

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: April 18, 2017

Judgment delivered on: July 04, 2017

+ W.P.(C) 3944/2002, CM Nos.6699/2002, 8654/2006 & 3838/2010

R.K.BHATIA

..... Petitioner

Through: Mr. Anil Mittal, Adv. with
Ms. Komal Aggarwal, Adv.

Versus

CHAIRMAN & M.D. DELHI POWER COMPANY LTD.
& ANR

..... Respondents

Through: Mr. Sandeep Prabhakar, Adv. with
Mr. Vikas Mehta, Adv. for BRPL.

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 *inter alia* challenging the orders dated December 21, 1999, March 10, 2000 and June 8, 2002 whereby the petitioner has been imposed a penalty of reduction by five stages in his time scale of pay for a period of five years with further stipulation that he will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments. Vide orders dated March 10, 2000 and June 8, 2002, the appeal filed by the petitioner against the order dated December 21, 1999 and review thereof were rejected.

2. The facts are that the petitioner was appointed as Meter Reader in the erstwhile DESU (later known as DVB) on August 19, 1974. On November 11, 1991, a charge-

sheet was issued wherein it was *inter alia* alleged that the petitioner who was deputed to record readings of the meters of consumers in Mayur Vihar, Phase – II, he with *mala fide* intention did not record the readings properly and did not issue requisite statements in terms of instructions issued vide letter dated January 29, 1982, in respect of different connection numbers including connection No. 604/131028. It is stated that on February 25, 1992, the respondents had issued another charge sheet with an allegation that the petitioner during the year 1991, while working as meter reader in District Mayur Vihar, with *mala fide* intention in disregard to office order dated May 29, 1982 did not issue Statement–III in respect of the defective/ stopped meter No. E-6067551 installed against connection No. 604/131028. It is suffice to state that the charge sheet dated February 25, 1992, culminated in a report dated July 21, 1997 of the inquiry officer, wherein the inquiry officer has held the charge framed against the petitioner as ‘*proved*’. Pursuant to the inquiry officer’s report, it was proposed to impose a penalty of reduction by five stages the time scale of pay for a period of five years with stipulation that he shall not earn increments of pay during the period of reduction. Against the said show cause notice, the petitioner initially made a representation dated September 28, 1999, wherein he sought certain documents so as to enable him to file a suitable reply. The aforesaid representation was followed by another representation dated October 26, 1999. Suffice it to state, it is not the case of the petitioner in his aforesaid representations that the allegation in charge sheet dated February 25, 1992 was the charge in an earlier charge sheet dated November 11, 1991. After considering the representations made by the petitioner, the Disciplinary Authority i.e. Additional General Manager (A) vide order

dated December 15, 1999 imposed the penalty of reduction by five stages in time scale of pay for a period of five years with further stipulation that he will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments. Against this order, the petitioner filed an appeal before the Appellate Authority. The petitioner has not enclosed alongwith the writ petition copy of the appeal filed by the petitioner with the Appellate Authority. In the absence of the same, it is difficult to decipher as to whether the petitioner has taken a plea that the charge in the charge sheet dated February 25, 1992 was subject matter of charge in the charge sheet dated November 11, 1991. There is no averment in the writ petition that the petitioner in his appeal dated January 5, 2000 has taken a plea that the charge in the charge sheet dated February 25, 1992 was a charge in the charge sheet dated November 11, 1991. The appeal of the petitioner was dismissed on March 10, 2000. Subsequently, on December 3, 2001, the charge sheet dated November 11, 1991 happened to be decided by the Additional General Manager (A) whereby the Disciplinary Authority on consideration of the inquiry report wherein the charge against the petitioner was held 'not proved', dropped the charge sheet dated November 11, 1991. This made the petitioner to file a review petition dated December 18, 2001 against the order dated March 10, 2000 passed by the Appellate Authority dismissing the appeal of the petitioner against the order of the Disciplinary Authority dated December 21, 1999 in charge sheet dated February 25, 1992. Even though, the review petition has not been placed on record, I note from the order of the Reviewing Authority dated June 8, 2002, the charge in the charge sheet dated February 25, 1992

was a charge in the charge sheet dated November 11, 1991. Suffice to state that the Reviewing Authority dismissed the review petition with a finding that there is no link between the two cases. It is in the aforesaid background, the present petition has been filed. A counter affidavit has been filed by the respondents and I intend to deal with the stand of the respondents while noting the submissions made by the learned counsel for the respondents.

