

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

+ **RSA No. 42/2015 and C.M. Appl. No. 1800/2015 (for stay under Order XLII read with Order XLI Rule 5 read with Section 151 CPC), C.M. Appl. No.1801/2015 (under Order XLII read with Order XLI Rules 27/25 CPC)**

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29th July, 2016

BSES YAMUNA POWER LTD.

..... Appellant

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

versus

SH. M.C. GOEL

....Respondent

Through: Mr. M.K. Bhardwaj and Mr. S. Kashyap, Advocates with respondent in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/employer/appellant (original employer being Delhi Vidyut Board) impugning the concurrent Judgments of the courts below; of the Trial Court dated 29.4.2013 and the First Appellate Court dated 1.11.2014; whereby the courts below have decreed the suit for declaration

filed by the respondent/plaintiff/employee for setting aside the Order of the Disciplinary Authority dated 4.8.2000 imposing the punishment of reduction in one rank upon the respondent/plaintiff.

2. The facts of the case are that the employer of the respondent/plaintiff issued a charge-sheet dated 24.9.1992 on the ground that the respondent/plaintiff colluded with persons who were committing theft of electricity for getting undue benefits, by not getting FIR lodged with the police and disconnecting the electricity supply. The Article of Charges reads as under:-

“2. ARTICLE OF CHARGES

ARTICLE-I “Shri M.C. Goel, A.E., while working as such in Zone no. 2102 Distt, Krishna Nagar during the period 1990-92, acted with malafide intention, ulterior motives and with a view to attend undue benefit to the persons who illegally interfered/tempered with the DESY service line, did not take any action for getting an FIR lodged with Police and to disconnect the supply after obtaining the approval of the competent authority as required under office order No.CC022/CBN/77-78/6846 dt. 28-31/10/77 and office order No.COII/Com.26/89-90/7,dt. 31.7.89.

ARTICLE-II The said Shri M.C. Goel while working in the aforesaid capacity during the aforesaid period with ulterior motives and malafide intentions did not take any action for removal/disconnection of the supply against two bogus/illegal connections installed at the premises No.6932, Arya Samaj Gali (Hanuman Market), Gandhi Nagar and thus extended undue benefit to the users of supply against these connections.

Thus, Shri M.C. Goel failed to maintain absolute integrity and devotion to duty and violated rule 3(i) of the CCS (Conduct) Rules, 1964.”

3. An Inquiry Officer was appointed. The respondent/plaintiff only appeared in some of the hearings and thereafter he failed to appear. Inquiry

Officer consequently submitted his *ex parte* report against the respondent/plaintiff and on the basis of which the disciplinary authority issued to the respondent/plaintiff a show cause Notice dated 11.4.2000 (Ex.PW1/3) for dismissal from service. The respondent/plaintiff responded to the show cause notice vide his Reply dated 09.6.2000 (Ex.PW1/4). The Disciplinary Authority then passed its Order dated 4.8.2000 (Ex.PW1/5) only imposing the punishment of reduction in one rank. The Order of the Disciplinary Authority dated 4.8.2000 notes that a lenient view is taken because respondent/plaintiff was to retire on 31.5.2002 and the stiffer punishment of dismissal from service would adversely affect the family members of the respondent/plaintiff.

4. Respondent/plaintiff filed the subject suit impugning the order passed by the disciplinary authority. In the suit, three basic aspects were pleaded. The first was that the disciplinary proceedings were vitiated on account of violation of the principles of natural justice. The second ground was that the findings of the Inquiry Officer were perverse. Thirdly and finally, it was stated that the punishment imposed upon the respondent/plaintiff was by AGM (Admin.), but this post was already abolished when the first employer Delhi Electricity Supply Undertaking was merged and taken over by Delhi Vidyut Board, and for which purpose respondent/plaintiff relied upon the Gazette

Notifications dated 24.2.1997 and 27.2.1997, Ex.PW1/1 and Ex.PW1/2 respectively showing that on constitution of the Delhi Vidyut Board, the post of AGM (Admin.) was abolished and it became the post of Member (Admin.).

