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

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Date of Decision: 30.10.2015

% **RSA 305/2014**

SHRI GURDIAL SINGH

..... Appellant

Through: Mr. Vinay Sabharwal & Ms. Neha
Sabharwal, Advocates along with
appellant in person.

versus

BSES RAJDHANI POWER LIMITED

..... Respondent

Through: Mr. Sandeep Prabhakar & Mr. Vikas
Mehta, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal under Section 100 CPC is directed against the judgment and decree dated 05.05.2014 passed in RCA No. 10/13 preferred by the plaintiff-appellant to assail the judgment and decree dated 10.07.2013 passed by the learned Civil Judge (Central), Tis Hazari Courts, Delhi, in a suit filed by the plaintiff-appellant titled, 'Gurdial Singh Vs. BSES Rajdhani Power Ltd.' being Suit No. 245/13. By the impugned judgment, the said first appeal has been dismissed by the learned Additional Senior Civil Judge, South East District, Saket Court Complex, New Delhi, i.e. the first appellate court. The trial court had similarly dismissed the appellant-plaintiff's suit by the judgment and decree dated 10.07.2013.

2. The appellant-plaintiff had filed the suit to seek a declaration and mandatory injunction to assail the penalty of reduction to the minimum of the scale of the post held by him, for the period of five years, and it was directed that the appellant shall not earn any increment during the period of reduction, and further that the reduction will have the effect of postponing his future increments. The said penalty was imposed vide order dated 12.09.2000. The appellant-plaintiff sought a declaration that the said penalty order dated 12.09.2000 be declared as perverse, null, void, illegal and arbitrary. He also sought consequential relief of payment of the illegally deducted amount along with interest. He also sought a mandatory injunction to seek a direction to the respondent-defendant to grant him all consequential benefits of pay and allowances reduced on the basis of the said penalty order dated 29.08.2000 along with interest.

3. The respondent-defendant upon being summoned contested the suit by filing a written statement. The trial court framed the following issues on 01.05.2002:

*“1. Whether plaintiff is entitled to decree of declaration?
OPP*

2. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP

3. Whether the action of defendant in initiating disciplinary action against plaintiff is barred? OPP

4. Whether departmental enquiry conducted as per law and principles of natural justice? OPD

5. Relief.”

4. The trial court determined all the issues against the plaintiff and consequently dismissed the suit. It was, inter alia, held that there was no breach of principles of natural justice and the inquiry had been conducted in accordance with the rules.

5. The first appellate court while placing reliance on *Union of India Vs. Ramesh Chand* ILR (2011) 1 Delhi 822, held that the jurisdiction of the trial court was limited. The trial court could not have travelled into the evidence led before the Enquiry Officer, and was not empowered to determine whether the evidence was sufficient or not to hold the plaintiff guilty. The only question that could be considered by the trial court was, whether the principles of natural justice were followed during the enquiry proceedings and a speaking order was passed. The jurisdiction of the trial court being limited, it could not have gone into the question as to whether the evidence was rightly appreciated; whether all the documents were considered, etc.

6. From the impugned judgment, it appears that the appellant had not disputed the factum of compliance of principles of natural justice in the conduct of the enquiry. The stand of the appellant was, that his reply was not considered and appreciated by the enquiry officer. The first appellate court held that such an objection could not have been considered by the trial court, and could not be considered by the appellate court, in view of the settled legal position that only limited jurisdiction vests in the civil court qua examination of the departmental enquiry proceedings. The first appellate court considered all the submissions raised before it, and dismissed the first appeal.

7. It appears that when the present second appeal was listed before the court on 11.02.2015 and 28.02.2015, the submission advanced by the appellant was that the trial court had not granted an opportunity to the appellant to adduce evidence, although, the onus to prove all the issues was put on the appellant. After framing the issues, the trial court had observed that all issues being legal, it does not require the recording of evidence. From the order-sheet dated 28.04.2015, it appears that on this premise, notice was issued in the present appeal.

