

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

+ **W.P.(C) No.12174/2016**

% **23rd December, 2016**

J.S. SEHRAWAT

..... Petitioner

Through: Mr. Apurb Lal, Advocate with Ms.
Meenu Pandey, Advocate.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ANR.

..... Respondents

Through: Mr. Manu Padalia, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.48059/2016 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+W.P.(C) No.12174/2016

2. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the show cause notice dated 21.9.2016 by which it is proposed by the disciplinary authority to impose the penalty upon the petitioner of dismissal from services inasmuch as petitioner has

been convicted by the criminal court. The impugned show cause notice dated 21.9.2016 reads as under:-

**“Delhi Urban Shelter Improvement Board
Govt. of N.C.T. of Delhi
Vigilance Cell**

No.D-641/DD/Vig./DUSIB/2016

Date:21/9/2016

SHOW CAUSE NOTICE

WHEREAS vide order dated 09.05.2016 passed by the Ld. court of Sh. Vinod Kumar Special Judge-03, CBI PC Act, PHC, New Delhi, Sh. Jaibir Singh Sehrawat, S/O Sh. Sahib Singh working as Junior Engineer in Delhi Urban Shelter Improvement Board (Convict no.2) has been awarded a sentence in a case no.CC No.04/13 RC no.3A/2009/ACU-1/ND as per details given below:

No.	Offence Punishable u/s	Sentence of Rigorous imprisonment	Fine (Rs)	Sentence in default of fine
1.	120-B IPC r/w section 7, 12 & 13(1)(d) punishable u/s 13(2) of Prevention of Corruption Act 1988	05 years	20,000/-	02 months
2.	u/s 7 of Prevention of Corruption Act 1988	05 years	20,000/-	02 months
3.	13(1)(d) r/w section 13(2) of Prevention of Corruption Act 1988	05 years	20,000/-	02 months

All the sentences shall run concurrently.

And Whereas, the undersigned being disciplinary authority of Sh. Jaibir Singh Sehrawat, S/O Sh. Sahib Singh working as Junior Engineer, in exercise

of the powers conferred under rule 19(2)(ii) of the CCS CCA rules 1965, placed Sh. Jaibir Singh Sehrawat, Junior Engineer under deemed suspension with effect from 09.05.2016 which is the date of his taking into judicial custody vide D/470/DD(Vig)/DUSIB/2016 dt.20/07/2016.

And Whereas, the undersigned proposes to award an appropriate penalty under rule 19 of CCS CCA rules 1965 taking into account gravity of criminal charges against Sh. J.S. Sehrawat, JE.

AND WHEREAS after careful consideration of the order of Ld. court the undersigned has come to the conclusion that Sh. Jaibir Singh Sehrawat S/O Sh. Sahib Singh, Junior Engineer is not a fit person to be retained in service. The gravity of the charges is such as to warrant the imposition of a major penalty and accordingly, the undersigned proposes to impose on him the penalty of ***“Dismissal from service which shall ordinarily be disqualification for future employment under the Government”***.

Now therefore, Sh. Jaibir Singh Sehrawat S/O Sh. Sahib Singh, Junior Engineer, is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Sh. Jaibir Singh Sehrawat, JE.

The receipt of this Memorandum may be acknowledged.

sd/-
Member(Admn.)/
Disciplinary Authority

Sh. Jaibir Singh Sehrawat,
Junior Engineer (U/S)”

3. As per the writ petition and the arguments urged on behalf of the petitioner before this Court, the impugned show cause notice is challenged on the ground of lack of jurisdiction of the person issuing it because it is argued that the Member(Administration) of the employer i.e Delhi Urban Shelter Improvement Board who has issued the impugned show cause notice lacks jurisdiction to issue the show cause notice because

he is an authority lower than the Chief Executive Officer being the authority which has appointed the petitioner.

4. I have gone through the writ petition and I have also put repeated queries to the counsel for the petitioner to state that where is the pleading in the writ petition that as regards the petitioner who is a Junior Engineer, what would be the disciplinary authority as per the rules of the employer, however, counsel for the petitioner has failed to point out any pleading with respect to specific rule of the employer/Delhi Urban Shelter Improvement Board which provides the various disciplinary authorities and the appellate authorities with respect to taking of disciplinary action by the employer against the employees including the petitioner. Merely self-serving statement in the writ petition that action taken against the petitioner is taken by an incompetent authority i.e an authority lower than the appointing authority, cannot be a valid basis to entertain this writ petition because the writ petition can only be entertained when specific factual details are provided of the cause of action for taking disciplinary action being without jurisdiction by giving details of what are the rules of the employer/organization with respect to which authority/person/designated authority and person who is empowered to take disciplinary action against a Junior Engineer such as the petitioner, and only then the issue can be

examined as to if the person who has issued the impugned show cause notice dated 21.9.2016 being the Member(Administration) of the employer/organization was or was not the appropriate authority. There are no statutory provisions that employees of the respondent no.1 can be proceeded against only by such disciplinary authorities who are higher or equal to the appointing authority with respect to a Junior Engineer/petitioner. Once there are no such statutory provisions then disciplinary proceedings will have to be in accordance with the relevant rules etc of the respondent no.1, and as stated above, no such rules are pleaded in the writ petition to show as to how the disciplinary authority which has issued the impugned show cause notice was incompetent to do so.

5. I put it to the counsel for the petitioner that if the petitioner is interested in filing of the fresh appropriate petition by setting out the details of the rules cause of action as per rules etc of the respondent no. 1 for challenging of disciplinary action by the employer, but, counsel for the petitioner argues the petition on merits for being decided.

6. Dismissed.

DECEMBER 23, 2016
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VALMIKI J. MEHTA, J