

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

+ **W.P.(C) No.5784/2001**

% **5<sup>th</sup> March, 2015**

SHRI ROOP CHAND GUPTA ..... Petitioner  
Through: Ms. Jasmeet Chandhoke, Advocate  
with Mr. Gourav Chauhan, Advocate.

versus

DELHI VIDYUT BOARD ..... Respondent  
Through: Mr. Sheetesh Khanna, Advocate.

**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 seeks quashing of the orders passed by the Disciplinary Authority and Appellate Authority; dated 29.12.2000 and 21.3.2001 respectively; by which the petitioner has been imposed penalty of reduction by four stages in his time scale of pay for a period of four years with cumulative effect. Petitioner was charged with giving illegal tube well connections without obtaining technical feasibility report and genuineness of load report, and which reports were required in terms of the circulars of the

respondent/employer dated 23.5.1990 and 4.5.1987. These circulars read as under:-

**“CIRCULAR DATED 23.5.1990**

**“DELHI ELECTRIC SUPPLY UNDERTAKING  
(Municipal Corporation Of Delhi)  
CIRCULAR**

Sub:- Providing non-domestic connections and other categories of connections.

Certain questions have been raised about the procedure of providing single phase/three phase electric connections in approved/regularised unauthorised and regularised unauthorised areas. The position has been clarified as under:

For providing electric connections, the different type of areas can be broadly divided into the following categories;

- 1) Approved areas
- 2) Regularised unauthorised areas,
- 3) Unapproved areas.

As per Office Order No. CO.II/Con-26/84-85/29 dt. 8-8-84 the regularised colonies are treated at par with the approved colonies in the matter of grant of electric connection.

Thus with the issue of the above Office Order the areas can be divided into the following two categories:

- a) Unapproved areas.
- b) Approved colonies/regularised unauthorised colonies.

The policy for (giving the electric connections in un-approved colonies/non-conforming areas is clearly given in the Office

Order No. CCO-22(31)/78-79/dt. 29-8-78. As approved colonies and other regularised colonies the single phase/three phase **connection are to be given by assessing the genuineness of the load by sanctioning authority.**

The non-domestic connections can be categorised into the following two categories:

i) Cases covered under requirement of Municipal Licence under Clause 417 and 421 of Municipal Act, 1957.

ii) The case for which Municipal Licences are not required under the above said clauses of Municipal Act, 1957.

In the category (i) above on submission of valid Municipal Licence, NOC is not insisted upon as it is presumed that while giving the Municipal Licence the land use for the same has been ascertained or NOC for the said NDL purpose is there.

In the category (ii) above where no Licence is there, there being no documentation to rely upon the land use, NOC from MCD/DDA (the concerned agency) in respect of non-conforming areas is required.

The position as above is re-treated.”

### **CIRCULAR DATED 4.5.1987**

“DELHI ELECTRIC SUPPLY UNDERTAKING  
(Municipal Corporation Of Delhi)

#### **OFFICE ORDER**

Sub:- Installation of energy efficient motor pump sets for providing Tube-well connections.

In compliance to the recommendations for conservation of energy brought out in the conference of Power Ministers of State held in Delhi, it is hereby decided that while permitting electric connection to tube-wells, adherence of agricultural pumping sets to IS-10304-1986 shall be insisted upon. The installation of centrifugal pumps with less than 60% efficiency and monoblock

pumps with less than 50% efficiency should be firmly discouraged. However, in very special cases where the Suptdg. Engineer (D) of the respective circle considers that the pump set being installed by the prospective consumer comes up to the recommended efficiency level, the condition of ISI certification of the motor pump set may be relaxed.

This is being issued with the approval of Addl. G.N.(T).”

