

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

Writ Petition No.6753 of 2000

Between:

Capt. George A.E.Paul.
Petitioner

And

Bharath Dynamics Limited, Bhanur, Medak
Rep. by its Chairman and Managing Director,
and others.

Respondents

DATE OF JUDGMENT PRONOUNCED: **11.04.2016**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE U. DURGA PRASAD
RAO**

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments?
Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes
/ No
3. Whether Their Lordship wish to
see the fair copy of the
Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD**

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Respondents

**! Counsel for Petitioner : Sri Vikram
Pooserla**

^ Counsel for Respondents : Smt. V. Uma Devi

< Gist:

> Head Note:

? Cases referred:

- 1) (1989) 3 SCC 132
- 2) 2012 (4) MPHT 72
- 3) AIR 2015 SC 1271
- 4) AIR 1967 SC 295
- 5) (1978) 2 SCC 102

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.6753 of 2000

ORDER:

In this writ petition, filed under Article 226 of the
Constitution of India, the petitioner seeks a writ in the
nature of Certiorari declaring the order

No.BDL/6074/36191/2K dt:26.02.2000 of the Deputy General Manager (P&A), Bharat Dynamics Limited (for short "BDL"), Bhanur, Medak and the circular passed in proceedings No.BDL/04/51/32/C- P & A dt:21.10.1994 as illegal, unconstitutional and void.

2) The petitioner's case is that he was initially appointed as Assistant Manager (Security and Fire) by the respondent No.1. Later he was promoted as Deputy Manager (P & A) (Grade III) in the year 1994 and was posted as Deputy Manager (EA & SEC) in July, 1996. In January, 1998, the charge sheet vide proceedings No.BDL/Pers/K-191/98 was issued to the petitioner stating that he was absent without any sanctioned leave for 26 days between 01.03.1997 to 15.09.1997 in different spells and was also absent for 8 days in all between 01.12.1997 to 15.09.1998. The Deputy General Manager (P&A), BDL by order dt:11.02.1998 awarded a minor punishment of censure. The petitioner preferred an Appeal before the General Manager, BDL and the same was dismissed by proceedings dt:27.03.1998.

a) His further case is that, during the pendency of the said appeal, a charge sheet dt:16.03.1998 was issued to the petitioner alleging that the petitioner in his reply to the letter issued by the management, used certain language which was unbecoming of an officer and therefore, he was liable for the charges of wilful insubordination. Subsequently, another charge sheet

dt:28.03.1998 was issued to the petitioner alleging that he being officer-in-charge of Estate Administration and Security, failed to take effective and necessary steps for recovery of rents and follow up action against occupants of estate belonging to the Employer Company which resulted in accumulation of huge arrears of rents and the said act amounts to carelessness and negligence of work. Challenging the above charge sheets, the petitioner filed W.P.No.16204 of 1998 and the same was dismissed by judgment dt: 21.04.1999 holding that it was open for the petitioner to raise all permissible objections in the course of enquiry. Aggrieved, the petitioner filed W.A.No.745 of 1999 and the same was dismissed.

b) The petitioner's further case is that he was placed under suspension by the proceedings dt:12.03.1998. Challenging the same, he filed W.P.No.26447 of 1999 and this Court, by order dt: 13.03.2000 dismissed the said W.P as withdrawn giving liberty to the petitioner to seek remedies at the Departmental level.

c) The petitioner submits that as per Rule 24 of the Conduct, Discipline and Appeal Rules (for short "CDA Rules") of the BDL read with the Schedule, the Disciplinary Authority in regard to the employees in Grade III is the Managing Director and the Appellate

Authority is the Chairman. The Enquiry Officer Sri L.Dhananjaya, Deputy General Manager (Production) was appointed as Enquiry Officer to enquire into charges by an order dt:04.05.1998. The Enquiry Officer submitted his report on 23.02.2000 on the finding that petitioner was guilty of the acts of misconduct referred under Rule 5(5), (6), (9), (20) of CDA Rules of the company. The Deputy General Manager (P&A) had imposed the punishment of withholding the two increments of pay with cumulative effect and also held that the period of suspension w.e.f 12.03.1998 till the date of petitioner reporting for duty will be treated as a period not spent on duty and hence, petitioner is not eligible to any amounts other than the subsistence allowance already paid during the period of suspension.