8. At the stage of preliminary hearing of the present appeal, Mr. Vinay Sabharwal, learned counsel for the appellant, has not sought to press the aforesaid aspect. The appellant does not dispute the findings returned by the trial court and first appellate court with regard to the compliance of principles of natural justice vis-a-vis the enquiry proceedings initiated against the appellant-plaintiff. The appellant also does not raise any grievance or issue with regard to his not being permitted to lead evidence after the framing of issues by the trial court. Mr. Sabharwal has, however, raised two issues before this Court which, according to him, require consideration.

9. The first issue is that the courts below were not precluded from examining whether the enquiry report, on the basis of which the appellant was penalized, suffered from perversity. He submits that the courts below have proceeded on the assumption that the civil court did not have the jurisdiction to examine the said aspect. In this regard, he places reliance on the decision of the Supreme Court in ***Kuldeep Singh Vs. Commissioner of Police and Others*** (1999) 2 SCC 10. The submission of Mr. Sabharwal is

that there was no evidence to establish the charge leveled against the appellant-plaintiff. On the contrary, the evidence showed that the appellant was innocent. The charge against the appellant was;

“That the said Shri Gurdial Singh, MRI during the posting in Distt. NZD, deliberately allowed accumulation of huge dues and timely action was not taken for disconnection of the supply which was later on disconnected from the feeding point (i.e. on 30.3.94) and even efforts were not made for getting the meter reading recorded against K. No. HZ 016-1772471/NP & K. No. NNZ-016-1760635/NL, in the name of Shri Ram Lubhaya, Shop No. 6, Guru Hari Krishan Market, Opposite Eros Cinema, which further gave ample opportunity to the unscrupulous consumers to get their meters manipulated/reversed resulting in financial loss to the undertaking.

Thus Shri Gurdial Singh failed to maintain absolute integrity and devotion to duty in violation of Rule 3(i) of the CCS (Conduct) Rules, 1964.”

10. Thus, the charge related to the appellant not taking timely action for disconnection of the meter/connection in question, which led to accumulation of substantial dues. The disconnection was made only on 30.03.1994. He also did not take steps to get the meter reading recorded, which enabled the consumers to manipulate the meter, resulting in financial loss to the department.

11. Mr. Sabharwal submits that the appellant had sent his detailed reply to the said charge-sheet, wherein it had been pointed out that the area in question was allotted to the appellant-plaintiff in October, 1993, and the defaulters list was supplied to him in December, 1993. The address of the consumer, and the location of the electricity connection/meter in question

mentioned in the defaulters list and the meter reading sheet was wrong, as there was no school by the name of Jain Higher Secondary School in the area of Jangpura Extension. The plaintiff had claimed that the actual address of the place where the meter was installed was searched by contacting various eminent persons of the vicinity, and it was learnt that the meter in question was installed at Shop No. 6, Guru Hari Krishan Market, Jangpura Extension. Several efforts had been made to contact the consumer but he could not be contacted and, therefore, the supply was disconnected from the feeding point with the help of local staff on 30.03.1994. The plaintiff also claimed that he had been made a scapegoat at the hands of self interested and influential persons of the area. He also sought to place reliance on the observations made by Shri J.N.Mandal, the then MSR, dated 20.09.1995 wherein the efforts of the appellant were commended and his integrity and devotion to duty was certified. The said officer had observed that instead of implicating the appellant-plaintiff, the real culprit should have been fished out to find as to how the connections were installed on a non-existent ghost address.

12. Mr. Sabharwal submits that the aforesaid aspects have been completely ignored by the enquiry officer, disciplinary authority and the appellate authority while imposing the penalty upon the appellant-plaintiff.

13. The next submission of learned counsel for the appellant is that the penalty has been imposed upon the appellant by the AGM (A), even though the competent officer was AGM (F) in terms of the notification dated 25.05.1989.

