

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

+ **W.P.(C) Nos. 142/2005 & 143/2005**

% **17th April, 2013**

1. **W.P.(C) No. 142/2005**

S.C. BATRA

..... Petitioner

Through: Mr. G.D. Gupta, Senior Advocate with Mr.
Sarvesh Bisaria, Advocate.

VERSUS

UNION OF INDIA AND ANR.

..... Respondent

Through: Mr. B.V. Niren, CGSC with Mr. Prasouk
Jain, Advocate for respondent No.1.
Mr. Vikas Singh, Senior Advocate with
Mr. K.K. Tyagi, Advocate for respondent
No.2.

2. **W.P.(C) No. 143/2005**

S.C. BATRA

..... Petitioner

Through: Mr. G.D. Gupta, Senior Advocate with Mr.
Sarvesh Bisaria, Advocate.

VERSUS

UNION OF INDIA AND ANR.

..... Respondent

Through: Mr. B.V. Niren, CGSC with Mr. Prasouk
Jain, Advocate for respondent No.1.
Mr. Vikas Singh, Senior Advocate with
Mr. K.K. Tyagi, Advocate for respondent
No.2.

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

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

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.142/2005

1. This writ petition is filed by one Sh. S.C. Batra who is a Secretary with the respondent No.2/employer/Central Warehousing Corporation. The following relief is claimed:-

“It is therefore, most respectfully prayed that your lordships may graciously be pleased to grant ex-parte stay of the chargesheet dated 3.3.2004 and further issue appropriate orders and directions to the respondents to promote the petitioner provisionally/ on ad-hoc basis to the post of Executive Director or may pass any other order or direction as may deem fit and proper in the interest of justice.”

2. Before me, it is urged that really the issue is only one i.e of quashing of chargesheet dated 3.3.2004. I may note that during the pendency of the case departmental proceedings have taken place, petitioner has participated in these proceedings, both the parties have led evidences and a penalty order has been passed by the disciplinary authority and which could not be implemented till date because of interim orders passed by this Court.

3. On behalf of the petitioner, it is urged by the learned senior counsel that the memorandum dated 3.3.2004 and the accompanying chargesheet is void and without jurisdiction because in terms of the regulations of the respondent No.2 the article of charges had to be framed by the Board of Directors inasmuch as the Board of Directors is the disciplinary authority. The relevant regulations are the Central Warehousing Corporation(Staff) Regulations, 1986 and Regulations 60 and 61 thereof with Appendix 1 are relevant and the same reads as under:-

“ CENTRAL WAREHOUSING CORPORATION (STAFF) REGULATIONS, 1986

60.Disciplinary Authority- The disciplinary authority as specified in the Appendix-I or any authority higher than it may impose any of the penalties specified in regulation 59 on any employee.

61.Procedure for Imposing Major Penalties-

(i) No order imposing any of the major penalties specified in clause (e), (f), (g) and (h) of regulation 59 shall be made except after an enquiry is held in accordance with this regulation.

(ii) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, or appoint any public servant (hereinafter called the inquiring authority) to inquire into the truth thereof.

(iii) Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges together with a statement of the allegations on

which they are based, a list of documents by which and a list of witnesses by whom the article of charges are proposed to be sustained shall be communicated in writing to the employee who shall be required to submit within such time, not exceeding 15 days, as may be specified by the disciplinary authority a written statement whether he admits or denies any or all of the article of charges.

Explanation:- It will not be necessary to show the documents listed with the charge-sheet or any other document to the employee at this stage.

Competent Authorities for Appointment, Disciplinary Action and Appeals/Review

S.No.	Appointing Authority	Authority competent to impose penalties			Appellate Authority	Reviewing Authority
		Authority Penalty				
4.	Group 'A'					
	(i) Officers below the level of Managers	Managing Director	Managing Director	all	Executive Committee	Board of Directors
	(ii) Officers of the level of Managers and above (posts with the scale of pay of ₹1500-1800 and above)	Board of Directors	Board of Directors	all	Board of Directors	Board of Directors

4. Learned senior counsel for the petitioner very strongly relies upon

Regulation 61(iii) which states that disciplinary authority i.e Board of Directors

must frame the charges whereas the article of charges in the present case have not been framed by the Board of Directors but only by the Managing Director of the respondent No.2, and which becomes clear from the Minutes of Board of Directors dated 19.2.2004 and the relevant portion of which reads as under:-