d) The petitioner's further case is that the Deputy General Manager (P & A) had acted as Disciplinary Authority relying upon the Circular No. BDL/04/51/32-C-P & A dt:21.10.1994. The Board of Directors had delegated the Power to the Chairman and Managing Director (for short "CMD") in respect of the Disciplinary matters. The CMD in turn sub-delegated those powers as per circular dt:21.10.1994 by appointing different Disciplinary Authorities in respect of the different cadres of employees. In respect of the employees in Grade I to IV, the Disciplinary Authority is the Departmental head, not below the Grade VI. The Appellate Authority is the

Divisional Head and the Reviewing Authority is the Functional Director. The petitioner challenged the delegation and sub-delegation. He filed the writ petition challenging the legality and constitutional validity of the aforesaid order on the ground that the punishment dt:26.02.2000 imposing penalty of stoppage of two increments with cumulative effect is without power or jurisdiction as the Deputy General Manager (P & A) is not the disciplinary authority as per the CDA Rules. He also prayed that the direction may be issued to the respondents to pay the petitioner subsistence allowance @ 75% of Basic Pay and allowances from 11.09.1998 till date and continue to pay until the petitioner joined the duty.

3) The Respondents filed their counter and opposed the petition. It is contended that the petitioner earlier filed W.P.No.16204 of 1998 questioning the charge sheet issued by the Management even before the enquiry was conducted. Initially stay was granted and later vacated and writ petition itself was dismissed. Aggrieved, he preferred W.A.No.745 of 1999 which was also dismissed. He preferred one more W.P.No.26447 of 1999 and on 13.03.2000, the said Writ Petition was dismissed as withdrawn giving liberty to the petitioner to seek remedies at the departmental level. Thus in the earlier round of litigation, both the writ petitions filed by the present petitioner were dismissed and this is the

third round of litigation.

a) It is further contended that the contention in the earlier writ petition was that there was no basis for issuing charge sheet and no enquiry was conducted and now he contends that the person who issued the charge sheet is not competent. As per the decision of the Supreme Court, it is not open for the parties to start raising various contentions from time to time and they have to take all the pleas at a time as otherwise the principle of *res judicata* will be applicable.

b) The further contention of the respondents is that the petitioner was appointed as Assistant Manager (Security and Fire) in the year 1989 and subsequently he was promoted as Deputy Manager and on his promotion he was given additional charge of Estate Administration. However, right from beginning he was not regular to his duties and not adhering to the rules. This was communicated to him so many times. Even after promotion, his probation was extended for 6 months for his irregular attendance and performance. BDL is a Defence undertaking engaged in manufacture of sophisticated ammunition and therefore, they need Vigilance, Security and timely administrative decision in the Township as well as in the plant. The Estate Administration is an essential service department and as the incharge of the Township, the petitioner is supposed to be available in the township round the clock which is

evident from the circulars issued from time to time viz., 24.11.1994, 22.03.1996, 15.10.1998 and 25.02.1998. The petitioner chosen to disobey the orders of his superiors and neglected his duties entrusted to him. For these reasons he was placed under suspension on 12.03.1998 pending enquiry. As per Rule 20 of CDA Rules, when the disciplinary action is contemplated an employee can be placed under suspension pending issuance of charge sheet and therefore, basing on this clause he was placed under suspension and subsequently charge sheet was issued as his continuation, in the opinion of superiors, would have effected the administration of township adversely.

