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

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Judgment delivered on: 02.01.2014

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W.P.(C) 6971/2002

SATNAM SINGH PABLA

..... Petitioner

versus

DELHI POWER COMPANY LTD.

..... Respondent

Advocates who appeared in case:

For the Petitioner: None

For the Respondent: Mr Vikram Nandrajog & Mr Sushil Jaswal, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. There is no representation on behalf of the petitioner. Mr Vikram Nandrajog, learned counsel for the respondent, has assisted me in the matter and taken me through the record. The prayer in the petition is directed against the order dated 19.10.2000 passed by the respondent in appeal preferred by the writ petitioner against the order dated 29.07.1999. To be noted, since the writ petitioner had also preferred a review qua the order dated 19.10.2000 an order was passed by the respondent dated 13.03.2001 whereby the review petition was also dismissed.

1.1 The present writ petition, which is in a sense the second round of litigation, was filed to impugn the order dated 13.03.2001 passed in the

review petition.

1.2 The earlier writ petition filed, which was numbered as WP(C) No. 3624/2001 did not impugn the order passed in review and hence the same was dismissed as withdrawn on 13.03.2002. Consequently, the present writ petition came to be filed challenging the three orders, which are referred to hereinabove.

2. Briefly, the writ petitioner's case is that he had joined the respondent's predecessor-in-interest, the Delhi Electric Supply Undertaking in 1968 as an apprentice. Since the respondent got morphed into its present avatar, which is the Delhi Power Company Limited, the writ petitioner had continued in service. The writ petitioner claims to have obtained a number of promotions and it is his averment that he was promoted to the post of Shift Officer in 1992.

2.1 Apparently, in December, 1992 the writ petitioner took three months' leave and travelled to U.K., due to some urgent family matter. The writ petitioner, apparently, stayed in U.K. for a period of fourteen (14) months for which purpose he sent leave applications for extension of leave, which was granted to him. In February, 1994 the writ petitioner rejoined the respondent. The writ petitioner claims that the leave taken, while he was in U.K., was regularized.

2.2 Apparently, in August, 1994 the writ petitioner applied for leave of three months. It is averred that this leave was sought to travel to Canada and once again for circumstances which were unavoidable. It is stated by the writ petitioner that he travelled without sanction of leave by the competent authority. The writ petitioner, however, avers that he did send applications for extension of leave. It is averred that since his brother had taken ill, he

had to over-stay till his brother's health stabilized which was in the month of June, 1996. The writ petitioner avers that he returned to India in June, 1996 and re-joined the respondent and remained in duty till November, 1996.

2.3 Evidently on 08.10.1996 the petitioner was issued a memorandum for imposition of minor penalty under Regulations 5(a)/ 8 of DESU (DMC) Service (C&A) Regulations, 1976 (in short the 1976 Regulations) read with Section 95 of DMC Act, 1957. By this memorandum the petitioner, was broadly, called upon to explain the reasons for his purported over-stay of leave, without sanction, between November, 1994 and June, 1996.

2.4 The writ petitioner sent a detailed representation dated 19.10.1996, against the action proposed vis-a-vis him. It was the writ petitioner's stand that the leave applications, which were sent from Canada by him from time to time were not placed before the competent authority. The writ petitioner appears to have also invoked the provisions of Rule 12 of the Revised Leave Rules, 1972, which according to him, allowed him a continuous period of leave, not exceeding five years.

2.5 Apparently, on 21.11.1996, the petitioner applied for leave, yet again, for a period of three months to travel to Canada, ostensibly to look after his ailing brother, who was critically ill. This time around, as in the past, the writ petitioner did not wait for the leave to be sanctioned by the competent authority. It appears that the respondent vide communication dated 26.11.1996, informed the petitioner, that he was to appear before the inquiry officer on 06.12.1996.

2.6 Since the writ petitioner was not available in India and because of the fact that the circumstances were such that he could not travel to India, the proceedings apparently were adjourned to 26.02.1997.

2.7 It is not in dispute that vide order dated 09.01.1997, the respondent, imposed a penalty on the petitioner of stoppage of promotion for a period of three years from the date it fell due. It is also not in dispute that this order was not challenged by the writ petitioner. To be noted, this order pertained to leave taken by the writ petitioner for the period August, 1994 to June, 1996, as indicated hereinabove.

