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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : July 14, 2015

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LPA 276/2015

ROOP CHAND GUPTA

..... Appellant

Represented by: Mr.Ashok Gurmani, Advocate

versus

DELHI VIDYUT BOARD

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Joining service on April 26, 1963 as an Inspector Grade II with the erstwhile Delhi Electric Supply Undertaking, the appellant earned promotions and when he was served with a charge memorandum which has resulted in a penalty being levied upon him, he was working as an Assistant Engineer. The undertaking had by then been taken over by the Delhi Vidyut Board.

2. By a memorandum dated September 18, 1993, the appellant was charged while working as an Assistant Engineer in District Najafgarh during 1991, with mala-fide intention and ulterior motive extending undue favour to the consumers by not completing the requisite commercial formalities while sanctioning tube well connections in village Mundka in utter disregard of the departmental instructions issued in this regard, thereby violating Rule 3(1) of the CCS (Conduct) Rules, 1964.

3. The statement of imputation in support of the charge memorandum brings out the contours of the illegalities alleged to have been committed by the appellant. It reads as under:-

“Shri R.C.Gupta, AE (PS) while working as such in District NJF, during 1991, was required to maintain absolute integrity, devotion to duty and to do nothing which may be unbecoming of an employee of the undertaking.

However, it has been observed during joint inspections on 01.10.91 and 03.10.91, that a large number of tube well connections were sanctioned/energized illegally in village Mundka in District NJF, which were being misused for industrial purposes. It has also been observed that there was no agricultural activity, and no sign of tube well etc. The land was divided into industrial plots having boundary walls. The PCC poles were erected in orderly fashion on the pacca roads sides to electrify the industrial complex. In order to facilitate the plot holders, the connections were sanctioned in utter disregard to the orders and instructions of the subject.

It has further been observed that Shri R.C.Gupta, AE (PS) sanctioned the connections bearing K.Nos.902/AP/160059, 160061, 16007, 160025, 160024, without mentioning the motor no. of the pipping sets and accepted incomplete applications. As such instructions of O.O.No.CE (Com)/87-88/2 dated 04.05.87 and O.O.No.CO.II/Com.26/85-86/2 dated 06.05.85 were violated.

It has also been noticed that genuineness of load/TF were not ascertained before sanctioning the connections from zonal staff. Thus O.O.No.CO.II/Com.26/90-91/2 dated 23.05.90 was violated. He did not even mention that distances from PCC pole as indicated by BDO in his certificate. It is thus evident that Shri Gupta sanctioned the connections in utter disregard to the departmental instructions with mala-fide intention and to extend undue favour. Thus, he contributed in establishment of illegal industrial complex at the cost of the undertaking.

Thus, by the aforesaid act, Shri Gupta, exhibited lack of integrity and devotion to duty and thereby violated Rule 3(1) of the CCS (Conduct) Rules, 1964, which for good and sufficient reasons render him liable for disciplinary action under regulation 7 of DESU DMC) Service (C & A) Regulations, 1976 read with Section 95 of DMC Act, 1957.”

4. Inquiry Officer was appointed since the appellant denied the charge. In a report dated March 15, 2000, the Inquiry Office exonerated the appellant. Considering the report of the Inquiry Officer, the Disciplinary Authority penned the note of disagreement recording his tentative reason for not accepting the report of the Inquiry Officer and sent the same along with the report of the Inquiry Officer to the appellant on October 12, 2000. Relevant for the purposes of dealing with the contentions urged by learned counsel for the appellant in appeal, part of the tentative reasons communicated to the appellant on October 12, 2010 penned by the Disciplinary Authority read as under:-

“That the Enquiry Officer has conveniently over looked is that the charged officer being AE (PS) was the authority to sanction the connections and was therefore cast upon the responsibility to satisfy himself that the papers/documents put to him by the Counter Clerk were complete in all respects. PW-1 in his cross-examination has stated that he did not examine the role of Counter Clerk or the dealing assistant and that it was he who had been cast upon the responsibility to scrutinize the documents. But the question that still remains to be answered is that even the counter clerk does not perform his duty with devotion and accepts the incomplete documents, is it not for AE (PS) to return these papers to the counter clerk asking him to get the commercial formalities completed first? The charged officer failed to do so. The most important fact conveniently over looked by the Enquiry Officer is that the charged officer was required to

obtain technical feasibility report from the zonal staff before sanctioning the connections which he failed to do.