“CONFIDENTIAL AGENDA ITEM NO.4

Purchase of Black Polythene Covers from IPCL

The BOD discussed the Agenda in detail. The Letter No.9-57/2003-SG dated 17th Feb. 2004 received from the Ministry of Consumer Affaris, Food and Public Distribution in connection with the recommendations/advice of CBI/CVC for initiation of major penalty proceedings was circulated on the table for the notice of the BOD as DA. After detailed discussion on the Agenda including the comments/views of the Managing Director on the representations of concerned officials, the BOD (DA) decided to go by the decision already taken by the BOD in its 242nd (Emergency) Meeting held on 24.2.2003 to initiate major penalty proceedings against Shri S.C. Batra, Secretary, Mrs. S. Venugopal, DFA & Manager (Publicity), the then Manager (Purchase), Shri K.M. Sawhney, DFA & Manager (A/cs) and Shri Tajinder Singh, JM (Finance). The BOD also authorized the Managing Director to finalize the charge sheets and issue necessary communications on its behalf. Since senior officers of the Corporation are involved, the BOD also decided to nominate an officer for appointment as IO and to request the JS (Storage) to move the Ministry immediately for necessary action in this regard pending circulation of minutes. The BOD also authorized the MD to appoint PO from amongst the officers of the Corporation.”

5. The issue therefore to be decided in the present case is that whether the chargesheet has been issued by an authority or that the charges framed by the authority which is not authorized to frame/issue the same. Of course, and it cannot be disputed that it is the Board of Directors which is the disciplinary authority, and the Board of Directors has to frame the article of charges, however, the fact is that the Board of Directors in the minutes of the meeting dated 19.2.2004 specifically delegated this power to the Managing Director. Delegation, in this regard, of the Managing Director by the Board of Director is permissible in view of Section 7(5) of the Warehousing Corporation Act, 1962 (hereinafter referred to as 'the Act') and the same reads as under:-

“7.(1) The board of directors referred to in section 6 shall consist of the following, namely:-

- (a) six directors to be nominated by the Central Government;
- (b) one director to be nominated by the National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962(26 of 1962);
- (c) one director to be nominated by the State Bank;
- (d) one director to be elected by other scheduled banks;
- (e) one director to be elected by co-operative societies;
- (f) one director to be elected by insurance companies, investment trusts and other financial institutions, recognised associations and companies dealing in agricultural produce or notified commodities;
- (g) a managing director, appointed by the Central Government in consultation with the directors referred to in clauses (a) to (f):

Provided that the three directors to be elected under clauses (d), (e) and (f) may, for the first constitution of the board of directors, be nominated by the Central Government in such manner as to give representation to each class of institutions (whether they have become

shareholders of the Corporation or not) referred to in those clauses, but a director so nominated shall hold office only until he is replaced by a director elected as provided in that clause, and the director so elected shall hold office only for so long as the director replaced would have held office had he not been replaced.

(2) The directors referred to in clauses (d), (e) and (f) of sub-section (1) shall be elected in the prescribed manner.

(3) If, within the period prescribed in this behalf, or within such further period as the Central Government may allow, the institutions referred to in clause (d) or clause (e) or clause (f) of sub-section (1) fail to elect a director, the Central Government may nominate a director to fill the vacancy.

(4) The board of directors shall have a Chairman and a Vice-Chairman who shall be appointed by the Central Government from among the directors.

(5) The managing director shall-

(a) exercise such powers and perform such duties as the board of directors or the Central Warehousing Corporation may entrust or delegate to him; and

(b) receive such salary and allowances as the Central Warehousing Corporation may, with the approval of the Central Government, fix.

(6) The directors of the Central Warehousing Corporation other than the managing director shall be entitled to receive by way of remuneration such sums as the Central Warehousing Corporation may, with the approval of the Central Government, fix:

Provided that no official director shall be entitled to receive any remuneration other than the allowances, if any, admissible to him under the rules regulating his conditions of service.

(7) The term of office of, and the manner of filling casual vacancies among, the directors shall be such as may be prescribed.”

6. It goes without saying that ordinarily the management of a company is always vested in its Board of Directors, however it is permissible in law to

delegate powers by the Board of Directors to a delegatee inasmuch as Board of Directors need not all the time sit for each and every decision which is to be taken by the corporation. It is to this end that Section 7(5) exists in the Warehousing Corporation Act, 1962. Since the delegation is permissible and the minutes of the meeting of the Board of Directors dated 19.2.2004 show that power to frame the charges was delegated to the Managing Director (it is not disputed on behalf of the petitioner that the charges have in fact been framed by the Managing Director and for which purpose learned senior counsel for the petitioner has referred to the memorandum which is signed by the Managing Director for and on behalf of the Board of Directors), therefore, the neat position which emerges is that ordinarily Board of Directors has to manage the business of a corporation, but, the Board of Directors can always have the power to delegate its functions to a delegatee, which power is specifically provided by Section 7(5) of the Act, hence the Board of Directors correctly delegated the framing of chargesheet to the Managing Director in terms of the resolution dated 19.2.2004 and the Managing Director has in fact framed the article of charges.

