

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 01, 2017

Judgment delivered on: November 08, 2017

+ W.P.(C) 3058/2001

HARVEER SINGH

..... Petitioner

Through: Mr. Sanjiv K. Jha and Mr. Vikash
Kumar, Advs.

versus

DELHI POWER SUPPLY CO. LTD. THRU CHAIRMAN

..... Respondent

Through: Mrs. Avnish Ahlawat and Ms. Palak
Rohmetra, Advs. for R1.
Mr. Sandeep Prabhakar and Mr.
Vikas Mehta, Advs. for R2.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:-

“It is, therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

a) quash the order No. VC 49/91-Vig/DCP/AVO-II/10 dated

15th Feb 2001 passed by Additional General Manager (A) Delhi Vidyut Board.

b) direct the Delhi Vidyut Board to consider the petitioner to be on duty for all purposes during the suspension period.

c) direct the Delhi Vidyut Board to pay the Petitioner the interest of 18% p.a. on the Gratuity amount i.e. Rs.1,69,000/- from 31.12.1996 till the date of actual payment;

d) direct Delhi Vidyut Board to pay to the petitioner the difference of monthly suspension allowance @ 25% of his salary from 27.6.1993 to 16.12.1994 together with interest @ 18% from inception until payment.

e) direct Delhi Vidyut Board to give the benefits of V Pay Commission to the Petitioner and accordingly direct the Delhi Vidyut Board to pay to the Petitioner the Suspension allowance @ 75% of his enhanced salary as per the recommendation of V Pay Commission from 1.1.1996 to 31.12.1996 together with interest @ 18% p.a.

f) pass such other further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

2. From the above, it is noted that the challenge is primarily to order dated February 15, 2001 whereby the Appellate Authority dismissed the appeal of the petitioner and upheld a penalty of 30% cut in pension per month permanently.

3. Some of the relevant facts are, in the year 1990 the petitioner was working as Senior Cash Clerk in DESU. On May 21, 1990, a complaint was lodged by one Ram Chander Goel against the petitioner alleging in the complaint that his wife had come to deposit certain electricity bills on April 12, 1990. The petitioner received Rs.704/- in respect of certain regular electricity bills and advance electricity bills, issued receipt in respect of advance electricity bills and pocketed Rs.466/- pertaining to the regular electricity bills. On April 08, 1992 a charge sheet was issued to the petitioner in respect of the allegations, wherein three Articles of Charge were framed against him. On April 28, 1992, the petitioner submitted an application asking for the help of one K.L. Sharma for assisting him in carrying out the inspection of records. The said request was rejected. On March 01, 1993, the petitioner submitted his reply to the charge sheet and denied all the charges. On March 26, 1993, the petitioner was placed under suspension. It may be noted that in the charge sheet, the respondent sought to prove the charges by way of twenty three documents and seven witnesses. Inquiry Officer was appointed, who held inquiry and proved the charges against the petitioner. It is also noted that during the pendency of inquiry, the petitioner attained the age of superannuation.

4. On September 11, 1998, a show cause notice was issued to the petitioner proposing a penalty of 30% cut in pension per month permanently under Rule 9 of the CCS (Pension) Rules read with Regulation 10 of DESU (DMC) Service Regulations, 1973 (hereinafter referred to as 'Regulations'). On October 21, 1998, the petitioner submitted a representation against the penalty proposed. On December 31, 1998, the Disciplinary Authority passed an order imposing the penalty of 30% cut in pension per month permanently in exercise of its power conferred under Rule 9 of the CCS (Pension) Rules, 1972 read with Regulation 10 of the Regulations. On January 28, 1999/February 4, 1999, the petitioner being aggrieved by the order dated December 31, 1998, preferred an appeal against the penalty imposed on him. In the year 2000, the petitioner filed a Writ Petition No. 7673/2000, which was disposed of directing, the appeal filed by the petitioner before the Appellate Authority be disposed of as expeditiously as possible, preferably within a period of 60 days from the date of the order. On January 10, 2001, the petitioner submitted a representation to the Chairman of erstwhile Delhi Vidyut Board for personal hearing in the appeal and for treating him on duty for all purposes during the period of suspension. The appeal filed by the petitioner was

dismissed on February 15, 2001. On February 22, 2001, the Disciplinary Authority passed an order that the period between suspension and the date of superannuation of the petitioner may be treated as period spent on duty for the purpose of pension and other terminal benefits.

