

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

% **Date of Decision: 13th July, 2017**

+ **LPA 441/2017**

VINOD MALIK & ORS Appellants
Through: Mr.Manoj Joshi, Advocate.

versus

DELHI ENERGY DEVELOPMENT AGENCY & ORS Respondents
Through: Mr.Ekant Luthra, Advocate for R-1
to 4.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J. (ORAL)

C.M. Nos.23294/2017 (9 days delay in filing the appeal) & 23295/2017(138 days delay in re-filing the appeal)

For the reasons stated in the applications, the same are allowed.
Delay is condoned.

The applications stand disposed of.

LPA 441/2017

1. The Appellants have preferred the present Letters Patent Appeal to assail the judgment of the learned Single Judge of this court in W.P.(C)

No.6387/98 decided on 28th November, 2016. The learned Single Judge has dismissed the Appellants' writ petition under Article 226 of the Constitution of India, wherein the Appellants had impugned three different orders passed by Respondent No. 1 imposing the penalty of dismissal from service on each of the Appellants.

2. The undisputed facts are that the Appellant Nos. 1 & 2 were employed as Lower Division Clerk (LDC) and Appellant No.3 was a Regular Peon in the Delhi Energy Development Agency (DEDA).

3. At the relevant time on 11th June, 1991, all the three Appellants were working in the Polaroid unit of the Transport Department at 5/9, Underhill Road, Delhi and as noticed by the learned Single Judge, all the three Appellants were issued separate charge-sheets dated 28th July, 1992 followed by departmental enquiries in relation to incidents involving handing over of bogus driving licenses and typing of the Polaroid cards. All the three Appellants were found guilty of charges in separate departmental enquiries and thereafter, orders dismissing them from service were passed by the Respondent on 30th November, 1998. The individual appeals filed by the Appellants were also dismissed by the Appellate Authority, where after they had approached this Court by way of a common Writ Petition.

4. The learned Single Judge has dealt with the cases of each of the Appellants separately and after detailed examination of the enquiry reports, come to a conclusion that there was no procedural error in the holding of the enquiry and the Appellants were given adequate opportunity to lead evidence in support of their defence. The learned Single Judge also considered the plea of the Appellants that they were not supplied with some

documents even though, according to the Appellants, they had been cited in the list of documents submitted by the Appellants before the Enquiry Officer. On perusal of the evidence, led in the three enquiries, the learned Single Judge came to a conclusion that there was nothing to show that any of the Appellants had raised any grievance regarding the non-supply of the documents during the course of enquiry, after inspecting the records.

5. For the sake of completion of records, it would be apt to reproduce the observations of the learned Single Judge in respect of each of the Appellant:-

“Appellant No.1

5(i) Enquiry Officer has held that charge no. 1 is proved against the petitioner no. 1 because the 6 bogus driving licences bearing nos.C- 88052610, C-90020985, C-91060140, C-91060141, C-91060142 and C- 91060143 were indeed proved as Ex. S-1 to S-6 and which driving licences did not tally with the official record and thus were bogus. The factum of handing over by the petitioner no. 1 of the six bogus licences to the MLO/ Sh. Kishan Singh has been taken as proved from the statement of PW-2. Accordingly the Enquiry Officer, in the opinion of this Court, has rightly arrived at the conclusion of petitioner no. 1 handing over six bogus licences on 11.6.1991 to the MLO/Sh. Kishan Singh.

(ii) So far as the second article of charge of missing 19 Polaroid cards is concerned, the enquiry officer on the basis of the record found that as a fact 19 Polaroid cards did not exist, though as per the records they ought to have existed because 442 Polaroid cards were issued but only 429 were found. Even if 6 cards out of 19 were those used for preparing 6 bogus licences, then yet there was no valid explanation with proof of 13 Polaroid cards. Enquiry officer has thus rightly found this article of charge to be proved.

Appellant No.2

8. So far as the petitioner no. 2/Smt. Sikha Mazumdar is concerned, she was served with the charge sheet dated 28.7.1992 containing one Article of Charge. The charge was that the petitioner no.2 typed the Polaroid cards without their existing proper forms/applications for grant/renewal of licences/duplicate licences. In this regard, the Enquiry Officer has noted that the petitioner no.2/Smt. Sikha Mazumdar did not dispute that she had in fact typed the Polaroid cards. Once the Polaroid cards are admitted to be typed by the petitioner no.2 in the absence of any application forms on record for issuing of licences, petitioner no.2 has rightly been held guilty of being part and parcel of the racket of preparing bogus licences. The four driving licences in question are as under:

