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

+ **LPA 377/2013**

DR S C BATRA

..... Appellant

Represented by: **Mr.Sarvesh Bisaria, Advocate.**

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: **Mr.Vikas Singh, Sr.Advocate**
instructed by **Mr.K.K.Tyagi**
and **Mr.Iftekhar Ahmad,**
Advocates for Respondent
No.2/CWC.

+ **LPA 387/2013**

DR S C BATRA

..... Appellant

Represented by: **Mr.Sarvesh Bisaria, Advocate.**

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: **Mr.Vikas Singh, Sr.Advocate**
instructed by **Mr.K.K.Tyagi**
and **Mr.Iftekhar Ahmad,**
Advocates for Respondent
No.2/CWC.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

20.08.2015

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1. **Dr.S.C.Batra** while working as Secretary with the respondent No.2 Central Warehousing Corporation (in short 'CWC') was issued two charge sheets one dated March 03, 2004 and the other dated August 13, 2004. Both

these charge-sheets were challenged by way of two writ petitions being W.P.(C) Nos.142/2005 and 143/2005 respectively which petitions have been dismissed by a common impugned judgment dated April 17, 2013 and hence the two appeals before this Court.

2. In LPA No.387/2013, Dr.S.C.Batra seeks setting aside of the judgment dated April 17, 2013 in W.P.(C) No.142/2005 whereas in LPA No.377/2013 he seeks setting aside of the judgment dated April 17, 2013 in W.P.(C) No.143/2005. Vide the charge sheet dated August 13, 2004 challenged in W.P.(C) No.143/2005 the statement of article of charge framed against the appellant were as under:

"STATEMENT OF ARTICLE OF CHARGE FRAMED
AGAINST SHRI S.C.BATRA, SECRETARY (THE THEN
MANAGER (PURCHASE, CWC, CORPORATE OFFICE,
NEW DELHI).

Shri S.C.Batra, while working as Manager (Purchase) during the period from 13.5.93 to 5.4.98, did not consider all the available records/information in Purchase Division and suppressed the same from Technical Committee/ Purchase Committee while framing the policy for conversion of mechanical Lorry Weigh Bridges (LWBs) into Electro-mechanical/Electronic LWBs as well as purchase of electronic LWBs/conversion of mechanical LWBs into electromechanical LWBs from M/s.Weigh-Well (India), Chandigarh. As a result, the Corporation was put into heavy financial loss as detailed in the Statement of Imputation. He was, thus, negligent in performance of his duties, acted in a manner prejudicial to the interest of the Corporation and failed to maintain absolute integrity and devotion to duty, thereby violating Regulation 39 (i) (a) & (b) of the CWC (Staff) Regulations, 1986."

3. The Articles of charge in the charge sheet dated March 03, 2004

challenged in W.P.(C) No.142/2005 are twofold i.e.: -

"STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI S.C.BATRA, SECRETARY, CWC CORPORATE OFFICE, NEW DELHI

Charge-I

Shri S.C.Batra while working as Secretary failed in his duties and responsibilities in the matter of purchase of Multi Layered Cross Laminated Covers (MLCL covers) during the year 2000 as detailed in the Statement of Imputation of misconduct (Annexure-II). Shri S.C.Batra thus failed to maintain absolute integrity and devotion to duty contravening Regulation 39(i)(a) & (b) read with 40 (v) (ix) of CWC Regulations, 1986.

Charge-II

Shri S.C.Batra while working as Secretary in the year 2000 failed to supervise the work and take all possible steps to ensure absolute integrity and devotion to duty of Manager (Purchase) working under his control and authority as detailed in the Statement of Imputation. (Ann-II), thereby committed the misconduct of neglect of work/negligence in performance of his duties and contravened Regulation 39(ii) read with 40 (ix) of CWC (Staff) Regulations, 1986."