5. Counter affidavit has been filed by the respondent. The respondent did not dispute the aforesaid facts as narrated in the writ petition. That apart, it has been stated that the allegations made in the charge sheet were admitted by the petitioner in his statement dated February 01, 1991. On February 27, 1991, the petitioner further admitted the fact that he had unauthorizedly taking the help of an outsider to discharge the duties assigned to him and thereby exposed his cash counter to great risk by allowing the outsider in his Cabin without permission of his higher Officers and in utter disregard to the relevant instructions issued from time to time. According to the respondent, the petitioner instead of submitting a reply to the show cause notice dated April 08, 1992, made an application to the respondent to allow him to inspect the record with the help of an Advocate, which request of the petitioner was considered by the Competent Authority and rejected. It is stated that the Inquiry Officer after duly considering the relevant evidence placed on record along with relevant documents and after

carefully perusing the statements of all seven prosecution witnesses as well as the documents and the written arguments placed on record both by the prosecution as well as by the petitioner held the charges as proved. They also support the orders passed by the Disciplinary Authority as well as by the Appellate Authority. The respondent also justified the order dated February 22, 2001. Finally, the respondent has sought the dismissal of the writ petition.

6. Mr. Sanjeev K. Jha, learned counsel appearing for the petitioner would challenge the impugned action of the respondent by stating that the penalty could not have been imposed on him on the basis of an inquiry conducted by the Inquiry Officer, which is perverse. He states, that the Inquiry Officer wrongly proved the charges against the petitioner on mere assumptions and presumptions, without making proper analysis, evaluation and appreciation of the documentary as well as oral evidence. She ignored the vital facts placed on the record of the inquiry and proved the charges by repeating the same story, which was written by the Presenting Officer. According to him, the defence arguments were neither considered nor discussed in the report. The Inquiry Report is one sided. Therefore, the penalty imposed is unjustified and contrary to the principles of natural

justice. It is his case that the prosecution documents mentioned at Sl. No. 3, 8, 15, 17 and 21 were not produced during the inquiry. That apart, the Departmental Inquiry is a Fact Finding Inquiry but the Inquiry Officer did not find out the factual truth of the case and proved the charges merely on surmises and conjectures. It is his submission that the Inquiry Officer has wrongly relied upon the evidence of PW1 Ram Chander Goel, who had made the complaint as he did not deposit any of the electricity bills himself but the bills were deposited by his wife, who never made any complaint. The registered consumer, whose bills were paid by the wife of Ram Chander Goel also did not make a complaint about the non issue of receipt against the bills. According to Mr. Jha, Ram Chander Goel was living in the same locality in which petitioner Harveer Singh was living and due to personal enmity Ram Chander Goel made a false complaint against the petitioner to get him involved in a false case. Hence, the report of the Inquiry Officer is based on bogus complaint, without knowing the factual position, is wrong and misconceived and imposing of the proposed penalty will be against the principles of natural justice. He also states that the charge of not realizing surcharge from the consumers against the bills, which were paid after due date and not affixing revenue stamps on the bills,

have been wrongly proved by the Inquiry Officer without any evidence. He states, the evidence of PW 2 to PW 6 are sufficient proof from which it will be seen that the charges have no ground to stand and imposing the penalty will not be justified.

7. According to Mr. Jha, even the charge that the petitioner has availed the services of outsiders for performing his duties and exposed the sensitive office of cash counter to great risk has also wrongly been proved without any evidence. As such, imposing of penalty without any fault or lapse on the petitioner's part is highly unjustified. It is also his submission, that the petitioner is a retired person having retired from DESU/DVB after rendering more than 33 years of good, faithful and devoted service. There was no complaint against him except this case and therefore, keeping in view his past antecedents, record of service, the penalty is not justified. He also states that before imposing a penalty, the departmental Authorities were required to consult UPSC, which is mandatory and as the Authorities have not consulted UPSC, the penalty imposed need to be set aside. He would rely upon the judgments in the case of *Ram Dhari Singh and Others v. Delhi Vidyut Board* 2002 II AD (Delhi) 389 and *Vijay L. Mehrotra v. State of U.P. and Others* (2001) 9 SCC 687 in support of his

contention.