c) Regarding the delegation of powers, the respondents submitted that Rule 24 of CDA Rules says Disciplinary Authority is the one, specified in the schedule or any other higher authority that may impose any of the penalties specified in Rule 23. As per schedule, for an employee in Grade I to V, the Disciplinary Authority is Managing Director. The petitioner is in Grade III. The Board has approved in their meeting held on 30.04.1994 (sic 30.09.1994), the delegation of powers to CMD in respect of disciplinary matters covering employees upto and including Grade IV. As per delegation of powers (revised), Board of Directors in their meeting held on 28.12.1993 passed a resolution and the same was issued on 01.01.1994,

authorising the CMD to sub-delegate his powers. So as per the above delegation, it is clear that CMD is empowered to sub-delegate any of the powers delegated to him to any lower authorities depending upon the need. Therefore, the CMD has sub-delegated the power to lower authorities. The General Manager (P & A) after approval of CMD vide note dt:20.10.1994 has issued a circular dt:21.10.1994 in regard to the sub-delegation of disciplinary powers. The said circular was issued as a standard distribution for the general information of all the employees. Hence the allegation that the disciplinary authority is not DGM (P & A) is not true and in view of the above circular, he is the Disciplinary Authority in respect of the petitioner. The said DGM (P & A), has conducted enquiry and issued punishment. In this case the Appellate Authority is the Divisional Head i.e, GM (BU) and the Reviewing Authority is the Functional Director i.e, Director (Technical). Hence the allegation of the petitioner that he could not avail the benefit of appeal is not correct as the aforesaid circular has clearly indicated the Appellate Authority and Reviewing Authority.

d) Regarding the payment of subsistence allowance, the respondents submitted that as per Rule 21 (1)(2) of CDA Rules, the petitioner is eligible for subsistence allowance @ 50% of his Basic Pay, provided that the disciplinary authority is satisfied that the employee is

not engaged in any other employment or business or profession or vocation. Further, if the suspension period exceeds 6 months, the subsistence allowance can be increased to 75% if in the opinion of the authority, the period of subsistence allowance is prolonged for the reasons to be recorded not directly attributable to the employee under suspension. The subsistence allowance can be decreased to 25% if in the opinion of the authority, the period of suspension is prolonged for the reason directly attributable to the employee under suspension. As per the above rule, the petitioner was being paid 50% subsistence allowance. The petitioner prolonged the domestic enquiry proceedings by seeking adjournments from time to time for the reasons best known to him, though all the points have been recorded in the proceedings and all the doubts have been clarified by the management. In that view, the management should have revised the subsistence allowance to 25% from 50% as delay was directly attributable to the petitioner. However, as a good gesture, he was allowed to continue to receive 50% of subsistence allowance though period of 6 months was over long back, till his suspension was revoked on 26.02.2000. Thus the respondents contended that though the delay in completion of the disciplinary enquiry was directly attributable to petitioner, he was paid 50% allowance inspite of the authorities had power to reduce it to 50%

as a good gesture. The respondents finally contended that there are no merits in the writ petition and the same may be dismissed.

4) Heard arguments of Sri Vikram Pooserla, learned counsel for petitioner and Smt.V.Uma Devi, learned Counsel for respondents.

5) Admittedly the petitioner was initially appointed as Assistant Manager (Security & Fire) in the respondent company and later he was promoted as Deputy Manager (P & A) (Grade III) in the year 1994 and he was posted as Deputy Manager (EA & SEC) in July, 1996. While-so, charge sheets Nos.BDL/K/03/98/K-191 dt:16.03.1998 and BDL/K/03/98/ K-191 dt:28.03.1998 were issued against the petitioner. Prior to the issuance of the aforesaid charge sheets, he was already placed under suspension vide order dt:12.03.1998. The charges in brief with which we are not much concerned are firstly, the petitioner not only failed to obey the reasonable orders of the superiors but also replied in a manner which is unbecoming of an Officer and thus liable for wilful insubordination, committing the act of subversiveness indiscipline and acting in a manner prejudicial to the interest of the company and secondly, he failed to collect the rents from the shopkeepers, contractors as office incharge of Estate Administration and thus rendering himself liable for neglect of the work which is also prejudicial to the interest of the company. Sri L.Dhananjaya, Deputy

