

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

+ **W.P.(C) No. 6530/2007**

% **2nd February, 2017**

TRILOKI NATH Petitioner

Through: Ms. Manindra Acharya, Sr. Advocate
with Mr. C.K. Gautam, Advocate.

versus

BSES RAJDHANI POWER LIMITED AND ORS. Respondents

Through: Mr. Gulshan Chawla, Advocate for R-1.
Mr. Triloki Nath, Advocate for R-2/DPCL.
Mr. Sumeet Pushkarna, St. Counsel
with Mr. Siddhartha Nagpal, Advocate
for Pension Trust/R-3.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India the petitioner impugns two orders passed by the disciplinary authority dated 6.1.2006 and 7.2.2006. By the order dated 6.1.2006 the disciplinary authority has imposed the penalty of a cut in pension by 5 percent for a period of one year upon the petitioner, and which amount roughly works out to only about Rs.7,445/-. The second order dated 7.2.2006 holds that for the period of suspension from 21.6.2000 to

28.2.2002 the petitioner will only be paid subsistence allowance during the period of suspension and not the regular pay though the petitioner will be taken to be on duty for this period. At the outset itself it is stated that by this judgment the second issue of suspension is decided in favour of the petitioner and only the first relief is not granted resulting only in the monetary disadvantage of Rs.7,445/-. The most part of the present judgment however is only because of the first issue of the challenge to the order dated 6.1.2006.

2. There is a chequered history to this case, inasmuch as, on the charge sheet initially issued against the petitioner on 7.12.1993, petitioner was found guilty and imposed the punishment of compulsory retirement. Petitioner however challenged the order of the imposition of compulsory retirement by his W.P. (C) No. 4487/1999. This writ petition was allowed by a learned Single Judge of this Court on 14.3.2000 by setting aside the punishment order imposed against the petitioner by observing that the rules of the employer do not provide for the punishment of compulsory retirement. Petitioner was granted reinstatement with consequential benefits. A second show cause notice was thereafter issued against the petitioner on 15.3.2000 and which resulted in the order of the disciplinary authority dated 20.6.2000 whereby the petitioner was imposed the penalty of removal from

services in addition to the penalty that period of suspension of petitioner from 31.7.1999 till the order of removal from service will be treated as not spent on duty i.e the petitioner will only be granted subsistence allowance. Petitioner challenged this order of the disciplinary authority dated 20.6.2000 in W.P. (C) No. 5431/2000. There were various issues raised in the W.P. (C) No. 5431/2000, and one of the issues was that the disciplinary authority could not impose the punishment upon the petitioner because petitioner was not supplied with certain documents which resulted in the petitioner being held guilty by the disciplinary authority which disagreed with the Enquiry Officer's Report. Learned Single Judge vide his judgment dated 10.9.2002 set aside the disciplinary order dated 20.6.2000 and directed reinstatement of the petitioner with all consequential benefits.

3. The judgment of learned Single Judge of this Court dated 10.9.2002 in W.P. (C) No. 5431/2000 was challenged by the respondent no. 1/Department by filing LPA No. 975/2002 before a Division Bench of this Court. This LPA was allowed and disposed of by the order dated 6.1.2005 and thereby disciplinary authority was directed to consider the issues afresh. Since the wording of this order dated 6.1.2005 will be relevant in view of one of the arguments urged

on behalf of the petitioner, this order dated 6.1.2005 is reproduced as under:-

“1. This appeal is filed against the order made by learned Single Judge, in Civil Writ Petition No. 5431 of 2002 on 10.09.2002. By allowing the petition, learned Single Judge held that the petitioner should be held entitled to all the consequential benefits till date he was superannuated and all the pensionary benefits thereafter.

2. In the instant case, there were departmental proceedings against the petitioner. The report was submitted by the Inquiry Officer holding the delinquent officer not guilty. However, the Disciplinary Authority on considering the material placed before it arrived at a conclusion that the case requires reconsideration and issued show cause notice to the petitioner.

3. After hearing the petitioner, the order of terminating the services of the petitioner came to be passed which was challenged before learned Single Judge.

