

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

+ **WP(C) No.7559/2008**

% **February 07, 2013**

SH. R.C. TYAGI

..... Petitioner
Through: Mr. Vimal Wadhawan,
Advocate.

versus

B.S.E.S. RAJDHANI POWER LTD. AND ORS. Respondents

Through: Mr. S.N. Choudhary.
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition filed under Article 226 of the Constitution of India impugns the order dated 29.12.2007 of the disciplinary authority, and the order dated 15.2.2008 passed by the appellate authority, whereby, the petitioner was subjected to the penalty of "10% cut in his pension for a period of one year only".

2. Though there is a history of litigation in the present case inasmuch as the earlier legal proceedings ended with a direction to pass a speaking order, however, I need not mention these facts in detail

inasmuch as the enquiry officer's report dated 31.1.2000 remains the
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same, although the earlier order of the disciplinary and appellate authority were set aside and are now substituted by the orders dated 29.12.2007 of the disciplinary authority and 15.2.2008 of the appellate authority.

3. There were two charges made against the petitioner, and which alongwith the imputation of charges, read as under:-

“ARTICLE OF CHARGE

CHARGE (I) “That Sh. R.C. Tyagi, Asstt. Engineer, while functioning as such, in Zone 1101 A. Distt. NJP, during the period 1994-98, with ulterior motive and malafide intention flatly refused to extend expected co-operation and deliberately ignored the legitimate directions given by Joint Inspection Team supervised by Senior Level Officers. He particularly behaved defiant to disclose “Theft Prone Areas” which were very much in his knowledge because of his stay in that area for more than Four years and further created unusual situation with the intention to make vigilance raids unsuccessful which were basically aimed to unearth ‘Fraudulent Abstraction of Electricity. Thus the abnormal behaviour and Non-cooperation of Zonal A.E. clearly proves that theft of electricity in the area under his command and control was taking place because of his active connivance with the Area Inspector and dishonest consumers, causing substantial financial loss to Delhi Vidyut Board.

CHARGE (II) “That the said Sh. R.C. Tyagi, A.E. (Zone) during the ‘Joint Inspection’ conducted on 3.4.98, indulged in ‘insubordination’ and in called-for interference’ by raising strong objections to replace the service line after removing theft prone existing LV mains in the premises of M/s Laxmi Udyog thereby acting against the pecuniary interests of D.V.B.

Sh. R.C. Tyagi by his above acts of insubordination, disobedience and dereliction of duty exhibited lack of absolute integrity, devotion to duty and has acted in a manner which is unbecoming of an employee of D.V.B. thereby contravening Rule 3(i), (ii) and (iii) of C.C.S. (Conduct) Rules, 1964 and rendering himself liable to disciplinary action under Regulation 7 of DESU (DMC) Service (C&A) Regulations, 1976.

(II) IMPUTATION

Further in the statement of imputation of misbehaviour/misconduct in support of Article of Charges framed against Sh. R.C. Tyagi, facts are quoted as under:-

A Joint inspection consisting Team Manager supervised by Senior Level Officers from Vigilance Enforcement, MTD, Distt. NJF and Zonal Staff was organized on 3.4.98 for conducting raids in village Nangli Sakravati/Distt. NJP to detect theft of electricity.

In the official vehicle make Maruti Gypsy the SE (VIG.) AE (VI.G) alongwith Sh. B.D. Sharma, SUPDT. Sh. Sanjay Kumar, Inspector (VIG.) and Sh.R.C. Tyagi, A.Z. Zone 1101-A) were seated. A.E. (VIG.) wanted to know about the possible premises where theft of electricity was suspected. Sh. R.C. Tyagi, A.E.(Zone) who was serving in that area for the last Four Years, unexpectedly very vaguely replied that how could AE (Zone) identify such premises and very rudely said it is none of his business to go each and every premises to look for theft of electricity. He objected why his particular zone was being selected for conducting the raids.

