

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

Judgment reserved on August 27, 2015

Judgment delivered on August 31, 2015

+ **W.P.(C) 1791/2012**

SUBHASH CHANDER MEHTA

..... Petitioner

Through: Mr.Yashvardhan, Advocate
with Mr.Viyush Singh,
Advocate

versus

TATA POWER DELHI DISTRIBUTION LTD. & ANR

..... Respondent

Through: Mr.Vikram Nandrajog, Adv.
for R-1
Mr.Sumeet Pushkarna,
Standing Counsel with
Mr.Siddhartha Nagpal,
Advocate for R-2 with Mr.P.
Narayanan, Manager of R-2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the show cause notices/memos no. VC-413-414/92-Vig/NDPL/07-08/41 and VC-445-454/92-Vig/NDPL/07-08/41 dated February 2, 2008 and memos VC-413-414/92-Vig/NDPL/08-09/06 and VC-445-454/92-Vig/NDPL/08-09/07 dated April 22, 2008 whereby, the Disciplinary Authority has held the charges as proved and proposed the penalty of censure (vide show

cause notice dated February 2, 2008) and in fact imposed the penalty of censure on the petitioner (vide memos dated April 22, 2008). As noted from the above, there were two show cause notices and two orders imposing penalty of 'censure' on the petitioner. The same is for the reason, two charge sheets were issued to the petitioner dated September 28, 1992 and October 5, 1993. The facts of both the charge sheets shall be referred to separately in this judgment.

Charge sheet vide Memorandum dated September 28, 1992:-

2. On September 28, 1992, a charge sheet vide memorandum dated September 28, 1992 was issued to the petitioner by the erstwhile Delhi Electrical Supply Undertaking (DESU), where the petitioner was working inter-alia alleging that (i) the petitioner energised two DLP connections in premises at GD-28, Pitampura while the building was under construction with mala fide intention and with a view to extend undue favour to a customer; (ii) the petitioner failed to exercise effective supervision over his subordinate.

3. On January 21, 1993, petitioner submitted reply to the memorandum dated September 28, 1992. The Enquiry Officer, vide his report dated January 1, 1996 held the petitioner partially guilty in respect of the charge that he failed to exercise supervision, control and

coordination over his subordinate but exonerated him in respect of the rest. On January 9, 1998, a memorandum-cum-show cause notice was issued by the Delhi Vidyut Board (for short 'DVB') proposing a major penalty as it did not agree with the findings of the Enquiry Officer in his report dated January 1, 1996. The petitioner, vide his representation dated February 12, 1998, filed his reply to the memorandum-cum-show cause notice dated January 9, 1998. An order was passed by the DVB on April 6, 1998/May 8, 1998 imposing the penalty of reduction of pay of three stages for a period of three years with the stipulation that the petitioner would not earn increments during the said period of three years. The petitioner preferred an appeal vide his letter dated June 29, 1998 before the Chairman of DVB challenging the order dated April 6, 1998. Thereafter, in the year 1998, he filed a writ petition challenging the order dated April 6, 1998/May 8, 1998 imposing the penalty of reduction of pay of three stages for a period of three years. In the year 2000, Delhi Electricity Reforms Act, 2000 was passed where under, the respondent No.1 namely Tata Power Delhi Distribution Ltd (formerly known as New Delhi Power Ltd) took over all the rights and liabilities towards the employees of the DVB. On April 30, 2001, petitioner retired from services. On October 23, 2001, an order was passed by the

Appellate Authority dismissing the petitioner's appeal dated June 29, 1998.

4. On May 25, 2006, this Court decided the Writ Petition No.6162/1998, whereby, allowing the writ petition of the petitioner on the ground that where the Disciplinary Authority disagrees with the findings of the Enquiry Officer, it had to grant opportunity of hearing and also communicate to the charged official, the tentative reason for the proposed disagreement and directed the respondent No.1 to issue fresh show cause notice. Pursuant to the judgment of this Court dated May 25, 2006, it is the case of the petitioner that on July 31, 2006, November 6, 2006 and April 30, 2007, he wrote letters to the respondent No.1 to comply with the orders of this Court dated May 26, 2006. On February 2, 2008, the impugned show cause notice was issued by the respondent No.1 holding the charges against the petitioner as proved and proposing to impose a minor penalty of censure upon the petitioner and asking the petitioner to show cause as to why the penalty of censure be not imposed. The petitioner submitted his reply vide his letter dated March 5, 2008. The Disciplinary Authority vide one of the impugned order dated April 22, 2008, considered the reply submitted by the petitioner dated March 5, 2008 as unsatisfactory on the ground that the charges

attract a major penalty and the ends of justice would be met if a penalty of censure is imposed on the petitioner.