General Manager (Production) was appointed as Enquiry Officer to enquire into the charges by an order dt:04.05.1998. The said officer submitted his enquiry report on 23.02.2000 and thereupon the Deputy General Manager (P&A) in his order dt:26.02.2000 vide Ref. No.BDL/6074/36191/2K imposed punishment on petitioner withholding two increments of pay with cumulative effect. At this juncture, it must be made clear that the petitioner is not invoking this Court's jurisdiction to sit on the correctness of the enquiry report or the proportionality of the punishment but his main attack as can be seen from the writ petition averments is that the Deputy General Manager (P & A) cannot act as a Disciplinary Authority to impose punishment on him because the petitioner being a Grade III employee in BDL, his Disciplinary Authority is the Managing Director and the Appellate Authority is the Chairman and therefore, the Deputy General Manager (P & A) acted without authority and jurisdiction. It is his further contention that the Board of Directors have no power to delegate the disciplinary matters to the CMD as the CDA Rules do not permit such delegation and further, the CMD in turn, had no power to sub-delegate his disciplinary powers on some others, as he did, vide proceedings No.BDL/04/51/32C-P & A dt:21.10.1994. So precisely his contention is that the Deputy General Manager (P&A) acting upon the sub-delegation

proceedings dt:21.10.1994 is illegal, unconstitutional and void.

He sought to buttress his stand that delegation or sub-delegation of powers not backed up by statute or rule and consequential actions taken are bad-in-law, through the following decisions:

(i) ***Marathwada University vs. Seshrao Balwant Rao Chavan***^[1]

(ii) ***Devashish Dutta vs. Nepa Limited Nepanagar***^[2]

6) Per contra, the contention of the respondents is that the act of DGM (P & A) in imposing punishment on the petitioner basing on the circular No.BDL/04/51/32/C-P & A dt:21.10.1994 is valid in the eye of law as the delegation of the disciplinary powers by the Board to CMD and his sub-delegation of those powers as per the aforesaid circular are fully backed up by the CDA Rules.

7) In the light of above rival contentions, the points that arise for determination are:

(i) *Whether the Board of BDL Company was empowered to delegate powers relating to disciplinary matters of its employees to the Chairman-cum- Managing Director?*

(ii) *If Point No.1 is held in affirmative, whether CMD in turn is empowered to sub-delegate his powers relating to disciplinary matters to some others?*

(iii) *Whether the authorities committed any illegality*

in not granting 75% subsistence allowance to the petitioner?

(iv) *To what relief?*

8) **POINT No.1:** The law of Delegation of Powers is no more *res integra*. Hon'ble Apex Court happened to delineate the meaning of delegation of powers; the manner of delegation of Powers; the distinction between the delegation of legislative and administrative powers; sub-delegation of powers etc., aspects. In ***Siddhartha Sarawgi vs. Board of Trustees for the Port of Kolkata and others***^[3], the Hon'ble Apex Court was engaged with the question as to whether there is an exception to the maxim *delegatus non potest delegare* and while answering the same, it has discussed the aforesaid aspects. Regarding the act of delegation, it observed thus:

"Para 2: Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Black's Law Dictionary as "the act of entrusting another with authority by empowering another to act as an agent or representative". In P. Ramanatha Aiyar's, The Law Lexicon, "delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself".

Thus from the above, we understand the delegation is an act of an authority creating or commissioning a delegate which may be an individual or a body of persons upon which powers are conferred by the delegating authority to do certain acts in the absence of which, the authority were to do those acts. Then speaking on the necessity to delegate the powers by an authority, the Apex Court in the above judgment observed as follows:

“Para 6: Practical necessities or exigencies of administration require that the decision making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires. Thus, the maxim delegatus non potest delegare, gives way in the performance of administrative or ministerial tasks by subordinate authorities in furtherance of the exercise of the delegated power by an authority.”

Thus, through the above observation the Apex Court carved out an exception to the maxim *delegatus non potest delegare* and held that the administrative exigencies and necessities may impel the authority to delegate tasks on another authority or person. The above principle was laid down in an earlier decision of the Apex Court reported in ***Barium Chemicals Limited and another vs. The Co. Law Board and another***^[4], wherein it was held in Para 36 as follows:

...the maxim delegatus non potest delegare must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima

facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.