4. In our opinion, learned Single Judge has rightly pointed out that the relevant material which was taken into consideration by the Disciplinary Authority was not provided to the delinquent, therefore, the order is not in accordance with law and the order made by the Disciplinary Authority has thus been rightly set aside. However, in such a situation what was required to be done was that a direction was required to be issued to the Disciplinary Authority to proceed further in accordance with law i.e. to proceed after supplying the relevant document to the delinquent. On this issue there is consensus and, therefore, we are not required to give detailed reasons. Therefore, this appeal is required to be allowed by directing the Disciplinary Authority to proceed afresh in accordance with law after supplying copies of documents which were relied and were not supplied to the delinquent.

5. The grievance made by learned counsel for the respondent, as considered by learned Single Judge, has some basis to the extent that the order passed prior to issuance of the show cause notice at pages 130-131 seems to suggest that a decision had been taken to punish the petitioner. The order is not very happily worded. There can be no doubt that on consideration of the report of the Inquiry Officer, the Disciplinary Authority would have recorded reasons for differing from the conclusions. The same would be tentative in nature and would form the basis of issuance of the show cause notice. In view thereof, we clarify that what has been recorded by the Disciplinary Authority therein can only be the tentative finding, which resulted in the show cause notice and the reply of the petitioner has to be considered after supplying copies of the documents relied upon by the Disciplinary Authority, which were not earlier given to the petitioner as per the finding arrived at by learned Single Judge. Needless to say, the Disciplinary Authority will confine

itself to only the charges framed and shall decide the matter strictly in accordance with law.

6. Considering the fact that the delinquent has already been superannuated, we direct that proceedings shall be completed within a period of three months. The appeal stands allowed with no order as to costs.”
(underlining added)

4. Pursuant to the order of the Division Bench dated 6.1.2005 in LPA No. 975/2002 petitioner was issued a fresh show cause notice dated 23.8.2005, and which show cause notice reads as under:-

“BSES RAJDHAJI POWER LIMITED
“...a joint venture with Govt. of NCT. Delhi”
VIGILANCE CELL: H.R. DEPARTMENT.
2nd Floor, D-Block, BSES Bhawan, Nehru Place, ND-19
TEL. NO.: 39999706 & 39999809
REGISTERED A.D. POST

No.VC-7-9/93-Vig./BRPL/611

Dated:23/8/2005

MEMO

WHEREAS, disciplinary proceedings under Regulation 7 of the DESU [DMC] Service C&A Regulations, 1976 were initiated against Sh. Triloki Nath, AFO, E.No.69, vide Memo No. VC-7-9/93-Vig/SDT/07 dated 7/12/1993.

AND WHEREAS, the Inquiry Officer in his report had held the charges leveled against Sh. Triloki Nath as “Not Proved” beyond all doubts vide inquiry report No.OSD [Enq]/97-98/Dated March/1998.

AND WHEREAS, the Disciplinary Authority did not agree with the findings of the Inquiry Officer and imposed a major penalty of compulsory retirement from service of the Board w.e.f. 31/7/99 upon Sh. Triloki Nath vide order No. VC/7-9/97-Vig./TPS/221 Dated 23/7/99.

AND WHEREAS, aggrieved by the aforesaid penalty Sh. Triloki Nath filed a writ petition in the Hon’ble High Court.

AND WHEREAS, it came to notice that penalty of compulsory retirement from service was not available in the DESU [DMC] Service C&A Regulations, 1976 and, therefore, withdrew the order dated 23/7/99.

AND WHEREAS, Hon. Court disposed of Sh. Triloki Nath’s writ petition vide order dated 14/3/2000 but allowed the Disciplinary Authority to process afresh in the matter.

AND WHEREAS, the Board accordingly considered afresh the Inquiry Report and issued fresh show-cause notice directing him as to why the charges against him may not be held as “Proved” in disagreement with the

findings of the Inquiry Officer and also the period from 23/7/99 in respect of Sh. Triloki Nath be treated as under suspension till further orders.

AND WHEREAS, Sh. Triloki Nath submitted his reply to the show-cause notice on 2/5/2000.

AND WHEREAS, the Board after considering the reply of said Sh. Triloki Nath dated 2/5/2000 imposed a penalty of "Removal from Service" and also ordered that period from 31/7/99 till the order of removal from service be treated as not spent on duty and payment of pay and allowances for the said period be restricted to subsistence allowance which Sh. Triloki Nath was entitled in accordance with the rules.