4. We need not deal further into the articles of charge because in 2005 when the writ petitions were filed the only issues urged by learned counsel for the appellant before the learned Single Judge and re-agitated before this Court is that the charge sheet dated August 13, 2004, though approved by the Board, suffers from non-application of mind as the board failed to consider the entire documents whereas in relation to the charge sheet dated

March 03, 2004 which is the subject matter of LPA No.387/2013 the contention is that the competent authority being the Board of Director of the CWC no charge sheet could have been issued by the Managing Director alone and thus the charge sheet dated March 03, 2004 was null and void.

5. It would be relevant to note regulations 60 and 61 of the Central Warehousing Corporation (Staff) Regulations, 1986 (in short 'the Regulations') as under:-

"60. Disciplinary Authority- The disciplinary authority as specified in the Appendix-I or any authority higher than it may impose any of the penalties specified in regulation 59 on any employee.

61. Procedure for Imposing Major Penalties-

(i) No order imposing any of the major penalties specified in clause (e), (f), (g) and (h) of regulation 59 shall be made except after an enquiry is held in accordance with this regulation.

(ii) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, or appoint any public servant (hereinafter called the inquiring authority) to inquire into the truth thereof.

(iii) Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges together with a statement of the allegations on which they are based, a list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained shall be communicated in writing to the employee who shall be required to submit within such time, not exceeding 15 days, as may be specified by the

disciplinary authority a written statement whether he admits or denies any or all of the articles of charges.

Explanation: - It will not be necessary to show the documents listed with the charge-sheet or any other document to the employee at this stage.

Competent Authorities for Appointment, Disciplinary Action and Appeals/Review

S.No.	Appointing Authority	Authority competent to impose penalties Authority Penalty			Appellate Authority	Reviewing Authority
4.	Group 'A'					
	(i) Officers below the level of Managers	Managing Director	Managing Director	all	Executive Committee	Board of Directors
	(ii) Officers of the level of Managers and above (posts with the scale of pay of ₹1500-1800 and above)	Board of Directors	Board of Directors	all	Board of Directors	Board of Directors

6. In relation to the charge sheet dated March 03, 2004 where the objections are that the article of charges have not been framed by the Board of Director but only the Managing Director it would be relevant to note that in the minutes of the meeting dated April 19, 2004 this power was specifically delegated to the Managing Director as permissible under Section

7(5) of the Warehousing Corporation Act, 1962 (in short 'the Act') which reads as under:

"7.(1) The board of directors referred to in section 6 shall consist of the following, namely:-

(a) six directors to be nominated by the Central Government;

(b) one director to be nominated by the National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962(26 of 1962);

(c) one director to be nominated by the State Bank;

(d) one director to be elected by other scheduled banks;

(e) one director to be elected by co-operative societies;

(f) one director to be elected by insurance companies, investment trusts and other financial institutions, recognised associations and companies dealing in agricultural produce or notified commodities;

(g) a managing director, appointed by the Central Government in consultation with the directors referred to in clauses (a) to (f): Provided that the three directors to be elected under clauses (d), (e) and (f) may, for the first constitution of the board of directors, be nominated by the Central Government in such manner as to give representation to each class of institutions (whether they have become shareholders of the Corporation or not) referred to in those clauses, but a director so nominated shall hold office only until he is replaced by a director elected as provided in that clause, and the director so elected shall hold office only for so long as the director replaced would have held office had he not been replaced.

(2) *The directors referred to in clauses (d), (e) and (f) of sub-section (1) shall be elected in the prescribed manner.*

(3) *If, within the period prescribed in this behalf, or within such further period as the Central Government may allow, the institutions referred to in clause (d) or clause (e) or clause (f) of sub-section (1) fail to elect a director, the Central Government may nominate a director to fill the vacancy.*

(4) *The board of directors shall have a Chairman and a Vice Chairman who shall be appointed by the Central Government from among the directors.*

(5) *The managing director shall-*

(a) exercise such powers and perform such duties as the board of directors or the Central Warehousing Corporation may entrust or delegate to him; and

(b) receive such salary and allowances as the Central Warehousing Corporation may, with the approval of the Central Government, fix.

