

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

+ W.P.(C) No. 722/2008

% **28th October, 2013**

B.S.CHOWDHARY Petitioner
Through: Mr. U.S.Chaudhary and Mr. Vipin
Chaudhary, Advocates.

VERSUS

DELHI FINANCIAL CORPORATION AND ANR. Respondents
Through: Mr. Sanjay Poddar, Sr. Adv. with Mr.
Rajat Aneja and Mr. Govind Kumar,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner impugns the action of the employer/respondent no.1/Delhi Financial Corporation for issuing a second charge-sheet dated 14.11.2007, although, there was an earlier enquiry report with respect to a charge-sheet dated 21.12.2004 exonerating the petitioner on more or less the same set of allegations. Effectively, the petitioner pleads the bar of double jeopardy or bar of conducting of a fresh enquiry on the

basis of a new charge-sheet containing allegations in the old charge-sheet, on account of general principles of *res judicata*.

2. Since the comparison of the two memorandum of charges in this case would be necessary in order to find out that the charges in sum and substance are essentially the same in both the first and second charge-sheet, let me reproduce at this stage the first article of charges and the related imputations of mis-conduct as also the second article of charges and the related imputations of misconduct.

First memorandum and related imputations of misconduct

“ARTICLE 1

Shri B.S.Chaudhary while functioning as Assistant (L) during the period 21.09.1994 to 17.11.1994 at Branch Office Chandigarh exhibited a total lack of integrity and acted against the interest of the Corporation by working a collusion with the borrower/guarantor and misled the authorities in order to facilitate sanction of loan M/s Aar Cee Communication and thereby favour the firm.

ARTICLE-II

Shri B.S.Chaudhary while functioning as aforesaid capacity displayed lack of devotion to duty by failing to execute the Bond of Guarantee in case of M/s Aar Cee Communication with due diligence required to establish the identity of the guarantor. As a result of his actions the guarantor subsequently rescinded and denied his signatures.

The above acts of Shri B.S.Choudhary show negligence, lack of integrity and actions detrimental to the interest of the Corporation resulting in financial loss to the Corporation and by

these acts he violated the provisions as contained in Regulation 41 of DFC Staff Regulation 1961.

STATEMENT OF IMPUTATION OF MISCONDUCT/MISBEHAVIOUR IN SUPPORT OF ARTICLE OF CHARGES AGAINST SHRI B.S.CHOUDHARY, ASSISTANT (LEGAL)

Shri B.S.Chaudhary while functioning as Assistant (L) in Branch Office, Chandigarh dealt with the case of M/s Aar Cee Communication. He failed in his duties to scrutinize the relevant legal documents of the case and ignored the discrepancy in name of one of the guarantors. The application of loan mentioned one of the guarantors as Gurmeet Singh S/o Shri S.Bhaktawar Singh. The draft appraisal mentioned name of Shri Gurmeet Singh without any parentage/paternity, Minutes of 429th I.C.meeting held on 22.02.1994 at Chandigarh and terms and conditions attached with the sanction letter dated 28.09.1994 mentioned yet another name i.e Shri Gurmail Singh. The consent letter signed by two guarantors (another being Shri R.K.Hans) mentioned the name as Shri Gurmeet Singh S/o Shri Avtar Singh. In view of these discrepancies it was necessary to ascertain and establish clear identity of the guarantor so that interests of the Corporation officers and also did not send the draft legal documents for further vetting by the Legal Advisor as was the practice.

While working in aforesaid capacity Shri B.S.Choudhary marked the file to Manager (T) vide his note dated 18.10.1994 and stated “drafts of Mortgage deed and bond of guarantee have been prepared and added in the file for approval please. Documents submitted by the party may also be approved as these are as per the drafts of the Corporation Necessary orders may be passed for execution of legal documents and registration of M/deed subject to compliance of O/s formalities mentioned above”. He mentioned five documents i.e. consent letter of guarantor, photograph of guarantors, verification of addresses, mortgage deed, bond of guarantee as outstanding. Following approval of his proposal, Shri Chaudhary again stated on 20.10.1994 all the executants visited our office and

executed the legal documents. Registered M/Deed has been received and kept in D/F. Legal documentation work is over. Now file may be sent to A/c for opening of account and to release the sanctioned loan.”

