

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

% *Judgment Reserved on : March 11, 2015*
Judgment Delivered on : March 18, 2015

+ **LPA No.646/2013**

K.C. SHARMAAppellant

Represented by: Mr.Piyush Sharma, Advocate

versus

BSES YAMUNA POWER LIMITED Respondent

Represented by: Mr.Sandeep Prabhakar, Advocate
with Mr.Vikas Mehta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS.PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The intra-court appeal arises out of the order dated 28th February, 2013 passed by the learned Single Judge in Writ Petition(C) No. 2107/2000 filed by the appellant, whereby the learned Single Judge has, after setting aside the orders dated 21st October, 1999 passed by the Disciplinary Authority and 2nd February, 2000 passed by the Appellate Authority, required the Disciplinary Authority to pass a speaking order.

2. The appellant, Sh.K.C.Sharma, when working as an Assistant Accountant in the office of AFO (D) YVR, Delhi Vidyut Board (earlier known as Delhi Electric Supply Undertaking) was issued a charge-sheet dated 1st December, 1994 imputing him of misconduct during the year 1992-1993. The article of charge against him reads as follows:-

“Sh. Kham Chand Sharma, E.No.11846 while working as Asstt. Acctt. in the office of AFO(D)VYR during the year 1992-93 with mala-fide intention with a view to extend undue benefit to the consumer in connivance with Sh.R.K.Taneja, AFO(D)VYR assisted Sh.Ramesh Chand, Sr.Clerk, in reducing the reading (units)by tampering the readings recorded in the meter reading sheets. After feeding to the computer for the month of June & August, 1992 against K. No. 052-0049063 registered in the name of Sh.Chander Bhan and Sh.Ved Prakash Prop. M/s Anuj Ice Factory Village Gokal Pur, Shahdra and further assisted in correction of the bill on the basis of the reduced reading (units) and in crediting an amount of ₹8080.20 to the consumer incurring heavy financial loss to the undertaking.”

3. The appellant denied the charge, requiring the Disciplinary Authority to appoint an inquiry officer to record evidence and submit an inquiry report.

4. During the inquiry the department examined two witnesses and proved nine documents. Sh.B.M.Mishra, PW-1 was the Meter Reading Inspector (MRI) and Sh.T.R.Sharma, PW-2 was the Vigilance Inspector. The appellant did not produce any witness but proved a few documents; and we need not note the same because nothing turns thereon.

5. On the basis of evidence led the Enquiry Officer submitted a report dated Nil July 1998 opining that the charge was not established. The relevant findings of the Enquiry Officer read as under:

“The documents as produced by the prosecution Exb. S-1 to Exb. S-9 adequately substantiate that the overwriting, corrections made in the Meter Reading Sheets by the Meter Readers in their round visit of the premises visited by them Both the PW’s, MRI Sh. B.M. Misra (PW-1) and Sh. T.R. Sharma, PW-2 who was the IO in this case have categorically stated that it is the meter reader or

readers who are responsible for taking readings and then making corrections in the meter reading sheets. In case these corrections, overwritings were not done by him, he is required to inform the MSR about such corrections which are not done by him. It is the MSR who according to the duties as stipulated are required to keep the meter reading sheets as well as the allotment of the duties register by the meter reader or the MSR who is the whole and sole responsible for the custody of the meter reading sheets. Anybody making corrections whatsoever when (meter sheets/books) they are under the custody of the MSR, the responsibility of the MSR cannot be minimised. He remains whole and sole responsible for the safety, sanctity of the meter reading sheets/books/allotment of duties register and their safe custody. Both the PW's viz. 1 and 2 have mentioned in their depositions that the corrections in the meter reading sheets have not been the main charge against Sh. K.C.Sharma but it is that he made the corrections in the CC ledger sheets for the month of May 1992-Sept 1992.....

..... These corrections which are in CC ledger sheets have been transcribed from those in form "A" and form 8A which are Exb. – S-3 and S-2 respectively. In these registers in form A and form 8A the corrections which have been made in the CC ledgers have been reflected at the appropriate place and they have been duly authenticated by the then AFO, Sh.R.K.Taneja, the then AFO(YVR) or by some other person i.e. Sh.O.P.Jain the then accounts Supt. From this, it is seen that whatever the corrections have been carried out in the CC ledger and which have been originally brought out in the Form A or Form 8A and which have been duly authenticated by AS(B) or by the AFO, how it will be possible to put the blame on Sh.K.C.Sharma, the CO of his correcting the entries in the CC ledger without taking authorization from the higher authorities.....