(6) *The directors of the Central Warehousing Corporation other than the managing director shall be entitled to receive by way of remuneration such sums as the Central Warehousing Corporation may, with the approval of the Central Government, fix: Provided that no official director shall be entitled to receive any remuneration other than the allowances, if any, admissible to him under the rules regulating his conditions of service.*

(7) *The term of office of, and the manner of filling casual vacancies among, the directors shall be such as may be prescribed."*

7. Since Section 7(5) of the Act permits the Board of Directors or for that matter even the CWC to entrust or delegate to him any power or to perform any duties, it was competent to the Board of Directors to have delegated the duty of framing the charge sheet to the Managing Director as resolved in the meeting dated February 19, 2004, extracts whereof are reproduced as under:

" Confidential

*MINUTES OF THE BOARD MEETING DATED 19.2.2004
ADDL.CONFIDENTIAL AGENDA ITEM NO.1*

Conversion/Purchase of LWBs from M/s Weighwell India Limited, Chandigarh

The BOD discussed the Agenda in detail on the first stage advice tendered by the CVC vide their letter dated 18.11.2003 wherein considering the overall facts and circumstances of the case, the Commission has advised initiation of Major Penalty Proceedings against Shri Malkhan Singh, GM, Shri S.C.Batra, Secy, (the then Manager (Purchase), Smt.S.Venugopal, Manager (Publicity) (the then Manager (Purchase) and Shri S.N.Gulati, EE and issue of recordable warning to Shri S.K.Tandon, DM (G) and Shri Mahavir Krishnan, DM(G). The BOD also considered the representation made by Shri Batra vide his confidential letter dated 7.1.04 on the subject. The BOD observed that Shri Malkhan Singh, GM i/c and Shri S.N.Gulati, EE have since retired from the service of the Corporation in the meantime and no action could, therefore, be taken against them. After detailed discussion, the BOD decided to accept the advice of the CVC in respect of the remaining officials to initiate major penalty proceedings against Shri S.C.Batra, Secy, (the then Manager (Purchase) and Smt.S.Venugopal, Manager (Publicity) (the then Manager (Purchase) and to issue

recordable warning to Shri S.K.Tandon, DM (G) and Shri Mahavir Krishnan, DM (G). The BOD also authorised the MD to finalise the Charge Sheets and issue necessary communication on its behalf. Since senior officers of the Corporation are involved, the BOD also decided to request the Ministry of Consumer Affairs, Food & Public Distribution to nominate an officer for appointment as IO and to request the JS (Storage) to move the Ministry immediate for necessary action in this regard pending circulation of minutes. The BOD also authorised the MD to appoint PO from amongst the officers of the Corporation."

8. Though we do not need to deal any further into this aspect finding that the Board of Directors were within their authority to delegate the functions to the Managing Director which they did in terms of Section 7(5) of the Act as noted above however, it would be appropriate to note that though the learned counsel for the appellant urged that this is the only ground strenuously before this Court as well as before the learned Single Judge the pleadings in the writ petition are totally bereft of this contention.

9. This brings us to the second charge sheet dated August 13, 2004 wherein the contention of learned counsel for the appellant is that though the charge sheet was appropriate and issued by the Board of Directors itself however, there is no application of mind in as much as no documents were placed before the Board of Directors. In this regard it would be relevant to note the minutes of 248th meeting of the Board of Directors held on July 30, 2004 in relation to Confidential Agenda Item No.3 as under:

*"248TH MEETING OF THE BOARD OF DIRECTORS TO
BE HELD ON 30TH JULY, 2004*

Confidential Agenda Item No.3

CONVERSION/PURCHASE OF LWBs FROM M/S
WEIGH-WELL), (INDIA), CHANDIGARH

An additional confidential Agenda item No.1 on the above subject was placed before the Board of Directors (BOD) in its 246th meeting held on 19.2.2004.