A similar altercation was held in between the SE(D) West.II, Sh. O.P. Nanda and Sh. R.C. Tyagi, AE (Zone) and Sh. Om Prakash, Area Inspector, on that day. Sh. Om Prakash, Inspector, had been serving that area for the last ten years and the suspected area where Fraudulent Abstraction of Electricity was taking place was very much in his knowledge. But he was reluctant to co-operate with the Raiding Team Members for the reasons that his 'active connivance' with the dishonest consumers is not exposed before the said Senior Level Officers.

During raids the Joint Inspection team noticed that in the premises of M/s. Laxmi Udyog, two spans of bare conductor were existing well within the premises and these were extremely not only theft prone but also dangerous for human life because of accessibility. Three S/L connections have been kept from these LV mains and the Joint Team were of the opinion collectively at site that bare conductor within the private premises be removed and existing service connections may be extended to the LV mains on main road. At this stage again zonal AE Sh. R.C. Tyagi and Area Inspector Sh. Om Prakash promptly started behaving as if they are not interested to act on the proposal of the 'Joint Team' and raised strong objections to

replace the service line nad also to remove existing LV mains. Thus abnormal behaviour, unwarranted interferences and act of insubordination of the said Sh. R.C. Tyagi and Sh. Om Prakash clearly prove that a substantial loss of 'Revenue' was being caused at their instance to the DVB. The department does not expect such an irresponsible behaviour and callous attitude form the said A.E. & Inspector who are otherwise considered eyes & ears of this organization.

Sh. R.C. Tyagi, A.E., by his above acts of insubordination and disobedience and dereliction of duty exhibited lack of absolute integrity, devotion to duty and has acted in a manner which is unbecoming of an employee of DVB thereby contravening Rule 3(1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964 rendering himself liable to disciplinary action under Regulation 7 of DESU (DMC) Service (C&A) Regulations, 1976.”

4. The enquiry officer exonerated the petitioner by giving the following findings:

“FINDINGS

Listed documents, Prosecution witnesses, defence witnesses etc have been appraised fully in preceding paras VII to IX. Conclusions emerging there from as at XA(i), (iii), XB(i), (ii), XC(i) entire Para XII, XII(i), XII (iii) & (iv) besides preceding entire para XIII show that the two charges levelled against the C.O. are not substantiated in the light of deposition made and documents of defence side confirmed by all the PWs/DWs.

It is also on record from the statements of XEN(Enf.), A.E.(Enf.) etc. that the raid was successful. This could not have been so without the co-operation and assistance of the Zonal staff including C.O.S. The charges therefore do not hold water. The prosecution has not rebutted/refuted D.W.S contentions and defence documents during hearing. Even in the written brief of P.O., there is no attempt to take into account of counter any defence document and it appears that the prosecution version is a one sided one.

Almost all the PWs have stated that there was altercation between Enforcement and Vig. Staff with XEN(D) of the area Sh. H.P. Singh yet he has neither been made a C.O. nor any

details of action taken against him, if any, have been placed on record. This arbitrary and discriminatory approach against the C.O. is also established by the deposition of Investigating Officer, Sh. Arvind VEDI who has stated that neither any opportunity of explanation before framing the charges was accorded to the C.O. nor any written Memo was served to attend Vig. Deptt. for recording their statement. The entire case was prepared at the behest of Investigating Officer beyond the back of the C.O. and even without calling of comments of XEN(D) of the Area about conduct and behaviour etc of the C.O.

The deposition of 2 D.W.s of the Department Inspector Sh. Harish Chand and XEN Sh. Draham Sarup is really an independent version. These 2 DWS have given the real reasons for offending the Enf. And Vig. Staff. Even P.O. in his written brief though ignoring all defence documents has admitted that the depositions of DW-5 Sh. Braham Sarup, XEN totally absolves C.O. of the charges. I have no reason to disagree with this version of the P.O. In the light of defence documents, defence deposition and revelations made by the PWs during cross/recross examination by C.O. and their D.A.s, as otherwise these facts/documents have not been placed on record from investigation/prosecution side for reason best known to them.”

