief Secretary (Energy) to Government of Haryana-cum-Chairman of the respondent-Nigam to pass a fresh order strictly in accordance with law and the order has to be passed by the competent authority himself under his own signatures and not by anybody else, within a period of three months from the date of receipt of certified copy of this order.

CWP-19795-2024

255. The present petition has been filed seeking quashing of charge-sheet dated 19.11.2014 (Annexure P-15), order dated 06.05.2022 (Annexure P-28), second enquiry report dated 20.08.2014 (Annexure P-13), third enquiry report dated 24.01.2023 (Annexure P-31), order dated 22.12.2023 (Annexure P-36) and order dated 23.05.2024 (Annexure P-39).

256. Mr. Rajiv Atma Ram, learned Senior Counsel appearing on behalf of the petitioner with Mr. Arjun Pratap Atma Ram, learned counsel has submitted that it is a case where the punishment order is Annexure P-36 and the appellate order is Annexure P-39. He submitted that it is a case where as per the orders which were supplied to the petitioner which have been impugned appears to have been forwarded by one person i.e. Under Secretary, HR in pursuance of the decision taken by the punishing authority and by the appellate authority and the aforesaid person who has forwarded both the orders is the same which could not have been done. He also submitted that it is a case where no order has been passed by the competent authority which has been supplied to the petitioner and even so far as the appellate order is concerned, the same is also on the face of it, a non-speaking order because none of the grounds taken in the grounds of appeal have been considered by the appellate authority. He has referred to judgments of Division Benches of this Court in ***Dr.H.S. Aneja Versus State of Punjab[29], and Ashok Kumar Watts Versus District Red Cross Society[30],*** He also submitted that in the absence of any decision taken by the competent authority by passing of a speaking order, the same cannot be sustained in

[29] CWP No.11130/1999, dt. 09.09.1999

[30] CWP No.5173/2000, dt. 01.06.2000

the eyes of law and as a consequence of the same, even the appellate order would also not sustain. He also submitted that a major punishment of compulsory retirement has been passed against the petitioner which cannot sustain. He also submitted that it is case where when the Enquiry Officer had finalized the inquiry report and supplied the same to the competent authority, then the competent authority vide Annexure P-30 had rather remanded the inquiry to the Inquiry Officer on the ground that he has violated Regulation 7 (B) (1) & (2) of the Uttar Haryana Bijli Vitran Nigam (Punishment and Appeal) Regulation, 2018 and the Inquiry Officer was also requested to conduct further inquiry proceedings and submit final inquiry report in conformity with the Uttar Haryana Bijli Vitran Nigam (Punishment and Appeal) Regulation, 2018 in the office of the competent authority. However, the Enquiry Officer did not even obey the orders passed by the competent authority in this regard who had remanded the matter back for fresh inquiry to the Inquiry Officer and did not conduct a fresh inquiry and did not adopt the procedure as laid down in Regulation 7 (B) (1) & (2) of the Uttar Haryana Bijli Vitran Nigam (Punishment and Appeal) Regulation, 2018 which was the ground for remanding the inquiry back to the Inquiry Officer. In this regard, learned Senior Counsel referred to the punishment order itself to substantiate his arguments. He submitted that a bare perusal of the punishment order dated 22.12.2023 (Annexure P-36) would show that the punishment order does not reflect at any place that the aforesaid order passed by the competent authority dated 18.04.2023 (Annexure P-30) was complied with and the competent authority imposed a major punishment of compulsory retirement on the basis of the same inquiry report which was of

the same date i.e. 24.01.2023 and after passing of Annexure P-30, no steps were taken by the Inquiry Officer to comply with the orders passed by the competent authority vide Annexure P-30 and to comply with the regulations especially the Regulation 7 (B) (1) & (2) of the Uttar Haryana Bijli Vitran Nigam (Punishment and Appeal) Regulation, 2018. He submitted that on this ground as well, the punishment order may be set aside.

257. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has produced the original record of the present case before this Court. He has referred to the original order which has been passed by Managing Director who is the punishing authority himself which is at page No.143 of the record. He submitted that although the order has been passed by Managing Director who was the competent authority but the same has been passed only by stating that the petitioner has been heard and punishment of compulsory retirement to be awarded to the official and the Managing Director has himself signed the aforesaid order but the aforesaid order cannot be said to have been passed by one stroke of a pen because it has to be read in the light of the previous notings and the hearing which was given to the petitioner and therefore, it cannot be said that it was in violation of any law or in violation of the principles of natural justice.

258. Learned Senior Counsel for the respondent-Nigam with regard as to why the Inquiry officer did not comply with the orders (Annexure P-30) passed by the competent authority submitted that vide Annexure R-4/8, the Inquiry Officer clarified the position to the competent authority that he had drawn up the charges in accordance with Regulation 7 (B) (1) &

(2) of the Uttar Haryana Bijli Vitran Nigam (Punishment and Appeal) Regulation, 2018 and in case the competent authority is not satisfied with the enquiry report, then the matter may be referred to the Vigilance Committee. So far as to whether the fresh charges were drawn up and whether an enquiry report was prepared by the Inquiry Officer is concerned, he also submitted that the Enquiry Officer neither made any fresh inquiry after the matter was remanded nor did he draw any fresh charges, although there was a letter Annexure P-30 by the competent authority. He further submitted that the letter Annexure P-30 which was issued by the competent authority/Managing Director was subsequently not acted upon by the competent authority /Managing Director and therefore, it cannot be said that there was any violation of the aforesaid letter. He also submitted on specific instructions that there is no order on the record by which such a letter was withdrawn.

259. After hearing the learned counsels for the parties and perusing the record so produced by the learned Senior Counsel for the respondent-Nigam, it is apparent that so far as the impugned orders which have been attached as Annexure P-36 and P-39 with the present petition as punishment order and appellate order are concerned, the same have been passed by one authority i.e. Under Secretary/ HR-I, UHBVN namely, Rajesh Sood. Both the orders i.e. punishment order of compulsory retirement and the appellate order are passed by the aforesaid officer. It was the argument of the learned Senior Counsel for the respondent-Nigam that on the file the orders have been passed by the actual punishing authority who was the Managing Director on the basis of the discussions made in the noting file. The record

which was produced before this Court at page No.143 of the record, the following noting was made by the punishing authority who was the Managing Director as follows:-

> *"Heard. A punishment of compulsory retirement be awarded to the official".*

260. A perusal of the aforesaid nothing would show that although prior to the aforesaid noting, there may be various notings that have been made by the subordinate officers but when it came before the punishing authority, he simply by one stroke of a pen held that a punishment of compulsory retirement be awarded. Thereafter it shows that one draft order was prepared and was sent for approval which was approved by the Managing Director and this draft order is Annexure P-36 which is the punishment order. The aforesaid approach and method adopted by the Managing Director being punishing authority is non-speaking and illegal and cannot be sustained under any circumstance. A punishment order of compulsory retirement cannot be passed by one stroke of a pen and Under Secretary is not competent to have passed a detailed order which has been annexed as Annexure P-36. This system so adopted is unknown to service jurisprudence and therefore on this ground, the punishment order itself is liable to be quashed.

261. So far as the appellate order Annexure P-39 is concerned, the same also reflects in the office file to have been passed by the Chairman on 01.05.2024 by ordering that the appeal is liable to be rejected and is rejected and thereafter a draft order was prepared which was thereafter approved by the Chairman and attached as Annexure P-39 by the same officer i.e. Under Secretary Rajesh Sood. In this way, the punishment order itself has to be set

aside being *ex facie* illegal and as a consequence of the same the appellate order is liable to be set aside.

262. So far as the second issue raised by the learned counsel for the petitioner that when earlier the punishing authority had remanded the case back to the Enquiry Officer on the ground of Regulations 7(B) (C) of UHBVN (Punishment & Appeal), 2018 is concerned, subsequent order of punishment passed by the punishing authority on the noting file does not give any reason at all as aforesaid but when Annexure P-36 is perused it shows that it again refers to the earlier enquiry report and what happened in between after the remand and as to whether Regulations 7(B) (C) of UHBVN (Punishment & Appeal), 2018 were complied with or not still remains unsettled.