(emphasis added)

2. The Enquiry Officer by his report dated 15.3.2000 exonerated the petitioner, however, Disciplinary Authority disagreed with the findings of the Enquiry Officer and therefore issued a show cause notice dated 12.10.2000 to the petitioner attaching therewith the Enquiry Officer’s report as also the reasons why the Disciplinary Authority proposed to disagree with the findings of the Enquiry Officer. Some of the relevant portions of this show cause notice by the Disciplinary Authority containing reasons for disagreeing with the report of the Enquiry Officer read as under:-

“That the Enquiry Officer has conveniently over looked is that the charged officer being AE (PS) was the authority to sanction the connections and was therefore cast upon the responsibility to satisfy himself that the papers/documents put to him by the Counter Clerk were complete in all respects. PW-1 in his cross-examination has stated that he did not examine the role of Counter Clerk or the dealing assistant and that it was he who had been cast upon the responsibility to scrutinize the documents. But the question that still remains to be answered is that even the counter clerk does not perform his duty with devotion and accepts the incomplete documents, is it not for AE (PS) to return these papers to the counter clerk asking him to get the commercial formalities completed first? The charged officer failed to

do so. The most important fact conveniently over looked by the Enquiry Officer is that the charged officer was required to obtain technical feasibility report from the zonal staff before sanctioning the connections which he failed to do.

The other important fact that has conveniently been over looked by the Enquiry Officer that part of the charges have in fact been admitted by the charged officer in his statement dated 1.11.91 (Ex.S-I, IA (G) (RCG). In the said statement the charged officer has stated that as per practice the Motor Number with make is not necessary and started accepting the cases without Motor number and make. He has further stated that TP and genuineness reports were stated but due to criticism by the farmers and delay in releasing these cases due to obtaining these reports, the practice of seeking technical feasibility and genuineness report was stopped. This clearly goes to prove that the cases were being received without Motor number and make and that TF and genuineness reports were not being called.

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**Ex.S-33(G) which is office order dated 4.5.87 clearly stipulates that while permitting electric connections to tube-wells, adherence of agricultural pumping sets to IS-10804-1986 shall be insisted upon.** The Office Order further stipulates that the installation of centrifugal pumps with less than 60% efficiency and monoblock pumps with less than 50% efficiency should be firmly discouraged. From the K Nos file it is quite evident that the charged officer did not bother to get the Motor number and make indicated on the test report while releasing the connections. In other words, as Motor number and make had not been indicated on the Test report, there has been clear violation of the office order dated 4.5.87 as in the absence of any Motor number and makes having been indicated on the Test Report, it was not possible for the charged officer to ensure whether the pumping sets adhered to IS-10804-1986.

Similarly, Ex.S-34(G) which is an office order dated 23.5.90 clearly cast upon the charged officer, the responsibility of assessing the genuineness of the load before sanctioning single phase/three phase connections. In other words, the charged was duty bound to have sought technical feasibility and genuineness reports from the zonal

staff before sanctioning the connections with a view to ensure that it is technical feasible to sanction the load applied for. It has clearly been proved that the charged officer failed to seek the said reports and has in fact admitted that he did not do so due to criticism by the farmers and the anticipated delay.

The charged officer in his defence has stated that the primarily the responsibility of scrutinizing the documents submitted by the prospective consumers lay with the counter clerk. Quoting the deposition of PW-1 who was also the investigating officer of the case, the charged officer has stated in accordance with the guidelines contained in para 1 & 2 of the office order dtd-6.5.85 exhibited as Ex.S-3(G) all the documents are required to be scrutinized by the counter clerk himself and in case some rectifications are to be made the same are required to be made by the counter clerk otherwise he is required to return the documents to the consumer with the rejection slip under the signature of Comml. Supdt. or AE (PS). PW-1 had been shown the relevant K. No. files viz Ex.S-32(G). S-29(G), S-13(G) and S-14(G) who admitted that the endorsements by the dealing assistant recommending sanction of HP load for the agriculture purpose had indeed been made. PW-1 also admitted that he does not remember as to how he had skipped to examine the role of the dealing assistant.