5. The disciplinary authority has passed an order setting aside the findings of the enquiry officer and the relevant portion of the report of the disciplinary authority reads as under:-

“AND WHEREAS, it is also evident from the record that there had been a misunderstanding between Shri R.C. Tyagi and the raisign team at the initial stage, when they asked him to indicate the consumer who were indulging in fraudulent abstraction of electricity in their zone. The raid was however conducted in Nangli Sakrawati village of Nazafgarh Distt. Though, as per record of enforcement department, the raid was successful, as a number of cases of FAE were booked. However, it is also clearly established in the Enquiry Report that the charged employee i.e Shri R.C. Tyagi did not extend expected co-operation to the Joint Inspection Team.

AND WHEREAS, scrutiny of the depositions made by the

defence witnesses, reveals that even their deposition viewed in totality of the circumstances and on merit do not help the charged employee and does not further the case of defence. For example, the deposition of DW-4 who is photographer hired by the charged employee at the behest of the Joint inspection Team interesting. In cross-examination, this defence witness admitted to be well acquainted with the charged employee i.e Shri R.C. Tyagi and this explains why he stated, what he stated. The very fact that the charged employee produced a private photographer to give a favourable deposition shows his intimacy with him as normally private persons and even complainants do not come to departmental enquiries to depose. Thus, the presence of DW-4 in the departmental enquiry against the charged employee clearly goes to show that he wanted to help the charged employee by going to the extent of giving a false deposition.

AND WHEREAS, keeping in view all the facts and circumstances of the case, I have come to the conclusion that evaluation of the evidence on the part of the Enquiry Officer has not been prudent and circumspect. There have been in fact attempts to dilute the evidence to help the charged employee.

NOW THEREFORE, the undersigned being the Disciplinary Authority, does not agree with the findings of the Inquiring Authority on account of the reasons mentioned above and hold the articles of charges as “Proved”. No new substance is found in the representation dated 1.12.2007 of Shri R.C. Tyagi as well as in the personal hearing given to him on 29.11.2007 and 27.12.2007.

Since Shri R.C. Tyagi already stands retired from the services, taking a very lenient view, I hereby impose a penalty of “10% cut in his pension for a period of one year only.

The ORDERS are issued accordingly.”

(underlining added)

6. The crux of the matter is as to whether the petitioner/Charged Officer (C.O.) created difficult circumstances for carrying out the raids with respect to theft of electricity.

7. The Department relied upon three documents Ex.S1 to Ex.S3 before the enquiry officer as also relied upon the statements made by the

six prosecution witnesses. The petitioner/C.O. relied upon the documents Ex.D1 to Ex.D9 and got recorded statements of five witnesses in defence.

8. In the present case in order to decide the issue as to whether the petitioner/C.O. was guilty of creating hindrances in conduct of the raids and also for removing of certain electricity lines, it would be necessary to refer to examination of the inspection report dated 3.4.1998 which is filed as Ex.S1 and Ex.S1A by the respondent/department. The relevant appraisal of this document being the inspection report dated 3.4.1998 reads as under:-

“Ex.S-1A & Ex.S-1: This is a report in respect of Joint Inspection conducted in Vill. Nangli Sakravati on date 3.4.98 and behaviour of zonal staff. This report is undated and has been signed by A.E.(Vig.), Supdt.(T)/Vig. and Inspector (T)/Vig. No other Member of the Joint Team from Enforcement, MTD Distt./Zonal staff etc. has signed it.

This document mentions that the C.O. did not cooperate with the Joint Inspection Team during the raid at Zone-101-A and that behaviour of C.O. was not proper and against official decorum. Similar observations are made against another C.O. Sh. Om Parkash, Inspector.

This document clearly mentions that at the premises of M/s. Laxmi Udyog and M/s. Gautam Cables, the behaviour of the C.O. was as if they are not interested to act on the proposal of the Joint Team and raised strong objections regarding replacement of the service line and also to remove existing LV mains on this premises. This document also mentions that the actual user of LV mains of M/s. Laxmi Udyog did not object for removal of the mains rather he pointed out that he had made request in this regard to general staff. Yet another observations made in this document is that the behaviour of Sh. H.P. Singh, XEN(D) of the area was also objectionable and non-cooperative but surprisingly this XEN has not been made C.O. in the case and if separately some action

taken against him the same has not been placed on record by the prosecutions side.