AND WHEREAS, aggrieved by the above said order Sh. Triloki Nath filed a CWP No.5431/2000 in the Hon'ble High Court of Delhi in August-2000.

AND WHEREAS, the single bench of the Hon. High Court quashed the order dated 20/6/2000 and also ordered that Sh. Triloki Nath shall be entitled to all consequential benefits till the date of his superannuation i.e.28/2/2002 and thereafter all pensionary benefits vide judgment dated 10/9/2002.

AND WHEREAS, not satisfied with the orders of the Hon'ble High Court of Delhi, the Delhi Power Company Ltd and DVB Employees Terminal Fund-2002 filed a LPA No.975/2002.

AND WHEREAS, the Hon. High Court had allowed the appeal and allowed the Disciplinary Authority to consider the matter afresh but it shall confine itself to only charges framed and shall decide the matter strictly in accordance with the law vide order dated 6/1/2005.

AND WHEREAS, the Inquiry Officer has rightly observed that in the instance case the raid at the premises of Sh. Gopal Kishan, 45, Anarkali Garden, Jagat Puri, against K.No. 601/139497 was carried out on 5/6/91 when it was found out that consumer was fraudulently abstracting energy and a bill for Rs.7,17,746.42 was raised to Sh. Gopal Kishan. The CO who, joined as AFO [D]KRN in Oct-91, submitted a note dated 31/3/92 stating that Sh. Jagga Singh had made a representation on 17/2/92 stating that the said premises was taken by him on rent from Sh. Gopal Kishan on 1/6/91, and asked the approval of Competent Authority for re-assessment of the bill. Inquiry Officer has further rightly observed that Dy. C.A.[E] Sh. P.N. Gulati vide his note dated 23/4/92 asked for the legal opinion as to whether the rent agreement which has been signed by the tenant Sh. Jagga Singh and the landlord, Sh. Gopal Kishan could be taken as a valid document or not. The point was examined and Legal Officer Sh. Harish Jain who in his note dated 20/5/92 opined that the rent agreement, even if it is not registered may be accepted and this legal opinion of Sh. Harish Jain was accorded by the Competent Authority i.e. Sh. Sethuraman, the then AGM[A]. The Inquiry Officer also rightly observed that due to a stay-order by Hon'ble Court the CO could not disconnect the supply of impugned premises.

However, the Inquiry Officer has wrongly relied upon the evidence of Director [EDP], that he did not see any malafide about CO's bringing the re-assessment bill/file on 4.6.92 to him without routing through normal

channel viz through Dy. C.A. [East] and Dy. F.O. [D]. I do not agree with the findings of I.O. in this regard. The Inquiry Officer has drastically failed to appreciate that Director [EDP] in his deposition has stated that AFO's etc. used to bring the cases personally to him for "expeditious clearance" of the case only in urgent matter. In the instance case the raid was conducted on 5/6/91, Sh. Jagga Singh made a representation on 17/2/92, CO initially submitted the case to his Dy. C.A. [East] on 31/3/92, Dy. C.A. [East] sought legal opinion on 23/4/92 and the legal opinion is given by Legal Advisor on 20/5/92 which clearly indicate that the matter was not urgent at all. In these circumstances the CO's taking file personally to Director [EDP] **overlapping two steps in between** particularly the Dy. C.A. [East] who had sought legal opinion about the validity of rent agreement submitted by said Sh. Jagga Singh, clearly speaks of the malafide intentions on the part of C.O.

AND THEREFORE, Sh. Triloki Nath is hereby afforded an opportunity to show-cause as to why the charge leveled against him may not be held as "Partly Proved" to the extent stated above in disagreement with the findings of Inquiry Officer. Sh. Triloki Nath is directed to submit his reply, if any, within 15 DAYS of receipt of this Memo, failing which it will be presumed that he has nothing to say in the matter and further action would be taken accordingly.

A copy of the Enquiry Report is enclosed.

Encl.: As above

Sd/-

[A. CHAKRAVORTY]
SR. MANAGER [HR]

SH. TRILOKI NATH,
Ex-AFO, E.No. 69,
R/O: 1323, Basti Chain Sukh Das
Kala Mahal, Darya Ganj,
Delhi."

