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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 609/2008
SATYA PAL GAUR Petitioner
Through Mr. Praveen Kumar Aggarwal,
Advocate
versus

N.D.P.L Respondent
Through Mr. Vikram Nandrajog, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER
% **13.07.2016**

1. Satya Pal Gaur, the appellant, by this Letters Patent Appeal, impugns the order dated 18.08.2008 whereby the WP(C) No.1358/2003 challenging the order of penalty of reduction by two stages in the time scale of pay for a period of one year with cumulative effect imposed by the Appellate Authority vide order dated 06.02.2002 was dismissed. The appellant has also challenged the order of the Disciplinary Authority dated 24.03.2000 holding that the charges against the appellant stand proved. The order dated 24.03.2000 had imposed major penalty of reduction by three stages in the existing time scale of pay for a period of three years with a further stipulation that during the period of reduction, he would not earn any increments of pay and on expiry of this period. The reduction would have the effect of postponing his future increments of pay.

2. Learned counsel for the appellant has submitted that the Inquiry Officer had completely exonerated the appellant for want of evidence and material to show the appellant's involvement or misconduct. He has drawn our attention to the inquiry report dated 23.03.1999 in which it was observed:-

“From the perusal of the joint inspection report (Ex.S-6), it is not clear as to who is the registered consumer and which premises was inspected by the joint team and what was the K. No. and particulars of old meter and there is nothing on record brought during the course of enquiry that there was a paper seal fixed on the old meter as the subject meter was under surveillance of the Vigilance Department. As soon as the charged official came to know that the subject meter / connection was under surveillance, he deposited the meter with the police station to be treated as material evidence. The subject meter was changed on a complaint that the meter was burnt and on coming to know that the subject connection is under surveillance of the Vigilance Department, he did not return the meter to the MTD Department, but deposited same with the police station vide FIR (Ex.D-1 (SPG)) and the meter was deposited with the Police Station (Ex.D-3 (SPG)). The charged official has further relied upon office order dated 29.05.85 (Ex.D-2 (SPG)) for laying the procedure for replacement of burnt / defective meters, which inter alia provide that on receipt of Meter Replacement Sheet, the Area Inspector shall replace the defective meter immediately but not later than three months. Thus, the charged official acted within the ambit of the office order dated 29.05.86 (Ex. D-2 (SPG)) and there being no paper seal on the subject meter, the charged official had rightly replaced the meter within the stipulated time. Thus, the charged official cannot be held responsible for the same. There being no evidence brought on record of the enquiry that any joint team had pasted paper seals on the meter in question.”

3. Learned counsel for the appellant has also drawn our attention to purported communications dated 5.11.1993 and 17.12.1993 written in the handwriting of the appellant. The burnt meter, it is asserted, was not deposited with the meter testing department on verbal instructions of the Assistant Engineer. The appellant was not at fault and at best the case made out was against the Assistant Engineer.

4. Learned counsel for the appellant has lastly contended that the respondents have not correctly understood the penalty imposed by the Appellate Authority and they have interpreted the said penalty to mean that the appellant has forfeited two increments which would have an impact on the salary payable even after one year.

5. The appellant was charge-sheeted on the following charge:-

“Shri S.P. Gaur, E.No.26624, while functioning as an Inspector, Zone-516(D) BWN, during the year 1992-93, exhibited lack of integrity, devotion to duty and acted in a manner unbecoming of an employee of this Undertaking in as much as he, in order to destroy the material evidence, changed the meter of the consumer M/s. Superwood Industries, Village Prahladpur, D-BWN, which was under Vigilance observation, as detailed in Annexure-II, and thus, violated Rule 3(1) of the CCS(Conduct) Rules, 1964, as applicable to DESU employees.”