14. On the other hand, the submission of learned counsel for the respondent is that no substantial question of law arises for consideration in the present second appeal. He submits that both the Courts below have returned concurrent findings of fact on the basis of evidence brought on record. Learned counsel submits that there was no perversity in the inquiry proceedings, as there was sufficient material available on record to hold the appellant/ plaintiff guilty of misconduct of the charge leveled against him. Learned counsel submits that the respondent has, in fact, been let off rather lightly even though he was a part of the well-organised racket being run by the officials of the DVB, in collusion with the local shopkeepers in the area to draw electricity and not pay for the same.

15. Mr. Prabhakar submits that since the appellant/ plaintiff was serving as the Meter Reading Inspector (MRI), i.e. he was superior to and above the Meter Readers, he was responsible for ensuring that consumption of electricity in the area within his jurisdiction was properly metered, so that the same could be billed. However, the appellant failed to discharge the said obligation.

16. Mr. Prabhakar submits that against K. No. HZ 016-1772471/NP & K. No. NNZ-016-1760635/NL, in the name of Shri Ram Lubhaya, Shop No. 6, Guru Hari Krishan Market, Opposite Eros Cinema, Jangpura Extension, the outstanding started accumulating from May 1992. This was even before the appellant/ plaintiff took charge of the area. However, even after the appellant was posted in the area and took charge of the same, he allowed the arrears to accumulate to the tune of Rs.48,586.49 against K. No.NZ 016-1772471/NP and Rs.4514.53 against K. No.NZ016-1760635/NL before

disconnecting supply on 30.03.1994. He submits that the appellant was posted as a MRI in April 1993 in place of Mr. P.K. Chakraborty, MRI (D) NDZ in the area in question. When the appellant took charge, the outstanding dues in respect of the two connections were Rs.24682.13 and Rs.2405.51 respectively. The appellant should have disconnected the said electricity connections immediately in May 1993. Instead of disconnecting the electricity supply on priority, the appellant allowed further accumulation of dues for the next ten months before disconnecting the supply on 30.03.1994. In the meter reading sheets since January 1992, the premises where the meter was installed was shown as 'locked'. However, no efforts were made for opening of the premises with the assistance of the superior officers for recording the meter reading.

17. Mr. Prabhakar submits that the inquiry report is extremely detailed and is premised on the evidence led before the Inquiry Officer. The Inquiry Officer conducted a joint inquiry against Sh. P.K. Chakraborty and the appellant, as before the appellant took over charge, Sh.P.K. Chakraborty was serving as the MRI in the area in question. Mr. Prabhakar has relied upon the extracts from the inquiry report, wherein the Inquiry Officer recorded his findings. The Inquiry Officer found that in the premises in question i.e. Shop No. 6, Guru Hari Krishan Market, opposite Eros Cinema, Jangpura Extension, the appellant allowed the consumer Shri Ram Lubhaya to continue with two meters on one wooden board which were being fed through separate service lines. One of the two meters was found stopped and its neutral was attached to the other meter. This connection was feeding supply to various shops in the market. I may, at this stage itself, notice that

it has come on record that 14 shops were being fed electricity through this meter/connection. The appellant did not try to get dues pending against the consumer against these two connections recovered which were amounting to Rs. 24,683.12 and Rs. 2405.51. The enquiry officer also took note of the defence evidence produced by the appellant, namely, the statement of Mr. J.M.Mandal, MRI, (D)(NZZ) to the effect that the address in relation to the connection in question was mentioned as Jain Higher Secondary School, Jangpura, which was a non-existent address, and that the appellant traced out the said connection.

