

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

+ **W.P.(C) No.1714/2017**

% **27th February, 2017**

J.S. SEHRAWAT Petitioner

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

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD & ANR.

..... Respondents

Through: Mr. Ankur Chhibber, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 7658/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 1714/2017

1. By this writ petition under Article 226 of the Constitution of India, petitioner challenges the impugned order passed by the disciplinary authority dated 12.1.2017 whereby the petitioner has been inflicted the penalty of dismissal from service which shall ordinarily be disqualification for future employment under the Government.

2. Petitioner pleads that the appointing authority of the petitioner was the Chief Executive Officer (CEO) of the respondent and therefore the impugned order should not have been passed by a lower authority being the Member (Administration) of the respondent.

3. I may note that petitioner had earlier challenged the show cause notice which was issued by the respondent dated 21.9.2016 on the same grounds as are urged in the present writ petition before this Court. It was urged in the earlier writ petition being W.P. (C) No. 12174/2016 filed by the petitioner that the show cause notice dated 21.9.2016 which was issued was without jurisdiction because the same was issued by the Member (Administration) of the respondent and which authority was not competent to do so because he is an authority lower than the CEO of the respondent. The said writ petition being W.P. (C) No. 12174/2016 was dismissed by the judgment dated 23.12.2016 of this Court by giving two findings. Firstly it was found that petitioner had not made the requisite pleadings as to the service rules applicable of which is the competent authority of the respondent who can take disciplinary action against the petitioner. The second reason for dismissal of the earlier writ petition was that there is no law that a person can only be proceeded against with departmentally by the authority which is higher than the appointing authority of the employee.

The relevant paragraph 4 of the judgment dated 23.12.2016 in W.P. (C) No.

12174/2016 reads as under:-

“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.”

4. Once again by this writ petition, the same arguments are urged before this Court and therefore this writ petition is barred by the principles of *res judicata*.

5. Independently of the writ petition being barred by the principles of *res judicata*, I find that there are no service rules of the

respondent or any statutory provisions that an employee can only be proceeded with by the disciplinary authority of the employer which is higher than the appointing authority of an employee.

6. Learned counsel for the petitioner seeks to place reliance upon Article 311 of the Constitution of India, however, this Article will not apply in the present case because petitioner does not hold any civil post under the Union or the State and inasmuch as, the respondent/employer is an autonomous organization which is neither the Central Government nor the State Government.

7. In view of the above, there is no merit in the writ petition, and the same is therefore dismissed.

FEBRUARY 27, 2017

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VALMIKI J. MEHTA, J