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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: December 08, 2015

+ **W.P.(C) 3457/2001**

S.S. GUPTA Petitioner

Through: Mr.Vimal Wadhawan, Advocate.

versus

D.V.B. Respondent

Through: Mr.Gulshan Chawla, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

1. Consequent upon a departmental Inquiry, penalty of reduction to the lowest stage in the time scale of pay for a period of three years with further stipulation that he will not earn any increment of pay during the period of reduction was imposed upon petitioner vide order of 4th May, 1999 (*Annexure-P-6*), which is assailed in this petition. Learned counsel for petitioner submitted that petitioner who was employed as an Inspector (Special Cell) with respondent and was accompanied by senior officer i.e. Superintendent for conducting a routine surprise inspection at I-63 and I-85, Jahangir Puri, Delhi on 1st December, 1989.

2. Upon inspection of the aforesaid premises, petitioner submitted a report on 1st December, 1989 that the connected load in the above-said premises was 9 HP each and the senior officer i.e. A.E. (Special Cell) of

the respondent, while acting upon petitioner's report, had imposed the requisite penalties.

3. Learned counsel for petitioner submitted that after a period of 9½ months, a raid was conducted at the aforesaid premises on a complaint and in the inspection report submitted by the raiding party, it was found that the connected load to the aforesaid premises was 28 HP and 63 HP respectively. While acting upon the Inspection Report of the raiding party, disciplinary proceedings were initiated against petitioner and his immediate officer i.e. Superintendent concerned and during Inquiry, two articles of charge were framed, which are as under:-

“Article-I

Shri S.S. Gupta while functioning as Inspector (Enforcement-II) during the year 1990-91 with ulterior motives and with a view to extend undue favour to the consumer, submitted false inspection reports in respect of the connected loads with the result that the consumers could not be charged appropriately and the Undertaking was put to revenue loss.

Article-II

The said Sh. S.S.Gupta, while working in the aforesaid capacity during the aforesaid period, carried out inspection of the premises of the consumers of K.No.1394022 IP and 1381905 IP without associating the MTD staff and thus violated the instructions contained in office order no. CO.II/Comml. 26/89-90/7 dated 31.07.89.”

4. During the inquiry, four witnesses were examined to prove the charges against petitioner. The Inquiry Officer concluded that petitioner had submitted a false Inspection Report in respect of the connected load to the aforesaid premises and while acting upon the Inquiry Report, penalty of dismissal was inflicted upon petitioner. After giving show-

cause notice to him and in view of his reply, penalty was substituted with reduction to the lowest stage in his time scale of pay for a period of five years but in appeal, the period was reduced from five years to three years.

5. At the hearing, learned counsel for petitioner had assailed the impugned order and had submitted that the Inquiry against petitioner stood vitiated because the findings returned by the Inquiry Officer was not supported by the evidence on record. It was pointed out that witness (PW-3) examined by respondent has deposed that it was not necessary for the *Meter Testing Department (hereinafter referred to as "MTD")* staff to accompany enforcement staff during the routine inspections and MTD staff is required to accompany enforcement staff only when raid is to be conducted and as per the Circular of 31st July, 1989, such raid is to be preceded with a discreet verification. In this regard attention of this Court was drawn to the extract of deposition of *Sh. K.L.Garg (PW-3)* as noted in the Inquiry Report. It was pointed out that this witness (PW-3) has admitted in his evidence that due to the lapse of time i.e. 9½ months, it cannot be said that the connected load found in December 1989 would be the same as in September, 1990 as it can be increased and decreased subsequently at any time due to different reasons.

6. It was pointed out that this witness (PW-3) has also admitted that position of meter with regard to seals and working also cannot be the same after the lapse of considerable time. Thus, it was submitted that the evidence on record does not support the charges framed against the petitioner and so the findings returned by Inquiry Officer in the Inquiry Report are vitiated. Thus, quashing of the Inquiry Report as well as the penalty imposed is sought.