3. It is the submission of Mr. Anil Mittal, learned counsel for the petitioner that the issuance of charge sheet dated February 25, 1992 on the same charge which is subject matter of earlier charge sheet dated November 11, 1991 is without jurisdiction and *void ab initio*. He states that it is settled principle of law that no person can be punished twice for the same charge, more particularly without withdrawing the earlier charge sheet. It is his submission that in the first charge sheet dated November 11, 1991, the inquiry officer after conducting a detailed inquiry gave a finding that the department has failed to produce MSR – 15 Register, which if produced, could have thrown light on the real position. According to Mr. Mittal, there is also a finding that in view of office order dated November 6, 1989, there was no need to issue Statement – III as the said office order has superseded earlier office order dated May 25, 1982 but still the petitioner had issued Statement by abundant caution. Mr. Mittal would state that the inquiry officer in the second charge sheet dated February 25, 1992, after holding a sketchy inquiry by examining two witnesses in which one of the witnesses, namely, Sh. Ram Avtar was common, without examining the office order dated November 6, 1989 gave a finding of charge ‘proved’. He would rely upon the judgment in the case reported as **2014 (140)**

4. On the other hand, Mr. Sandeep Prabhakar, learned counsel for the respondents, Delhi Power Company Limited, which was allowed to be impleaded because of the unbundling of Delhi Vidyut Board would submit that the only basis for filing the writ petition is the dropping of charges in charge sheet dated November 11, 1991, vide order dated December 3, 2001. He states that the writ petition is not based on the ground that the second charge sheet dated February 25, 1992 was not proper. According to him, as per settled law, such writ petition challenging the second charge sheet should have to be filed within three years of the issuance of the charge sheet. The objection regarding second charge sheet was only made vide review application dated December 18, 2001 after the dropping of charges in the first chargesheet vide order dated December 3, 2001. He also states that even assuming that a right had accrued to the petitioner to challenge the second charge sheet dated February 25, 1992, no such objection/ challenge was ever taken/ made either before the respondent or before the inquiry officer or any representation made before any authority or any writ petition filed before this Court within three years from the issuance of charge sheet dated February 25, 1992. He would rely upon the judgments of the Supreme Court reported as: (a) **AIR 1964 SC 1006, State of Madhya Pradesh & Another versus Bhailal Bhai & Others** and (b) **(2011) 3 SCC 436, State of Orissa versus Mamata Mohanty**. He seeks the dismissal of the writ petition.

5. Having heard the learned counsel for the parties and perused the synopsis filed by them, there is no dispute in so far as the facts are concerned. Concedingly, a charge

sheet was issued on November 11, 1991 which incorporates a charge with regard to connection No. 604/131028; the second charge sheet dated February 25, 1992 also incorporates the said charge. It so happened that the second charge sheet wherein the inquiry officer, proved the charge, was decided earlier to charge sheet dated November 11, 1991. Pursuant to the show-cause notice, the Disciplinary Authority vide order dated December 21, 1999 imposed a penalty, which order has been confirmed by the Appellate Authority as well. It was only after the Appellate Authority had rejected the appeal and the inquiry officer's report against the first charge sheet had a finding that the charge has not been proved, petitioner woke up to contend for the first time that the subject matter of the second charge sheet dated February 25, 1992 was a subject matter of the first charge sheet dated November 11, 1991. Much water has flown, in as much as, there is a finding against the petitioner that he has committed misconduct. I agree with the submission of Mr. Sandeep Prabhakar, learned counsel for the respondents that the petitioner has never challenged the issuance of the second charge sheet either before the inquiry officer or before the Disciplinary Authority, in fact, the petitioner proceeds on the premise that the charges in the first charge sheet dated November 11, 1991 and the second charge sheet dated February 25, 1992 are different. Be that as it may, in the absence of any challenge to the second charge sheet before the inquiry officer and the Disciplinary Authority, the inquiry officer rightly proceeded with the charge sheet dated February 25, 1992 and gave his findings in his report dated July 21, 1997. Subsequent thereto, if a plea is raised, the same would be unsustainable as in terms of the second charge sheet a penalty has been imposed vide order dated December 21, 1999. The

effect thereof would be that the first charge sheet November 11, 1991 would cease to exist. In fact, the Disciplinary Authority should not have gone ahead with that charge sheet. The given facts would demonstrate that the penalty imposed on December 12, 1999 cannot be held to be bad on the ground now pleaded by Mr. Anil Mittal. The plea of Mr. Mittal that the second charge sheet dated February 25, 1992 issued to the petitioner could not have been issued assuming to be correct, but the same was not challenged by the petitioner till the filing of the review petition on December 19, 2001, that is, almost nine years after the issuance of charge sheet dated February 25, 1992. Hence, the challenge to the impugned orders is unsustainable. In so far as the submission of Mr. Mittal on the merit of the charge is concerned, the inquiry officer has given the following findings:

“After going through the Listed Documents, Addl Documents, depositions made by the PWs, Written Brief of the PO and the Defence Arguments submitted by the CO, I find that the charge against Sh. Bhatia is that as a meter reader, he with a malafide intention and utter disregard of the office order dated 29.5.82 did not issue Statement – III in respect of defective/ stopped meter No. E-6067551 installed against K. No. 604-131.28 registered in the name of Shri Ram Saran Dass resident of 108-D, Pocket-C, Mayur Vihar, Phase- II. Shri Bhatia took the reading of the said meter twice i.e. on 7.1.91 and 2.5.91 and on the first occasion the reading show as 2840 and the previous reading was also on 6.9.90 showing the reading as 2840 and a remark given by the previous meter reader as ‘Direct’. According to the statement of imputation and the charge, Shri Bhatia was required to issue Statement – III when he made his reading on

7.1.91.

On the second occasion when he went for meter reading on 2.5.91, he saw the premises locked and gave the remarks as 'PL'. This shows that Shri Bhatia did not take appropriate action in issuing the statement – III when he was required to be so under the office under at Ex-D-1. In his pre-recorded statement before the Vigilance, Shri Bhatia has stated that as the remarks given by the previous meter reader in the month of Sept. 90 he did not issue Statement – III when he visited the premises for reading the meter in Jan. 1991. This plea given by Shri Bhatia, CO both in his Defence Statement as well as in his arguments does not hold good. It is the duty of the Meter Reader as point out any deficiency found in the meter reading to the higher officer, MSR in this case so that the action against the direct consumption of the electricity by the consumer could have been stopped and the alleged loss of revenue to the Undertaking could have been averted.

From the statement given by Shri Karan Singh, another CO in this case, it appears that Shri Bhatia did not report about the stopped/ burnt meter or did not issue the Statement-III and as such Shri Karan Singh was not aware that some irregularity was going on at premises no. 108-D, Pocket-C, Mayur Vihar, Phase –II. Attention may also be invited to Ex-S-5 which is an IR given by the Jr. Clerk and duly signed by the Asstt. Engineer on 4.9.91 marked to VO [G] in that exhibit. There is an over writing in the year of the complaint made by the consumer at Sl. No. 270 of the complaint register. It appears that tampering has been done in the year and a separate investigation may be contemplated.

In totality there is an emission and commission on the part of Shri R.K. Bhatia in not reporting relating to the stopped / burnt meter

and also not issuing the Statement – III as he was so required. I, therefore, hold that the charge against Shri R.K. Bhatia has been proved.”

6. Even though, Mr. Mittal has tried to draw a comparison in the findings of the inquiry officer's report dated July 21, 1997 (second charge sheet) and dated *nil*, Page 83 to 85 of the paper book (first charge sheet), he could not draw my attention to the office order dated November 6, 1989 to show that the said order had superseded the office order dated September 25, 1982 and there was no requirement for submitting a statement in respect of defective / stopped meters. I may note here that the Reviewing Authority in its order dated June 8, 2002 did comment that there is no link between the two cases. I may state here that it is not the case of Mr. Prabhakar that the subject matter of the charge sheet dated February 25, 1992 was not the subject matter of the charge sheet dated November 11, 1991. Such an observation may not be a correct observation. Be that as it may, it would be quite late in the day for this Court to remand the matter back to the Reviewing Authority, more so, as I have already concluded that the challenge in the writ petition to the aforesaid three orders being December 12, 1999, March 8, 2000 and June 8, 2002 is unsustainable. In so far as the judgment relied upon by Mr. Anil Mittal in the case of ***B.S. Chowdhary (Supra)*** is concerned, the same is not applicable in the peculiar facts of this case.

7. The writ petition is dismissed. No orders as to costs.

CM No. 3838/2010 (under Order 1 Rule 10 CPC for impleadment of BSES Rajdhani Power Ltd.)

In view of the order dated July 24, 2002 and March 19, 2010, the application does

not survive for consideration being infructuous. Ordered accordingly.

CM Nos. 6699/2002 (for stay) & 8654/2006 (for release of benefits to the petitioner)

In view of the fact that the writ petition has been dismissed, the applications are dismissed.

V. KAMESWAR RAO, J

JULY 04, 2017/jg

