

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 42 of 2012**

% Judgment delivered on : September 3, 2012

BSES YAMUNA POWER LTD. ... APPELLANT

through : Mr. Sandeep Prabhakar,
Ms. Prerna, Mr. Amit
Kumar, Advocates

VERSUS

SHRI S.R. TIWARI ...RESPONDENT

through: Mr. Ashok Mahajan,
Mr. Karan Arora, Advocates

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice)

The Respondent herein was working as Assistant Engineer AE (D) MYR in Delhi Vidyut Board (DVB). With the disintegration of DVB and creation of various discounts including BSES Yamuna Power Ltd. (appellant herein), services of the respondent were taken over by the appellant. While the respondent was in service with DVB, orders dated 14th March, 2000 were passed awarding penalty of reduction in minimum pay scale of AE till his retirement. This order was challenged by the respondent by filing writ petition which has been allowed by the learned Single Judge. As in the meantime respondent had retired from service on attaining the age of superannuation, while setting aside the impugned orders dated 14th March, 2000, the learned Single Judge, without granting

arrears of pay, has directed that his retiral, pensionary and other benefits will be re-worked as if no such punishment was given. It is also directed that if the respondent was denied any promotion as a result of the impugned order, those promotions will also be granted to him from the respective dates when they became due to him. Some other directions on payment of interest etc. on the arrears of retiral and pensionary benefits are also given.

2. The respondent was served with charge sheet dated 24th September, 1993 levelling following two charges:

- (i) That the Petitioner, while functioning as AE (Zone) in 1991 had failed to report to the local police that the four societies, i.e., MACGH, HWF, Border Roads and Sara were indulging in direct theft of electricity, and
- (ii) That six other Societies continued with temporary connections whereas it was the duty of the Petitioner to have disconnected their supply. The Petitioner was charged with failure to maintain absolute integrity and devotion to duty in violative of Rule 3 (I) of CCS (Conduct) Rules, 1964.”

3. It was based on some inspection carried out on 13th September, 1991 of ten cooperative group housing societies in Patparganj area by the officials of DVB wherein it was found that four cooperative societies were indulging in direct theft of electricity through the metering equipment and six other societies were continuing with temporary connections although the period of such connections had ended. It would be worthwhile to mention here that when the inspection was carried out on 13th September, 1991, the respondent was on leave. In fact he had

fractured his leg because of which he proceeded on leave on 15th July, 1991 and remained on leave till 17th September, 1991.

4. The respondent denied the charges on various grounds and it is not necessary to spell out the same which are mentioned by the learned Single Judge in the impugned order. What is relevant is that the inquiry officer, after conducting the inquiry, returned his findings holding that these charges had not been proved. The disciplinary authority, however, did not agree with the findings of the IO and issued show cause notice dated 21st December, 1998 to the respondent calling upon him to explain why punishment of reduction in the present scale of pay by two stages for the period of two years with cumulative effect be not imposed on him. The respondent gave detailed reply dated 14th January, 1999. The DVB slept over the matter for almost eight months and on 24th September, 1999, second show cause notice was issued to the respondent stating that the Board had considered his reply and decided to ask him to show cause why the penalty of removal from service should not be awarded. It was opined by the Board that some of the group housing societies continue to illegally draw power from the service line even after disconnection of temporary supply and this could not happen without the knowledge and connivance of the area inspector, namely, the respondent. The respondent submitted reply dated 3rd December, 1999 to this show cause notice also. Thereafter, on 14th March, 2000, impugned orders were passed imposing the penalty of “reduction in the minimum of the present scale of pay as AE till retirement”.

5. The learned Single Judge has given various reasons quashing the said penalty. It is found that not only on merits the conclusions drawn by the IO were correct and there was no valid reasons given to disagree

therefrom, the allegations made in the second show cause notice were not even part of the charge sheet. The relevant portion of the order of the learned Single Judge in this behalf is as under:

“13. The report of inquiry against the Petitioner completely exonerated the Petitioner. The witnesses examined on behalf of the management clearly supported the case of the Petitioner. In the first place the incident concerning the inspection took place sometime in 1991 and yet the charge sheet was not issued till 1993. Before the IO seven management witnesses confirmed the finding of the joint inspection but none of them were able to indicate the actual date of the validity of the temporary connection of the societies in question and the dates of disconnection as carried out by the Zonal Inspectors. None of them visited the societies prior to the raid on 13th September 1991. Most of these witnesses stated that since six years had elapsed they were not sure whether any application for the extension of the temporary connections had been made by any of the Societies. The IO also referred to the two instructions for carrying out disconnection orders as well as direct theft or suspected theft of electricity. The IO concluded that the records did not indicate any failure on part of the Petitioner to issue disconnection orders to the Inspector concerned. It was also noticed that given the work load it was not possible for the Petitioner to carry out the disconnection through his inspector until and unless the disconnection order was received from the commercial wing.

14. The DA had to state reasons for its disagreement with the findings of the IO. The memorandum dated 21st December 1998 where the DA states that he does not agree with the findings of the IO does not indicate the reasons for such

disagreement. The DA has made a reference only to the office order dated 10th September 1985 and not to the subsequent instructions dated 1st October 1990. A copy of the latter instructions has been placed on record as Annexure IV to the writ petition. It notes that unless the status of recovery was known, the Engineering Department would not be able to grant extension of temporary connections. The consumers on the other hand were unable to make the payment where a bill was not raised. Consequently, in the said instructions it was stated as under:

“To mitigate these sufferings of the consumers resulting out of delays in timely issuance of the bills for the temporary connections the district engineers are hereby advised not to disconnect the supply for one month of such consumers who have applied for extension, and are otherwise entitled for extension of temporary supply but could not be granted extension only because the bill has not been raised.

The district engineers will simultaneously inform AFO concerned to raise the bill immediately. He will also inform Dy. F.O. (D) for ensuring that the bill is raised and for taking appropriate administration action.”

6. That apart, another significant reason which prevailed with the learned Single Judge is that in the show cause notice dated 21st December, 1998, the disciplinary authority while disagreeing with the findings of the IO, did not give any chance to the respondent to make any representation against the proposed disagreement. In fact, the disciplinary authority had made up its mind finally in this behalf and the respondent was given show cause notice qua the proposed penalty only. This was clearly contrary to the judgment of the Supreme Court in *ECLI*

v. Karunakar, (1993) 4 SCC 727 as well as *Yoginath D. Bagde v. State of Maharashtra*, (1999) 7 SCC 739. In the latter authority, the Supreme Court made following significant observations:

“37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned Counsel is that a final decision with regard to the charges leveled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (*supra*) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.”

7. Though learned counsel for the appellant has made endeavour to find loopholes in the approach of the learned Single Judge, we are of the opinion that the order of the learned Single Judge warrants to be sustained on the ground that no proper opportunity was given to the respondent to

make representation against the disagreement and the disciplinary authority had made up its mind while issuing the show cause notice. This appeal is, therefore, dismissed on this ground alone itself.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

SEPTEMBER 03, 2012
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