18. Learned counsel for the respondent submits that the fact that as many, as, 14 shops in the market area were being fed through one connection installed in the name of Mr. Ram Lubhaya in Shop No.6, itself demonstrates the gross misconduct of the appellant, as this means that the said 14 shop owners had not obtained separate electricity connection in respect of each of them, and the meter readers were permitting them to draw electricity from one meter/connection, which was in the name of Ram Lubhaya. Obviously, the same could not have happened without the active connivance of, inter alia, the appellant, who was the Meter Reader Inspector serving in the area since April, 1993. Mr. Prabhakar submits that thus there was sufficient evidence for the enquiry officer to conclude that the charged officer did not insist on recovery of the dues, although, the address of the premises was known to him and was given by the earlier meter reader in the meter reading sheets. Even when the dues were accumulating, the appellant did not take steps for disconnection of the electricity connection. Mr. Prabhakar has also drawn the attention of the court to the following finding returned by the

enquiry officer on the basis of the joint inspection report (Ex.SIA) which was led in evidence during the course of enquiry;

“(a) Both the signal (sic single) phase meters were found feeding all 14 Nos. shops of Guru Harkrishan Market.

(b) Service line laid against M. No. 3245757 was having three numbers of joint in it before metering position.

(c) Half seal M/No. 3244624 found fictitious and seal of M. No. E-3245677 could not be verified at the time of inspection. M. No. 3245677 found stopped. Neutral of this meter found direct outside the meter terminal phase.”

19. The averment of the appellant-plaintiff in paras 20 and 21 of the plaint was to the effect that the final order has been passed by an incompetent person who was not the appointing authority of the plaintiff and that this led to violation of Section 95 of the DMC Act. The plaintiff had claimed that major penalty could only be imposed by the appointing authority and by no authority subordinate to him. He claimed that his appointing authority was the General Manager (E), DESU. However, before this Court, the appellant himself is seeking to rely upon the notification dated 25.05.1999 so as to claim that impugned action could have been taken against him by AGM (F) and not by AGM (A).

20. Mr. Prabhakar submits that the plea of the appellant that the AGM (F) could have imposed punishment in question has no merit, since the appellant belonged to the non-technical branch, and he did not belong to the Finance Branch. He submits that it was only in respect of the Finance Branch that the AGM(F) was competent to pass the punishment order in terms of the said notification dated 25.05.1999.

21. Mr. Prabhakar lastly submits that since it cannot be said that there was no evidence against the appellant in the enquiry proceedings, this Court would not, in any event, go into the issue of adequacy of the material against the appellant, as it was not a case of “no evidence” against the appellant.

22. Having heard learned counsel for the parties, I am of the view that there is absolutely no merit in the present appeal and the same does not raise any substantial question of law for consideration of this Court. The two courts below have returned concurrent findings with regard to the satisfaction of the principles of natural justice and the conduct of the enquiry proceedings. The said aspect has not even been urged by Mr. Sabharwal.

23. As noticed above, his primary submission is that the enquiry report was perverse and that this aspect could and should have been gone into by the two courts below. Even if the submission of the appellant were to be accepted, it is abundantly clear that there is no perversity in the enquiry report which forms the basis of the punishment inflicted upon the appellant. The enquiry officer has made a detailed enquiry report on the basis of the evidence led by the parties. The respondent had produced a host of document including the joint inspection reports, and had also produced four witnesses, including the vigilance inspector, as PW1. The other relevant officers of the department were also produced as witnesses. The said witnesses led in evidence a host of documents which have been considered threadbare in the enquiry report. It came out during the enquiry that two meter connections were obtained in the name of Ram Lubhaya which were installed in Shop No. 6, Guru Hari Krishan Market, Jangpura, opposite Eros Cinema. One of the meters was lying dead. The neutral of the said