The other important fact that has conveniently been over looked by the Enquiry Officer that part of the charges have in fact been admitted by the charged officer in his statement dated 1.11.91 (Ex.S-I, IA (G) (RCG). In the said statement the charged officer has stated that as per practice the Motor Number with make is not necessary and started accepting the cases without Motor number and make. He has further stated that TP and genuineness reports were stated but due to criticism by the farmers and delay in releasing these cases due to obtaining these reports, the practice of seeking technical feasibility and genuineness report was stopped. This clearly goes to prove that the cases were being received without Motor number and make and that TF and genuineness reports were not being called.

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Ex.S-33(G) which is office order dated 4.5.87 clearly stipulates that while permitting electric connections to tube-wells, adherence of agricultural pumping sets to IS-10804-1986 shall be insisted upon. The Office Order further stipulates that the installation of centrifugal pumps with less than 60% efficiency and monoblock pumps with less than 50% efficiency should be firmly discouraged. From the K Nos file it is quite evident that the charged officer did not bother to get the Motor number and make indicated on the test report while releasing the connections. In other words, as Motor number and make had not been indicated on the Test report, there has been clear violation of the office order dated 4.5.87 as in the absence of any Motor number and makes having been indicated on the Test Report, it was not possible for the charged officer to ensure whether the pumping sets adhered to IS-10804-1986.

Similarly, Ex.S-34(G) which is an office order dated 23.5.90 clearly cast upon the charged officer, the responsibility of assessing the genuineness of the load before sanctioning single phase/three phase connections. In other words, the charged was duty bound to have sought technical feasibility and genuineness

reports from the zonal staff before sanctioning the connections with a view to ensure that it is technical feasible to sanction the load applied for. It has clearly been proved that the charged officer failed to seek the said reports and has in fact admitted that he did not do so due to criticism by the farmers and the anticipated delay.

The charged officer in his defence has stated that the primarily the responsibility of scrutinizing the documents submitted by the prospective consumers lay with the counter clerk. Quoting the deposition of PW-1 who was also the investigating officer of the case, the charged officer has stated in accordance with the guidelines contained in para 1 & 2 of the office order dtd-6.5.85 exhibited as Ex.S-3(G) all the documents are required to be scrutinized by the counter clerk himself and in case some rectifications are to be made the same are required to be made by the counter clerk otherwise he is required to return the documents to the consumer with the rejection slip under the signature of Comml. Supdt. or AE (PS). PW-1 had been shown the relevant K. No. files viz Ex.S-32(G), S-29(G), S- 13(G) and S-14(G) who admitted that the endorsements by the dealing assistant recommending sanction of HP load for the agriculture purpose had indeed been made. PW-1 also admitted that he does not remember as to how he had skipped to examine the role of the dealing assistant.

In this connection as already pointed out that there had in fact been grave dereliction of duty on the part of the dealing assistant who recommended sanction of the connections on the basis of the incomplete documents/applications and unfortunately he did not come to be identified as one of the guilty officials inadvertently as has been admitted by PW-1 but then the responsibility of the C.O. as sanctioning authority to ensure that the documents are complete in all respects still remains and it has clearly been established that he failed to perform his part of duties and responsibility in a proper manner. Inadvertent exoneration of the dealing assistant in no way mitigates the responsibility of the C.O. as ultimately as AE (PS) the ultimate responsibility for completion of commercial formalities rested with him.