5. I may note that the plaint only makes general averments with respect to the first two aspects pleaded of violation of the principles of natural justice and the order of the disciplinary authority being vague. In order to appreciate the lack of adequate and proper pleading, reference would be required to be made to paragraphs 5, 7, 9, 11 and 12 of the plaint and these paragraphs read as under:-

“5. That the enquiry officer, mis-conducted himself and the inquiry proceedings. The enquiry report and findings are therefore, vitiated and non-est inter-alia on the ground that the chargesheet has been issued by an incompetent authority. The learned inquiry officer has also not been appointed by a duly authorized and competent officer. Not only this but the Ld. Inquiry officer also failed to apply his judicial mind to the peculiar facts and circumstances of the present case. The conclusions and findings of the inquiry officer are not based on any evidence or any other material on record, rather the same are based on conjectures and surmises. The inquiry proceedings and the report are therefore, vitiated.

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7. That the learned inquiry officer also failed to appreciate that plaintiff was entrusted with the work of attending urgent Court cases of erstwhile Delhi Vidyut Board, and breakdowns in his area as the same was VVIP area during the relevant period in which enquiry officer, rushed up in the matter with undue haste and proceeded ex-parte against the plaintiff, inspite of the fact that he was duly informed by the immediate superior officer of the plaintiff. Not only this but no notice with regard to the ex-parte proceedings was served on the plaintiff by the inquiry officer. Even the copy of the written brief of the prosecution was not served on the Plaintiff. So much so that the copy of inquiry report was also not served on the plaintiff. It is the established principle of law that failure on the part of the competent authority to provide the charges official with report of the enquiry, amounts to denial of

reasonable opportunity as contemplated by law, and entire enquiry proceedings stand vitiated.

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9. That in the present case virtually no opportunity of being heard, as contemplated under the provisions of law was ever afforded to the plaintiff in the enquiry proceedings and the report is therefore, vitiated illegal against principle of natural justice, without jurisdiction and null & void.

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11. That the alleged disciplinary authority as already pointed out also without applying his judicial mind to the peculiar facts and circumstances of the present case passed a stereo type and non-speaking order dated 04.08.2000 thereby imposing major penalty of reduction in rank, to the next lower post of Supdt (tech) now JE till his retirement on attaining superannuation on the basis of illegal inquiry proceedings and report.

12. The punishment order dated 04.8.2000, apart from being without jurisdiction, is also illegal, arbitrary, violative of principles of natural justice, uncalled for and void ab-initio. The plaintiff also filed a review petition against order dated 01.08.2000 to the competent authority but the same was not even considered, as plaintiff has not received any reply till today even after waiting for such a long time.”

6. It may be noted at this stage that the stand of violation of the principles of natural justice was taken up with respect to three heads. The first was that the Inquiry Officer proceeded *ex parte* against the respondent/plaintiff without issuing notice, the second head was that the report of Inquiry Officer was not given to respondent/plaintiff and the third head was that the order passed by the disciplinary authority is a non-speaking order not dealing with the contentions of the respondent/plaintiff given in the reply to the show cause Notice dated 11.4.2000.

7. Appellant/defendant contested the suit and denied violation of the principles of natural justice. In the written statement, it was the case of the appellant/defendant that the respondent/plaintiff did not appear in the inquiry proceedings except on two dates of 11.9.1998 and 23.10.1998 and therefore the Inquiry Officer proceeded *ex parte* against him. It is also denied that the Inquiry Officer's report was illegal and bad in law. It is also pleaded that the disciplinary authority passed the order after application of mind and on agreeing with the detailed findings of guilt given by the Inquiry Officer and that in fact whereas in the show cause notice penalty of dismissal was proposed but a lenient view was taken on account of the retirement of the respondent/plaintiff happening in around two years and consequently punishment only of reduction of one rank was imposed upon the respondent/plaintiff. The appellant/defendant also took up a plea that vide Office Order dated 25.5.1999, AGM(Admin.) is the disciplinary authority so far as the respondent/plaintiff is concerned as respondent/plaintiff was an Assistant Engineer (A.E.) and appointing authority of Assistant Engineer (A.E.) is AGM (Admin.)