8. On the other hand, Ms. Avnish Ahlawat, learned counsel appearing for the respondent would justify the impugned orders. She, apart from reiterating the submissions made in the counter affidavit, would state that there is sufficient evidence on record to prove the charges framed against the petitioner. That apart, it is her case that the principle of natural justice having been complied with, this Court would not like to re-appreciate the findings and come to a different conclusion. That apart, it is her submission that insofar as Article I is concerned, it is immaterial as to who made the payment, the complainant or his wife. The complaint was duly proved by PW 1 on the basis of exhibited documents on record. According to her, payments of the bills Ex.S-1, S-1A, S7, S-7A were made by his wife and similarly Ex.S9, S-9A and S-9B were also made by his wife. However, the petitioner did not issue receipt for the same. She states, that the payments were made by consumers after the due date but the petitioner did not realize any surcharge on the same. It is her case that this fact was admitted by the petitioner in his own statement in Ex.S12 and S-12A, S-12B and S-12C. That apart, she states from the statement made by PW 2, it was proved that revenue stamps were available at the cash counter, where he himself was

working at the relevant time and further, the fact, which emerged from the statement of the PW 2 is that an outsider was helping the petitioner by doing his official work. However, he could not throw any light about the identity of the outsider. She also draws my attention to the statement of PW 3 from which, it is clear that the witness could not say whether there was any shortage of revenue stamps or not at the relevant time. She also draws my attention to the statement of PW 6, who had stated that though there was shortage of revenue stamps at the relevant period, however this shortage was not brought to his notice by the petitioner and no amount of revenue stamp was charged by the cashier while issuing electricity bills receipt, which were issued without affixing the revenue stamps. She also stated that PW 7 Investigating Officer had duly investigated the case. As per his testimony, the cashier summary sheet Ex.S5, S-5A, though not seized by the Investigating Officer but was received by him through office letter exhibited as Ex.S5, disclosed the name of the petitioner working on cash counter No. 407. She seeks the dismissal of the writ petition.

9. Having heard the learned counsel for the parties, the following were the charges framed against the petitioner:-

“ ARTICLE- I

That Shri Harveer Singh, Sr. Cash Clerk while functioning at the Cash Counter No.407, B.G. Road, Delhi during the year 1990 with malafide intention & ulterior motives did not issue receipt to the consumers for the payments received by him against electricity bills.

ARTICLE- II

The said Sh. Harveer Singh while working on the aforesaid office in its aforesaid capacity during the year 1990, did not realise surcharge from the consumer in respect of the bills which were paid after the due date. Further he did not affix revenue stamps on the bills, amount of which exceeded Rs. 20/-.

ARTICLE- III

That said Sh. Harveer Singh, while working in the aforesaid office in the aforesaid capacity during the year 1990 unauthorisedly availed the services of outsiders for performing his duties and thus exposed the sensitive office of the Cash Counter to great risk.

Thus Shri Singh violated rule 3 (1) of the CCS (Conduct) Rules 1964.”

10. The findings of the Inquiry Officer, in her report, are as under:-

FINDINGS:

I have carefully gone through the whole case, perused the statements of all the seven prosecution witnesses examined by the department. I have also scrutinised the documents to which have been duly exhibited after these were proved by the prosecution and have considered the written arguments placed on the record by the prosecution as well as the C.O.

The charges against the C.O as contained in Art-I is that while working as Sr. Cash Clerk at counter No. 407, B.G. Road, Delhi

during 1990, the CO did not issue receipt to the consumers although payment was duly received by him. As per Art.II of the charges, during the year 1990 the CO did not realize surcharge for the payments made by the consumer in respect of electricity bill, payments of which were made after expiry of due date and did not affix revenue stamps on the bills amounts of which exceeded Rs.20/-. As per Art.-III, the CO during the period 1990 utilized the services of an outsider for doing his official work and thus exposed the sensitive office of the Cash Counter to great risk.