6. The assertion was that while working as an Inspector during the year 1992-93, the appellant, acting with malafide intention and ulterior motive had changed the burnt meter of M/s. Superwood Industries, Village Prahladpur, thereby destroying material evidence. The facts as alleged and stated in the said charge sheet in the inquiry report read as under:-

“However, on receipt of asource information that certain power connection had been illegally shifted out from their original place of Lal Dora, Village Prahladpur, Distt. Bawana and that power thefts are being committed, a surprise check was conducted by the Vigilance Deptt. along with Enforcement and MTD. During the course of investigation, it was revealed that Sh. S.P. Gaur changed the meter of M/s. Superwood Industries, Village Prahladpur, D-BWN with ulterior motive and in order to destroy the material evidence. The consumer was found to be indulged in fraudulent abstraction of energy. The positions of the seal of the meter of the above consumer had not been verified during the first check of the joint team, due to unavailability of the specific sample monogram. To keep the positions intact, two paper seals had been pasted on the meter. But the consumer, acting in connivance with the Inspector, Sh. Gaur, destroyed the seal and requested to change his meter which was reportedly

burnt. Sh. Gaur acted promptly to change the meter, which was under Vigilance surveillance. He did so with malafide intention and ulterior motive.”

7. The Disciplinary Authority did not agree with the inquiry report and had issued disagreement note dated 27.09.1999. The Disciplinary Authority, after examining the evidence and material held that the contention of the appellant that he was not aware of the vigilance case against the consumer was fallacious and farfetched. Contradictions in the reply given by the appellant on the said aspect were highlighted. It was observed that the illegal shifting of the meter/connection was reported to the police by AE (Zone) on 07.07.1993 and an FIR was registered with the police on 27.07.1993. At that time, the appellant was the Area Inspector and, therefore, it would be incongruous to accept that he was not aware of these developments or that he was not aware that the joint inspection was carried out on 16.3.1992. The appellant had changed the burnt meter on 21.7.1993 and deposited the same belatedly only on 1.3.1994, i.e., after seven months. As per the prescribed practice, the meter should have been deposited with the meter testing department and the conduct; ex-facie reflects and was indicative of the guilty intent. The appellant had deliberately replaced the meter in connivance with the consumer to help the latter prepare his defence and weaken the case of electricity theft against him.

8. The respondent, vide reply, had responded to the disagreement note. The reply was duly considered by the Disciplinary Authority, who vide order dated 24.03.2000, had held that the charges against the appellant were duly proved. Keeping in view the fact that the removal

from service would affect the family members of the appellant, the Disciplinary Authority took a lenient view and imposed major penalty of reduction by three stages in the existing time scale of pay for a period of three years with further stipulation that during the period of reduction, the appellant would not earn any increment and expiry of the said period of reduction would have the effect of postponing his future increments.

9. On an appeal being filed, the Appellate Authority while upholding the finding on proof of charge and merits, vide order dated 6.02.2002, reduced and modified the penalty to reduction by two stages in his time scale of pay for a period of one year with cumulative effect.

10. The Single Judge, in the impugned order has affirmed the finding of the Appellate Authority and has not interfered with the penalty imposed. We do not see any reason or ground to reverse the findings of facts on merits recorded by the Disciplinary Authority and affirmed by the Appellate Authority. The charge, we find, was proved as held by Disciplinary Authority, The Appellate Authority and the Single Judge. The authorities had taken the relevant facts into consideration. It cannot be said that it is a case of no evidence and the findings recorded and held as proved are perverse and no reasonable man would have recorded and reached the said opinion. We would, therefore, not interfere with the finding.

11. On the question of quantum of punishment, the Disciplinary Authority and the Appellate Authority have taken a lenient view. The

principles relating “proportionality” would not justify judicial interference.

12. On the question of the effect of punishment imposed by the Appellate Authority, we are in agreement with the findings of the learned Single Judge. The Appellate Authority had awarded the punishment of reduction by two stages in the time scale of pay for a period of one year with cumulative effect. The words “with cumulative effect” are significant. This would show that even after the period of one year, the reduction of pay by two stages would be accounted for and matter. In other words, the appellant, after one year would start from time scale of pay payable consequent to the punishment. Reduction by two stages would have permanent effect.

13. Accordingly, we do not find any merit in the appeal. The same is dismissed. There would be no orders as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

JULY 13, 2016

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