.....In the meter reading sheets there is an entry which has been completely blotted out.....

.....Whenever any overwriting/cutting have been made in the meter reading sheets, the authentication has to come from the MSR and as such how the Asst. Acct., the CO in this case can have any cause of manipulation.....

..... Both the PW's have categorically stated that neither the CO Sh. Khem Chand Sharma not Sh.Ramesh Chand, Sr.Clerk had made any corrections in the meter reading sheets. They have also stated that these meter readers are wholly and solely responsible for the corrections in the meter reading sheets. He (MR) should have intimated on his subsequent reading in July 1992 or Sept. 1992 to MSR if there is any change in the entry by overwriting by some other person. As such there is not such statement from the MSR so it cannot be believed that the corrections have been carried out by some other person other than the meter reader. It is also a fact that whenever a bill is passed on to the consumer, the cashier accepts the bill amount only when he is aware that the bill has been approved by the AFO or the person authorized by him. The question of loss to the company as such does not hold good.....

..... the CO Sh.Khem Chand Sharma has only to look into the bill as per the readings shown. He had no other role. As it has already been stated in the Form A and Form 8A authenticated documents are duly seen by the AFO and AS(B) and countersigning by them, the question of making any manipulation by the CO does not arise. I, therefore, would consider that the charge against Sh.Khem Chand Sharma is not proved. ”

6. Considering the report of the Enquiry Officer, the Disciplinary Authority issued a memorandum dated 22nd January, 1999 to the appellant

wherein holding that in view of the evidence led the charge was proved. The appellant was called upon to show cause as to why a penalty of reduction in the time scale of pay by three stages for a period of three years be not inflicted during which period the appellant would not earn an increment and such reduction will have the effect to postpone his future increments. The appellant was called upon to show cause as to why the penalty be not inflicted.

7. Being relevant, we note the reasoning of the Disciplinary Authority, in the words of the Disciplinary Authority, to disagree with the report of the Enquiry Officer. It reads :-

“AND WHEREAS the undersigned as Competent Disciplinary Authority has considered the Enquiry Report submitted by the Inquiry Officer and find from the documentary evidence adduced during the enquiry that the meter readings for June, 1992 and August, 1992 for the relevant K.Nos. were tempered with and the over writings were not authenticated by any competent person. Nonetheless, the bills were revised and credited was given to the consumers. The record reveals that Shri Ramesh Chand made entries in Form-A and Form 8-A regarding revision of bills and Shri K.C.Sharma countersigned these forms. Their failure to point out that the changes in meter book had not been authenticated by the competent person confirms their connivance in the case. The plea that the revision of the bill was done with the approval of AFO is not therefore tenable because entries by themselves do not entail approval of the AFO. The forms have been prescribed and they facilitate data enquiry in the computer. The AFO signs the documents to ensure that the changes have been fed in the Computer. There is no independent document to show that the approval of AFO was taken. It has been accepted by them that they have revised the bill. As they have done so on the basis of tempered meter readings without the approval of AFO, malafides cannot be ruled out.”

8. The appellant submitted a response to the memorandum dated 22nd January, 1999 and highlighted therein that the report of the Enquiry Officer

well considered the documentary evidence. He highlighted that the report of the Enquiry Officer brought out that the over writings on Exhibits S-1 to S-9, being the meter reading sheets were not attributed by the department to the appellant, as brought out by the Enquiry Officer and that the charge against the appellant as sought to be established was the entries made in the ledger sheets by the appellant recording meter reading as corrected by the over writing. The appellant highlighted that the corrections in the meter reading sheets had to be supervised by the meter reading supervisors. The appellant highlighted that the entries made by him in the ledgers had been duly authenticated by the then AFO Shri O.P.Jain. He highlighted that the Enquiry Officer had noted that both departmental witnesses had categorically stated that the appellant had not made any corrections in the meter reading sheets.

9. The Disciplinary Authority passed an order on October 21, 1999 confirming the penalty proposed as per the memorandum dated 22nd January, 1999, and relevant would it be to highlight that in the said order the Disciplinary Authority did not deal with the contentions advanced by the appellant regarding acceptance of the report of the Enquiry Officer.