(emphasis added)

5. It is this show cause notice dated 23.8.2005 which has resulted in the impugned orders dated 6.1.2006 and 7.2.2006, and which are challenged by means of this writ petition.

6. The first argument urged on behalf of the petitioner is that when the Division Bench vide its order dated 6.1.2005 ordered fresh proceedings in accordance with law by the disciplinary authority, the disciplinary authority could not have issued a fresh show cause notice

dated 23.8.2005 which is reproduced above, inasmuch as, the learned Single Judge by his judgment dated 10.9.2002 had held the proceedings of the disciplinary authority bad because the disciplinary authority relied upon an affidavit of one Sh. Gopal Kishan without this affidavit being supplied to the petitioner, and therefore, the order of the Division Bench in LPA No.975/2002 would have to be read in that the fresh proceedings by the disciplinary authority on different findings was not to be limited to the aspect of the affidavit of Sh. Gopal Kishan as to whether by this affidavit the petitioner could be found guilty of the charges contained in the charge sheet dated 7.12.1993. I may note that in the present case the Enquiry Officer's Report of March, 1998 had exonerated the petitioner but the disciplinary authority had disagreed with the findings contained in Enquiry Officer's Report and thus resulting in the three show cause notices with the second being dated 15.3.2000, and which was impugned by the petitioner in the W.P. (C) No. 5431/2000 resulting in the judgment of the Single Judge dated 10.9.2002 and the Division Bench order dated 6.1.2005. What is argued on behalf of the petitioner is that proceedings of the disciplinary authority in terms of the judgment of the learned Single Judge dated 10.9.2002 and the order of the Division Bench in appeal against the judgment dated 10.9.2002 was to restrict the fresh disciplinary

proceedings only as regards the affidavit of Sh. Gopal Kishan (owner of the subject premises which had the electricity connection and which was raided on 5.6.1991 showing that there was fraudulent extraction of energy) and not of any fresh grounds by the disciplinary authority.

7. At this stage, it would be therefore relevant to reproduce the Memorandum of Charges dated 7.12.1993 against the petitioner along with its attached Annexures of the statement of facts and this reads as under:-

“MEMORANDUM

“The undersigned proposes to hold an inquiry against Sh. Triloki Nath under regulations-7 of the DESU (DMC) Service (C&A) Regulations-1976. The substance of the imputations of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annex-I). A statement of the imputations of misconduct or misbehavior in support of each article of charge is enclosed (Ann.-II). A list of documents by which and a list of witnesses by whom the article (s) of charge are proposed to be sustained are also enclosed (Annex.-III) & (IV).

Sh. Triloki Nath, AFO is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also state whether he desired to be heard in person.

Sh. Triloki Nath is hereby informed that if he so desired, he can inspect and take abstract from the documents mentioned in the enclosed list/statement of allegations of any time during office hours within 7 days of the receipt of this memorandum in the Vig. Deptt. R.P.H. For the purpose of such inspection he can take the assistance of another employee provided he ‘No Objection’ from his controlling.

He is informed that an inquiry will be held only in respect of those article(s) of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

Sh. Triloki Nath is further informed that if he does not submit his written statement of defence on or before the date specified in Para-2 above or does not appear in person before the Inquiry Authority or otherwise fails or refuse to comply with the provisions of Reg.7 of the DESU (DMC) Service (C&A) Regulations 1976 of the orders/directions issued in pursuance of the said Regulations the Inquiry Authority may hold the Inquiry against him ex-parte.

Attention of Shri Triloki Nath is invited to Rule-20 of the Central Service (Conduct) Rules-1964 under which no Mpl. Employees shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the DESU (DMC). If any representation, is accompanied on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Sh. Triloki Nath is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule-20 of the CCS (CONDUCT) Rules, 1964.

The receipt of this memorandum may please be acknowledged.

sd/-

(S.P. AGGARWAL)
GENERAL MANAGER (E)

Encl: Annexures-I, II, III & IV
Shri Triloki Nath, AFO

THROUGH: DY. FO(D)

Copy to:

Dy.FO(D), he may please deliver the enclosed memo to Shri Triloki Nath immediately. In case he is on long leave the letter be got delivered at his residence. The dated acknowledgement may be sent to the Vig Deptt. within four days.

sd/-

GENERAL MANAGER

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI TRILOKI NATH, AFO(D)KRN, E.NO.69, (ENCLOSED WITH MEMO NO.VC-7-9/93-Vig./SDT/07 DT.7-12-1993.

