

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

Judgment reserved on: March 17, 2017

Judgment delivered on: March 24, 2017

+ LPA 190/2017 & CM No. 10676/2017

J. S. SEHRAWAT

..... Appellant

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

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD AND
ORS

..... Respondents

Through: Mr. Ankur Chhibber, Adv.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 10676/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

LPA 190/2017

1. This Intra-Court appeal has been filed by the appellant challenging the order dated February 27, 2017 of the learned Single Judge in W.P.(C) No. 1714/2017 whereby the learned Judge has dismissed the writ petition filed by

the petitioner challenging the order of the Disciplinary Authority dated January 12, 2017, dismissing him from service, which shall ordinarily be disqualification for future employment under the Government.

2. Suffice to state, that the dismissal was on account of the appellant's conviction in a criminal case registered by the Central Bureau of Investigation. Before issuing order dated January 12, 2017, a show cause notice September 21, 2016 was issued to the appellant. He was also granted personal hearing on December 26, 2016.

3. The only submission advanced on behalf of the appellant before the learned Single Judge and even before this Court is the order of dismissal was passed by Member (Administration), who is not the Appointing Authority. The learned Single Judge has rejected the said plea on the ground that the appellant had earlier challenged the issuance of show cause notice dated September 21, 2016 by filing a W.P.(C) No. 12174/2016 on the same ground, inasmuch as the same was issued by Member (Administration), who was not competent to do so because he was an Authority lower than CEO of the respondent. The said writ petition was dismissed vide judgment dated December 23, 2016 by holding; (i) the appellant 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; (ii) there is no law that a person can only be proceeded against departmentally by the Authority, which is higher than the Appointing Authority of the employee.

4. In the impugned order, which is in the second writ petition, the learned Single Judge has held that the writ petition is barred by principles of res-judicata. He also observed that there are no service Rules of the respondent or any statutory provision 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.

5. During the course of his submission, the learned counsel for the appellant has drawn our attention to page 29, which is a letter dated January 24, 2017 addressed to the appellant in response to his application under the RTI Act, wherein the following has been stated:-

“Point No.1. Appointing Authority in r/o Jr. Engineer (Civil) in DUSIB is CEO (DUSIB), (Certified copy of office order in this regard enclosed)

Point No.2. Certified copy of office order dated 28.07.2011 issued by Director (Admn) DUSIB is enclosed.”

6. He has also drawn our attention to page 30, which is an office order dated July 28, 2011. Suffice to state, in terms of the office order dated July 28, 2011, the Disciplinary Authority to impose penalty on a holder of Group C post is Member (Administration), (insofar as major penalties are concerned)

and the CEO is the Appellate Authority. The Rule position being clear that is the Disciplinary Authority is the Member (Administration), he was competent to impose penalty on the appellant. We also concur with the conclusion of the learned Single Judge that the appellant, having challenged the show cause notice dated September 21, 2016 in W.P.(C) No. 12174/2016, on the same ground on which writ petition was dismissed on December 23, 2016, and the issue having attained finality, the plea now being urged pursuant to a final order dated January 12, 2017, on the same show cause notice i.e. September 21, 2016 shall be hit by the principles of res-judicata. We may also state that the reliance placed by Mr. Apurb Lal on page 29 to contend that the Appointing Authority of Junior Engineer (Civil) is CEO is incorrect and contrary to the Rule position in terms of office order dated July 28, 2011, which we have referred to and dealt with, above.

7. The attempt on the part of Mr. Apurb Lal, to draw a distinction between the Appointing Authority and Disciplinary Authority is also liable to be rejected, inasmuch as Rule 19 of the CCS (CCA) Rules contemplates in a case where penalty has been imposed on the Government Servant on the ground of conduct, which has led to his conviction on a criminal charge, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit surely, suggest that the Disciplinary

Authority was empowered to pass an order of dismissal, which in this case was Member (Administration) in terms of office order dated July 28, 2011.

8. We do not see any merit in the appeal. The same is dismissed. No costs.

V. KAMESWAR RAO, J

CHIEF JUSTICE

MARCH 24/2017/ak