In view of the above, the charges against Shri R.C. Gupta, AE are thus proposed to be held proved in disagreement with the findings of the Enquiry Officer.” (emphasis added)

5. Appellant responded on November 02, 2000 to the notice issued by the Disciplinary Authority on October 12, 2000. In a nut shell, the appellant relied upon an office order dated May 23, 1990 to urge that in terms thereof he was not obliged to obtain any technical feasibility and genuineness report from the zonal staff before sanctioning the connection. Vide order dated December 29, 2000 the Disciplinary Authority disagreed with the reason given by the appellant to the tentative note of disagreement and imposed the penalty of reducing appellant in the time scale of pay by four stages for a period of four years with cumulative effect. The order reads as under:-

"DELHI VIDYUT BOARD
VIG. DEPTT., R.PH, NEW DELHI-2.
No.VC-488-494/92-Vig./SR/VO (G)/1085 Dated 29/12/2000
O R D E R

WHEREAS the disciplinary proceeding under Regulation 7 of Delhi Electric Supply Undertaking (DMC) Service (C&A) Regulations, 1976 was initiated against Shri R.C.Gupta, E.No. 4179, AE vide Memo No. VC-488-494/92-Vig./ MKS/292 dated 18.9.1993.

AND WHEREAS on denial of the charges, an oral enquiry was held. The Enquiry Officer submitted his report dated 15.3.2000 holding the charges against the said Shri R.C.Gupta, AE as not proved.

AND WHEREAS disagreeing with the finding of the Enquiry Officer, an enquiry report was sent to the said Shri R.C.Gupta, AE to make his representation/submission in writing within 15 days on the disagreement with the finding of the Enquiry

Officer vide Memo No. VC-488-494/92-Vig./SR/AVOI/1070 dated 12.10.2000.

AND WHEREAS the said Shri R.C.Gupta, AE has submitted his representation dated 2.11.2000 to the aforesaid dated 12.10.2000.

AND WHEREAS the undersigned as the Competent Disciplinary Authority has carefully gone through the reply dated 2.11.2000 submitted by the said Shri R.C.Gupta, AE with reference to the aforesaid Memo and find no merit in the same. It is observed that the Charged Officer was required to obtain the Technical Feasibility & Genuineness Report from the Zonal Staff before sanctioning the connections as he admittedly failed to do so although the cases were being received without mentioning the Motor Number and Make and the Technical Feasibility and Genuineness Report were being continuously called and there were no mention of the Motor Number and Make on the Test Reports and Progress Cards. The office order dated 23.5.90 clearly casts and responsibility on the Charged Officer for assessing the genuineness of the load before sanctioning the connections. The Charged Officer had infact admitted that he did not do so due to criticism of the farmers with anticipated delays.

NOW, THEREFORE, the undersigned as the Competent Disciplinary Authority holds the charge as fully proved in disagreement with the finding of the Enquiry Officer and I confirm and impose upon the said Shri R.C.Gupta, AE the penalty of reduction by four stages in his time scale of pay for a period of four years with cumulative effect.

Sd/-

(Y.P. SINGH)

*Shri R.C. Gupta, E.No.4179
AE (C&A)(D) RHN*

*MEMBER (T-I)
THROUGH: XEN (D) RHN”
(emphasis added)*

6. The Appellate Authority before whom the departmental appeal was filed rejected the same vide order dated March 21, 2001. Penalty imposed by the Disciplinary Authority vide order dated December 29, 2000 was upheld. Appellant challenged the penalty imposed vide W.P.(C) No.5784/2001. The same has been dismissed vide impugned order dated March 05, 2015.

7. Of the various contentions urged before the learned Single Judge, all except one have been reiterated during arguments in the appeal today. The contention dealt with by the learned Single Judge concerning who would be the Disciplinary Authority has not been urged in the appeal during arguments today. One additional plea has been urged.