7. In view of the above, there is absolutely no basis for contending that the chargesheet has been issued by an authority which did not have any jurisdiction to issue the same and therefore the departmental proceedings are flawed for the reason.

8. On behalf of petitioner, reliance has been placed upon minutes of the Board of Directors' meeting dated 24.2.2003 to argue that by this meeting there was only initiation of major penalty proceedings against the petitioner and therefore this initiation of proceedings has nothing to do with issuing of chargesheet by the Managing Director, and since the Managing Director was not authorized to issue the chargesheet the initiation of disciplinary proceedings of issuing of the chargesheet in the present case is to be faulted with. I fail to understand this argument inasmuch as the respondent no.2 is not relying upon the minutes of the meeting of the Board of Directors dated 24.2.2003 but is relying upon the minutes of the meeting dated 19.2.2004, and the delegation which has been given thereby to the Managing Director thereafter to frame the chargesheet. Once the Managing Director has framed the chargesheet in accordance with the delegation which has been imposed upon him, I do not find that there is any lacuna or legal defect in issuing of chargesheet.

9. Learned senior counsel for the petitioner sought to place reliance upon Section 42 of the Act to argue that the corporation is authorized to make regulations and once regulations are made which require the Board of Directors to frame and issue the chargesheet, then, the general provision in Section 7(5) cannot have any application. I cannot accede to this argument because surely the subordinate legislation is subordinate to a principal Act i.e a subordinate

legislation cannot be in conflict with the principal Act. If the subordinate law is in conflict with the principal Act, the same has to give way to that extent. Therefore, once the main act i.e Section 7(5) authorizes the Board of Directors to delegate its functions, I do not think that the argument urged on behalf of the petitioner is correct that in terms of the regulations it is only the Board of Directors which could have framed and issued the chargesheet. Also, I do not think that there is any conflict between the Act and the Regulations because ordinarily the Board frames the chargesheet, but, it can also delegate that power and thus the Act and regulations must be read in a harmonious manner to give effect to the both.

10. In view of the above, there is no merit in the writ petition, which is accordingly dismissed with costs of ₹ 25,000/- to the respondent No.2 inasmuch as the petitioner has succeeded in getting the enquiry proceedings which were initiated against him way back in the year 2004 stalled till date and unnecessarily dragged the respondent No.2 to the Court.

+ W.P.(C) No.143/2005

11. In this writ petition, the petitioner who is also the petitioner in W.P.(C) No.142/2005, challenges a separate chargesheet dated 13.8.2004. The relief claimed in this writ petition is also the same as in W.P.(C) No.142/2005.

On behalf of the petitioner, it is argued before this Court that ground (B) which is pleaded in the writ petition is to the effect that the Board of Directors did not consider the relevant documents before framing of the chargesheet and therefore the chargesheet has to be quashed on that basis.

12. In my opinion, the argument raised on behalf of the petitioner is liable to fail not only because of lack of pleadings, but also on merits.

13. Firstly, let me refer to the pleadings relied upon. The following is the ground (B) which is urged in support of the argument that the Board of Director has not considered the relevant documents before framing of the charges:-

“B. Because admittedly the chargesheet which has been issued by the respondents is without proper application of mind and nor the Board of Directors have applied its mind in terms of regulation 61(iii), therefore, the chargesheet is void ab initio and liable to be quashed.”

14. In my opinion the object of law of pleadings is to bring notice of a party's case to the opposite party so that the other party can meet the same. The object of pleading is not to make vague averments so as to catch the other party by surprise at the time of arguments. Unless there are clear cut pleadings, surely, the opposite side cannot take up proper stands either in fact or in law. Therefore, I do not find that any pleading has been urged that the chargesheet which was

framed and issued in this case is to be faulted with because the Board of Directors did not consider the relevant documents.

15. Secondly, let me presume that there are pleadings, and then the question is that has at all the Board of Directors issued the chargesheet without considering any document.

In my opinion, this argument on merits is misconceived because the resolution in question does not state that documents have not been considered before framing of the chargesheet. If it was said so in the resolution then it was a different matter, however, that is not what is stated in the Board of Directors' resolution that documents are not considered. Though the learned senior counsel for the petitioner argued that the language of the resolution shows that necessary documents were not considered, however, I cannot agree with the argument and for that purpose let me reproduce the relevant portion of agenda and resolution and which read as under:-

“CONVERSION/PURCHASE OF LWBs FROM M/S. WEIGH-WELL (INDIA), CHANDIGARH

An additional confidential Agenda item No.1 on the above subject was placed before the Board of Directors (BOD) in its 246th meeting held on 19.2.2004.