The BOD discussed the agenda in detail on the 1st stage advice tendered by the CVC vide their letter dated 16.11.2003. While considering the over-all facts and circumstances of the case, the Commission had advised initiation of major penalty proceedings against Shri Malkhan Singh, GM, Shri S.C.Batra, Secretary (the then Manager (Purchase, Smt.S.Venugopal, Manager (Publicity) (the then Manager (Purchase) and Shri S.N.Gulati, EE and issue of recordable warning to Shri S.K.Tandon, DM (G) and Shri Mavie Krishan, DM (G). The BOD also considered the representation made by Shri Batra vide his confidential letter dated 7.1.2004 on the subject. The Board observed that Shri Malkhan Singh, GM I/c and Shri S.N.Gulati, EE, have since retired from the service of the Corporation in the meantime, no action could, therefore, be taken against them. After detailed discussion, the BOD decided to accept the advice of CVC in respect of the remaining officials to initiate major penalty proceedings against Shri S.C.Batra, Secretary (the then Manager (Purchase) and Smt.S.Venugopal, Manager (Publicity) (the then Manager (Purchase) and to issue recordable warning to Shri S.K.Tandon, DM (G) and Shri Mavie Krishan, DM (G).

The BOD also authorised the MD, CWC to finalise the charge sheet and issue necessary communication on its behalf. Since senior Officers of the Corporation are involved, the BOD also decided to request the Ministry of Consumer Affairs, Food and Public Distribution to nominate an officer for appointment as I.O and to request the JS (Storage) to initiate action in this regard pending

circulation of minutes. The BOD also authorised the MD to appoint Presenting Officer from amongst the officers of the Corporation.

In compliance to BOD decision, the Corporation had written a letter dated 20th February 2004 to Joint Secretary (Storage), Ministry of Consumer Affairs, Food & Public Distribution, Govt. of India, New Delhi for appointment of Inquiry Officer for following two vigilance cases:

- a) Purchase of Black Polythene Covers from IPCL.*
- b) Conversion/Purchase of Lorry Weigh Bridges from M/s. Weigh-well (India), Chandigarh.*

In response to CWC letter dated 20.2.2004, the Ministry vide their letter no.6-9/2004-SG dated 3rd March, 2004, nominated Ms. Anita Chaudhary, Jt Secretary, Department of Food & Public Distribution as Inquiry Officer in respect of above two vigilance cases.

As per the decision of BOD, the recordable warnings have been issued to Shri S.K. Tandon, JM (G) (the then DM(G) and Shri Mavie Krishan, DM (G) vide memo dated 15th June, 2004.

In compliance to BOD decision, the draft charge sheets on the major penalty proceedings against Shri S.C. Batra, Secretary (the then Manager (Purchase) and Smt. S. Venugopal, Manager (Publicity) (the then Manager (Purchase) have been finalised by MD and the same are placed at Annexure-A and Annexure-B respectively for approval of the BOD (DA).

*Sd/-
(B.B. Pattanaik)
Chief Vigilance Officer"*

10. A perusal of the minutes would thus reveal that all facts and

circumstances of the case were produced before the Board including the representation filed by Dr.S.C.Batra before the charge sheet was issued.

11. Thus contentions of learned counsel for the appellant deserve to be rejected. Consequently the appeals are dismissed.

CM No.8985/2013 (Stay) in LPA 377/2013

CM Nos.9024/2013 (Stay) and 5267/2014 (impleadment) in LPA 387/2013

Applications are dismissed as infructuous.


PRADEEP NANDRAJOG, J.


MUKTA GUPTA, J.

AUGUST 20, 2015
'vn'

For R.P. No. 457/2015 for review of above or.