In this connection as already pointed out that there had in fact been grave dereliction of duty on the part of the dealing assistant who recommended sanction of the connections on the basis of the incomplete documents/applications and unfortunately he did not come to be identified as one of the guilty officials inadvertently as has been admitted by PW-1 but then the responsibility of the C.O. as sanctioning authority to ensure that the documents are complete in all respects still remains and it has clearly been established that he failed to perform his part of duties and responsibility in a proper manner. Inadvertent exoneration of the dealing assistant in no way mitigates the responsibility of the C.O. as ultimately as AE (PS) the ultimate responsibility for completion of commercial formalities rested with him.

In view of the above, the charges against Shri R.C. Gupta, AE are thus proposed to be held proved in disagreement with the findings of the Enquiry Officer.” (emphasis added)

3. The petitioner responded to the show cause notice through his reply dated 2.11.2000 and disputed the show cause notice and sought implementation of the report of the enquiry officer exonerating him. The Disciplinary Authority disagreed with the reply given by the petitioner and thereafter passed the following impugned order dated 29.12.2000:-

"DELHI VIDYUT BOARD  
VIG. DEPTT., R.PH, NEW DELHI-2.  
No.VC-488-494/92-Vig./SR/VO (G)/1085 Dated 29/12/2000

O R D E R

WHEREAS the disciplinary proceeding under Regulation 7 of Delhi Electric Supply Undertaking (DMC) Service (C&A) Regulations, 1976 was initiated against Shri R.C.Gupta, E.No. 4179, AE vide Memo No. VC-488-494/92-Vig./ MKS/292 dated 18.9.1993.

AND WHEREAS on denial of the charges, an oral enquiry was held. The Enquiry Officer submitted his report dated 15.3.2000 holding the charges against the said Shri R.C.Gupta, AE as not proved.

AND WHEREAS disagreeing with the finding of the Enquiry Officer, an enquiry report was sent to the said Shri R.C.Gupta, AE to make his representation/submission in writing within 15 days on the disagreement with the finding of the Enquiry Officer vide Memo No. VC-488-494/92-Vig./SR/AVO-I/1070 dated 12.10.2000.

AND WHEREAS the said Shri R.C.Gupta, AE has submitted his representation dated 2.11.2000 to the aforesaid dated 12.10.2000.

AND WHEREAS the undersigned as the Competent Disciplinary Authority has carefully gone through the reply dated 2.11.2000 submitted by the said Shri R.C.Gupta, AE with reference to the aforesaid Memo and find no merit in the same. It is observed that the Charged Officer was required to obtain the Technical Feasibility & Genuineness Report from the Zonal Staff before sanctioning the connections as he admittedly failed to do so although the cases were being received without mentioning the Motor Number and Make and the Technical Feasibility and Genuineness Report were being continuously called and there were no mention of the Motor Number and Make on the Test Reports and Progress Cards. The office order dated 23.5.90 clearly casts and responsibility on the Charged Officer for assessing the genuineness of the load before sanctioning the connections. The Charged Officer had infact admitted that he did not do so due to criticism of the farmers with anticipated delays.

NOW, THEREFORE, the undersigned as the Competent Disciplinary Authority holds the charge as fully proved in disagreement with the finding of the Enquiry Officer and I confirm and impose upon the said Shri R.C.Gupta, AE the penalty of reduction by four stages in his time scale of pay for a period of four years with cumulative effect.

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|----------------------------|-----------------------|
|                            | Sd/-                  |
|                            | (Y.P. SINGH)          |
| Shri R.C. Gupta, E.No.4179 | MEMBER (T-I)          |
| AE (C&A)(D) RHN            | THROUGH: XEN (D) RHN" |

(emphasis added)

4. The aforesaid order of the disciplinary authority was upheld by the Appellate Authority vide order dated 21.3.2001.

5. The issue therefore is whether petitioner was guilty of giving tube well electricity connections without getting technical feasibility report and without ascertaining the genuineness of the load required.