8. The following issues were framed on 15.3.2004 by the trial court:-

“(1) Whether the penalty of reduction in rank was imposed on the plaintiff unfairly without following the procedure prescribed in law & not following the principles of natural justice? OPP

- (2) Whether the order of punishment was not issued by the competent authority? OPP
- (3) Whether the plaintiff is liable to pay ad-valorem court fee on the plaint? OPD
- (4) Whether the Plaintiff is entitled to any relief if so what relief? OPP”

9(i) Respondent/plaintiff filed and proved the following documents:-

“Ex.PW1/1 is the copy of Delhi Gazette dated 24.02.1997

Ex.PW1/2 is the copy of another gazette notification dated 27.02.1997

Ex.PW1/3 is the copy of show cause notice dated 11.04.2000

Ex.PW1/4 is the representation dated 09.06.2000

Ex.PW1/5 is the copy of punishment order dated 04.08.2000

Ex.PW1/6 is the copy of notice dated 15.05.2002

Ex.PW1/7 to Ex.PW1/9 are the postal receipt, UPC an AD receipts respectively.”

(ii) Appellant/defendant examined Sh. Vishnu Prasad, Accounts Assistant, DW1 who was duly cross-examined.

10. Trial Court has held issue no.1 in favour of the respondent/plaintiff and against the appellant/defendant by observing as under:-

“24. It is argued on behalf of the defendant that the courts cannot rule as to in which manner the inquiry is to be conducted and that the extent of judicial intervention can only be on the aspect of procedure. It is argued that due process was followed and a charge sheet was issued against the plaintiff. The plaintiff gave no response to the charge sheet and consequently, he was proceeded ex-parte and an ex-parte order was passed. Plaintiff, during his cross-examination has admitted that opportunities of hearing were given to him.

25. Plaintiff had filed reply along with certain documents in answer to the show cause notice which were not considered on merits by the department. Perusal of Ex.PW1/5 shows that the Ld. Enquiry Officer has merely factually stated that there is no merit in the reply of the plaintiff without stating as to what was the defence of the plaintiff or giving reasons therefore. The Ld. Enquiry Officer has further failed to discuss the evidence, if any, against the plaintiff and has proceeded to imposing a major penalty of reduction in rank.

26. It was incumbent upon the inquiry officer to question the plaintiff, broadly on the evidence appearing against him if the plaintiff did not offer himself for examination as a witness. This is the mandatory provision of CCS(CCA) Rules.

27. It has been held in State of **Andhra Pradesh and Others v. Chitra Venkata Rao (1965 2 SCC 557)**:

“The court is concerned to determine whether the inquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated”.

“The Courts may interfere where the department proceedings have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or violation of statutory rules prescribed in the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at the conclusion”.

28. It has been held in **Ministry of Finance & Anr. V. SOB. Ramesh, JT 1998 (1) S.C. 319** that

“even if the officer/plaintiff has set him ex-parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the inquiry thereafter. Even if the inquiry authority did not choose to give the applicant/plaintiff as opportunity to cross-examine the witness examined in support of the charge, he should have given him the opportunity to appear and then proceeded to question him under sub-rule 18 of Rule 14 CCS (CCA) Rules. The omission to do so was a serious error committed by the inquiry authority”

29. In the instant suit, no evidence is shown to have been led against the plaintiff in the departmental proceedings much less, was any opportunity

given to plaintiff to cross-examine witness or was any evidence was put to the plaintiff for questioning in compliance of sub-rule 18 of Rule 14 CCS (CCA) Rules.

30. It is held that the penalty of reduction in rank was imposed on the plaintiff unfairly without following the procedure prescribed in law & not following the principles of natural justice. The issue stands decided in favour of plaintiff accordingly.”

11. With respect to issue no. 2 of whether punishment was imposed by the correct and competent authority, this was also held in favour of the respondent/plaintiff and against the appellant/defendant in terms of the following observations:-

“31. Plaintiff has argued that the time of initiation of inquiry Delhi Electricity Supply (hereinafter referred to as DESU) which was a department of MCD was in existence. Delhi Vidyut Board (hereinafter referred to as DVB) was created on 24.02.1997.

32. The impugned order dated 04.08.2000 was passed under the Old Act by newly constituted DVB. It is argued that under the New Act, the powers of the Member Administration was limited with respect to administration matter only.

33. The post of Additional General Manager, Administration who passed the punishment order, was non existent at the time of initiation of inquiry under the Old Act.