263. In view of the aforesaid facts and circumstances, the present petition is allowed. Both the orders i.e. Annexure P-36 and P-39 are hereby set aside. The matter is remanded back to the punishing authority to pass a fresh order after fresh application of mind being uninfluenced by earlier orders and strictly in accordance with law. The order has to be now passed by the punishing authority itself and also not by one stroke of a pen as has been done earlier, within a period of four months from the date of receipt of the certified copy of this order. The punishment authority shall also consider the enquiry report in terms of Regulation 7(B) of UHBVN (Punishment & Appeal), 2018 or any other relevant provision.

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264. The present petition has been filed seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 28.04.2023

(Annexure P-8) passed by respondent No.2 whereby punishment of stoppage of one annual increment without future effect was imposed upon the petitioner and the order dated 05.06.2024 (Annexure P-12) passed by respondent No.1 by setting aside the charge-sheet dated 15.04.2021 (Annexure P-3), with a further prayer to direct the respondents to grant interest @ 18% per annum on the amount deducted from the salary of the petitioner till date of its realization.

265. Learned counsel appearing on behalf of the petitioner submitted that in the present case the punishment order is Annexure P-8 and the appellate order is Annexure P-12. He submitted that a perusal of the aforesaid two orders would show that the same are being forwarded by the same officer who was the Under Secretary and there has been a semblance of interest and separate order has been supplied to the petitioner which is passed by the competent authority and the appellate authority. He submitted that although minor punishment has been imposed upon the petitioner but there is no order which has been conveyed to the petitioner by the punishing authority in this regard.

266. On the other hand, Mr. Puneet Jindal, learned Senior Counsel appearing on behalf of the respondent-Nigam has produced the original record of the present case. He submitted while referring to page No.21 where the Managing Director has passed an order by which he observed that the matter was heard and as the Enquiry Officer held him marginally responsible, the penalty of stoppage of one increment without future effect was awarded to the officer and submitted that the aforesaid order has been signed by the Managing Director himself and therefore, it cannot be said

that no order has been passed by the Managing Director. He also submitted that the Managing Director has passed the order by giving reference to all the detailed notings which were put up before him and therefore, it cannot be said that the aforesaid order is a non-speaking order because the entire file has to be read into the order which has been passed by the Managing Director. He further submitted that so far as the appellate order is concerned which is at page No.33 of the record, the appellate authority has himself passed a detailed speaking order and therefore, it cannot be said that the appellate authority has not passed the order and it also cannot be said that there has been a semblance of interest because both the orders i.e. the punishment order and appellate order have been passed by the different authorities who were competent to pass the orders.

267. Learned Senior Counsel also submitted that during the pendency of the present petition, an advice was received by the appellate authority from the LR to re-consider the appeal and to pass a fresh order in appeal and thereafter even a fresh order was passed by the appellate authority who is the Chairman dated 18.10.2024 in which he has re-affirmed the earlier appellate order.

268. I have heard the learned counsels for the parties and perused the record produced by the learned Senior Counsel for the respondent-Nigam.

269. Annexure P-8 which is purported to be a punishment order has been passed by the Under Secretary by stating that it has been passed in pursuance of decision taken by the Managing Director and Annexure P-12 is the appellate order which is also passed by the Under Secretary by stating that it has been passed in pursuance of decision taken by Chairman. A

perusal of the record would show that at page No.21 of the record file after number of notings given by the subordinate staff, the matter was thereafter sent to the Managing Director who was the punishing authority and he with one stroke of a pen gave a noting as follows:-

> *"Heard. As enquiry officer has held him marginally responsible, penalty of stoppage of one increment without future effect be awarded to the officer".*