P.W. 1 Shri Ram Chander Goel, has proved his complaint Ex.S-7, and the documents Ex.S-1, S-1A, Ex.S-7A, Ex.S-9, Ex.S-9A and S-9B. According to his statement the payments of bills S-1, S-1A, Ex.S-7 and Ex.S-7A was made by his wife, and similarly payments of bills Ex.S-9, S-9A and S-9B were also made by his wife. Apart from these bills, other bills Ex.S-9C, S-9D, Ex.S-9E were also proved. A perusal of these reveal that payment was made by consumers after due date but the CO did not realize any surcharge. P.W.2 Sh. B.N. Rai Sr. Cash Clerk has confirmed having made statement Ex.S-13 and Ex.S-13A. The statement of this witness is rather misleading so far as the availability of revenue stamp with the CO is concerned. However, this witness has emphatically stated that these revenue stamps were available at the cash counter which he himself was working at the relevant time. Another fact which emerged from the statement of this witness is that one outsider was helping the CO by doing his official work, although he could not throw any light about the identity of that outsider. P.W.3, Sh. H.S. Aggarwal, Retd. Holrith Officer the statement of this witness is evasive, in as much as this witness could not say whether there was a shortage of revenue stamp or not at the relevant period i.e 1990. P.W.4, is Sh. Shiv Kumar, Sr. Clerk AFO(D). According to this witness, the due date for payment of electricity bills used to be extended with permission of the concerned AFO/DCA and information for extension was required to be submitted to the Dir.(EDP). On seeing the bill book No. P-317 for cycle-3, he could not say whether the CO had received payment against any electricity bills after expiry of the due date or not. P.W.5, Sh. Shiv Shankar, Bill Messenger. This witness also could not say whether the CO had received the payment or bill book No.P-

317, after expiry of the due date or not. P.W.6 is Sh. O.P. Sharma, who inter alia stated that there was a shortage of revenue stamp during 1990-91. He further stated that the CO did not affix revenue stamps while issuing the electricity bill. This witness categorically stated that he did not receive any complaint against the CO that the latter was utilizing the services of an outsider in dealing with his official work. P.W.7, Sh. S.D. Sharma stated that he had investigated the complaint against the CO. He was shown the documents, placed on the file, duly exhibited on the file. The witness confirmed having seized a number of documents during course of investigation by him.

On a comprehensive analysis of the material placed on record, I find that in this case so far the question of the CO not realizing the surcharge on the payments against the bills which were paid after their due date. Similarly, it is also proved from the statement of P.W.1, that his wife had made payment of certain bills but the CO did not issue any payment receipt for the same. Further, the CO did not affix any revenue stamps on the bills amount of which exceeded Rs.20/-. The preponderance of the oral evidence mainly by PW.1 and other witnesses as well as the documents placed on record, clearly suggest that the prosecution has proved its case against the CO to my entire satisfaction. Hence, I hold the CO guilty of all the charges leveled against him.

The report is submitted accordingly."

11. From the above, it is noted, the Inquiry Officer in her findings, has only referred to the statements made by the witnesses to hold the charges as proved. She did not give reasons i.e the sum total of the evidence has not been narrated while holding the charges as proved. She did not analyze the evidence (exhibits and statements) while concluding so. To say that she has made comprehensive analysis, without reflecting so on record, would not justify the findings, more so when some of the statements made can

also be read in favour of the petitioner. It is difficult for this Court to make out the basis for the Inquiry Officer to prove the charges against the petitioner. In fact, in the absence of the exhibits on the file of this Court, this Court cannot hold that the Inquiry Officer was justified in her final conclusion proving the charges. The Supreme Court in the case of ***Khardab & Co. v. Workmen AIR 1964 SC 719*** has observed as under:-

“If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions. Unless such a course is adopted, it would be difficult for the Industrial Tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse.”

12. That apart, I note the petitioner despite filing a detail appeal stating that the findings are perverse, has also not cared to decipher the evidence, both documentary and oral while rejecting the appeal. The Appellate Authority has also not dealt with various other grounds raised by the petitioner in his appeal. The appellate order is a reiteration of the order of the Disciplinary Authority, which suggest non application of mind and contrary to the law laid down by the Supreme Court in the case reported as

(2013) 6 SCC 530 Chairman, Life Insurance Corporation of India and others v. A. Masilamani, wherein the Supreme Court, in para 19 held as under:-

“19. The word “consider”, is of great significance. The dictionary meaning of the same is, “to think over”, “to regard as”, or “deem to be”. Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term “consider” postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar, (2006) 11 SCC 147; and Bhikhubhai Vitlabhai Patel & Ors. v. State of Gujarat & Anr., AIR 2008 SC 1771).