Article of charge

Shri Triloki Nath, E.No.69, while functioning as AFO (D)KRN, during the year 1991-92, got re-assessment and revision of the electricity bill against K.No. 601-139497 from 7,17,745.42 to drastically to Rs.6544-30, approved, by collusion with Shri Harish Jain, Legal Officer, with malafide intention, ulterior motives, and with a view to extend undue favour to the consumer Shri Gopal Krishan R/o 45, Anarkali Garden, Jagatpuri, Delhi, and thus, caused great revenue loss to the Undertaking. Thus, Shri Triloki Nath, failed to maintain absolute integrity and devotion to duty in violation of rule 3(1) of CCS (Conduct) Rules, 1964.

Sd/-

(S.P.AGGARWAL)
GENERAL MANAGER (E)

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGES FRAMED AGAINST SHRI TRILOKI NATH AFO (D) KRN, E.NO. 69, (ENCLOSED WITH MEMO NO.

Shri Triloki Nath, E.No. 69, while functioning as AFO (D) KRN during the year 1991-92, was required to maintain absolute, integrity, devotion to duty and do nothing which is unbecoming of an employee of this Undertaking.

However, premises No.45, Anarkali Garden, Jagat Puri, Krishna Nagar, was inspected by the Joint Team on 5.6.91. The NDLP connection is in the name of one Shri Gopal Krishan and the same was being used for industrial purposes at the time of inspection. The consumer was found indulging in fraudulent abstraction of energy and therefore, the matter was reported to the police for registration of case after approval of the Competent Authority. Necessary details were passed on the AFO (D) KRN for raising the bill on account of theft etc. On 19.12.91, an assessment bill amounting to Rs.7,17,746.42 was raised in the name of the consumer Shri Gopal Krishan against K.No. 601-139497. The party was required to make the payment by 21.1.92. Although the party, failed to make the payment on due date, the office of AFO(D) KRN instead of taking action to disconnect the supply, allowed the matter pending. On 17.2.92, a representation was received from one Sh. Jagga Singh resident of 128, Gagan Vihar, stating that he became lawful tenant of Shri Gopal Krishan on 1.6.91 and, therefore, he cannot be billed for theft etc. prior to that date. In support of his contention, he submitted a copy of Rent Agreement indicating that he became lawful tenant of Shri Gopal Krishan on 1.6.91.

Relying on the contention of Shri Jagga Singh, Shri Triloki Nath, AFO (D) KRN, revised the assessment bill from Rs.7,17,746.42 to Rs.6544.30. Bonafides of Shri Jagga Singh and the legality of the rent Agreement were got authenticated from AGM(A) through Legal Cell. The folder containing the rent agreement was sent to the Legal Cell through Dy. CA(East) for opinion whether the same could be used as a Legal document to provide relief to the tenant. In the Legal Cell the matter was dealt with by Shri Harish Jain, Legal Officer, who opined that although the rent agreement was unregistered but the same was valid for revising the bill in favour of the applicant. He got his opinion confirmed from AGM (A) on the notesheet without putting up the complete records. In the note put up by the Legal Officer, OSD (E&L) was shown on leave on that particular date and, therefore, the confirmation was obtained from AGM (A) treating the matter as of urgent nature. It is pertinent to note that although the relevant file was received in the Legal Cell from the Finance Deptt. on 20/5/92, Sh. Harish Jain, Legal Officer had put up the note to AGM(A) for approval on 18/5/92 i.e. two days prior to the receipt of file in the Legal Cell.

Enquiries had further confirmed that Sh. Jagga Singh was a fictitious character brought into existence on the file as a tenant in order to revise the bill in favour of Sh. Gopal Krishan. Sh. Jagga Singh never lived at the given address of 128, Gagan Vihar, which is a co-operative Housing Society belonging to the employee of Indian Airlines and the same plot

was allotted to one Sh. Pritam Lal who is residing at the said premises right from the very beginning.