The BOD discussed the agenda in detail on the 1st stage advice tendered by the CVC vide their letter dated 16.11.2003. While considering the over-all facts and circumstances of the case, the Commission had advised

initiation of major penalty proceedings against Shri Malkhan Singh, GM, Shri S.C. Batra, Secretary (the then Manager (Purchase), Smt. S. Venugopal, Manager (Publicity) (the then Manager (Purchase) and Shri S.N. Gulati, EE and issue of recordable warning to Shri S.K. Tandon, DM (G) and Shri Mavie Krishan, DM (G). The BOD also considered the representation made by Shri Batra vide his confidential letter dated 7.1.2004 on the subject. The Board observed that Shri Malkhan Singh, GM I/c and Shri S.N. Gulate, EE, have since retired from the service of the Corporation in the meantime, no action could, therefore, be taken against them. After detailed discussion, the BOD decided to accept the advice of CVC in respect of the remaining officials to initiate major penalty proceedings against Shri S.C. Batra, Secretary (the then Manager (Purchase) and Smt. S. Venugopal, Manager (Publicity) (the then Manager (Purchase) and to issue recordable warning to Shri S.K. Tandon, DM (G) and Shri Mavie Krishan, DM (G).

The BOD also authorized the MD, CWC to finalize the charge sheet and issue necessary communication on its behalf. Since senior Officers of the Corporation are involved, the BOD also decided to request the Ministry of Consumer Affairs, Food & Public Distribution to nominate an officer for appointment as I.O. and to request the JS (Storage) to initiate action in this regard pending circulation of minutes. The BOD also authorized the MD to appoint Presenting Officer from amongst the officers of the Corporation.

In compliance to BOD decision, the Corporation had written a letter dated 20th February, 2004 to Joint Secretary (Storage), Ministry of Consumer Affairs, Food & Public Distribution, Govt. of India, New Delhi for appointment of Inquiry Officer for following two vigilance cases:

- a) Purchase of Black Polythene Covers from IPCL.
- b) Conversion/Purchase of Lorry Weigh Bridges from M/s. Weigh-Well (India), Chandigarh.

In response to CWC letter dated 20.2.2004, the Ministry vide their letter No.6-9/2004-SG dated 3rd March, 2004, nominated Ms. Anita Chaudhary,

Jt. Secretary, Department of Food & Public Distribution as Inquiry Officer in respect of above two vigilance cases.

As per the decision of the BOD, the recordable warnings have been issued to Shri S.K. Tandon, JM(G) (the then DM(G) and Shri Mavie Krishan, DM (G) vide memo dated 15th June, 2004.

In compliance to BOD decision, the draft charge sheets on the major penalty proceedings against Shri S.C. Batra, Secretary (the then Manager (Purchase) and Smt. S. Venugopal, Manager (Publicity) (the then Manager (Purchase) have been finalized by MD and the same are placed at Annexure-A and Annexure-B respectively for approval of the BOD (DA).

(B.B. Pattanaik)

Chief Vigilance Officer

XXXX

XXXX

XXXX

XXXX

**CONFIDENTIAL AGENDA ITEM NO.3 AND ADDITIONAL
CONFIDENTIAL AGENDA ITEM NO.3**

***CONVERSION/PURCHASE OF LORRY WEIGH BRIDGES (LWBs)
FROM M/S WEIGH-WELL (INDIA), CHANDIGARH.***

The BOD considered the agenda together with the draft statement of article of charge and draft statement of imputation of misconduct in respect of Shri S.C. Batra, Secretary and Mrs. S. Venugopal, Manager (Publicity) in connection with the conversion/purchase of Lorry Weigh Bridges (LWBs) from M/s Weigh-Well (India), Chandigarh as well as the representation dated 19th July 2004 of Shri S.C. Batra put up through Additional Confidential Agenda Item No.3, the Board observed that most of the points raised by Shri Batra in his letter dated 19.7.2004 could be addressed during the Inquiry proceedings. The Board further observed that

most of the points raised by Shri Batra in his representation dated 10.7.2004 were covered in his earlier representation dated 7th January 2004 which was considered by the Board in his meeting held on 19.2.2004.

After considering of facts and circumstances of the case, the Board approved the draft cahrgesheet in respect of Shri S.C. Batra, Secretary and Mrs. S. Venugopal, Manager (Publicity) and authorized the Managing Director to issue the same.”

16. I have deliberately reproduced the entire agenda and the decision taken by the Board of Directors because the aforesaid agenda and the Minutes of the Board of Directors in no way states that the charges have been simply framed without considering any document. In fact, the aforesaid agenda of the minutes of meeting show that power was again delegated to the Managing Director who framed the charges and thereafter the Board of Directors have approved those charges framed by the Managing Director for being issued to the delinquent employee/petitioner.

17. In view of the above, there is no merit in the petition, which is accordingly dismissed, with costs of ₹ 10,000/- to the respondent No.2.

APRIL 17, 2013
Ne

VALMIKI J. MEHTA, J.