

\$~R-16

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

Date of Decision: November 17, 2015

+ **W.P.(C) 4093/2000**

DASHRATH LAL & ORS. Petitioners
Through: Mr. Kamal Mehta, Mr. Sudeep
Singh and Mr. Karan Joshi,
Advocates

versus

DELHI VIDYUT BOARD Respondent
Through: Mr. Sandeep Prabhakar &
Mr. Vikas Mehta, Advocates for
respondent No.1 & 2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

Petitioner-*Jagwanta* was the lineman and remaining three petitioners were Assistant Lineman in *Delhi Vidyut Board (hereinafter referred to as DVB)*, who have been dismissed from service vide impugned order of 8th March, 2000 while dispensing with the Inquiry by invoking Rule 19 (ii) of *CCS CCA Rules, 1965*.

Impugned order of 8th March, 2000 discloses that petitioners were placed under suspension on 31st January, 2000 as disciplinary proceedings were contemplated against them. It is evident from the impugned order that on 31st January, 2000, General Manager of *M/s.*

Himalayan Overseas had appeared on a news channel and had disclosed that a day earlier, he had to pay bribe of ₹2,000/- to one of the employees of DVB to get his burnt electric meter replaced. The revelation made on the news channel was that one of the employees of DVB had declared that few electric meters were received, but the demand is for more and electric meter can be installed at the premises of the said General Manager provided ₹2,000/- is paid. News reporter purportedly took the said General Manager (*hereinafter referred to as the complainant*) to the sub-station situated at Delhi Okhla Industrial State where before camera, DVB employees present there openly admitted to taking of bribe and had disclosed that the booty/bribe collected is put in a common pool and is divided amongst the lineman staff and on an average, an employee of DVB pockets the bribe of ₹1,000/- per day.

To verify this distressing news, vigilance investigation was got conducted by DVB and as per the vigilance report, one *Nafe Singh*, Assistant Lineman (ALM) of DVB in his statement on 24th January, 2000 before the Vigilance Staff had admitted that he had spoken to a lady news reporter in the morning of 23rd January, 2000 and had admitted that he was aware that his colleagues i.e. petitioners had visited the industrial premises of the said General Manager of 22nd January, 2000 and had struck the deal for replacement of the burnt electric meter on the next day i.e. Sunday for consideration of ₹5,000/-.

It is also evident from the impugned order that during the vigilance investigation, it had come to the fore that the said General Manager, who had confirmed before the Senior Officer of Vigilance Department of having paid a bribe of ₹2,000/- to one of the line staff members for

replacement of the burnt electric meter. During vigilance investigation, it stood confirmed that petitioners had replaced the burnt electric meter on 23rd January, 2000 i.e. on Sunday and had also confirmed that there was indeed shortage of the electric meters. Vigilance investigation further revealed that there was rampant and organized corruption amongst the lineman staff, who did not attend to even routine complaints of “*No Current*” without a consideration.

The vigilance investigation concluded that the complaint centre in question was neck deep into corrupt practices. The Disciplinary Authority in the impugned order had concluded that the circumstances of this case in its totality do not make it reasonably practicable to hold a departmental inquiry against petitioners. Finding no likelihood of an impartial inquiry in the prevailing circumstances, the Departmental Inquiry stood dispensed with while noting that the said General Manager of *M/s. Himalaya Overseas Limited* is not likely to give evidence due to organizational hostility and threat of discriminatory treatment in future.

An apprehension was also expressed in the impugned order that there is real danger of the DVB employees getting influenced by misguided loyalty to create labour problem resulting in disruption of public services. It is also noted in the impugned order that petitioners were in the advantageous position of influencing DVB employees in the event of Departmental Inquiry being held. Impugned order takes note of the organized corruption in DVB and concludes that petitioners were not fit to be retained in service and thus, penalty of dismissal from service was inflicted upon petitioners.

At the hearing, learned counsel for petitioners assailed the

impugned order on the ground that petitioners are Class IV employees, who were suspended after the news coverage and infact, petitioners were not even named by the said General Manager and so, on mere suspicion, service of petitioners cannot be terminated without following the process of law.