connection was connected to the meter of the working connection. This meter was supplying electricity to, as many as, 14 shops in the area. This itself shows that there was ample evidence of collusion and connivance between the appellant and the said Shri Ram Lubhaya/other shopkeepers. There was no other way that the shopkeepers would have drawn electricity from one meter for years, without obtaining their own electricity connections. It appears that the arrangement continued with the blessings of the officials of the respondent over the years, even before the appellant was posted in the area as MRI. However, even after the appellant was so posted, he did not act in the matter. Pertinently, by then, substantial dues had accumulated in respect of the two connections as noticed hereinabove. The non-action of the appellant led to further inflation of the outstanding dues. The plea that the appellant was the one who traced the correct address of the connection, and he deserved commendation for the same and not punishment, has also been considered in the enquiry report. The enquiry officer has taken note of the fact that bills were being raised in respect of the connections with the correct address written in hand. This only means that the officials of the respondent were aware of the actual location of the connections even though, on the bill, incorrect address was being printed. How else would the bill be raised month after month and be paid up till January, 1992? The appellant allowed the electricity to be drawn from the meters, both of which were installed on a wooden board and one was not functioning. He also permitted the electricity to be distributed in 14 shops through the same connection. He also did not seek to recover the outstanding dues and permitted the racket to continue for nearly 10 months after taking over charge. Thus, it could not be said that there is no material

available before the enquiry officer to hold the appellant guilty of the misconduct of which he was charged.

24. Coming to the second argument of Mr. Sabharwal, the notification dated 25.05.1999 relied upon by Mr. Sabharwal itself provides that, *“Appointing Authorities Disciplinary Authorities/Appellate Authorities in the prevalent Regulations have been decentralized and delegated further to empower appropriate authorities and they shall be as per the schedule annexed herewith. The stiff major penalties of compulsory retirement, removal from service and dismissal from service, shall not be imposed by any authority lower than the Appointing Authority.”* Thus, the stiff major penalties of compulsory retirement, removal from service and dismissal from service could be imposed only by an authority which is not lower than the appointing authority. All other penalties, including the penalty imposed upon the appellant, could be imposed by the appropriate authority as mentioned in the Schedule, forming part of this notification. The appellant claims that he is covered by Entry at Serial No. 5 of this Schedule, though, the respondent claims that the appellant is covered by the Entry at Serial No.6. These two Entries read as follows:

SCHEDULE

Sl. No.	Description of post	Appointing Authority	Authority competent to impose minor penalties	Authority competent to impose major penalties	Appellate Authority
5.	All posts in the scale of pay of Rs. 6000-10800 but below Rs. 8000-	AGM(A)	1.Non- Tech.: CPO 2. Tech.:SE	AGM(A) CE	AGM (Concerned) for minor

	13775. (O&MO (Genl.)/ Maint. Officer/Sr. Shift Officer/ACP/ Foreman/ Prosecutor/ etc.		(Concerned) 3. Finance: AGM(F)	(Concerned) AGM(F)	penalties in respect of non-tech. & Finance. CE (Concerned) for minor penalties in respect of Tech. Member (Concerned) for major penalties for Tech./Non-Tech.
6.	All posts in the scale of pay of Rs. 4000-7100 and above but below Rs. 6000-10800. (Jr. Clerk and above up to the level of Hd. Clerk and equivalent)	CPO	1. Non-Tech.:ACPO 2. Tech. : SE 3. Finance : F.O.	CPO ACE/CE Dir. Rev./ AGM(F)	AGM(A) CE/AGM(F) AGM(F)/ Member (F)

25. It is informed that the pay of the appellant was in the scale of Rs. 5500-9875. Therefore, the same would evidently be covered by Entry at Serial No. 6. Assuming that the appellant's case is covered by Entry at Serial No. 5, he could be punished by AGM(A), in terms of the said Schedule. The claim made by the appellant that he was in the Finance Department, has no basis. He has not made any averment to this effect, nor led any evidence in this respect. There is no reason to doubt the statement made by the counsel for the respondent, on instructions, during the course of hearing to the effect that MRI are covered by the non-technical branch.

26. As noticed above, the challenge to the competence of the AGM(A) to issue the punishment order was premised on the plea that the appointing authority of the appellant was General Manager, DESU. The plea was not premised on the claim that the MRI falls in the finance branch, and not the

non-technical branch. The said plea stands negated by para 5 of the said notification - as extracted herein above, which is relied upon by the appellant himself. Thus, there is no merit in this submission of the appellant as well.

27. Consequently, I find no merit in the present appeal and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

OCTOBER 30, 2015

sl/B.S. Rohella