270. A perusal of the aforesaid would show that the aforesaid is order of imposition of punishment on the noting file was with one stroke of pen and absolutely non-speaking and by simply stating that since Enquiry Officer has held the petitioner liable as marginally responsible, then penalty of stoppage of one increment without future effect be awarded to him. Thereafter again same procedure was followed that a draft order was prepared by the Under Secretary and sent to the petitioner and therefore under no circumstance it can be said that a detailed speaking order has been passed by the punishing authority. Such kind of notings given by the punishing authority cannot constitute an order to hold an employee liable for any action. When it came to the appellate authority, the appellate authority although in the capacity of a Chairman did pass an order which is reflected in the noting but Annexure P-12 is not the order passed by the appellate authority but was passed by the Under Secretary, although it has been stated by the learned Senior Counsel for the respondent-Nigam that the appellate authority has re-affirmed the order which he earlier passed and a fresh order has been passed on 18.10.2024.

271. After hearing the learned counsels for the parties, this Court is of the considered view that there is in fact no punishment order passed by

the punishing authority and he only proposed that stoppage of one increment without future effect be awarded to the petitioner which is clear from the language used as reproduced above but the actual order of punishment has been passed by the Under Secretary who was not competent and a subordinate officer and he was not a punishing authority. The aforesaid reproduction of the noting given by the punishing authority is only in the nature of a proposal that the punishment is to be awarded but there is no awarding of any punishing by the punishing authority.

272. In view of the above, the present petition is allowed. The order dated 28.04.2023 (Annexure P-8) is hereby set aside. Since the punishment order has been set aside, the appellate authority order would also be set aside accordingly and it will be insignificant even if the appellate order has been reiterated by the appellate authority because the punishment order so attached as Annexure P-8 itself has been set aside. Although the case could have been remanded back to the punishing authority but considering the fact that Annexure P-8 has not been passed by the punishing authority and by some subordinate officer and rather there is no order passed by the punishing authority at all and therefore, no such remand can be made to the punishing authority. If any amount has been recovered from the petitioner, the same shall be refunded to him alongwith interest @ 6% per annum (simple) within a period of four months from the date of the receipt of certified copy of this order.

G. CONCLUSION AND DIRECTIONS

(i) Whenever a quasi-judicial authority or a purely administrative authority is vested with a power by any law for the time being in

force to decide or pass an order, the power can be exercised by the same authority in which the power vests and no other authority.

(ii) An order passed by a subordinate officer or any other officer not authorised to pass an order by stating that the same has been passed with the approval of the authority in whom power otherwise vests is illegal, perverse, arbitrary and *coram non-judice*.

(iii) An order passed by punishing authority on behalf of appellate authority by stating the same to have been passed with the approval of appellate authority is impermissible, illegal, nullity, *coram non-judice* and violative of principles of natural justice namely, *Nemo Judex in Causa Sua.*

(iv) An order imposing punishment or any other order involving civil consequences as also an appellate or revisional order, if passed by a single stroke of a pen in the noting sheet or otherwise stating to be rejected or accepted or remanded etc. is illegal, arbitrary, cryptic, non-speaking and without application of mind. Therefore, it is also violative of Article 14 of the Constitution of India.

(v) When a quasi-judicial authority or an administrative authority passes any order involving civil consequences, the same has to be communicated to the concerned employee within reasonable time unless prohibited by any law for the time being in force. Communication can be made by any other subordinate officer by forwarding and attaching the actual order passed by the competent authority and not by substituting it with his own order. In case the actual order of the competent authority is not conveyed to the

employee, the same shall be deemed to have been not communicated.

(vi) A draft order prepared by any authority other than the competent authority and thereafter, put up for approval and simply approved by the competent authority either by tick marking the same or otherwise is no order in the eyes of law since the order has not been passed by the competent authority but is only an approval of a draft order prepared by some other authority who was not competent to pass the order. A speaking order involving civil consequences must be passed by a competent authority in whom the power vests under the law and simply approving a draft order drafted by another officer amounts to abdication of powers causing miscarriage of justice and therefore impermissible.