The same principle was also reiterated in ***State of Uttar Pradesh vs. Batuk Deo Pati Tripathi and another***^[5] as follows:

“Para 25: xx xx

The maxim delegatus non-potest delegare does not enunciate a rule knows no exception; it is a rule of construction to the effect that "a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language, scope or object of the statute.”

In ***Marathwada University***’s case (1 supra) cited by the petitioner also the above principle was reiterated.

“Para 20: xx xx.. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under Section 24(1) (xxix) of the Act. It is, therefore, futile to contend that the Vice Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power it must be exercised only by that body. It cannot be exercised by others unless it is delegated. (Emphasis supplied)

The law must also provide for such delegation. Halsbury's Laws of England (Vol.1 4th Ed. para 32) summarises these principles as follows:

32. Sub-delegation of powers. In accordance with the maxim delegatus non protest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind."

9) So the principle reiterated by the Apex Court on the Delegation of Powers is to the effect that when a statute prescribes a particular authority or body or a person to exercise certain power, it must be exercised only by that authority or body or a person and it cannot be delegated to some others. However, the maxim *delegatus non potest delegare* is not a rigid rule of law but only a rule of construction which means in certain exigencies, concerned authorities can delegate its powers on some other authority or an individual provided, such delegation/sub-delegation is authorised or permitted by the express words or necessary implication in the concerned statute. With this principle in mind, it has now to be seen whether the Board of BDL Company was empowered to delegate powers relating to disciplinary matters to the CMD. Admittedly, the BDL employees including the petitioner are governed by the

Bharat Dynamics Limited Conduct, Discipline and Appeal Rules, 1975 in the matter of initiation of disciplinary proceedings and imposing penalties against delinquent employees. As per Rules Book, a copy of which is furnished by both parties, 38 Rules were framed by the authorities, of which Rules 3, 21 and 24 are germane for our case. Rule 3 deals with definitions, Rule 21 relates to subsistence allowance which will be discussed while dealing with Point No.3, whereas Rule 24 deals with the power of Disciplinary Authority.

10) Rule 3(d) defines Board as:

*“**Board**” means the Board of Directors of the Company and includes in relation to the exercise of powers, any Committee of the Board/Management or any officer of the Undertaking to whom the Board delegates any of its powers.*

So from the above, the definition ‘Board’ in relation to the exercise of powers includes:

- (i) Board of Directors of the Company
- (ii) The Committee of the Board/Management or any officer of the undertaking to whom the Board **delegates any of its powers.**

The above definition tells us that in the matter of exercise of the powers of the Board, the Board means not only the Board of Directors of the Company but also any Committee Members of the Board, Management or any Officer of the Undertaking upon whom the Board delegates any of its powers. Thus the above definition makes it clear that the CDA Rules empowered the Board

to delegate any of its powers on any committee of the Board/Management or even any Officer of the Undertaking also. Therefore, the Board draws the power of delegation from the Rule 3(d) of CDA Rules itself. Backed by this power, the Board in its 109th meeting held on 30.09.1994 delegated its powers on disciplinary matters to the CMD. The resolution on Item No.11 (v) a copy of which is filed by the respondent, reads thus:

“Item No.11 (v) Delegation of powers to CMD in respect of disciplinary matters:

11(v).1 The Board approved delegation of powers to Chairman and Managing Director in respect of disciplinary matters covering employees upto and including Grade-VI and to stipulate disciplinary powers in respect of Grade-VII and Grade-VIII.”

As already discussed supra, the general principle in the maxim is that *delegatus non potest delegare*, but this maxim has an exception to the effect that delegation is permissible if it is authorised by the express language of the statute or by necessary implication. In the instant case by virtue of the definition in Rule 3(d), such an exception is carved out paving the way for the Board to delegate the disciplinary powers on CMD. Hence, it is preposterous for the petitioner to contend that the Board has no power to delegate the disciplinary matters to the CMD. Such a contention is thwarted by the CDA Rules. So point No.1 is concerned, it is held that the

Board of BDL Company was empowered to delegate the powers relating to disciplinary matters to the CMD.

