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

Date of decision : August 17, 2015

\+ **LPA 221/2014**

NATHIMAL GUPTA ..... Appellant
Represented by: Mr.Ankur Chhibber, Advocate

versus

INDERPRASTHA POWER GENERATION CO LTD ..... Respondent
Represented by: Mr.R.K.Vats, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.(Oral)

1. Charge against the appellant was that while functioning as an Inspector in the 11 KV (Constn.East-I), Karkardooma, during the year 1999, with mala fide intention and ulterior motive he stole Meter No.E-9705279 from premises No.75-A, Pocket F, GTB Enclave, Dilshad Garden of one Kishori Lal and installed the same in a fraudulent manner at premises No.F-271, Yojana Vihar, New Delhi and thereby allowed the consumer to steal power and for which wrong the appellant received ₹10,000/- as illegal gratification from Sachit Prasad Jain, the owner of premise B-271, Yojana Vihar and further prevented recovery of ₹1,42,720/- which was outstanding due towards consumption as recorded by a Poly Phase Meter No.4 D-461068 installed at B-271, Yajana Vihar.

2. Since the appellant had denied the charge, an Inquiry Officer was appointed before whom 21 documents were exhibited, and we simply

highlight that the documents establish that Meter No.E-9705279 was installed at premises No.75-A, Pocket F, GTB Enclave, Dilshad Garden and that during inspection carried out on June 10, 1999 it was found that the meter in question was installed at premises B-271, Yojana Vihar, New Delhi where a Poly Phase Meter No.4D-461068 had been installed and that ₹1,42,720/- was outstanding pertaining to electricity consumed at the premises, which amount was not recovered because due to non-payment the meter was removed, but the owner of the premises continued to enjoy benefit of electricity which was metered for purposes of consumption vide meter No.E-9705279.

3. Learned counsel for the appellant concedes that evidence led before the Inquiry Officer proves as above. At core is the argument : Where is the evidence to prove that the appellant stole Meter No.E-9705279 which was installed at premises No.75-A, Pocket F, GTB Enclave, Dilshad Garden and thereafter installed the same at premises B-271, Yojana Vihar, New Delhi?

4. Learned counsel for the respondent states that said fact is proved by the statements Ex.S-3 and S-3A made by Sachit Prasad Jain, the owner of premises No.B-271, Yojana Vihar, New Delhi. Learned counsel for the respondent states that this is the only evidence to establish that the appellant was the culprit.

5. Concededly Sachit Prasad Jain was not examined during the inquiry by the Inquiry Officer. Ex.S-3 and S-3A are statements made by him during fact finding preliminary proceedings in which the appellant was not associated.

6. Learned Single Judge has dealt with the issue of Sachit Prasad Jain not being examined in paragraph 7 of the impugned decision, and we note the same. It reads as under:-

> *"7. So far as the second argument is concerned, of the department not having examined Shri Suchit Jain of the premises where the stolen meter was found and installed at the Yojana Vihar, although his statement is relied upon, I may state that really the statement of Shri Suchit Jain which is relied upon by the department is not in the nature of deposition on oath for which there has to be cross-examination, but the statement relied upon is similar to a letter or a documents containing a fact and its statement to the electricity department. Such a document can always be relied upon in a civil proceeding and all that is required is that contents of the same are otherwise legally proved. The contents of the statement of Shri Suchit Jain have been proved in the departmental proceedings because it has been established that the meter in question actually was installed at the Dilshad Garden address, and therefore, it could have been found installed at Yojana Vihar address only if it was wrongly been installed at Yojana Vihar address i.e. on being stolen from the Dilshad Garden address."*

7. The reasoning of the learned Single Judge is totally contrary to the law. The charge against the appellant was of stealing the meter in question which was installed at a premises in GTB Enclave and thereafter installing the same at a premises in Yojana Vihar. The appellant had not disputed that the meter was sanctioned for being installed at GTB Enclave and as a matter of fact was installed there but subsequently found at the premises at Yojana Vihar. That the meter was never entrusted to the appellant was his contention and that he had nothing to do with it being removed from the place of installation and it being illegally installed at Yojana Vihar was the defence of the appellant; and thus the department had to prove that the appellant stole the meter and fixed it in the premises of Sachit Prasad Jain at Yojana Vihar. The department sought to prove the said fact through the statements Ex.S-3 and Ex.S-3A purportedly made by Sachit Prasad Jain during preliminary inquiry, who was for reasons best known to the

department not examined as a witness.

8. Even in a domestic inquiry the delinquent has a valuable right to cross-examine witnesses who depose facts to their knowledge and any fact purportedly disclosed by them during preliminary inquiry cannot be used against the delinquent unless the maker of the statement is examined. It is not the case of the department that Shri Sachit Jain was not available for being examined.

9. We therefore conclude that the department has miserably failed to prove that the appellant was the offender and thus we set aside the penalty of removal from service inflicted upon the appellant by the Disciplinary Authority vide order dated August 24, 2001 as also the order dated September 10, 2002 rejecting the departmental appeal filed by the appellant. We dispose of the writ petition filed by the appellant directing that the appellant would be treated in service till he would have superannuated, but for he being removed from service. For the period post levy of penalty of removal from service till the appellant would have superannuated, we direct that he would be paid 50% wages and for the period post he superannuating from service, we direct that the appellant would be paid his terminal benefits. The 50% back wages and terminal benefits shall be paid within 16 weeks from today failing which reckoned from 16 weeks from today they shall be paid with simple interest @ 8% per annum.

10. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 17, 2015/rk