(vii) In case it is simply conveyed by a lower administrative staff to an employee that his/her representation /legal notice/demand justice notice has been rejected/accepted by the competent authority but the order so passed by the competent authority is not attached or conveyed, the same is impermissible, illegal and arbitrary. Right of an employee to be informed by way of a copy of actual order involving civil consequences passed by a competent authority is hereby held to be a part of principles of natural justice and Article 14 of the Constitution of India.

(viii) If an order is passed by any authority by 'copy-pasting' of any earlier order(s) of some other case file/employee by only substituting the name, date etc., the same shall be an illegal, perverse, non-speaking and arbitrary order. The respondents are therefore directed to refrain

from passing such ‘copy-paste’ orders which are stereotyped and mechanical in nature.

(ix) When the administrative authorities by their acts and omissions evade their own responsibilities and leave it to the Courts to decide, it leads to a “let the Court decide syndrome” which can be dismantled *inter alia* by taking pre-emptory measures like legal education, training and accountability. Lack of knowledge of basic principles in the field of administrative law is also a strong factor causing the aforesaid syndrome. Consequently, the Union of India is hereby directed to ensure that in the Training Institutes for Civil Servants including Lal Bahadur Shastri National Academy of Administration, Mussoorie, adequate and in-depth training and education be imparted in the subject of Administrative Law by a dedicated faculty on the subject. Thereafter, regular refresher courses be also conducted from time to time. Professors, Legal Practitioners, Research Scholars or other suitable resource persons be also associated from time to time.

(x) The officers of all ranks of all public sector establishments must exercise their power in accordance with law not only in a diligent manner but in an “Extra-diligent manner” while being sensitive to the human values, compassion, humility and humanism to achieve the goals enshrined in the Constitution of India. While dealing with grievances pertaining to pensionary/retiral benefits, disability issues, medical reimbursement and alike issues, the ‘head of the establishment/ department/ public sector undertakings, instrumentalities of the State’ shall be considerate for expeditious

redressal of grievances in accordance with law.

(xi) The Administrative Departments/Statutory Boards/ Corporations/Public Sector Undertaking etc. are directed to revamp their legal departments and establish a Robust Legal Support System incorporating legal education, training and accountability.

(xii) Considering the peculiar facts and circumstances of the present bunch of cases, this court deems it fit and proper to direct the respondent power utilities to plant trees in the State of Haryana wherever the same are required, considering the fact that sustained presence of trees will offer immeasurable advantage to even successive generations. Out of the present bunch of 38 cases, 30 cases pertain to UHBVNL, 5 cases pertain to DHBVNL and 3 cases pertain to HVPNL. Consequently, it is directed that total of 50,000/- (Fifty thousand) trees, preferably having medicinal values, shall be planted by all the 3 power utilities who are Respondents in the present bunch of cases in the proportion of 30,000 trees by UHBVNL, 10,000 by DHBVNL and 10,000 by HVPNL. All the 3 power utilities are directed to actively coordinate with the Principal Chief Conservator of Forests, State of Haryana to identify the areas where plantation of trees is mostly required, depending upon soil type, topography and variety of trees. The exercise for plantation shall be completed by the aforesaid power utilities within a period of 6 months from the date of receipt of the certified copy of this order and they shall supervise the growth of the said trees at their own cost and expenses for the next 3 years. In case any replacement of the trees is required, then the same shall be

undertaken by them from time to time. Report regarding number of surviving trees shall be submitted to this court with the requisite certification from the aforesaid Principal Chief Conservator of Forests, State of Haryana after the aforesaid period of 6 months and thereafter again after 3 years from the date of receipt of the certified copy of this order. The registry of this court shall list this case for compliance purposes, accordingly, in the month of January, 2026 and thereafter in January, 2029.

A Copy of the present judgment be sent to the concerned official respondents of all the cases, Chief Secretary of the State of Haryana, the Secretary, Department of Personnel and Training (DoPT), Government of India and the Principal Chief Conservator of Forests, State of Haryana.

273. Before parting with the judgment, this Court records its appreciation towards Ms. Shreya Singh and Ms. Surpreet Kaur, Law Researchers of this Court for their valuable assistance.

04.03.2025 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking	**Yes/No**
Whether reportable	**Yes/No**