11) **POINT No.2:** Since Point No.2 is held in affirmative, it has now to be seen whether the CMD in turn is empowered to sub-delegate his powers relating to disciplinary matters to some others. In this context, learned counsel for respondents produced a book of Delegation of Powers in BDL Company and took me through the resolution dt:01.01.1994 of the Board under the heading "Revised Delegation of Powers". It reads thus:

SECRET

BHARAT DYNAMICS LIMITED
(Corporate Office)

*Phone : 239081 Ext.416
Hyd-500 258*

Kanchanbagh,

No.BDL/04/22/018

1st

January, 1994

REVISED DELEGATION OF POWERS

The question of revising the Schedule of Delegation of Powers as approved by the Board in June, 1976 and June, 1986 and subsequently amended from time to time, has been under consideration for sometime. Proposals in this regard had been considered at the 104th meeting of the Board held on 28th December, 1993 and the Board passed the following Resolution:

After detailed discussions, the Board approved the revised Delegation of Powers as set out in the Annexure 'A' together with General Principles governing the Delegation of Powers as set out in Annexure 'B' in the proposal, subject, however, to the condition that the overall responsibility would lie with the CMD and authorised CMD to sub-delegate all or any of the powers delegated to him to lower authorities depending upon the need from time to time, in super-session of all the earlier Delegation of Powers and further, subject to the provisions of

Memorandum and Articles of Association of the Company and Companies Act and Canons of Financial Propriety and directives issued by the President of India from time to time, with an addition in the remarks against item 1 as "subject to approved Manpower Plan and Report to the Board."

2. *The decisions/directions of the Board contained in the above Resolutions may please be noted for strict compliance and observance.*

3. *The Revised schedule of Delegation of Powers shall come into force with effect from 1st January, 1994.*

Kindly acknowledge receipt.

Sd/-
(H.B.MURTHY)
COMPANY SECRETARY

Encl: as stated

Distribution:
ALL CGMs/GMs.

Copy to:
CMD

Basing on the above resolution dt:01.01.1994, learned counsel submitted that the Board authorised CMD to sub-delegate all or any of the powers delegated to him to lower authorities depending upon the need from time to time. Drawing the power of sub-delegation from the said resolution, the CMD got issued a circular dt:21.10.1994 and sub-delegated his powers by appointing different disciplinary authorities for different cadres of the employees and as his act is backed up by the power of sub-delegation conferred on him, it is futile for the petitioner to contend that the CMD has no power of sub-delegation.

a) I have gone through the resolution dt:01.01.1994

under the caption "Revised Delegation of Powers". The details relating to Annexure 'A' and 'B' referred in the resolution are given in the book. Annexure 'A' consists of different items like:

- A. Establishment
- B. Purchases
- C. Contingencies and Miscellaneous
- D. Works
- E. Sales
- F. Research and Development
- G. Capital Sanctions.

As per Annexure 'A' in respect of those Seven (7) items, the powers are delegated on different officers with which we are not concerned now. So far as Annexure 'B' is concerned, it relates to general principles governing the Delegation of Powers (vide Pg. 36 and 37) Principle No.2 reads thus:

"The powers delegated to CMD can be further sub-delegated by him".

Thus as per the resolution dt: 01.01.1994, the Board has approved the revised Delegation of Powers as contained in Annexure 'A' and Annexure 'B' and as per Principle No.2 of Annexure 'B', the Board has approved that powers delegated to CMD can be further sub-delegated by him. When the Board's resolution dt:30.09.1994 and 01.01.1994 are conjunctively studied,

they give us an understanding that the Board at first delegated the powers on disciplinary matters to CMD and later further resolved that the powers delegated to CMD can be further sub-delegated by him. It is by virtue of the aforesaid power of sub-delegation, the CMD got issued the circular dt:21.10.1994 through the General Manager. The Circular reads as follows:

BHARAT DYNAMICS LIMITED
HYDERABAD - 500 258

BDL/04/51/32/C-P&A
21.10.1994

Dt:

CIRCULAR

Sub: Sub-delegation of Disciplinary Powers.

