

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No.2888/2008

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Date of decision : 09.04.2008

Jag Ram

..... Petitioner

Through: Mr.A.K.Soni, Advocate.

Versus

BSES Yamuna Power Ltd.

..... Respondent

Through : Mr.Nikhil Singhla, Advocate.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner has impugned the penalty of stoppage of three annual increments of pay in time scale and restriction of payment of pay equal to subsistence allowance during the period of suspension on account of penalty imposed on the petitioner. The charges against the petitioner were that he along with Mr.R.L.Ladwal had illegally removed the meter from the premises of the consumer named Kumari Nahidh Khanaka and did not make entries in the official records and on coming to know the vigilance investigation going on, he rushed to the site and installed the meter and produced a fabricated note and also restored

the supply of the consumer illegally without receiving reconnection order or deposit of reconnection fee by the consumer.

2. The petitioner was posted as Jr. Manager and he was suspended on 29th August, 2005 on account of charges against him. A memorandum and statement of article of charges dated 1st September, 2005 was issued to him. The inquiry was conducted and after a due inquiry after giving due opportunity, the enquiry officer had held that the charges in articles 2, 3 and 4 had been proved against the petitioner. Articles 2, 3 and 4 against the petitioner were that he had gone with Mr.R.L. Ladwal to the premises of the consumer named Kumari Nahidh Khanaka and illegally removed the electricity meter and did not make the relevant entry in the official record regarding removal of the meter and coming to know that a vigilance investigation was going on, he rushed to the site and installed the meter and produced a fabricated note and thereafter restored the supply of the consumer without receiving the reconnection order or deposit of reconnection fee by the consumer.

3. The disciplinary authority imposed the penalty of stoppage of four annual increments in the time scale of Rs.7750-13700 for a period of four years with cumulative effect and the period of suspension was treated as leave of the kind due and the payment was restricted to the amount of subsistence allowance already paid to him. The petitioner

filed an appeal before the appellate authority contending that the punishment of stoppage of four annual increments did not commensurate with the gravity of charges and that the petitioner was entitled for full wages during the period of suspension and the order passed by the disciplinary authority was a non-speaking order.

4. The appeal was disposed of by order dated 27th November, 2006 where considering the plea of the petitioner of disproportionate punishment to the gravity of charges, the penalty was decreased to three annual increments of pay in time scale of petition for a period of three years with cumulative effect, however, the penalty of payment of wages equivalent to suspension amount paid to the petitioner was sustained. The petitioner, thereafter filed a review petition against the order dated 31st August, 2006 which was also disposed of by order dated 4th October, 2007.

5. Learned counsel for the petitioner has contended that the penalty imposed does not commensurate with the gravity of offence against the petitioner though the disciplinary authority had awarded the stoppage of four annual increments which was modified to stoppage of three annual increments. The charges against the petitioner are that he illegally removed the meter and then did not make the relevant entry in the official record and thereafter on realizing about the ongoing

vigilance investigation reinstalled the meter and fabricated a note and also reenergized the meter without reconnection charges or order.

6. The appellate authority considering the plea of the disproportionate punishment has already reduced the punishment of stoppage of four annual increments to three annual increments. The review petition has also been dismissed. Considering the offence committed by the petitioner, it cannot be inferred that the penalty imposed is disproportionate to the offence committed by the petitioner. In any case, this Court is not to award different penalty or modify the same in exercise of its jurisdiction under Article 226 of the Constitution of India as there is no manifest error in the order of the appellate authority.

7. Perusal of the case law on the issue of the scope of interference in a domestic enquiry and applicability of the strict and sophisticated rules of evidence to the domestic enquiry clearly establishes that once a domestic tribunal based on the evidence arrives at a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. Thus if an enquiry held is consistent with the rules and in accordance with the principles of natural justice and the misconduct is proved, then the Tribunal has no

power to substitute its own discretion for that of the said disciplinary authority, unless it is mala fide, arbitrary or the findings are quite perverse. If an enquiry is properly conducted, then the departmental authorities are held to be the sole judges of the facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be argued upon or disputed before the Tribunal. The following judgments rendered by the Supreme Court fortify the aforesaid conclusion:

- (i) Martin Burn Ltd. v. R.N. Banerjee 1958 SCR 514.
- (ii) State of Orissa v. Bidyabhushan Mohapatra MANU/SC/0361/1962.
- (iii) State of A.P. v. S. Sree Rama Rao MANU/SC/0222/1963.
- (iv) State Bank of India and Ors. v. Samarendra Kishore Endow and Anr. MANU/SC/0655/1994.
- (v) Regional Manager, Rajasthan SRTC v. Sohan Lal MANU/SC/0841/2004.
- (vi) Bharat Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489.
- (vii) Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane MANU/SC/0832/2004.
- (viii) Muriadih Colliery v. Bihar Colliery Kamgar Union MANU/SC/0131/2005.
- (ix) V. Ramana v. AP. SRTC MANU/SC/0539/2005.
- (x) Hombe Gowda Educational Trust and Anr. v. State of Karnataka and Ors. MANU/SC/2522/2005.
- (xi) L.K. Verma v. H.M.T. Ltd and Anr. MANU/SC/0703/2006.

8. The objective of judicial review is to ascertain that a person received a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749 B.C.Chaturvedi Vs Union of India at page 759 in para 12 had held as under:

“ 12 . Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or **whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.** But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.** The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. **If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may**

interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

9. For the charges against the petitioner, the punishment cannot be termed shocking or illogical or suffering from procedural impropriety or is in defiance of logic or moral standards. The Learned counsel is unable to point out as to how, the punishment imposed is in defiance of logic or moral standards. The Supreme Court in *Damoh Panna Sagar Rural Regional Bank Vs Munna Lal Jain*, (2005) 10 SCC 84 had held as under:

"The court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. The court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court, in the same that it is in defiance of logic or moral standards. Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional circumstances and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. When a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

In the case at hand, the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate.

10. Learned counsel for the petitioner has contended that the order is not a speaking order. The disciplinary authority and the appellate authority and the authority which has reviewed the order have considered the facts and on the basis of the facts have decided the penalty to be imposed. Though detailed reasons are not given, however, it cannot be inferred that the order suffers from any manifest error. Learned counsel for the petitioner is unable to show as to how the charges are not made out against the petitioner on the basis of the material on record.

11. In the circumstances, there are no grounds to interfere with the penalty awarded by the respondents in exercise of jurisdiction under Article 226 of the Constitution of India and the writ petition is, therefore, dismissed.

April 9th, 2008.
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ANIL KUMAR, J.