13. Further, In the case of **Director (Marketing), Indian Oil Corpn. Ltd. And Another v. Santosh Kumar (2006) 11 SCC 147**, the Supreme Court has, noting the language employed by the Disciplinary Authority, which has been adopted in-toto by the Appellate Authority, held that there is a total non application of mind by the Appellate Authority. It necessary follows, even if the Disciplinary Authority order is bereft of reasons, the Appellate Authority order must reveal application of mind. In this regard, I quote paras 9, 10 and 11 of the judgment of the Supreme Court as under:-

“9. We have also perused the order passed by the General Manager (Operations) which is available at page 51 and the order

passed by the Director (Marketing) who is the appellate authority. A close scrutiny of both the orders would only go to show that the Appellate Authority has simply adopted the language employed by the Disciplinary Authority and inflicted the punishment of dismissal on the respondent herein.

10. *For the sake of convenience, we extract both the orders available at page 51-52 of the paper book:*

"I have carefully gone through Shri Santosh Kumar, Emp. No. 19957, Ex-AM(Ops) Hissar Depot's appeal dated 25.3.2000 together with all papers relating to the disciplinary case initiated against him vide charge-sheet No. IR/1461/(N-113) dated 24.6.97 in the capacity of the Competent Disciplinary Authority.

I have applied my mind and I find that Shri Santosh Kumar has not brought out any point in his appeal dated 25.3.2000 which may warrant any change in the said final order passed by me as the Competent Disciplinary Authority.

The appeal of Shri Santosh Kumar is hereby forwarded to Director(M)-the Appellate Authority for his kind consideration and orders.

General Manager (Operations)

I have carefully gone through Shri Santosh Kumar, Emp. No. 19957, Ex-AM(Ops) Hissar Depot's appeal dated 25.3.2000 together with all papers relating to the disciplinary case initiated against him vide charge-sheet No. IR/1461/(N-113) dated 24.6.97. Shri Santosh Kumar has preferred an appeal against the order of penalty of "Dismissal", inflicted upon him by GM(Ops.) - the Competent Disciplinary Authority vide reference No. IR/1461/(N-113) dated 30.12.1999 as a measure of disciplinary action against Shri Santosh Kumar.

I have applied my mind and I find that Shri Santosh Kumar has not brought out any point which may warrant my interference with the said orders passed by the Competent

Disciplinary Authority. Accordingly, I hereby reject the appeal of Shri Santosh Kumar. Let Shri Santosh Kumar be advised accordingly.

Director (Marketing)"

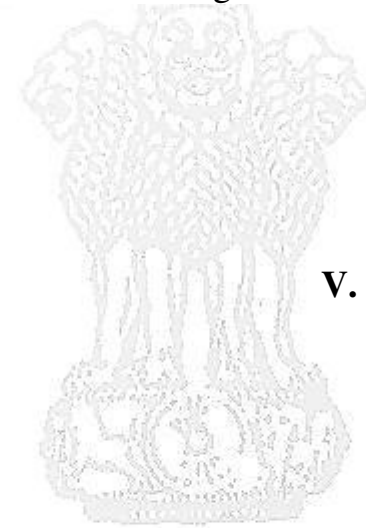
11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside for the above reason. We also set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs."

14. In view of my above discussion, the appellate order dated February 15, 2001 is set aside and the matter is remanded back to the Appellate Authority for considering the appeal dated January 28, 1999/February 04, 1999 filed by the petitioner afresh and to pass a detail and speaking order on the pleas raised by the petitioner in his appeal. The said action shall be taken by the Appellate Authority within a period not later than three

months from the date of receipt of copy of the order and communicate the decision to the petitioner herein, who, if still aggrieved can take recourse to such remedies as available in law. The Appellate Authority shall also consider the plea of the petitioner for enhancement of suspension allowance at 75% of his enhanced salary in terms of the recommendation of the V Pay Commission for the period January 01, 1996 to December 31, 1996 and pass a speaking order in that regard. The petition is disposed of. No costs.

NOVEMBER 08, 2017/ak

V. KAMESWAR RAO, J



सत्यमेव जयते