

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

+ W.P.(C) No. 1865/2001

% **5th February, 2015**

SH. DHARAMPAL Petitioner
Through: Mr. Rajiv Gupta, Advocate.

versus

M/S NORTH DELHI POWER LTD.
THROUGH ITS MD Respondent
Through: Mr. Vikram Nandrajog with Mr. Sushil
Jaswal, Advocates.

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 under Article 226 and 227 of the Constitution of India is filed by the petitioner, erstwhile employee of the Delhi Vidyut Board (now Tata Power Delhi Distribution Limited), impugning the departmental proceedings against him whereby the Disciplinary Authority vide its order dated 24.3.2000 imposed the major penalty of reduction by five stages in his present scale of pay for a period of five years with further stipulation that during the period of reduction he will not earn any increments of pay and on expiry of this period the reduction will have the

effect of postponing his future increments of pay and which was affirmed by the Appellate Authority vide its order dated 12.12.2000. The Enquiry Officer had exonerated the petitioner but the Disciplinary Authority upset the report and imposed the aforesaid penalty upon the petitioner.

2. On behalf of the petitioner only one aspect is very strenuously argued, and which is that the Disciplinary Authority has passed the impugned order dated 24.3.2000 in terms of the show cause notice dated 12.5.1998, but this show cause notice dated 12.5.1998 is not to give a hearing to the petitioner for disagreeing with the findings of the Enquiry Officer but this show cause notice dated 12.5.1998 is in fact a judgment holding the petitioner guilty and show cause notice is given only with respect to imposition of penalty. This alleged show cause notice, which is in fact a decision *ex parte* disagreeing with the findings of the Enquiry Officer, reads as under:-

“..... AND WHEREAS the Disciplinary Authority disagreeing with the findings of the Inquiry Officer i.e. the Charged Official himself was not required to take any action when he did not find any building construction activity going on at the time of his visit only once observes that the fact remains that when the CO went to the site on 15.12.90 for meter reading of permanent connection, and he noticed that the building is still under construction, he should have reported that fact to the MSR so that misuse charges could be levied on the consumer. He, however, failed to issue statement VII despite knowing the fact that electricity from permanent connection was being used for new connection which

was not permissible. **In view of the above fact, the charge against him stands proved.**

AND WHEREAS the undersigned as the Disciplinary Authority, after considering the facts and circumstances of the case in totality proposes to impose the penalty of reduction by five stages in his present scale of pay for a period of five years with further stipulation that he will not earn any increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay upon Shri Dharam Pal, Meter Reader.

NOW, THEREFORE, Shri Dharam Pal is hereby afforded an opportunity to show cause as to why the penalty of reduction by five stages in his present scale of pay for a period of five years with further stipulation that he will not earn any increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay **should not be imposed upon him.** Shri Dharam Pal is directed to submit his reply if any in the matter within a period of 15 days from the date of receipt of this Memo.

A copy of the inquiry report is enclosed herewith.”

(emphasis is mine)

3. I agree with the contention urged on behalf of the petitioner because sub-paras of this Memorandum dated 12.5.1998 quoted above show that the Disciplinary Authority has already disagreed with the findings of the Enquiry Officer and has held the petitioner guilty without hearing the petitioner. The last para on the first page and which is the 6th para of the Memorandum dated 12.5.1998 only issues show cause notice for the imposition of penalty. Therefore, the Memorandum dated 12.5.1998 holds the petitioner guilty by disagreeing with the report of the Enquiry Officer

dated 27.6.1996 and a show cause is issued only on the aspect of quantum of penalty to be imposed against the petitioner, and this aspect of setting aside the Enquiry Officer's report has been done without hearing the petitioner as to why the Enquiry Officer's report should not be set aside i.e the Enquiry Officer's report has been set aside *ex parte* against the petitioner.

4. It is settled law that, no doubt the disciplinary authority can disagree with the findings of the Enquiry Officer, but, before a finding is given disagreeing with the report of the Enquiry Officer, the affected party viz the charged officer, i.e the petitioner in this case, should be heard and there cannot be an *ex parte* conclusion of the disciplinary authority that he has already disagreed with the report of the Enquiry Officer and show cause notice is issued only to the extent of imposition of penalty.

5. In view of the above, this writ petition is allowed to the extent that the proceedings are remanded to the Disciplinary Authority in the present respondent viz Tata Power Delhi Distribution Limited at the stage of and for the purpose of the Disciplinary Authority deciding whether or not to disagree with the findings of the Enquiry Officer viz a hearing has to be granted to the petitioner before deciding that whether the Disciplinary

Authority disagrees with the findings and conclusions of the Enquiry Officer in his report dated 27.6.1996.

6. The present writ petition is accordingly disposed of directing the Disciplinary Authority in the respondent to now issue a show cause notice to the petitioner giving reasons as to why the Disciplinary Authority seeks to disagree with the findings of the Enquiry Officer as contained in the report dated 27.6.1996, and thereafter the petitioner will have a right to give his response in writing and be personally heard by the Disciplinary Authority. The Disciplinary Authority thereafter will take an appropriate decision in accordance with law as to whether the Disciplinary Authority wants to finally decide that the Disciplinary Authority does or does not want to agree with the findings and conclusions of the report of the Enquiry Officer dated 27.6.1996. In case the Disciplinary Authority passes an order after hearing the petitioner that the Enquiry Officer's report is to be set aside and that the petitioner is guilty, then the petitioner will be issued a show cause notice with respect to the proposal of imposition of penalty against the petitioner as also any other order if so required to be passed.

7. The disciplinary authority must now complete the proceedings in terms of the present order within a period of four months of receipt of copy of the present order.

8. The writ petition is allowed to the extent as stated above, leaving the parties to bear their own costs.

FEBRUARY 05, 2015
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VALMIKI J. MEHTA, J