10. Appeal preferred by the appellant before the Appellate Authority was rejected vide order dated 2nd February, 2000 resulting in WP(C)No.2107/2000 being filed by the appellant, in which the principal grievance of the appellant was to the fact that the Disciplinary Authority did not indicate tentative reasons to disagree with the report of the Enquiry Officer, to which an ancillary argument was attached: that the Disciplinary Authority was, in the minimum, obliged to deal with the submissions made by the appellant to the memorandum dated 22nd January, 1999 regarding the merits in the reasoning and the conclusions arrived at by the Enquiry Officer.

11. Without dealing with the first contention and agreeing with the ancillary, vide impugned decision dated February 28, 2013 the learned Single

Judge has set aside the order dated 21st October, 1999 passed by the Disciplinary Authority as also the order dated 2nd February, 2000 passed by the Appellate Authority. The matter has been remanded to the Disciplinary Authority with a direction to pass a reasoned order.

12. For record we need to note that in the appeal filed, in the absence of any interim order granted in favour of the appellant, the Disciplinary Authority has passed an order on May 02, 2013, giving reasons, to concur with the view taken that the report of the Enquiry Officer was not correct. The penalty proposed has been confirmed with a modification that it would be effective from 21st October, 1999 till 31st August, 2000, for the reason the appellant superannuated on 31st August, 2000. And we highlight that the date 21st October, 1999 from which date the penalty would be effective is premised on the fact that the original order of penalty was dated 21st October, 1999.

13. We note that the order dated May 02, 2013 records reasons dealing with the contentions advanced by the appellant in response to the memorandum dated 22nd January, 1999.

14. The appellant filed CM No.13607/2013 bringing on record subsequent events and placing on record the penalty order dated May 02, 2013.

15. In the decisions reported as (1998) 7 SCC 84 Punjab National Bank & Ors. Vs. Kunj Bihari Misra and (1999) 7 SCC 739 Yoginath D. Bagde Vs. State of Maharashtra & Anr., the Supreme Court held that a facet of the principles of natural justice was that if the Disciplinary Authority disagreed with the findings returned by an Enquiry Officer it should record tentative reasons for the disagreement, leaving scope for an open mind to consider the response of the charged officer, give the tentative reasons for the

disagreement to the charged officer and invite his response and then dealing with the response pass a reasoned order.

16. The jurisprudence behind said principle of law is that unless a person is given an opportunity to respond to a tentative reason to disagree, the person affected loses a valuable right of being heard before a decision adverse to his interest is taken and that the final decision must contain the reasons because it is these reasons which would determine the appellate remedy of the person whose interest is adversely affected by the decision.

17. In Yoginath D. Bagde's case (supra), the Supreme Court held :

“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. An argument was advanced in Yoginath Bagde's case before the Supreme Court that a post-decisional hearing may be granted. The Supreme Court negative the plea holding that the same would not be adequate because the Disciplinary Authority had already closed its mind by taking a determinative view.

19. In Kunj Bihari Mishra's case (supra), the Supreme Court did not permit curative action noting that Kunj Bihari superannuated on December 31, 1983 and died on January 06, 1995 and his legal heirs were prosecuting the matter. 14 years had passed since when Kunj Bihari Mishra had superannuated from service.

20. In the instant case we find that the appellant, as recorded in the order dated May 02, 2013, superannuated from service on 31st August, 2000. More than 14 years have gone by.

21. The charge against the appellant was not of making over writings in the meter reading sheets, but was of making corresponding corrections in the ledgers and for which we find that according to the Disciplinary Authority the wrong committed is of not ensuring that the corrections in the meter reading sheets were authenticated by the meter reading supervisors and that without

taking approval of his superior officer the appellant made the correction in the ledger. The Article of Charge brings out that the financial implication was a meagre sum of ₹8,080.20.

22. There is no allegation against the appellant of conniving with the consumer. The verdict of guilt returned by the Disciplinary Authority in the reasoned decision dated May 02, 2013 is premised on lack of proper care in making corrections in the ledger. It means that at best what can be said against the appellant is that he was negligent in the discharge of his official duties.

23. We therefore terminate the misery of the appellant who has suffered all this while for over 20 years (the charge sheet being issued on 1st December 1994), by bringing the curtains down on the charge memorandum by quashing the penalty imposed upon the appellants vide order dated May 02, 2013 and disposing of the appeal modifying the impugned decision passed by the learned Single Judge and disposing of the writ petition filed by the appellant with a direction that the pension of the appellant be fixed ignoring the penalty levied and arrears paid within 16 weeks from today.

24. Parties shall bear their own costs throughout.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 18, 2015

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