6. Before I turn to the findings and conclusions of the Disciplinary Authority, at this stage, it is required to be noted that the scope of enquiry before a court with respect to challenge to the findings and conclusions of a departmental authority is very limited. This Court interferes only if there is violation of the principles of natural justice or there is violation of the law/rules of the employer-organization or the findings of the disciplinary authority are perverse or the punishment imposed is disproportionate. The case before the departmental authorities is proved by preponderance of probabilities and this Court does not sit as an appellate court to question one of the two views which is taken by the disciplinary authority as per the preponderance of probabilities. It is only if the findings and conclusions of the departmental authorities are perverse that this Court interferes.

7. In the present case, the issues argued before me are of violation of the principles of natural justice and findings of the Disciplinary Authority being perverse.

8. In my opinion, the relevant portion of the show cause notice reproduced above, referring to the office orders dated 23.5.1990 and 4.5.1987 (and which have already been reproduced above), leaves one in no manner of doubt that for grant of a tube well connection in a rural area in Delhi at the relevant point of time so as to avoid misuse for non-agricultural purposes of a tube well electricity connection given only for agricultural purposes (which had a lower tariff being granted for agricultural purposes) it was required that before grant of the connection, genuineness of the load had to be assessed as also the technical feasibility report taken. Genuineness of the load was required to be obtained because there used to be applications for tube well electricity connections but which were not for agricultural purposes but were for unauthorized colonies and built up plots of land in the rural areas. Also, technical feasibility report was required inasmuch as the motor which had to be for the tube well agricultural connections should not result in wastage of electricity and hence specified pumps had only to be fixed. That the tube well connections were misused becomes clear from the following portion of the show cause notice given by the Disciplinary Authority:-

“The contents of all the exhibited documents including those of Joint Inspection Reports dated 1.10.91, 3.10.91 and 28.10.91

have clearly been confirmed by the Prosecution Witnesses. Ex.S-7, 7A to 7E thus clearly proves the irregularities found by the Joint Inspection Team at site some of which are i) Motors etc had been found to have been removed from 8 number of tubewell connections; ii) connections against K Nos. 911-11090 and 11092 were found installed without any tubewell bearing ; iii) 8 number tubewell connections found existing in Kotharis situated in open fields connection with pucca road; iv) from the outer look it clearly appeared that land for which tubewell connections and been sanctioned will be used for purposes other than agriculture; v) some connections were found being used other than agriculture purposes and vi) fields were found divided into sub plots. Similar irregularities were noticed in subsequent inspection report of which has been exhibited as EX.S-I, 1A to 1E. These included i) tube well of Shri Hari Singh was found shifted to some other place illegally; ii) Motor against K.No. 159716 was found illegally shifted; iii) No boring existed for tubewell connection against Meter No. 4D-02543, K Nos 159065 and 159726 were found being used for industrial prupose.” (underlining added)

9. The position which is clear from the record is that no assessment/genuiness load report or technical feasibility report existed and the petitioner actually contended that these were not required either because of pressure of farmers for grant of electricity connections or that such verification had to be done by officers who were junior to him and not the petitioner.

10. In my opinion, the arguments urged on behalf of the petitioner, in this regard, have no merit at all and the same have been rightly rebutted in the show cause notice issued by the Disciplinary Authority as also the

impugned order dated 29.12.2000 that the final authority for grant of electricity connections was with the petitioner who was an Assistant Engineer-AE(PS) and if the documents which were to be before the petitioner were incomplete on the basis of which electricity connections could not have been granted, petitioner should have returned the documents for completion and it was not open to the petitioner to give excuses with respect to urgency of grant of electricity connections or that actual verification had to be done by the officers at the spot.

11. In view of the above discussion, there is no ground why the departmental proceedings should be set aside because there is no perversity in the findings and conclusions by the departmental authorities.