Memorandum dated October 5, 1993:-

5. The charge sheet vide memorandum dated October 5, 1993 was issued to the petitioner alleging the following:-

(i) The petitioner did not ensure the timely disconnection of 603/FT/3605 even long after the expiry of its validity period in violation of the departmental instructions;

(ii) The petitioner violated Rule 1 of the CCS (Conduct Rules), 1964.

6. On June 6, 1996, the petitioner submitted reply to the memorandum dated October 5, 1993. On July 15, 1996, the Enquiry Officer, in his report held the petitioner partially guilty in respect of the charge that he failed to exercise supervision of the concerned Inspector in ensuring timely disconnection of the temporary connection but exonerated him in respect of the first charge. On March 15, 1998, a show cause notice was issued by the Disciplinary Authority proposing a penalty of reduction of five stages in the scale of pay till his retirement and stoppage of increment on petitioner and indicating that it did not agree with the finding of the Enquiry Officer. On June 29, 1998, petitioner filed reply to the memorandum-cum-show cause notice dated

March 15, 1998. On August, 9, 2000, the order was issued by the Disciplinary Authority imposing a major penalty of reduction of five stages. The petitioner preferred an appeal on September 12, 2000 against the order dated August 9, 2000 before the Appellate Authority. Since the appeal was not decided expeditiously by the erstwhile DVB, the petitioner approached this Court by way of a W.P (C) No.2178/2001. The said writ petition was decided by this Court on April 9, 2001 calling upon the DVB to dispose of the appeal within four weeks after taking into consideration the plea raised by the petitioner. On April 30, 2001, the appeal was decided by the Appellate Authority reducing the penalty on the petitioner to a loss of two increments. The petitioner challenged the order dated April 30, 2001 by filing W.P (C) No.3316/2001 as the Disciplinary Authority failed to follow the procedure in cases where the Disciplinary Authority disagrees with the Enquiry Report. The Writ Petition No. 3316/2001 was decided by this Court on February 14, 2002, whereby, the show cause notice dated March 16, 1998 of the Disciplinary Authority, order of the Disciplinary Authority dated August 9, 2000 and the order of the Appellate Authority dated April 30, 2001 were quashed and the DVB was directed to issue fresh show cause notice. Here again, the petitioner wrote letters dated February 25, 2002,

April 3, 2002, July 4, 2002, August 19, 2002 and October 4, 2002 calling upon the DVB to comply with the orders passed by this Court in W.P (C) No.3316/2001 dated February 14, 2002. I note, till 2006, the compliance was not effected. The petitioner, vide his different representations called upon the respondent No.1 to comply with the orders of this Court passed in W.P (C) No.6162/1998 as well. The said letters were followed by a legal notice dated January 25, 1998. It was only on February 2, 2008, a memo was issued by the respondent No.1 holding that charges framed against the petitioner have been proved and proposing a minor penalty of censure upon the petitioner and asking the petitioner to show cause as to why the same be not imposed on him. On March 3, 2008, the petitioner submitted his reply to the show cause notice dated February 2, 2008. The Disciplinary Authority, on April 22, 2008 passed the order of penalty of censure, which has also been impugned in this case.

7. The matter stood admitted on April 15, 2013. The petitioner filed early hearing applications from time to time including CM No.14104/2014. It was his case that despite orders, the Registry has not listed the case in the category of Senior Citizen. The said application was listed on September 1, 2014, when it was urged on behalf of the petitioner that despite orders the Registry has not listed the case in the

category of Senior Citizen. It was noted that the Writ Petition is already shown as item No.59 in the category of Senior Citizen. The application was withdrawn. The petitioner preferred an SLP before the Supreme Court against the order dated September 1, 2014 when the Supreme Court passed the following order:-

“Having regard to the subject matter of the special leave petition, we request the High Court to expedite the hearing of the writ petition and dispose of the same as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. The special leave petition is disposed of in the above terms.”