7. To controvert the afore-noted stand, learned counsel for the respondent had drawn the attention of this Court to the following findings in the impugned order:-

“The charged official had not associated the representative from MTD, thus contravening the provision of circular No. Co.II/comml. 26/89-90/7 dated 31.07.89. The instructions were intentionally conducted without the representative from MTD to extend undue favour to the above-said consumer as the seals of the meter of these consumers had been tampered as subsequently confirmed during the aforesaid joint inspection on 14.9.90 by the vigilance/MTD/Zonal Staff.

The charged official has stated in his pre-recorded statement i.e. Ex. S 4 and 4A and Exhibit D-1 and D-1/A that the area of Jahangirpuri, I-Block were inspected on the verbal instructions of the XEN (Special Cell), Shri S.S.Gupta, C.O. had stated in his pre recorded statement i.e. Ex. S.4 and S 4A that he was not aware of the type of complaints because it was marked to Sh. S.C.Aggarwal, Supdt. (Tech.), another C.O. The above statement of Sh. S.S.Gupta is self contradictory because no one can believe that he was not aware of the type of complaint that he was associated with Sh.S.C.Aggarwal who is the co-accused in this case. The above two statements Ex. S 4 and 4A is also self contradictory and does not held to the charge of C.O.

Ex. D-1 does not help to the charge because C.O. had not produced any defence witness or documents who has confirmed that the MTD staff were not made available at the time of joint inspection on 1.12.89 nor he reinspected the said premises with MTD staff during the period 1.12.89 to 14.9.90.

It clearly shows that the charged official conducted the inspection on 1.12.89 without the representative from MTD staff to extend undue favour to the said consumer, as the seals of the meter of these consumers had been tampered with as subsequently confirmed during the aforesaid joint inspection conducted by joint team on 14.9.90.

Ex. D-2, 2A to 2C is the written defence statement of Sh. S.C. Aggarwal, C.O. in which he had explained the position in respect of the charge levelled against him but the case was referred to Inquiry Officer. Inquiry order for conducting the Departmental Inquiry is self explanatory about the exhibits D-2, 2A to Ex. D3 is the office order repeating instructions vide office order dated 17.7.87 according to which it was necessary to give an opportunity to the C.O. to explain the position before the case registered against the C.O. The C.O. has taken a plea that the C.O. was chargesheeted without giving him reasonable opportunity. The plea taken by C.O. seems to be wrong and do not help to substantiate the charge because Ex.D-1 is the pre-recorded statements of the C.O. prior to the charge sheet.”

8. Reliance was placed by learned counsel for respondent upon decision of a Division Bench of this Court in *K.V.Kulkarni vs. Bank of India and Ors.* 2015 LLR 1243 to submit that this Court is not required to re-appreciate the evidence and it cannot be said in the instant case that the findings returned against the petitioner are based on no evidence.

9. Upon hearing both the sides and on perusal of the impugned Inquiry Report, the material on record and the decision cited, I find that the scope of judicial review is restricted to find out whether the impugned Inquiry Report suffers from any procedural irregularity in the decision making process and that the finding returned in the Inquiry Report is tenable or not. In the instant case, the challenge to the impugned inquiry is on the ground of lack of evidence. Although, it is the case of petitioner that it was a routine inspection but from the pre-recorded statement of petitioner, it becomes evident that there was some kind of complaint which was marked to the petitioner's co-delinquent and in such a case, the finding returned by the Inquiry Officer of petitioner having

knowledge about it cannot be said to be perverse. It is matter of record that Superintendent concerned who was co-delinquent, has been visited with similar penalty which has not been challenged. In any case, it cannot be said that it was a routine inspection, so petitioner as well as his co-delinquent ought to have associated the MTD staff in the inspection of the premises in question. For not having done so, petitioner has been rightly held to be guilty and commensurate penalty has been awarded. The reference to the evidence of PW-3 is not at all sufficient to conclude that the findings returned by the Inquiry Officer are perverse or untenable as it has come in the evidence that seals of the electric meters in question had been tempered with. In such a situation, the conclusion arrived at by the Inquiry Officer cannot be legitimately assailed. In the considered opinion of this Court, instant case is not of no evidence nor findings returned by the Inquiry Officer are perverse or untenable.

10. Impugned Inquiry Report and the penalty inflicted upon petitioner do not suffer any palpable error requiring any interference by this Court in the exercise of writ jurisdiction. Consequentially, this petition is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 08, 2015
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