12. Learned counsel for the petitioner argues that the Enquiry Officer has rightly exonerated the petitioner and in support of which argument reliance was placed upon the circular dated 29/30.3.1989 to argue that in electrified areas, a technical feasibility report was not required and therefore petitioner should not be found guilty of not taking the technical feasibility report. This argument urged on behalf of the petitioner is misconceived for three reasons. Firstly it is not shown to this Court as to whether this circular was filed and relied upon before the Enquiry Officer. Be that as it may, the second reason for not giving the petitioner benefit of

this circular is that this circular allows technical feasibility report not to be taken only for electrified areas. Electrified areas are normal electrified areas where regular electricity connections are granted and those areas which are rural/agricultural areas where only the agricultural connections are granted they are not the usual electrified areas and therefore since in the present case the electricity connections to be granted were only electricity connections for tube wells, therefore, such areas are not electrified areas and therefore consequently the petitioner derives no benefit of this circular dated 29/30.3.1989. Third reason for rejecting the argument based upon this circular is that even assuming the technical feasibility report was not to be taken, that did not exempt the petitioner from complying with the second requirement of taking the genuine requirement/assessment of load report inasmuch as in addition to the technical feasibility report the genuine assessment of load was required in terms of the circular of the respondent dated 23.5.1990 reproduced hereinabove. This argument urged on behalf of the petitioner is therefore rejected.

13. The next argument urged on behalf of the petitioner was that the impugned order passed by the Disciplinary Authority is without jurisdiction because punishment in this case could have been imposed upon the petitioner who is a group A employee, only by the Delhi Electric Supply

Committee and not the Member (Technical), however, this argument is also without any basis because the circular which is relied upon by the petitioner is the circular of the erstwhile Delhi Electric Supply Undertaking and which has thereafter been replaced by the Delhi Vidyut Board and in the Delhi Vidyut Board as per the circular dated 25.5.1999 filed by the respondent the post of Member (Technical) is a competent post for imposing the punishment in this case which is a punishment urged by the petitioner to be one of reduction in rank. This circular of the respondent dated 25.5.1999 is taken on record and copy of which was given to the counsel for the petitioner on the earlier date. This argument urged by the petitioner is therefore rejected by additionally noting that this ground of alleged lack of jurisdiction was at no point of time taken up during the departmental proceedings by the petitioner.

14. The last argument urged on behalf of the petitioner was that the impugned order is violative of the principles of natural justice because petitioner in terms of the Rule 7(2) of the Delhi Electricity Supply Undertaking (DMC) Service (Control and Appeal) Regulations, 1976 (hereinafter referred to as 'the 1976 Regulations') was required to be given a personal hearing but since the petitioner in spite of requesting a personal hearing was not given and thus principles of natural justice are violated.

15. To appreciate the argument urged on behalf of the petitioner,

Regulation 7(2) of the 1976 Regulations is reproduced below:-

“7(2) The disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Municipal Officer or other municipal employee, and he shall be required to submit within such time as may be specified by the Disciplinary Authority a written statement of his defence and also to state whether he desires to be heard in person.”

16. A reading of the aforesaid regulation shows that hearing in person which is required is during the enquiry officer's proceedings because this rule talks of disciplinary authority itself being the enquiry officer i.e the disciplinary authority who frames the charges and holds the enquiry is required to hear the charged officer in person. Once the charged officer/petitioner is heard in person during the departmental proceedings conducted by the enquiry officer, Regulation 7(2) of the 1976 Regulations stands complied with and Regulation 7(2) of the 1976 Regulations cannot be read in the manner as is sought to be urged by the petitioner that the disciplinary authority when passing the order on the basis of enquiry officer's report or setting aside the enquiry officer's report, must hear the charged officer in person. The provision of Regulation 7(2) of the 1976 Regulations is in the context of the other sub-regulations of Regulation 7 of

the 1976 Regulations which pertain to the rules for holding of the enquiry, either by the disciplinary authority or by the enquiry officer. Therefore, once petitioner has been heard during the enquiry proceedings before the Enquiry Officer, the provision of Regulation 7(2) of the 1976 Regulations is complied with and there is no violation of the principles of natural justice.

17. In view of the above, I do not find any merit in the petition and the same is therefore dismissed. No costs.

**MARCH 05, 2015**  
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**VALMIKI J. MEHTA, J**