8. Pursuant thereto, the matter was taken up for hearing on April 20, 2015 on which date notice was issued to the respondents for July 10, 2015 when request for filing counter-affidavit was made on behalf of respondent No.1, which request was not opposed and the time was granted. Again the matter was listed on August 14, 2015, when it was noted, the counter-affidavit filed beyond the period granted was not on record. A cost of Rs.5,000/- was imposed and the matter was listed on August 27, 2015 for hearing.

9. Mr. Yashvardhan, learned counsel appearing for the petitioner

would urge that despite the order of this Court in W.P(C) No.6162/1998 and W.P (C) No.3316/2001, the respondents have committed the same mistake inasmuch as the Disciplinary Authority has not given the note of disagreement on the charge, which was not proved by the Enquiry Officer. He has drawn my attention to the following part of the show cause notice/memo dated February 2, 2008:-

“Taking into consideration the facts and circumstances of the case in totality, the undersigned, as the Competent Disciplinary Authority, in disagreement with the findings of the Enquiring Authority hold the charges as “PROVED” and accordingly, proposes to impose a minor penalty of “CENSURE” upon the Charged Officer.

NOW, THEREFORE, the said Sh. S.C. Mehta is hereby afforded with an opportunity to show-cause as to why the penalty of “CENSURE” should not be imposed upon him. His reply, if any, should reach the undersigned within fifteen days of the receipt of this Memo, failing which, it will be presumed that he has nothing to say in the matter and further action would be taken accordingly.”

10. Similar is the position with regard to the show cause notice/memo against the charge sheet dated October 5, 1993. The same reads as

under:-

“Taking into consideration the facts and circumstances of the case in totality, the undersigned, as the Competent Disciplinary Authority, in disagreement with the findings of the Enquiring Authority hold both the articles of charge as “PROVED” and accordingly, proposes to impose a minor penalty of “CENSURE” upon the Charged Officer.

NOW, THEREFORE, the said Sh. S.C. Mehta is hereby afforded with an opportunity to show-cause as to why the penalty of “CENSURE” should not be imposed upon him. His reply, if any, should reach the undersigned within fifteen days of the receipt of this Memo, failing which, it will be presumed that he has nothing to say in the matter and further action would be taken accordingly.”

11. He would state, that this show cause notice is contrary to the position of law of the Supreme Court in the case reported as **(1998) 7 SCC 84 Punjab National Bank v. Kunj Behari Misra** and **(1999) 7 SCC 739 Yoginath D. Bagde v. State of Maharashtra**. In fact, according to him, the judgment of **Kunj Behari** (supra) was noted by this Court while disposing of Writ Petitions No.6162/1998 and 3316/2001.

12. Despite the aforesaid position of law, the Disciplinary Authority

has not given the note of disagreement. He further states, that even if the charge is partially proved, the Disciplinary Authority disagrees with that part of the charge, which has not been proved, still the Disciplinary Authority is required to give a note of disagreement and in that regard, he would rely upon the judgment of the Supreme Court reported as **(2004) 13 SCC 797 SBI v. Arvind K. Shukla.**

13. On the other hand, Mr. Vikram Nandrajog, would state, that the present petition is hit by delay and laches, inasmuch as the impugned orders were passed in the year 2008 but the petition has been filed in the year 2012, after a period of four years. That apart, it is his submission that no prejudice has been caused to the petitioner as the petitioner has been imposed the lowest of the punishment of censure. According to him, such a penalty could have been imposed on the partial finding of guilt by the Enquiry Officer in both the cases. He would rely upon the judgment of the Supreme Court in the case reported as **(2006) 9 SCC 440 Lav Nigam vs. Chairman & MD, ITI Ltd. and another** and also the judgment of the Supreme Court reported as **(1997) 7 SCC 463 Union of India and another v. G. Ganayutham** and drawn my attention to the observations of the Supreme Court in para 27 to contend on an aspect of law that the Courts and Tribunals in our country can only go into the

matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable.

14. On the other hand, the learned counsel for the petitioner on the aspect of delay and laches would rely upon the following judgments to contend that the writ petition is not liable to be dismissed on the ground of delay and laches.