34. The retrospective operation of criminal law is prohibited by the Constitution of India. As the post of Additional General Manager was not in existence at the time of initiation of the inquiry, the order passed by the Additional General Manager is in violation of the spirit of the Constitution. Accordingly, the order cannot be said to have been passed by a competent authority. This issue is decided in favour of the plaintiff and against the defendant.”

12. Learned counsel for the appellant/defendant argued that the findings and conclusions of the courts below are completely perverse and illegal, inasmuch

as, the fact of the matter is that as many as 21 opportunities were provided to the respondent/plaintiff in the inquiry proceedings but he chose not to attend. Reliance is also placed by the appellant/defendant on paragraph 7 of the plaint, as reproduced above, and which effectively in so many words shows that respondent/plaintiff did not attend the inquiry proceedings on the ground that he was stuck due to breakdown in VVIP area and was attending urgent court cases in the relevant period. It is also argued that contention of the respondent/plaintiff is misconceived that Inquiry Officer's report was not submitted to him, inasmuch as, the show cause Notice dated 11.4.2000 at the end clearly says that the copy of the Inquiry report is attached and when the respondent/plaintiff filed his response on 9.6.2000 against the show cause notice issued by the disciplinary authority, no ground was taken up in the same that the copy of the inquiry report was not given to the respondent/plaintiff. In fact, it is argued that this contention is totally false and frivolous because a reference to the Reply dated 9.6.2000 of the respondent/plaintiff to the show cause notice issued by the disciplinary authority shows that a detailed representation running into ten pages was given for challenging the various findings of the Inquiry Officer by giving specific references qua all the six departmental witnesses who have deposed as PW1 to PW6. It is also argued on behalf of the appellant/defendant that there is no

violation of the principles of natural justice because there is no requirement in law that before proceeding *ex parte* a notice has to be served upon the charged officer because the facts of this case show that as many as 21 opportunities were given to the respondent/plaintiff and ultimately since the respondent/plaintiff failed to appear and lead his evidence in the inquiry proceedings he was proceeded *ex parte*. Reliance is also placed upon the cross-examination of respondent/plaintiff before the trial court wherein respondent/plaintiff has admitted the facts with respect to receiving of notices for hearing and in spite of the same not participating in the departmental proceedings. It is also argued that there is no perversity in the findings and conclusions of the Inquiry Officer because a departmental case is proved on preponderance of probabilities like a civil case and once as many as six witnesses have deposed in the departmental proceedings proving the charge against the respondent/plaintiff, and the respondent/plaintiff chose not to lead evidence and remained *ex parte*, it cannot be held that the findings are perverse. It is also argued that the allegations of perversity stated in the plaint are far too general without giving instances of alleged perversity and hence such a vague plea is liable to be rejected *in limine*. It is argued that the contention of the respondent/plaintiff that the disciplinary authority which imposed the punishment was not competent is a frivolous argument because as

stated in the written statement of the appellant/defendant, a specific notification was issued on 25.5.1999 by the Delhi Vidyut Board whereby with respect to the post of AE, the disciplinary authority and the appointing authority is AGM (Admin).

13. The following substantial questions of law arise for determination of this second appeal:-

(i) Whether the courts below have committed a complete illegality and perversity in giving a finding that the departmental proceedings are vitiated by the principles of natural justice in spite of the fact that respondent/plaintiff himself chose to remain *ex parte* and hence there is no violation of the principles of natural justice; also that the copy of the Inquiry Officer's report was in fact duly served upon the respondent/plaintiff as per the show cause Notice dated 11.4.2000?

(ii) Whether a disciplinary authority is bound to pass a detailed order giving reasons, and that once there is a detailed inquiry report, is not the disciplinary authority entitled to accept and adopt the Inquiry Officer's report which contained the detailed reasons?

(iii) Whether the ground of perversity in the findings of the Inquiry Officer's report could not have been looked into by the courts below in the absence of any specific averments in the plaint as to what was the specific perversity and that too in which findings/conclusions of the Inquiry Officer?

(iv) Whether the courts below have not committed a gross illegality and perversity in holding that the disciplinary authority was not the competent authority to impose punishment on the respondent/plaintiff although the Notification of the appellant/defendant dated 25.5.1999 showed that the post of AGM (Admin.) was continued and in fact it was this post which was the competent authority being the appointing authority for appointing A.Es, and therefore also the disciplinary authority?