Ex.S-2: It is hand written statement dt. 22.4.98 of XEN(Enf.) I Sh. Anil Kumar. This document also points out to the non co-operative behaviour of the C.O., Sh. Om Parkash, Inspector and XEN(D) NJF. About the removal of adjusting LV Mains of M/s Laxmi Udyog and M/s. Gautam Cables also this document reiterates the earlier position. It also mentions that at one point of time due to the repeated interference by Sh. Tyagi and Sh. Om Prakash, the two C.O.s the XEN (Vig.) reorganised the Raiding Team to make the raids successful. This point has not been mentioned in the undated note at Ex.S-1. This note also points out that even when the Joint Reports were being prepared, C.O. Sh. Om Parkash, Inspector interrupted Sh. D.R. Mahta, A.E.(Enf.) III created hindrances in recording the facts by the Joint Team though with the effort of the Members of the Joint Team Raid was successfully conducted.”

(underlining added)

9. The aforesaid appraisal makes it very clear that documents in question specifically mention the fact that at the premises of the consumer M/s. Laxmi Udyog and M/s. Gautam Cables the behaviour of the petitioner/C.O. was as if he was not interested to act upon and raised strong objections regarding replacement of all service lines and also to remove the existing LV mains on the premises. This document being the inspection report is signed by the petitioner himself and which becomes clear from the following statement of PW2:-

“PW-2 Sh. B.D. Sharma, Supdt. (T) has confirmed the contents of Ex.S-1 and his signatures thereon. He has also confirmed, when shown Ex.D-3 which is a Joint Inspection Report dt. 3.4.98, Signatures of both the C.O.s thereon have also been confirmed along with the fact that the premises mentioned therein were inspected jointly by him with the C.O.s.

The P.W has mentioned that some hot exchanges were going on

between the Cos and XEN(D), Sh. H.P. Singh on one side and Sh. Mathur on other side but he does not know the background.”
(underlining added)

10. Therefore, on the one hand is the oral depositions led on behalf of the petitioner/C.O. and on the other hand there is documentary evidence Ex.S.1 which specifically mentions the recalcitrance of the petitioner and which document is very much signed not only by the petitioner but also another charged officer Sh. Om Parkash. Once there is a clear cut documentary evidence, oral evidence will not help the petitioner and it is enough on the basis of Ex.S1 to hold the charges to be proved against the petitioner. Of course, the disciplinary authority could have done a better job by elucidating the discussion, however, the disciplinary authority has in this regard observed as under:-

“However, it is also clearly established in the Enquiry Report that the charged employee i.e Shri RC Tyagi, did not extend expected co-operation to the Joint Inspection Team.”

11. Therefore the aforesaid observations made by the disciplinary authority has to be read in the light of analysis of Ex.S1 which has been done by the enquiry officer, as also the statement of PW-2 which shows that the petitioner/C.O. had duly signed this document, and which in clear cut terms reflects the objections and the conduct of the petitioner with respect to removal of the LV Mains and the service lines.

12. For the sake of completion of narration, I must note that on an earlier hearing in this Court, the petitioner had claimed parity of punishment with another charged officer Sh. Om Parkash, however, today when the counsel for the respondent filed the censure order with respect to other charged officer Sh. Om Parkash, counsel for the petitioner on instructions gave up the claim with respect to parity of treatment with the other Charged Officer Sh. Om Parkash.

13. It is settled law that this Court exercising powers under Article 226 of the Constitution of India does not sit as an appellate Court over the findings and conclusions of the disciplinary authority and the appellate authority. This Court cannot reappraise the evidence so as to arrive at the findings on its own. Unless the findings of the enquiry officer and the disciplinary authority/appellate authority are wholly perverse and against law, this Court does not interfere. In the present case the only punishment imposed is a 10% cut in the pension and that too for one year only. Considering the facts of the present case, I do not find any illegality or perversity in the impugned order which calls for interference by the Court exercising jurisdiction under Article 226 of the Constitution of India.

14. In view of the above, there is no merit in the petition which is accordingly dismissed, leaving the parties to bear their own costs.

FEBRUARY 07, 2013
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VALMIKI J. MEHTA, J