Even if the Rent Agreement executed in favour of Shri Jagga Singh is treated as a genuine document, Sh. Gopal Krishan the registered consumer is not entitled to any relief. On the contrary, charges for sub-let should have been levied on Sh. Gopal Krishan in addition to the assessment bill raised on account of theft etc. Sh. Jagga Singh could not have any locus standi unless the connection was transferred in his name and that too only on the basis of licence issued by MCD and completion of other commercial formalities. Ignoring his immediate supervisory officers. i.e Dy. CA(East) and Dy. FO(D), Sh. Triloki Nath, AFO (D) KRN, took the file by hand to Director (EDP) and got his approval for downward revision of the bill from Rs.7,17,746.32 to Rs.6,544.30.

In view of above facts, the responsibility for extending undue favour to the consumer directly lies on Sh. Triloki Nath, AFO. Thus, he failed to maintain absolute integrity, devotion to duty in violation of rule 3(1) of CCS (Conduct) Rules, 1964, which for good and sufficient reasons render him liable for disciplinary action under Regulation-7 of DESU (DMC) Service (C&A) Regulations, 1976 read with Section 95 of DMC Act, 1957.

Sd/-
(S.P.AGGRAWAL)
GENERAL MANAGER (E)”
(underlining added)

8. There is no dispute that the entire proceedings till date, including of earlier petitions, and even this writ petition, are a follow up of the Memorandum of Charges dated 7.12.1993.

9. A reading of the Memorandum of Charges against the petitioner shows that the petitioner was guilty of colluding with one Sh. Harish Jain, Legal Officer with *malafide* intention and thereby reducing the electricity bill raised on account of fraudulent abstraction of energy of the electric connection in the premises of Sh. Gopal Kishan from Rs.7,17,746/- to Rs.6,544/-. The imputations of misconduct showed that the assessment bill dated 19.12.1991 of

Rs.7,17,746/- was on account of raid conducted in the premises of one Sh. Gopal Kishan situated at 45, Anarkali Garden, Jagatpuri, Delhi on 5.6.1991 by the joint inspection team and through the electricity connection it was found that there was fraudulent abstraction of energy. There came about issues of one Sh. Jagga Singh claiming that he became a tenant in the subject premises under Sh. Gopal Kishan from 1.6.1991 i.e around five days prior to raid on 5.6.1991, and accordingly an issue arose as to the assessment bill for fraudulent abstraction of energy to be only from 1.6.1991 to 5.6.1991 of Rs.6,544/- and not Rs.7,17,746/- and which would be a bill of three years retrospectively from the date of inspection on 5.6.1991. The Memorandum of Charges also show that the stand of Sh. Jagga Singh, the tenant of his tenancy in the subject premises was accepted by Sh. Harish Jain, Legal Officer, and whose opinion was got confirmed from AGM [A]. The Memorandum of Charges also show that besides the issue of the claim of retrospective charges for three years resulting in the total amount of bill being Rs.7,17,746/- and not only for five days from 1.6.1991 to 5.6.1991 of Rs.6,544/-, the charge against the petitioner was that Sh. Jagga Singh was a fictitious character as Sh. Jagga Singh was never found to be living at the given address at 128, Gagan Vihar, New Delhi. The Memorandum of Charges also state that

assuming that the rent agreement is genuine, yet, the registered consumer Sh. Gopal Kishan is not entitled to relief because Sh. Jagga Singh had no *locus standi* to write any representation to the Department because the Department only deals with the registered consumer and which was Sh. Gopal Kishan in this case. The Memorandum of Charges finally observes that the petitioner ignoring his immediate supervisory officer which includes Deputy Chief Accountant [East] and Deputy FO [D] directly approached the Director [EDP] Sh. Y.N. Reddy and got his approval for reducing the bill from Rs.7,17,746/- to Rs.6,544/-, and which action of the petitioner was alleged to be lacking in absolute integrity.