Shri B.S.Chaudhary also failed to verify addresses of the persons relevant to the loan case which was an outstanding formality and needed action to secure the interests of the Corporation. He also did not check the records in respect of one of the guarantors which was also necessary to establish his correct identity. The guarantor form signed by Shri Gurmeet Singh was not accompanied with income tax return and also did not bear his photographs.

On subsequent inquiry it emerged that the Bond of Guarantee was got witnessed by two different individuals i.e Shri Satwant Singh Rajpal and Shri S.S.Sharma who had visited the office in connection with their loan case and were not aware of the guarantors who had already signed the Bond of Guarantee. As a matter of abundant precaution, particularly in the circumstances when the correct name and parentage of the guarantor was not clear for the record s. Shri B.S.Chaudhary was supposed to take the signatures of the guarantor on the Bond of Guarantee in presence of the borrower to witness the Bond of Guarantee as per the present practice in cases of such nature.

The report by forensic laboratory indicates that the signatures marked as Q1 to Q7 on Bond of Guarantee were not of Shri Gurmeet Singh when compared with his specimen signatures but letters vide which the guarantor withdrew his guarantee and denied having stood the guarantee were concluded as correct by the forensic officer. The circumstances of the case of signing of Bond of guarantee, therefore, indicate that Shri B.S.Chaudhary in collusion with the borrower/guarantor and other officers dealing with the case deliberately did not try to identity of the guarantor and rendered the Bond of guarantee weak and subject to dispute by one guarantor. The circumstances also create a doubt if the Bond of Guarantee and Mortgage Deed were signed in the office as Shri

Choudhary Claimed in his note in the relevant file. He, thereby, worked against the interest of the Corporation and made difficult for the Corporation to realize loan from one of the guarantor.

The above acts on the part of Shri B.S.Choudhary, therefore, indicates that he abused his official position and failed to maintain absolute integrity and conducted himself in a manner unbecoming of an employee of the Delhi Financial Corporation thereby violating the provisions of DFC Staff Regulations 41(1).”

SECOND ARTICLE AND RELATED IMPUTATIONS OF MISCONDUCT

“Annexure I

Statement of articles of charges framed against Shri B.S.Chaudhary, Assistants (Legal), under suspension

Shri B.S.Chaudhary, the then Asstt. (Legal.), while processing the case of M/s. Aar Cee Communication for legal documentation during the year 1994-95 at Branch Office, Chandigarh, committed the following acts of misconduct/misbehaviours.

Article I

Shri B.S.Chaudhary displayed negligence and lack of integrity as he deliberately failed to properly identify one of the guarantor Shri Gurmeet Singh and his parentage. He did not obtain any identity proof of the guarantor Sh. Gurmeet Singh. He did not mention the correct parentage of Shri Gurmeet Singh in the bond of guarantee and also did not seek any clarification from the apprising officer/Senior Officer in this regard before executing the Bond of Guarantee.

Article II

Shri B.S.Chaudhary displayed negligence, inefficiency, and lack of integrity as he failed to obtain the genuine signatures of Shri Gurmeet Singh S/o Shri Bakhtawar Singh, one of the guarantors, on the Bond of Guarantee allegedly executed by him on 20.10.94. The signatures of Shri Gurmeet Singh on the bond of guarantee were found fake as subsequently proved by the Forensic Report of Laboratory of the Government Examiner of Questioned Documents of Directorate of Forensic Science, Ministry of Home Affairs, Govt. of India, Shimla, Himachal Pradesh. By not exercising due diligence, Sh. Chaudhary acted in a manner detrimental to the interest of the Corporation. The above acts of Shri B.S.Chaudhary, Asstt (Legal) (Under employee of the Corporation under Rule 57 of the DFC Staff Regulation 2006 (As amended).