14. In my opinion, all the aforesaid questions of law have to be answered in favour of the appellant/defendant and against the respondent/plaintiff. The reasons for the same are given hereinafter.

15. So far as the aspect of violation of the principles of natural justice because the respondent/plaintiff was not given a specific notice of being proceeded *ex parte* by the Inquiry Officer is concerned, it is noted that there is no pleading in the plaint as to under which provision before proceeding *ex parte* against the charged official a specific notice for proceeding *ex parte* has to be given. It be noted that it is not disputed that the respondent/plaintiff had notice of the Inquiry Officer's proceeding and he had in fact appeared twice before the Inquiry Officer but he then chose not to appear. In fact a reading of paragraph 7 of the plaint reproduced above shows that respondent/plaintiff has tried to justify his non-appearance on account of breakdown in a VVIP area where he was posted

for the relevant period. Also, there cannot be a question of violation of the principles of natural justice when as many as 21 opportunities were given and which is so deposed in the affidavit filed of DW1 Sh. Vishnu Prasad. Any doubt which remained as to the respondent/plaintiff being rightly proceeded *ex parte* in the disciplinary proceedings becomes clear from the admissions made by the respondent/plaintiff in his cross-examination which was conducted before the trial court, and I would therefore at this stage seek to reproduce the relevant portion of the cross-examination dated 24.9.2011 which leaves no manner of doubt why the respondent/plaintiff cannot allege violation of the principles of natural justice on account of non-receipt of notices:-

“...I appeared before Inquiry Officer on the some date. I received summons from the Inquiry Officer so I came to know for appearing before Inquiry Officer. I did not file any reply before Inquiry Officer as I was not asked to give reply by Inquiry Officer. It is incorrect to suggest that Inquiry Officer gave me 21 opportunities to file the reply. Vol. I did not receive any communication again said I may have received some communications. I received communication for attending the Inquiry. I went 3-4 times before Inquiry Officer but no proceedings took place. I once provided additional document to Inquiry Officer.

Q: I put it to you that Inquiry Officer granted numerous opportunities to you for putting your defence but you did not submit any defence.

Ans. I received 3-4 notices except that I did not receive any notice.

It is correct that I did not appear before the Inquiry Officer passed Ex-parte judgment. I do not remember whether I received intimation that I was proceeded ex-parte on 27.03.98. I do not remember that I was finally informed on 14.05.1999 that ex-parte had already been initiated against me. It is incorrect to suggest that despite several notices and intimations with respect to ex-parte proceedings I did not appear before the Enquiry Officer. Vol. the notices were sent to the departments were I was earlier posted. It is

incorrect to suggest that I am deposing incorrectly to this effect. I do not remember whether I received the report of Enquiry Officer along with show cause notice dated 11.04.2000 issued by the Disciplinary Authority. ...”

(underlining added)

16. The courts below have committed gross and a clear perversity in arriving at a conclusion of violation of the principles of justice in spite of the categorical admissions of the respondent/plaintiff in his cross-examination which have been reproduced above, and which show that it is the respondent/plaintiff who deliberately failed to appear in the inquiry proceedings. The first ground, therefore, taken up by the respondent/plaintiff for violation of the principles of natural justice is clearly false and accordingly the same is rejected by setting aside the findings and conclusions of the courts below given under issue no.1 that the principles of natural justice are violated.

17. The second ground for violation of the principles of natural justice was that the Inquiry Officer's report was not given to the respondent/plaintiff. This stand of the respondent/plaintiff is also totally frivolous for the reason that it is seen that in the Reply given to the show cause notice by the respondent/plaintiff on 9.6.2000 not only has the respondent/plaintiff not stated that the Inquiry Officer's report attached to the show cause Notice dated 11.4.2000 which he is replying to is not attached to the show cause notice, but in fact the detailed Reply

dated 9.6.2000, questioning the merits of the report given by the Inquiry Officer by reference to the deposition of the six witnesses shows that this could only have been done on the respondent/plaintiff having received the copy of the Inquiry Officer's report. I would like to note that the courts below have in fact failed to refer to these crucial aspects in their judgments and consequently it is held that there is no violation of the principles of natural justice allegedly on the ground that the Inquiry Officer's report was not given to the respondent/plaintiff.