10. In this case, after the first round of litigation in favour of the petitioner whereby the petitioner succeeded in his writ petition of getting the penalty order of compulsory retirement quashed, the second show cause notice issued at that stage after the culmination of the first writ proceeding was the show cause notice dated 15.3.2000. Language of this second show cause notice dated 15.3.2000 would also be relevant for determination of the argument urged on behalf of the petitioner and therefore this show cause notice dated 15.3.2000 is reproduced as under:-

“DELHI VIDYUT BOARD
(VIGILANCE DEPARTMENT)

MEMO

WHEREAS disciplinary proceedings under Regulation 7 of the DESU (DMC) Service (C&A) Regulations, 1976, was initiated against Sh. Trilokinath, AFO, E. No. 69, vide memo no.VC-7-9/93-Vig/SDT/07, dated 7.12.93

AND WHEREAS major penalty of compulsory retirement from the service of the Board w.e.f. 31.7.99 was imposed upon the said Sh. Triloki Nath, AFO vide order no.VC-7-9/93-Vig/TPS/221, dated 23.7.99. Aggrieved with the imposition of the aforesaid penalty the said Sh. Triloki Nath filed a civil writ petition in the Hon'ble High Court. As the penalty of compulsory retirement has not been specified as one of the major penalties under Regulation 7 of the DESU (DMC) Service(C&A) Regulations, 1976 and there was accordingly a technical flaw in the aforesaid order, DVB reconsider the penalty order. In accordance with the advice of our legal counsel, DVB has withdrawn the order dated 21.12.98 and final punishment order dated 23.7.99, passed against Sh. Triloki Nath with the liberty to pass afresh orders in accordance with the law. As a consequence of withdrawal of punishment order dated 23.7.99, DVB has ordered Sh. Triloki Nath to be treated as under suspension w.e.f. 23.7.99 till further orders.

The Board considered afresh the Enquiry Report submitted by the Inquiry Officer. Board did not agreed with the findings of the Inquiry Officer and has made the following observations:-

“It is observed that the Inquiry Officer has not been able to appreciate and evaluate the evidence brought on the record of the enquiry. It is observed that Sh. Triloki Nath proposed the revision of the bill by taking cognizance of an application dated 17.02.1992 from one Sh. Jagga Singh, who claimed to be the tenant of Sh. Gopal Krishan (Registered consumer). Considering the fact that the bill was raised in the name of Sh. Gopal Krishan, Sh. Jagga Singh had no locus standi in the matter. As per existing provisions, only registered consumer is legally responsible for use/misuse of electric connection sanctioned by DVB. In such circumstances, it was wrong to act upon the application given by Sh. Jagga Singh (tenant). The fact regarding rent agreement was known to DVB officials when assessment note was initially put in 7/91. However, it was ignored, as it has no relevance for raising of the bill against the registered consumer. Thus the action of Sh. Triloki Nath to propose re-assessment of bill taking into account the rent agreement was aimed to favour the consumer.

Sh. Trilokinath had quoted ALO-II communication no.ALO-ii/945, dated 29.05.91 wherein it was advised not to blindly follow the three year rule for computing loss on account of theft of electricity. Taking shelter of this communication, he proposed that assessment of bill has to be done by taking all relevant factors of theft of electricity but the period has to be taken with effect from 1.06.1991 i.e the date of rent agreement and not three years from date of detection.

In this connection, it is noticed that while submitting proposal for revision of assessment of bill, he purposely ignored some of the vital facts available in the file of the registered consumer Sh. Gopal Krishan. Soon after the theft was detected at K.No.601-139497, Sh. Gopal Krishan approached the Court to refrain DVB from disconnecting the electricity on 20.06.1991 and produced affidavit in the Court, in which he denied to have sublet the premises.

Considering the fact that the registered consumer had himself given the affidavit stating that there was no subletting, it is undeniably clear that the action of Sh. Triloki Nath to propose revision of the bill on the basis of rent agreement was a clear case of extending undue benefit of the consumer with malafide intention, since facts were not put up in correct perspective. The gravity of lapse on the part of Sh. Triloki Nath is not mitigated by the Branch. Sh. Trilokinath is solely responsible for bringing extraneous facts i.e. the rent agreement to revise the bill in favour consumer.”