Annexure II

Statement of imputation of misconduct or misbehavior in support of the articles of charge framed against Shri. B.S.Chaudhary, Assistant (Legal) under suspension

Shri B.S.Chaudhary, while functioning as Assistant (L) in Branch Office, Chandigarh, during the period 1994-95 processed the case of M/s Aar Cee Communication, Chandigarh for legal documentation. One of the responsibility of Sh. B.S.Chaudhary was to get Bond of Guarantee executed after verifying the identity of executants in presence of two witnesses. Moreover, this Bond of Guarantee was to be executed in his presence. It has been observed that he failed to obtain the identity proof of one of the guarantors namely Shri Gurmeet Singh, which was essential in terms of the requirements of the Office Order No. DFC/Disb.(L)/4/89-90/105 dated 16.3.90. By not ensuring the execution properly,

the bond of guarantee executed in the loan case was found weak and subject to dispute by guarantor later on.

2. Shri Choudhary displayed negligence and lack of due diligence as he did not mention the correct parentage of Shri Gurmeet Singh in the Bond of Guarantee, whereas the guarantor Shri Gurmeet Singh himself clearly mentioned his name as Shri Gurmeet Singh S/o Shri Bakhtawar Singh in the information format supplied by him at the time of loan application. Sh. B.S.Choudhary mentioned the parentage of Shri Gurmeet Singh as Shri Avatar Singh in Bond of Guarantee, which was not supported by any documentary proof Shri Choudhary also did not seek any clarification from the Appraising Officer/Senior Officers about the exact name of the guarantor along with parentage. It is observed that there was some confusion as in the agenda note dated 22.09.94, the name of the guarantor was mentioned as Sh. Gurmeet Singh, whereas in the sanction letter dt. 28.09.94 & 429th I.C Minutes dated 27.09.1994, it was recorded as Gurmail Singh (without any parentage) Shri Choudhary did not raise any note/query to clear the above confusion from his Senior Officers and he also did not ensure independent verification of the addresses of the guarantors/parentage before execution of documents of the documents.
3. When the Corporation decided to proceed against the guarantors on the failure of the borrower to repay the loan, the Corporation received a letter dated 29.11.96 from one –Mr. Gurmeet Singh stating that he had never signed any documents as guarantor and was not responsible for the recovery of the loan. He further stated that the signatures might have been forged by the concerned party. On receipt of this letter, the matter was examined in detail and it was found that Sh. Choudhary displayed negligence and lack of devotion to duty while dealing with the case. When he got the Bond of Guarantee executed,

Sh. Choudhary failed to take any documentary proof of identification of the guarantor whose signatures had been taken on the Bond of Guarantee. This was in violation of Office Order No. DFC/Disb.(L)/4/89-90/105 dated 16.03.90. The lack of due diligence on part of Mr. Choudhary led to a situation where the Corporation was not able to enforce legal compulsion on the guarantors to repay the loan. It is, therefore, quite clear that the person who had been brought by the borrower as his guarantor had not signed the Bond of Guarantee. This inference has been further corroborated by the report received from Directorate of Forensic Science, Railway Board Building, Shimla vide their report dated 09.07.04 which conclusively opined that the signature at A-I on the letter of Sh. Gurmeet Singh dated 29.11.96 did not tally with the signatures at Q-1 to Q-7 on the Bond of Guarantee executed under the supervision of Sh. B.S.Choudhary.

The above acts of Shri B.S.Choudhary, amount to misconduct and unbecoming of an employee of the Corporation under Staff Regulation 57 of the Delhi Financial Corporation Staff Regulation 2006(As Amended) read with Rule 3(1) of the Central Civil Service (Conduct) Rule 1964.”

3. So far as the first article of charges and imputations of misconduct are concerned, it is clear that the allegation against the petitioner was that he committed breach of duty in not taking the guarantee of one Sh. Gurmeet Singh S/o Sh. S.Bhaktawar Singh and the guarantee which was taken was of one Sh. Gurmeet Singh S/o Sh. Avtar Singh. Confusion in the identity of the guarantor effectively resulted in the real guarantor which was proposed (being Gurmeet Singh S/o Sh. S.Bhaktawar

Singh) denying his liability and consequently respondent no.1 being unable to take any action for recovery against Sh. Gurmeet Singh S/o Sh. S.Bhaktawar Singh.