- “1. Driving Licence No.C-88052610 (Card No.196931)
2. Driving Licence No.C-90020985 (Card No.198071)
3. Driving Licence No.C-91060140 (Card No.198040)
4. Driving Licence No.C-91060143 (Card No.198043)”

6.This is all the more so in the present case where the petitioner no. 2 did not even step into the witness box for affirming her stand on oath, and therefore, such a charged official ought not to be believed who does not step into the witness box to substantiate her case. In fact on account of petitioner no. 2 not stepping into the witness box, the Enquiry Officer did put her questions as regards the Article of Charge and in answers to such questions it was not disputed by the petitioner no. 2 that she in fact had typed the Polaroid Cards. Therefore, once the cards are found to have been typed by the petitioner no. 2 in absence of the necessary forms or applications, petitioner no. 2 has been rightly held guilty of the charge by the Enquiry Officer.

Appellant No.3

11. So far as petitioner no. 3/Sh. Prahlad Kumar is concerned, he was issued the charge sheet dated 28.7.1992

having two Articles of Charges. The first Article of Charge was that the petitioner no. 3 who was assigned to take photographs of the licence holders after receiving of the Polaroid Cards duly typed, failed to return all the 442 Polaroid Cards received by him and instead only returned lesser Polaroid Cards of 423 in number. Out of the 19 missing Polaroid Cards six cards were subsequently taken by the petitioner no. 3 from the MLO and illegally cancelled the same but the remaining 13 Polaroid Cards out of the 19 missing Polaroid Cards continued to be unavailable. The second Article of Charge was of petitioner no. 3 failing to deliver 6 driving licenses to the concerned licence holders and being part of the process of making of forged licences. The case against the petitioner no. 3 is in some way intertwined with the case against petitioner no. 1 inasmuch as the issue overlaps with respect to non-availability of 19 Polaroid Cards out of the 442 Polaroid Cards which were issued for the day. The duty of the petitioner no. 1 was as a store keeper and the duty of petitioner no. 3 was as a person who had to take photographs and placed them on the Polaroid Cards i.e. 442 Polaroid Cards, and out of which Polaroid Cards 19 cards were found to be missing.

(ii) The Enquiry Officer, so far as the first Article of Charge against petitioner no.3 is concerned, has held that 19 Polaroid Cards were in fact found to be missing as per the record and hence first Article of Charge was proved against the petitioner No.3.

13. The second Article of Charge of not handing over six driving licences to the six persons is concerned, it is seen that six driving licences along with six Polaroid Cards were found in the possession of the MLO and the petitioner no. 3 collected 6 Polaroid cards from the MLO and thereafter cancelled them i.e. originally 6 Polaroid cards were not in the custody of the petitioner no.3 though they should have been. Also, on physical verification, it was found that 6 Polaroid cards were part of 19 Polaroid cards and which 19 cards were not found in the stock register on record. Thus, it was rightly held by the Enquiry

Officer that there were 6 bogus licences and 6 driving licences were not returned by the petitioner no. 3 to the concerned licence holders.”

6. The learned Single Judge has observed and in our view, rightly so, that the enquiry proceedings before a departmental authority are decided on balance of probability, and a court cannot interfere with the findings of the departmental authority unless the findings are completely perverse. In writ jurisdiction, this court cannot exercise extraordinary powers to substitute its view for that of the departmental authority.

7. We have perused the enquiry reports in respect of each of the Appellants, and also considered the submissions of learned counsel who has placed reliance on the order dated 19th May, 1999 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, wherein the enquiry against one Shri Kishan Singh was held to be vitiated and he was directed to be re-instated in services. Perusal of this order passed by the Tribunal, in case of Shri Kishan Singh, shows that neither he was an employee of DEDA, nor he was a part of the Polaroid branch and his duties and responsibilities were different from those of the Appellants, who were admittedly a part of the Polaroid branch. Even otherwise, once there was adequate evidence to prove the charges against each of the Appellants in the departmental proceedings, the Writ Court cannot re-appreciate the evidence. Pertinently, Appellant No.2 did not even appear as her own witness during the enquiry proceedings to defend herself.

8. The concern of the Writ Court is only to examine whether the findings recorded by the departmental authority were based on cogent evidence, or

not. We are satisfied that there is no infirmity in the view taken by the learned Single Judge. Upon examination of the charges against the appellants, the defence and evidence led by the appellants, the evidence against them examined led in the enquiry proceedings, the learned Single Judge has concluded that the view taken by the Disciplinary Authority was a plausible view. The Appellants have not been able to assail this opinion of the learned Single Judge. In these circumstances, we find absolutely no merit in the appeal and the same is hereby dismissed with no order as to costs.

REKHA PALLI, J

VIPIN SANGHI, J

JULY 13, 2017/gm

