

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

+ W.P.(C) No. 763/2015 & CM No. 1339/2015 (stay)

% **28th January, 2015**

SH. ASHOK KUMAR GUPTA

..... Petitioner

Through: Mr. R.K. Gupta, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Sanjeev Sabharwal, Adv. for R-
1/GNCTD.

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 is presently an employee of respondent no.2/BSES Yamuna Power Ltd. and who was the erstwhile employee of the Delhi Vidut Board (DVB), impugns the issuing of the charge-sheet against him dated 24.11.2014 by the employer/respondent nos. 2 and 3.

2. Law with respect to challenge to a charge-sheet is now well settled and which is that a charge-sheet can only be challenged on the

ground of lack of jurisdiction of the authority in issuing the charge-sheet or some such other fundamental ground. Issues of merits are to be heard and decided in the disciplinary proceedings and not by this Court.

3. Learned counsel for the petitioner urges only one ground to question the issuing of charge-sheet and which is that the charge-sheet has been issued by respondent no.3 who is the General Manager of the respondent no.2 and who is not a government employee being a private employee, and since the Central Civil Services (Classification, Control & Appeal) Rules, 1965 - CCS(CCA) Rules apply with respect to conduct of the departmental proceedings which requires issuing of charge-sheet by the government/government employee, it is argued that a private employee of a private company thus cannot initiate departmental proceedings against the petitioner.

4. The argument urged on behalf of the petitioner is without any merit whatsoever because various persons including the petitioner who were erstwhile employees of the DVB, on account of unbundling of the DVB, these services were got transferred from the DVB to various private DISCOMS, one such DISCOM being the respondent no.2. A tripartite agreement dated 9.11.2000 was entered into between the Government of

NCT of Delhi, the DVB and the Employees' Association, whereby, the service conditions of the employees of the DVB were not to be changed to their detriment on the ground that they were in future to be the employees of a private company and not the government company/DVB. As per the tripartite agreement the status of the employees of the erstwhile DVB was to remain the same as was when such employees were working with the DVB. It is by virtue of the rights of the employees of the DVB continuing as per the same status which existed when they were employed with the DVB, hence departmental proceedings are initiated, continued and concluded under the CCS(CCA) Rules which stand adopted by the private employer. Adoption of rules necessarily has to be *mutatis mutandis* because no doubt the enquiry under the CCS(CCA) Rules, when applied by the government is to be conducted by the government departmental authorities/government persons, however, the same cannot mean that merely because these CCS(CCA) Rules are adopted by the respondent no.2 with respect to the employees who were the erstwhile employees of the DVB against the employees of respondent no.2 departmental proceedings can only be commenced and conducted by a government employee and not a private employee of the respondent no.2. If this argument of the counsel for the petitioner is accepted, it would effectively mean that no departmental

proceedings at all can be commenced and carried on by the respondent no.2 against any of its employees who were the erstwhile employees of the DVB.

5. Petitioner cannot take up two conflicting positions at the same time. Either the petitioner is an employee of a private company on a private contract or he continues in the status of an employee of the DVB in terms of the tripartite agreement and in which latter case he would be bound by the CCS(CCA) Rules as adopted *mutatis mutandis* by the employer/respondent no.2. The position is the latter in this case.

6. In view of the above, I do not find any merit in the argument urged on behalf of the petitioner that since the respondent no.3 is a private employee and not a government employee, in terms of CCS(CCA) Rules the departmental proceedings initiated against the petitioner are without jurisdiction.

7. Dismissed.

JANUARY 28, 2015
ib

VALMIKI J. MEHTA, J