4. The second article of charges and the related imputation of misconduct also, bar a few lines of words of difference in language, also make the same allegations against the petitioner with respect to breach of duties caused by causing confusion in the identity of the guarantor one Sh. Gurmeet Singh and consequently of a wrong guarantee having been signed by another Sh. Gurmeet Singh and thereafter Sh. Gurmeet Singh S/o Sh. S.Bhaktawar Singh being able to deny his liability as the signatures on the bond of guarantee were not his.

5. At this stage, let us refer to the order of the disciplinary authority dated 20/21.9.2007 passed on the basis of the enquiry officer's report dated 5.9.2006. As per the earlier enquiry report, petitioner was effectively exonerated on account of charge no.1 not being established and charge no.2 being only partially established of failing to detect the mistake in recording the incorrect parentage causing inconvenience and embarrassment to corporation-respondent no.1. This order of the disciplinary authority dated 20/21.9.2007 reads as under:-

“DFC/VIG./2007-08/6993

DEFENDANT 20TH/21 September, 2007

WHEREAS , Shri J.R.Singh, Manager (T) & Shri B.S.Chaudhary, Asstt (L) (under suspension) were served with the charge-sheet defendant 21/12/04 in the loan case of M/s Aar Cee Communications for acts of omission & commission committed by them at the time of appraisal & legal documentation:

AND WHEREAS, inquiry was instituted vide order defendant 03.01.06 appointing Shri K.K.Bhasin as an inquiry officer to conduct inquiry after consideration of their replies.

AND WHEREAS, the inquiry report of Shri K.K.Bhasin has been received on 05/09/06.

AND WHEREAS, a grave mistake occurred due to (i) non utilization of the most crucial report i.e. Forensic Lab report as evidence and (ii) not producing the Forensic Expert as witness. The Forensic Lab report establishes that the bond of guarantee executed in favour of the corporation did not bear genuine signatures of the guarantor Sh. Gurmeet Singh.

AND WHEREAS, due to above cited mistake the inquiry report does not present the true picture to reply upon for taking an appropriate decision in the matter.

AND WHEREAS, in the interest of justice it is absolutely necessary that the truth comes out.

NOW, THEREFORE the undersigned proceeding under rule 15 GOI instruction (9) DGPT letter no. 114/324/78-DISC 11 defendant 5th July, 1979 of CCS(CCA) Rules, drops the inquiry proceedings against the said officers without prejudice to further action which may be considered under the circumstances of the case.

Sd/- B.B.Saxena

Disciplinary Authority”

6. No doubt, the earlier narrative paragraphs of the order refer to mistake of not utilizing the crucial report of forensic lab and not producing forensic expert as witness, however, the operative part of the order, and with which we are only concerned, specifically drops the enquiry proceedings

against the petitioner, of course, without prejudice to take further action which was considered under the circumstances of the case. This operative part of the order does not direct a *de novo* enquiry on the basis of the same charge-sheet on account of complete evidence not being led or inadequate evidence being led and which of course was perfectly permissible for the disciplinary authority to do. This was however not done by the disciplinary authority because he dropped the enquiry proceedings and did not direct the *de novo* enquiry by the enquiry officer on the same/first article of charges dated 21.12.2004.

7. That there was not to be a *de novo* enquiry on the same charge-sheet becomes clear from the fact that admittedly, and as stated and reproduced above, a fresh/second charge-sheet dated 14.11.2007 was issued. Therefore, in fact and reality what happened was that disciplinary authority dropped the proceedings as per the first charge-sheet, and said that further action would be taken as per the circumstances of the case, and which was understood by the department itself as issuing of a fresh show-case notice, and hence resulted in issuing of a fresh show-cause notice dated 14.11.2007. In my opinion, therefore it does not lie in the mouth of respondent no.1 to state that actually it is only a *de novo* enquiry which was directed by the order of the disciplinary authority dated 20/21/9/2007 only on the basis of

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the first chargesheet. Actions always speak than words and the actions in this case are not of conducting a *de novo* enquiry on the basis of the existing charge-sheet but conducting of fresh enquiry on the basis of fresh charge-sheet.

