

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

+ **W.P.(C) No.1799/2000**

% **20th April, 2015**

SH. DHARAMVIR DAHIYA Petitioner

Through: Mr. S.K. Bhaduri, Advocate.

Versus

THE AGRICULTURAL PRODUCE MARKET COMMITTEE & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner who was the employee of the Agricultural Produce Market Committee/respondent no.1, impugns the order passed by the Appellate Authority dated 4.8.1995 which has confirmed the order passed by the Disciplinary Authority dated 27.9.1994 imposing punishment of dismissal from service upon the petitioner. Therefore, the petitioner questions the orders of the departmental authorities; of the Disciplinary

Authority dated 27.9.1994 and the Appellate Authority dated 4.8.1995; by which petitioner has been imposed the punishment of dismissal from service.

2. Against the petitioner, there were serious and grave charges that while working as a Sanitary Inspector he was forcing safai karamcharis working under him to collect unauthorized charges from the user of the toilets and he was also guilty in maintaining a duplicate register of attendance by marking attendance even of absentee officials. These Articles of Charges read as under:-

“ Article –I

That the said Sh. Dharambir while functioning as Sanitary Inspector was pressurizing the Safai Karamcharies working under him to collect unauthorized charges from every users of the toilets during the duty hours with ulterior motive.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said Sh. Dharambir was marking the attendance of absentees Safai Karamcharies for a consideration.

In addition to this, it has also been found that Sh. Dharambir, S.I. was maintaining a duplicate attendance register of the Safai Karamcharies working under him for marking attendance of the absentees officials with an ulterior motive.

That the said Sh. Dharambir did not maintain absolute integrity and devotion to duty and thereby violated to Rule-3 of C.C.S. (Conduct) Rules which is unbecoming of a Govt. servant.

Statement of imputation of mis-conduct or mis-behaviour in support of the articles of charge framed against Sh. Dharambir, Sanitary Inspector.”

3. Petitioner appeared for some hearings before the Enquiry Officer but thereafter stopped appearing and therefore the Enquiry Officer gave his report dated 16.5.1994 by conducting *ex parte* proceedings against the petitioner. A reading of the Enquiry Officer's report shows that evidence was led by the department being depositions of witnesses as well as filing of documents. Charges against the petitioner on this evidence were held to be proved. Since the petitioner did not participate in the enquiry proceedings, there is no evidence recorded on behalf of the petitioner and also that the petitioner did not step into the witness box to prove his defence and stand the test of cross-examination. A charge-sheeted official who has no courage of conviction to even depose in his favour and stand the test of cross-examination, cannot be believed.

4. The law with respect to challenge to the orders passed by the departmental authorities is clear and this Court can interfere with the findings and conclusions of the departmental authorities only if the findings and conclusions of the departmental authorities are perverse. This Court will not interfere with the findings and conclusions of the departmental enquiry if on preponderance of probabilities the departmental authorities have come to one possible and plausible conclusion. This Court does not sit as an appellate court to re-apprise the findings and conclusions arrived at by

the departmental authorities. Since in the present case department proved its case by leading evidence and petitioner led no evidence including deposing in his own favour, I do not find, in the facts stated above, any perversity in the findings and conclusions of the departmental authorities in holding the petitioner guilty.

5(i). The argument urged on behalf of the petitioner that the appellate authority has to give personal hearing to the petitioner and which was not given, is a misconceived argument inasmuch as it is settled law that an appellate authority does not have to give personal hearing once personal hearing is given by the disciplinary authority. In the present case, petitioner was issued notice by the Disciplinary Authority for appearance, but the petitioner did not appear. The notice was returned back with the remarks that in spite of repeated visits petitioner was not available.

(ii) I have gone through the writ petition and in the writ petition there is no pleading of the petitioner that under which specific rule an appellate authority has to give personal hearing to the petitioner. Though counsel for the petitioner argues by placing reliance upon Rule 27 of the CCS (CCA) Rules, 1965 that appeal has to be considered i.e charge-sheeted official must be given personal hearing as appeal has to be ‘considered’, however, the argument is totally misconceived because there is

no requirement of this rule of giving the personal hearing and no judgment is cited before me of any court that an appellate authority has to give personal hearing before passing an order in an appeal against the order passed by the disciplinary authority.

6. Counsel for the petitioner finally argues that the order of the Appellate Authority cannot be said to be a considered order because it does not give reasons, however, even this argument is misconceived once there is a detailed report of the Enquiry Officer which is accepted by the Disciplinary Authority, and in spite of notice of personal hearing being given to the petitioner, petitioner did not appear before the Enquiry Officer or even the Disciplinary Authority which passed the order dated 27.9.1994 imposing punishment. In law the appellate authority effectively is entitled to adopt the findings and conclusions of the enquiry officer. This argument of the petitioner is thus also misconceived and is therefore rejected in the facts of the present case where the petitioner remained *ex parte* in the proceedings before the Enquiry Officer and the Disciplinary Authority.

7. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.