8. We note and simultaneously deal with each contention advanced.

9. The first contention advanced before the learned Single Judge and in appeal is that under Regulation 7(2) of the Delhi Electricity Supply Undertaking (Service, Control & Appeal) Regulations, 1976, the appellant had a right to be heard in person before the Disciplinary Authority.

10. The Regulation in question has been noted by the learned Single Judge in paragraph 15 of the impugned order. We also note the same. It reads as under:-

“7(2) The disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Municipal Officer or other municipal employee, and he shall be required to submit within such time as may be specified by the Disciplinary Authority a written statement of his defence and also to state whether he desires to be heard in person.”

11. The view taken by the learned Single Judge is that the Regulation requiring personal hearing would apply where the Disciplinary Authority holds the inquiry itself. But it would not be applicable if the Disciplinary Authority appoints an Inquiry Officer because the right of personal hearing would be before the Inquiry Officer. Appellant's contention that since the Disciplinary Authority disagreed with the view taken by the Inquiry Officer and recorded tentative reasons for its opinion for the disagreement, the appellant had a right of personal hearing before the Inquiry Officer. In support of the contention learned counsel for the appellant has relied upon the authorities reported as 1998 (7) SCC 84 Punjab National Bank Vs. Kunj Behari Misra, AIR 1999 SC 3734 Yoginath D.Bagde Vs. State of Maharashtra & Anr., 2006 (3) SCC 800 Suresh Chandra Nanhorya Vs. Rajendra Rajak & Ors., 1993 (1) SCC 78 C.B.Gautam Vs. Union of India & Ors., 2012 (13) SCC 14 Manohar s/o Manikrao Anchule Vs. State of Maharashtra & Anr. and 1989 (1) SC 628 M/s.R.B.Shreeram Durga Prasad & Fatehchand Nursing Das Vs. Settlement Commission (IT & WT) & Anr.

12. None of the authorities, except in Kunj Behari Misra's and Yoginath D.Bagde's case, cited has any relevance inasmuch as each deals with a facet of natural justice, which we all know is multi-dimensional. The decisions in Kunj Behari Misra's and Yoginath D.Bagde's case relied upon by learned counsel for the appellant are relevant and are actually against the proposition advanced by learned counsel for the appellant. The two authorities hold that if the Disciplinary Authority disagrees with the report of an Inquiry Officer, in full or in part, the principles of natural justice would be met if the Disciplinary Authority records a note of disagreement and forwards the same to the charged employee along with the report of the Inquiry Officer

for his response.

13. In the instant case, the Disciplinary Authority has done so.

14. The second contention advanced is that the tentative note of disagreement overlooks the circular dated may 23, 1990 and thus the reason for holding the appellant guilty of a misconduct is a perverse finding. This argument was advanced as the second argument before the learned Single Judge.

15. The circular in question has been noted by the learned Single Judge in the first paragraph of the impugned decision. We also note the same. It reads as under:-

“CIRCULAR DATED 23.5.1990

***“DELHI ELECTRIC SUPPLY UNDERTAKING
(Municipal Corporation Of Delhi)
CIRCULAR***

Sub:- Providing non-domestic connections and other categories of connections.

Certain questions have been raised about the procedure of providing single phase/three phase electric connections in approved/regularised unauthorised and regularised unauthorised areas. The position has been clarified as under:

For providing electric connections, the different type of areas can be broadly divided into the following categories;

1) Approved areas

2) Regularised unauthorised areas,

3) Unapproved areas.

As per Office Order No. CO.II/Con-26/84-85/29 dt. 8-8-84 the regularised colonies are treated at par with the approved colonies in the matter of grant of electric connection.

Thus with the issue of the above Office Order the areas can be divided into the following two categories:

a) Unapproved areas.

b) Approved colonies/regularised unauthorised colonies.