- (i) ***Madras Port Trust v. Hymanshu Internation, (1979) 4 SCC 176;***
- (ii) ***Royal Orchid Hotels v. G. Jayarama Reddy, (2011) 10 SCC 608;***
- (iii) ***State of U.P v. Raj Bahadur Singh (1998) 8 SCC 685;***
- (iv) ***Jagdish Kumar v. MCD, 102 (2003) DLT 546;***
- (v) ***Glory Public School v. Lt. Governor, Govt. of NCT, 107 (2003) DLT 662;***

15. Having heard the learned counsel for the parties, insofar as the aspect of delay and laches is concerned, the petitioner, has, in his petition stated that in the month of January 2009 and April 2009, he underwent two major surgeries of spine as he suffers from stenosis of Lumber Spine. Thereafter, a reference has been given to the filing of the Contempt Petition No.630/2009 alleging contempt by the respondents

and thereafter in the year 2011, representations and communications were sent by the petitioner to respondent No.1 for release of arrears of salary and other terminal benefits. Suffice to state, there is some explanation explaining the delay. It is a settled position of law that there is no hard and fast rule evolved for deciding the question of delay and laches and each case has to be decided on its own facts. It is not a case where the petitioner was not vigilant and was not pursuing the remedy. No doubt, continuous representation does not extend the limitation but where circumstances were such like undergoing surgery on two occasions and thereafter filing of contempt petition and filing of representations does show a reasonable explanation for the delay and laches and he cannot be non-suited on this ground. The plea of delay and laches need to be rejected.

16. Insofar as the merit of the submission made by learned counsel for the petitioner is concerned, suffice to state, that this Court while deciding the W.P (C) 3316/2001 and W.P (C) 6162/1998, had called upon the DVB/respondent No.1 to give the note of disagreement to the petitioner before taking action. Despite such a direction, the respondent No.1 has committed the same illegality as was done initially. The respondents perpetuated the illegality already committed. The law with regard to

disagreement with the findings of the Enquiry Officer by the Disciplinary Authority is well settled in terms of the judgment of the Supreme Court in ***Kunj Behari Misra*** (supra). The relevant para, I reproduce as under:-

“19.The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

17. The aforesaid position has been reiterated by the Supreme Court in the case of ***Yoginath D. Bagde vs. State of Maharashtra (1999) 7 SCC 739***, wherein the Supreme Court has held as under:-

"A delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or

reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

18. The submission of Mr. Nandrajog, on a first blush, looks appealing but on a more deeper consideration, the submission needs to be rejected for the reason that the scope of judicial review with regard to departmental enquiries is well settled. It is also well settled that the

Court would not sit as an Appellate Authority on the findings and the penalties imposed by the Competent Authority. Whether a particular penalty would be sufficient on a given finding is ultimately for the Competent Authority to decide. It is not for this Court to conclude that for the charge that stood partially proved, a penalty of censure would be justifiable. Rather, the reliance placed by Mr. Nandrajog on para 27 of the judgment of the Supreme Court in **G. Ganayutham** (supra), would be of relevance on the submissions so made and I quote the same as under:-

“27. We are of the view that even in our country, - in cases not involving fundamental freedoms, - the role of our Courts/Tribunals in administrative law is purely Secondary and while applying Wednesbury and CCSU principles to test the validity of executive action or administrative action taken in exercise of statutory powers, the Courts and Tribunals in our country can only go into the matter, as a secondary reviewing Court to find out if the executive of the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority the Court/Tribunal cannot substitute its view as to what is reasonable.”

19. There is no justification for the respondent No.1 to issue the show

cause in the manner it has done in the present case. The impugned orders need to be set aside. I order so.

20. The question that would now arise is whether the matter needs to be remanded back again to the Disciplinary Authority for a fresh consideration. It is noted that the memorandums were issued between 1992-1993 and twenty two years have gone by. The petitioner stood retired in the year 2001. It is quite late in the day for this Court to remand the matter back to the Authority concerned. I put to rest the issue once for all and having set aside the impugned orders of penalties, show cause notices and the appellate orders, the petitioner shall be entitled to all consequential benefits. The same shall be paid to him within three months from today. The writ petition is allowed.

No costs.

**V. KAMESWAR RAO, J
JUDGE**

AUGUST 31, 2015
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