18. The last facet for violation of the principle of natural justice which is alleged on behalf of the respondent/plaintiff is that the order of the disciplinary authority is a non-speaking order and therefore illegal, is also a totally frivolous argument and the courts below have been illegally swayed by reference to the short order of the disciplinary authority, inasmuch as, once there is a detailed report of an Inquiry Officer holding the respondent/plaintiff guilty on the basis of depositions of as many as six witnesses, it is not the legal position that the disciplinary authority also must pass a detailed order and the disciplinary authority is not entitled to adopt the detailed findings and conclusions of the Inquiry Officer. It is, therefore, held that there is no violation of the principles of natural justice allegedly because the order of the disciplinary authority is not a detailed order.

19. So far as the aspect of the authority which passed the punishment order being not a competent authority is concerned, the said contention of the respondent/plaintiff is clearly misconceived in view of the Notification dated 25.5.1999 issued by the Delhi Vidyut Board, and for the sake of convenience this notification is reproduced with its relevant portion as under:-

“DELHI VIDYUT BOARD

No.F.2/2/99-AO/(confd.)/3

Dt. 25.5.99

NOTIFICATION

The Delhi Vidyut Board vide its Resolution No.15.99/173-A dt. 21.4.99 and resolution No.19.99/240A dated 8.5.99 has received that henceforth for all future proceedings of disciplinary/Vigilance modure, as far as procedure and penalties are concerned for the employees of the Board, the provisions of CCS(CCA) Rules, 1965 shall be applicable. The said limited application of CCS(CCA) Rules, 1965 will be subject to the followings:

- i) ...
- ii) ...
- iii) ...
- iv) Keeping in view peculiar organizational structure and pay-scale in DVB, with reference to provisions relating to classifications of posts, the revised classification of posts in DVB will be as under:

<u>Sl.</u>	<u>Description of posts</u>	<u>classification of posts</u>
1.	A post carrying a pay or scale of pay with a note less than Rs.13775/-	Group ‘A’
2.	A post carrying a pay or scale of pay With a maximum of not less than Rs.16000/- but less than Rs.13775/-	Group ‘B’
3.	A post carrying a pay or scale of pay with maximum of Rs.7100/- and above but less than Rs.10800/-	Group ‘C’

4. A post carrying a pay of scale of pay the Group 'D'
Maximum of which is less than
Rs.7100/-

v) 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 still major penalties of compulsory retirement, removal from service and dismissal from service, shall not be imposed by any authority lower than the appointing authority.

vi) Nothing in these rules shall be construed as reducing any period of limitation for any appeal of review provided by any rule in force before the commencement of these rules.

(N.P Singh)

Addl. General Manager (Admn.)

THE SCHEDULE

Description of posts	Appointing Authority	Authority Competent to impose minor penalties	Authority Competent to impose major penalties	Appellate Authority
1.	2.	3.	4.	5.
4. All post in the scale of Rs.8000-13775 and above but below Rs.10000-15200 (AE/APC/AFO/Programme/RO/AAO/C&MO/ALO/AVO/LWO/LA/MO/PS/Asstt. Arch./AEE/Chemist etc.	AGM(A)	1.Non-Tech : CFO 2. Tech : ACE/CE (concerned) 3. Finance Div (Rev.) AGM(F)	AGM(A) AGM(T) AFM (F)	AGM(A) Member (Concerned)

20. A reading of the aforesaid notification leaves no manner of doubt that as regards an Assistant Engineer (A.E.) the appointing authority and also the disciplinary authority would be AGM (Admin.). The order passed by the

disciplinary authority in the present case is by AGM (Admin.) and hence the contention of the respondent/plaintiff is mis-conceived that AGM (Admin.) is not entitled to pass the order imposing punishment. In fact, it may be noted that there was a very serious charge upon the respondent/plaintiff of abating theft of electricity but only on account of his retirement in the near future of passing of the order by disciplinary authorities that he was not given the penalty of dismissal from service which was proposed in the show cause Notice dated 11.4.2000, but he was only given a lesser penalty of reduction in one rank keeping in view that otherwise his family members will be affected.