:--:

Attention is invited to Rule No.24, 32 & 33 of the BDL Conduct, Discipline and Appeal Rules concerning Disciplinary Authority, Appellate Authority and Reviewing Authority respectively. Similarly, attention is invited to Standing Order No.3.3 defining MANAGEMENT, and Standing Order No.28 referring to/Competent/ the Authority and Standing Order No.30 referring to the Appellate Authority.

The Board of Directors in the meeting held on 30th September, 1994 have delegated powers to the Chairman-cum-Managing Director in respect of Disciplinary matters. It has now been decided by the Chairman-cum-Managing Director to sub-delegate these powers as indicated below:

I. In respect of employees covered by the Standing Orders of the Company.

Sl.No.	Company of	Disciplinary
	Appellate	
	Employees	Authority
	Authority	

1 . Employees in Groups 'A' to
Sectional/ Divisional
'F' and others covered by Departmental Head,
Head
Standing Orders not below Gr-IV level

II. In respect of employees covered by the Conduct, Discipline and Appeal Rules of the Company.

<i>Sl. No.</i>	<i>Company of Reviewing Employees Authority</i>	<i>Disciplinary Authority</i>	<i>Appellate Authority</i>
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1.	Employees in Functional Gr-I to IV Head	Departmental head, not below Gr-VI	Divisional Head
2.	Employees in C.M.D Gr-V to VI Director	Divisional Head	Functional
3.	Employees in Board of Gr-VII Directors	Functional Director concerned or CMD	C.M.D
4.	Employees in Board of Gr-VIII Directors	C.M.D	Sub-Committee of the Board, if Constituted or the Board of Directors

The above sub-delegation comes into force with immediate effect.

Sd/-

(P.V.M.KRISHNA RAO)
GENERAL MANAGER

(P&A)

STANDARD DISTRIBUTION

12) As per the aforesaid circular, in respect of employees in Grade I to IV, the concerned disciplinary authority is either the Departmental Head or the Officer not below Grade VI. In the instant case, the order of punishment (vide No.BDL/6074/36191/2K dt:26.02.2000) was issued by Deputy General Manager (P&A) and he is in the rank of Grade VI. In this context, Rule 24 lays down as follows:

*“Rule 24: **Disciplinary Authority:***

The disciplinary authority, as specified in the schedule, or any authority higher than it may impose any of the penalties specified in Rule 23 on any employee.”

In the Schedule annexed to the CDA Rules, it is mentioned that for categories of the employees in Gr-I to IV, the Disciplinary Authority is the Departmental Head or the authority not below Grade VI. It appears, this Schedule issued in tune with the circular dt:21.10.1994. Therefore, it cannot be contended for a moment that the DGM (P&A) cannot act as disciplinary authority on the basis of the circular dt:21.10.1994 and that the circular itself is illegal as the CMD has no power of sub-delegation for the reason already narrated supra.

12) The citations relied on by the petitioner will not help his cause.

a) In ***Devashish Dutta***'s case (2 supra), the contention of the petitioner who was an employee in Nepa Mills Limited was that, his Appointing Authority and the Disciplinary Authority was the General Manager but the charge sheet and dismissal order were issued by one Sri S.C.Sharma, who was only a Deputy General Manager (Incharge Manager) and therefore, the proceedings were vitiated. This argument was found favour with the High Court of Madhya Pradesh which held that the office order only conferred the power of Sri S.C.Sharma, the Deputy General Manager to discharge the duties of the General Manager (Works) and to exercise all the powers of that post but the said order does not designate him nor does it empower him to discharge the functions of an Appointing Authority or the Disciplinary Authority as contemplated under the Conduct, Discipline and Appeal Rules of the Company. Thus by facts, the said decision can be distinguished. As in the instant case, the CMD was delegated with the powers of disciplinary matters and he was also given power to sub-delegate the powers and accordingly he fixed the different disciplinary authorities for different cadres of employees and the DGM (P&A) was the suitable disciplinary authority for the petitioner who was a Grade III Employee.