Learned counsel for petitioners relied upon decisions in *Jaswant Singh v. State of Punjab* 1991 (1) SCC 362; *Govt. of NCT of Delhi Ors. v. Ex. Constable Sudesh Pal Rana* 183 (2011) DLT 387; *Sharad Chandra Sharma v. Delhi Transco Ltd & Ors.* 2011 (124) DRJ 677; *Prithipal Singh v. State of Punjab* (2006) 13 SCC 314; *Chandigarh Administration, Union Territory, Chandigarh & Ors. v. Ajay Manchanda & Ors.* (1996) 3 SCC 753; *Calcutta Dock Labour Board v. Jaffar Imam & Ors.* AIR 1966 SC 282; *S.J. Meshram v. UOI & Ors.* 1987 (Supp) SCC 164; *Tarsem Singh v. State of Punjab* (2006) 13 SCC 581 and *Ex-constable Chote Lal v. UOI & Ors.* (2000) 10 SCC 196 to contend that the reasons for not holding the Inquiry must be relevant and germane and in the instant case, the reason put forth for not holding the Inquiry are not at all justifiable. It was contended that merely because there is likelihood of departmental proceedings ending in exoneration would not be a justification for not holding the Departmental Inquiry.

During the course of the hearing, learned counsel for petitioners had apprised this Court that petitioner-*Dashrath Lal* had died during the pendency of this petition and that remaining three petitioners have already attained the age of superannuation. It was submitted that in such a case, petitioners are entitled to the arrears of salary, etc., from the date of termination till the date of their superannuation.

On behalf of respondent, learned counsel relies upon Apex Court's decisions in *Union of India and Anr. v. Tulsiram Patel and Ors.* AIR 1985 SC 1416; *Kuldip Singh v. State of Punjab and Ors.* AIR 1997 SC 79; *Sahadeo Singh and Ors. v. Union of India and Ors.* AIR 2003 SC 1568; *Ved Mitter Gill v. Union Territory Administration, Chandigarh and Ors.* 2015 (4) SCALE 234 to submit that in writ proceedings, relevancy of the reasons given by the Disciplinary Authority are not to be examined while sitting over the reasoning as a Court of First Appeal. It is submitted that the reasons given in the impugned order are required to be examined in the light of the then prevailing circumstances and the court has to step into the shoes of the Disciplinary Authority to judge whether the reasons given were justified or not and the reasons so given are not to be dissected in a cool or detached atmosphere of a court-room, removed in time from the situation prevalent then. Lastly, it is submitted that when two views are possible, then the writ court will decline to interfere.

After having heard the submissions advanced by both the sides and on perusal of the impugned order, the material on record and the decisions cited, I find that Apex Court in *Ved Mitter (supra)* had aptly reiterated the legal position, which is as under: -

“In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the

question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

The three parameters laid down in *Ved Mitter (supra)* for valid invocation Article 311(2) of Constitution of India or Rule 19(ii) of CCS CCA Rules, 1965 to dispense with the Departmental Inquiry have been kept in mind and thereupon, it is found that it was not reasonably practicable to hold a regular Departmental Inquiry against petitioners as the vigilance investigation revealed (*as adverted to in the impugned order*), that there was rampant corruption in the DVB and in such a situation, it was least likely that a meaningful and effective Inquiry could be held due to Organizational hostility, disruption of essential services and the advantageous position, which petitioners were having to influence the witnesses. In the then prevailing circumstances, no effective or impartial Inquiry could be held and so, the holding of a regular Departmental Inquiry has been rightly dispensed with in view of Vigilance Report. It is a matter of common knowledge that people are willing to talk about the brunt of corruption faced by them before the press but are quite unwilling to depose about it before the court or in the Inquiry proceedings. Particularly, in the instant case, the complainant, who had publicly admitted to giving bribe, would not have stood by his statement made during the vigilance proceedings as he was party to giving of bribe without informing the vigilance department. In any case, the statement made by the complainant before the vigilance authorities can be taken into consideration by the Disciplinary Authority and in the

instant case, it has been rightly taken into consideration. Disciplinary Authority has aptly concluded that the regular Departmental Inquiry needs to be dispensed with as it is least expected that a news reporter would come forward to depose in the Departmental Proceedings.

In the considered opinion of this Court, impugned order does not suffer from any palpable error requiring any interference in the exercise of writ jurisdiction by this Court. Consequentially, this petition is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

NOVEMBER 17, 2015

S