8. Learned senior counsel for respondent no.1 placed great reliance upon the first line of the operative part of the order of the disciplinary authority dated 20/21.9.2007 to argue that action was taken in accordance with DGPT letter dated 5.7.1979 and therefore, it should be interpreted that the *de novo* enquiry was ordered and not that the enquiry proceedings were dropped pursuant to the first charge-sheet. I cannot agree with this argument because as already stated above, the department itself understood the order of the disciplinary authority for issuing of a fresh charge-sheet. Also the letter of DGPT dated 5.7.1979 did not provide only for one consequence of conducting of *de novo* enquiry but provided for two consequences i.e conducting of a *de novo* enquiry as also of issuing of a fresh charge-sheet. Therefore, it cannot be said that merely because there is reference to the DGPT letter dated 5.7.1979, the order of the disciplinary authority dated 20/21.9.2007 must be read as per its operative portion only for conducting of *de novo* enquiry and not for dropping of the enquiry proceedings and which is specifically so stated. In my opinion, I would be

doing violation to the language of the operative portion of the order of the disciplinary authority dated 20/21.9.2007 by seeking to interpret the expression ‘drop the enquiry proceedings’ as being equivalent to conducting of *de novo* enquiry. There is absolutely no substance and basis for the respondent no.1 to argue that the expression of dropping of enquiry proceedings should be read as equivalent to conducting of a *de novo* enquiry. I really have not understood which is that principle of law under which such an interpretation of a categorical language can be asserted to the contrary on behalf of respondent no.1.

(i) In order to make this issue further clear that disciplinary authority only directed dropping of the enquiry because there are two consequences which flow from DGPT letter dated 5.7.1979, let us reproduce that relevant instruction (9) and which reads as under:-

“(9) Reasons for cancellation of original charge sheet to be mentioned if for issuing a fresh charge sheet- It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS (CCA) Rules, `965 are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the Delinquent Officers unless the reasons for cancellation of the original charge sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in

the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge sheet appropriate to the nature of charges the same was based on.”

(ii) The aforesaid instruction 9 is clear in that there is contemplated by virtue of instruction 9 not only cancellation of the original charge-sheet by dropping of the proceedings but also of a *de novo* enquiry, and what is the course of action being adopted had to be categorically mentioned in the order of the disciplinary authority. Whatever way one reads the instruction 9 above, surely that instruction cannot be read to be violative of the principle of double jeopardy if the charge-sheet was defective and there is lack of legal cause of action. It is not the law and cannot be the law that after a departmental enquiry exonerates a charge-sheeted official as per a particular charge-sheet, once again there can be fresh departmental proceedings by issuing a second charge-sheet on the basis of the same set of allegations which are made in the first charge-sheet. The action besides being hit by doctrine of double jeopardy against the charge-sheeted official would also be barred by general principle of *res judicata*.

9. Reliance which was placed by respondent no.1 to the two judgments of the Supreme Court in the cases of *Union of India & Ors. Vs. P. Thayagarajan (1999) 1 SCC 733* and *Chairman, Life Insurance Corporation of India & Ors. Vs. A. Masilamani (2013) 6 SCC 530* is misplaced because there is no dispute to the proposition of law that the disciplinary authority can and is entitled to direct conducting of *de novo* enquiry if there are defects in the proceedings including existence of deficiencies in leading the necessary evidence, however, that is with respect to the departmental proceedings which are set aside on the basis of the charge-sheet and the enquiry proceeds on the self same charge-sheet and not that a fresh charge-sheet is issued after dropping of the enquiry proceedings. In both the cases, relied upon by learned senior counsel for respondent no.1, the facts were not that a second charge-sheet was issued on the self same allegations as contained in the first charge-sheet and that such an action got approval of the Supreme Court. Supreme Court in these cases directed not quashing of the charge-sheet by Courts and allowing conducting of *de novo* enquiry on the chargesheet where the enquiry proceedings for one or the other reasons are defective i.e the first charge-sheet continued to exist.

10. In view of the above, it is clear that the charge-sheet dated 14.11.2007 and the enquiry proceedings sought to be initiated thereupon

against the petitioner by the respondent no.1 are barred by principle of double jeopardy as also general principle of *res judicata*.

11. The writ petition is therefore allowed and the memorandum of charges dated 14.11.2007 and all proceedings emanating therefrom by the respondent no.1 are quashed. Parties are left to bear their own costs.

OCTOBER 28, 2013
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VALMIKI J. MEHTA, J.