*The policy for (giving the electric connections in un-approved colonies/non-conforming areas is clearly given in the Office Order No. CCO-22(31)/78-79/dt. 29-8-78. As approved colonies and other regularised colonies the single phase/three phase **connection are to be given by assessing the genuineness of the load by sanctioning authority.***

The non-domestic connections can be categorised into the following two categories:

i) Cases covered under requirement of Municipal Licence under Clause 417 and 421 of Municipal Act, 1957.

ii) The case for which Municipal Licences are not required under the above said clauses of Municipal Act, 1957.

In the category (i) above on submission of valid Municipal Licence, NOC is not insisted upon as it is presumed that while giving the Municipal Licence the land use for the same has been ascertained or NOC for the said NDLP purpose is there.

In the category (ii) above where no Licence is there, there being no documentation to rely upon the land use, NOC from MCD/DDA (the concerned agency) in respect of non-conforming areas is required.

The position as above is re-treated.”

16. The learned Single Judge has noted that the issue had to be considered with reference to another circular dated May 04, 1987 which has been noted by the learned Single Judge in paragraph 1 of the impugned order. We also note the same. It reads as under:-

CIRCULAR DATED 4.5.1987

***“DELHI ELECTRIC SUPPLY UNDERTAKING
(Municipal Corporation Of Delhi)
OFFICE ORDER***

Sub:- Installation of energy efficient motor pump sets for providing Tube-well connections.

In compliance to the recommendations for conservation of energy brought out in the conference of Power Ministers of State held in Delhi, it is hereby decided that while permitting electric connection to tube-wells, adherence of agricultural pumping sets to IS-10304-1986 shall be insisted upon. The installation of centrifugal pumps with less than 60% efficiency and monoblock pumps with less than 50% efficiency should be firmly discouraged. However, in very special cases where the Suptdg. Engineer (D) of the respective circle considers that the pump set being installed by the prospective consumer comes up to the recommended efficiency level, the condition of ISI certification of the motor pump set may be relaxed.

This is being issued with the approval of Addl. G.N.(T).”

(emphasis added)

17. We have already noted hereinabove, in paragraph 16, the tentative note of disagreement authored by the Disciplinary Authority wherein the circular dated May 04, 1987 has been discussed for purposes of discussion

the circular dated May 23, 1990. We have already noted hereinabove in paragraph 5 the order dated December 29, 2000 levying penalty.

18. We concur with the reasoning of the learned Single Judge in paragraph 8 to 12 of the impugned order as to why the Disciplinary Authority has acted within his jurisdiction to appreciate the evidence on the subject. It is trite that a writ Court would not re-appreciate the evidence discussed by a Disciplinary Authority; of course a finding of perversity could be a ground of challenge to the appreciation of evidence.

19. Though no argument was advanced by the learned Single Judge on subject of misconduct, with reference to the decision reported as 2007 (4) SCC 566 Inspector Prem Chand Vs. Govt. of NCT of Delhi & Ors. counsel urged that negligence simplicitor would not be a misconduct.

20. The argument overlooks the reasoning by the Disciplinary Authority against the appellant and the nature of the charge. The charge was to give benefit to consumers by overlooking the office orders on the subject of fresh agricultural connections. The charge brings out the manner in which rampant misuse of electricity was going on in the area. Agricultural land was colonized. Electricity connections were sanctioned for operating tube wells. Excess loads were drawn and electricity supplied was misused for industrial purpose. It was a double whammy for the consumers of electricity who had to pay higher tariff because electricity supply for rural consumption was billed at 1/3rd the tariff for domestic consumption and 1/5th tariff for industrial connections. Connections obtained for agricultural purposes were resulting in tariff being paid at 1/5th the rate as against if billing was for an industrial purpose. The subsidised tariff was borne by the consumers when tariff was fixed. As we all know when tariffs are fixed cross subsidization

takes place. The penalty imposed, as noted above is of reduction in the time scale of pay for a period of 4 years by 4 stages with cumulative effect. The penalty is not disproportionate and is commensurate with the misdemeanour.

21. The appeal is accordingly dismissed in limine and hence without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 14, 2015
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