2.8 In so far as the leave availed by the petitioner between November, 1996 and June, 1997 was concerned, the writ petitioner was issued a memorandum dated 08.09.1997, under Regulation 7 of the 1976 Regulations.

2.9 It is pertinent to note that since the writ petitioner was still in Canada, the respondent took care to direct the memorandum dated 08.09.1997 not only to his Delhi address but also to his Canadian address. Since, the writ petitioner, received the memorandum in Canada, a reply to the said memorandum was sent by the writ petitioner from Canada, which is dated 04.10.1997.

3. Mr Nandrajog, learned counsel for the respondent, does not dispute the fact that the proceedings were conducted ex-parte and after the service of the memorandum dated 08.09.1997 on the writ petitioner, no other notices were served on the petitioner at his Canadian address. Resultantly, the notices sent to the writ petitioner at his Delhi address were received back. The inquiry officer, finally concluded his proceedings and submitted an inquiry report dated 10.08.1998.

4. The writ petitioner avers that vide communication dated 26.06.1998 he had written to the inquiry officer that the proceedings were being conducted illegally and in an arbitrary manner in violation of principles of

natural justice. It is also the writ petitioner's stand that on 21.07.1998 he returned to India and submitted his joining report to the respondent. It is averred that the writ petitioner was allowed to join services and that he worked with the respondent till November, 1998, without any obstruction or hindrance.

4.1 Apparently, in the interregnum, on 23.07.1998, the writ petitioner also applied for voluntary retirement from service. As indicated above, the inquiry officer on 10.08.1998 had submitted his report and returned a finding that the charges framed against the writ petitioner, which were that he had proceeded on leave and travelled to Canada without the sanction of the competent authority, had been proved.

4.2 The net result of the same was that the respondent vide its communication dated 11.09.1998 also rejected the writ petitioner's application for grant of voluntary retirement.

5. In terms of the then prevailing rules and regulations, on 22.09.1998, the writ petitioner was issued a show cause notice to explain as to why the proposed penalty of removal from service in terms of the inquiry report ought not to be imposed upon him.

5.1 Consequent thereto, vide order dated 29.07.1999 the writ petitioner was removed from service, as proposed, in the aforementioned show cause notice.

5.2 According to the writ petitioner the order dated 29.07.1999 was served upon him, only on 25.08.1999. It is the stand of the writ petitioner that he applied for certified copies of certain exhibits being: S-1 to S-4. A request to that effect was made by the writ petitioner vide communication dated 28.02.2000. It is the stand of the petitioner that these documents were

not supplied to him; which were necessary for preferring an appeal.

5.3 Consequently, on 01.06.2000, after having waited for nearly four (4) months, the writ petitioner preferred an appeal.

6. As indicated above, vide order dated 19.10.2000, the appeal was dismissed by the respondent on the grounds of delay.

6.1 The writ petitioner preferred a review against the order dated 19.10.2000, which was also dismissed by the concerned authority on 13.03.2001.

6.2 Resultantly, as indicated above, a writ petition was filed in this court which was numbered as: CWP No. 3624/2001. The said writ petition was dismissed as withdrawn on the ground that the order of review had not been challenged. Consequently, the present writ petition was filed.

7. In this background, Mr Nandrajog submitted before me that the writ petitioner was a perennial defaulter. He submitted that prior to the impugned act of commission and omission, he had also, in the past, taken leave without sanction of the competent authority and therefore, in these circumstances, the impugned action of the respondent ought to be sustained. Mr Nandrajog has also taken me through the three impugned orders which are: the penalty order dated 29.07.1999; the appeal order dated 19.10.2000; and lastly, the order passed in the review dated 13.03.2001.