b) In **Marathwada University's** case (1 supra), before Executive Council of the University, one Officer namely Mr. N.B.Chavan placed an enquiry report in respect of the misdeeds of the respondent holding that his enquiry did not find anything against respondent and the Executive Council in its meeting entrusted the said report to Vice Chancellor who was present in the meeting to take a decision and he agreed to take a decision in about a month. However, without recommending to the Executive Council either to accept or reject the report with his remarks, it appears, the Vice Chancellor directed a departmental enquiry against the respondent and basing on the said enquiry report, the Vice Chancellor decided to dismiss the respondent. The Executive Council in its meeting dt:26/27.12.1985 ratified the action of the Vice Chancellor and confirmed the dismissal of the respondent. In that context, the Apex Court examined the question whether the Vice Chancellor was competent to direct disciplinary action against the respondent. It appears, Hon'ble Apex Court agreed in view of Sec.84 of the Marathwada University Act, 1974 that the Executive Council could delegate its power of examination of the report to the Vice Chancellor. However, sofaras the action of the Vice Chancellor to order for enquiry is concerned, the Apex Court observed thus:

"Para 30: These observations again are of little

assistance to us since we have already held that there was no prior delegation of power to the Vice-Chancellor to take disciplinary action against the respondent. There was no subsequent delegation either. Therefore, neither the action taken by the Vice-Chancellor, nor the ratification by the Executive Council could be sustained.

Thus in this context also the facts are quite different from the facts in case on hand. Thus Point No.2 is concerned, it is held that the CMD had the power to sub-delegate his powers relating to disciplinary matters and the consequent action of DGM (P&A) is not vitiated by illegality or irregularity.

13) **POINT No.3:** This point is concerned, Rule 21 of the CDA Rules, reads thus:

*“Rule 21: **Subsistence Allowance:***

(1) An employee under suspension shall be entitled to draw subsistence allowance equal to 50 percent of his basic pay provided the disciplinary authority is satisfied that the employee is not engaged in any other employment or business or profession or vocation. In addition he shall be entitled to Dearness Allowance admissible on such subsistence allowance and any other compensatory allowance of which he was in receipt on the date of suspension provided the suspending authority is satisfactory that the employee continues to meet the expenditure for which the allowance was granted.

(2) Where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows: -

- i. *The amount of subsistence allowance may be increased to 75 percent of basic pay and allowances thereon if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the employee under suspension;*
- ii. *The amount of subsistence allowance may be reduced to 25 per cent of basic pay and allowance thereon if in the opinion of the said authority, the period of suspension has been prolonged due to the reasons to be recorded in writing, directly attributable to the employee under suspension.*

(3) If an employee is arrested by the Police on criminal charge and bail is not granted, no subsistence allowance is payable. On grant of bail, if the competent authority decides to continue the suspension, the employee shall be entitled to subsistence allowance from the date he is granted bail."

Thus as per the above Rule, the increase or decrease of the subsistence allowance depends upon the conduct of the concerned employee who was under suspension. It is the contention of the respondent that the petitioner prolonged the domestic proceedings by seeking adjournments from time to time and he did not cooperate in that regard and though the authorities had power to reduce the subsistence allowance to 25% but out of sympathy continued to grant 50% of subsistence allowance. In this context, a perusal of the copy of enquiry report enclosed to the material papers submitted by the petitioner would show that Enquiry

Officer clearly noted as to how the petitioner has not cooperated for the enquiry by seeking adjournments after adjournments though all his doubts were clarified. In that view of the matter, his claim that he should have been paid 75% subsistence allowance cannot be countenanced. This point is answered accordingly.

14) **POINT No.4**: In the result, in view of the findings in Points 1 to 3, I see no merits in petitioner's case and accordingly, the writ petition is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 11.04.2016
SCS

[\[1\]](#) (1989) 3 SCC 132

[\[2\]](#) 2012 (4) MPHT 72

[\[3\]](#) AIR 2015 SC 1271

[\[4\]](#) AIR 1967 SC 295

[\[5\]](#) (1978) 2 SCC 102