21. I would, at this stage, like to note that I am referring to the Notification dated 25.5.1999, inasmuch as, in paragraph 13 of the written statement filed by the appellant/defendant this notification has been referred to and in paragraph 13 of the replication filed by the respondent/plaintiff there is no dispute that there exists the Notification dated 25.5.1999. Para 13 of the written statement of the appellant/defendant and the corresponding paragraph 13 of the replication of the respondent/plaintiff read as under:-

Paragraph 13 of the written statement of the appellant/defendant

“13. Contents of para 13 are wrong and are denied. It is pertinent to point out that the Delhi Vidyut Board (DVB) was constituted under Section 5 of the Delhi Electric Supply Act 1948 vide notification dated 24th February, 1997,

by the Government of NCT of Delhi. The notification dated 24th February, 1997 was amended by the State Government vide its notification dated 27th February, 1997, and under the said notification Clause 4 Sub-Clause 2 was omitted, in Sub-Clause 3 for the word 'other', the word 'the' has been substituted, and in sub-section 5 for the words 'corresponding members of the Board' the words 'members(s) of the Board' have been substituted Under Section 78 of the Electric Supply Act – 1948 the State Government framed rules to give effect to the provisions of the Act with respect to the working of the Board, the powers of the Chairman etc., which are prescribed in Chapter 4 of the said rules. That the Delhi Vidyut Board, exercising powers under Section 79 of the act framed regulations vide notification dated 25th of May, 1999 It is submitted that prior to issuance of this Notification, the Delhi Electric Supply Undertaking (DMC) Service (Control and Appeal) Regulations – 1976 were applicable with respect to maintenance of discipline in DESU. That the then General Manager (E) in exercise of powers under section – 491 read with Section – 504 of the Delhi Municipal Corporation Act – 1957 designated the Officers exercising the powers of Appointing Authority, Disciplinary Authority and Appellate Authority. That as per this Officer Order, Additional General Manager (A) is the Appointing Authority of the plaintiff. That in view of the fact that AGM (A) is the Disciplinary Authority of the plaintiff under Notification dated 25th of May, 1999, he is competent to impose punishment on the petitioner. It is denied that the post of AGM (A) ceased to exist on the establishment of the Board. In fact the new post of Member (A) was constituted and earlier posts of AGM(A) continued to co-exist. There was no re-designation of the post of AGM(A) to Member (A). In CWP No. 4606 of 2001 titled M.M. Budhiraja vs. Chairman, DVB before the High Court of Delhi similar challenge to penalty imposed by the AGM (A) was raised by the petitioner therein, however, the petition was dismissed vide order dated 12.2.2002 upholding the competency of the AGM(A). LPA 238 of 2002 was filed against the aforesaid order and the same was also dismissed by a Division Bench of High Court. In the case of plaintiff the AGM(A) was vested with the power to impose the penalty.”

Paragraph 13 of the replication of the respondent/plaintiff

“13-15. The contents of paras 13 to 15 of the written statement are absolutely wrong, incorrect, malafide, misleading, misconceived, false, without any substance and emphatically denied intoto. Paras 13 to 15 of the plaint are reiterated. The post of additional General Manager (A) became non-existent in the eyes of law after the issue of Notification No.F.11 (10)/92-LSG/PF (ii) dated 24.2.1997, under the statutory provisions of Section 5 of the Electricity (Supply) Act, 1948. It is denied that an earlier incumbent of the non-existent post can be the appointing or the disciplinary authority of the

plaintiff. It is submitted that the statutory provisions of section 5 of the Act 1948 shall prevail over alleged notification if any, though not admitted. Any alleged notification which is inconsistent with the statutory provisions of Sec.5 of the said Act is illegal and null and void. However, statutory provisions, notifications, rules and regulations referred to in para under reply be perused and referred for their correct meaning and interpretation.”

22. In view of the above discussion, the substantial questions of law are answered in favour of the appellant/defendant and against the respondent/plaintiff. This Regular Second Appeal is allowed and the judgments of the courts below are therefore set aside and the suit of the respondent/plaintiff therefore will stand dismissed. Parties are left to bear their own costs.

JULY 29, 2016

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VALMIKI J. MEHTA