8. I have heard Mr Nandrajog, learned counsel for the respondent. The record does seem to indicate that the writ petitioner appears to be one who, consistently, for one reason or the other, has repeatedly travelled abroad on leave without having his leave duly sanctioned. This conduct of the writ petitioner, however, unpalatable, required an inquiry, in accordance with due procedure as established by law. The respondent, had done the right thing

by appointing an inquiry officer. But what went wrong, and this in my view was substantive error, was that, though the memorandum of charges dated 08.10.1997 was issued and served upon the writ petitioner both at his Delhi and Canadian address, the notices with regard to the proceedings held thereafter, by the inquiry officer, on the date fixed, were not served upon the writ petitioner at his Canadian address. This infraction occurred, despite, the respondent being aware that the writ petitioner was in Canada. As a matter of fact, as indicated from the facts set out above, the writ petitioner had filed his reply to the memorandum of charges from his Canadian address. The inquiry officer, therefore, proceeded to conclude the inquiry by not having the benefit of the writ petitioner's appearance before him. The writ petitioner admittedly assailed the order passed by the disciplinary authority based on the report of the inquiry officer directing his removal from service, before the appellate authority, on the ground that principles of natural justice had been violated. The appellate authority, however, dismissed the appeal on the ground that it was filed beyond time. The reviewing authority, however, while sustaining the order of the appellate authority, briefly touched upon the fact that this was not a case in which review was called for, as the writ petitioner was a perennial defaulter.

9. According to me, both the appellate authority and the reviewing authority have missed the principal stand of the writ petitioner, which was that, he had no notice of the proceedings held before the inquiry officer. No doubt the writ petitioner was served with the memorandum of charges in Canada to which he had filed a reply, but thereafter the proceedings held before the inquiry officer, were not in his knowledge. This was decidedly so, as the notices were sent by the inquiry officer at the address of the writ

petitioner at Delhi. This is borne out from the following observations of the inquiry officer's report which are extracted hereinbelow:

“...Shri S.S. Pabla the charged official, in his brief has stated that he did not receive any memo/ charge sheet not intimation for holding inquiry. This statement cannot be accepted. The written intimations of dates of hearing were sent under Regd. A/D to his last known address at Shastri Nagar and were returned undelivered as there was nobody to receive the letters. The enquiry was conducted ex-parte. However, opportunity was afforded to him to submit his arguments in defence. He was given the copy of the brief of the Presenting Officer so that Sh. S.S. Pabla could defend his case. The enquiry could not be restarted as the proceeding had been completed and were closed. Sh. S.S. Pabla, therefore, cannot deny that sufficient opportunities were not afforded to him and his plea that the enquiry proceedings conducted in utter disregard to principle of natural justice is not sustainable as all intimations were sent under Regd. A/D to his last known address and he was given a final opportunity when he was given a copy of the brief of Presenting Officer offering him to put up arguments in his defence. But he failed to avail the opportunity. Sh. S.S. Pabla, the charged official, sought more time for submission of his brief vide his letter dated 24.6.98. Finally the brief submitted by him dt. 29.6.98 does not contain any reasonable arguments in support of his claim....”

(emphasis is mine)

10. Having regard to the above, I am of the view that the entire proceedings were vitiated as due opportunity was not granted to the writ petitioner to defend the charge levelled against him. It is trite to say that what appears at first blush to be an open and shut case, it often takes a different turn once the party, which is proceeded against, is heard in defence of his/ her case. This principle of law is best typified by the following observations made in *John vs Rees (1969) 2 All. ER 274*:

“It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. “When something is obvious,” they may say, “why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.” Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were of unanswerable charges which, in the end, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.”

10.1 The aforesaid principle was adopted with approval in a Division Bench judgment of this court in: ***Moser Baer India Ltd. vs The Additional Commissioner of Income Tax & Anr.*** and connected petitions (2008) ***ILR 13 Delhi 125***. The SLPs preferred against the said judgment being: SLP (C) No. 20513/2009 and connected petitions, were dismissed in limine vide order dated 29.01.2010.

10.2 The respondent, in my view, committed a grave error in not sending notices to the writ petitioner at his Canadian address, since it had due knowledge of his address in Canada. Accordingly, the impugned orders are set aside. The respondent shall, however, be at liberty to re-commence the

inquiry and proceed; albeit in accordance with law, after duly notifying the writ petitioner.

11. The writ petition is, accordingly, disposed of with the aforesaid directions.

RAJIV SHAKDHER, J

JANUARY 02, 2014

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