Keeping in view of the afore-mentioned facts the Board proposes to hold the charges against Sh. Triloki Nath as fully proved in disagreement with the findings of the Inquiry Officer. Sh. Triloki Nath, AFO is accordingly directed to show cause as to why the findings of the Inquiry Officer holding the charges against him not proved, may not be rejected and as to why the charges against the said Triloki Nath may not be held in proved in disagreement with the findings of the Inquiry Officer, due to the reasons already mentioned above. A final decision on the report of the Inquiry Officer would be taken only on receipt of a reply from Sh. Triloki Nath, who is directed to submit his reply within 15 days of the receipt of this Memo. Failing which it would be presumed that he has nothing to say in the matter and further action would accordingly be taken.

A copy of the Enquiry Report is enclosed.

Sd/-

(N.P.SINGH)

ADDL. GENERAL MANAGER (A)

Sh. Triloki Nath, E.No.69

AFO-through special messenger at
H.No.1323, Kala Mahal Basti Chain
Sukh Dass, Delhi-06

Encl: as above

Copy for information and follow up action to:

(1) APO (B) LPN: his pensionary benefits that may have been worked out or drawn as a consequence of penalty order dated 23.7.99 may be withheld and refunded to DVB's a/c

(2) A.O. (G)

(3) A.O. (Conf)

(4) APO (CC) RPH.

Sd/-

ADDL. GENERAL MANAGER (A)”

(emphasis added)

11. A reading of the show cause notice dated 15.3.2000 shows that there had arisen issues besides of validity of existence of the tenant Sh. Jagga Singh in the premises of Sh. Gopal Kishan, issues also with respect to retrospective operation of the assessment bill for three years prior to 5.6.1991 and not only from 1.6.1991 to 5.6.1991. I may note that it is obvious that if an assessment bill is of a period of three years prior to the date of inspection, the same would be for a much larger amount than the assessment bill which is of just five days period prior to the date of the inspection. Something very relevant will turn upon this aspect and hence this aspect is noticed at this stage itself.

12. The issue before this Court is that what are the binding observations of the Division Bench of this Court in LPA No. 975/2002 to bind the Department that the fresh show cause notice which was thereafter issued on 23.8.2005 was or was not a valid show cause notice because whether or not said show cause notice dated 23.8.2005 issued by the disciplinary authority disagreeing with the findings of the Inquiry Officer should not, as per the petitioner, have been confined to the aspect of affidavit of Sh. Gopal Kishan which was not supplied before the earlier order was passed by the disciplinary authority on 20.6.2000 resulting in allowing of W.P. (C) No. 5431/2000 by the judgment of the Single Judge dated 10.9.2002 and challenged before

the Division Bench by the Department resulting in the order of the Division Bench dated 6.1.2005 or that the show cause notice was entitled to be on the main issue of the retrospectivity of three years instead of five days only and which aspect was in terms of the Memorandum of Charges dated 7.12.1993 and which have remained the Memorandum of Charges on which the disciplinary proceedings have always been conducted.

13. In my opinion paragraph 4 of the order of the Division Bench is crucial, and I have already reproduced the same above, and a reading of this paragraph 4 of the order dated 6.1.2005 only shows that the disciplinary authority was directed to proceed afresh in accordance with law after supplying of documents which were relied and not supplied to the delinquent. The issue however remained of the charges as per the Memorandum of Charges dated 7.12.1993. This order dated 6.1.2005 cannot be read to mean that the disciplinary authority if it finds other reasons for disagreeing with the findings of the Inquiry Officer so as to sustain the Memorandum of Charges dated 7.12.1993, could not have included those aspects in the fresh show cause notice dated 23.8.2005. The fresh aspect is as regards the petitioner skipping the intermediary authority of Deputy FO [D] and directly approaching the Director [EDP], with the implied statement therein that if the

intermediary authority of Deputy FO [D] if would have been put the file then this Deputy FO [D] would have given his independent reasons including as to whether or not the assessment bill could be retrospective only for 5 days before 5.6.1991 or for 3 years prior to 5.6.1991. In this regard, another aspect that paragraph 4 of the order of the Division Bench is not restrictive and does not limit the disciplinary authority for giving other reasons for disagreeing with the findings of the Inquiry Officer only limited to the issue of affidavit of Sh. Gopal Kishan is also clear from the fact that even in the second show cause notice dated 15.3.2000 there was an issue with respect to retrospective operation period of the assessment bill for theft of electricity as to whether the same should be of three years prior to 5.6.1991 or only for 5 days prior to 5.6.1991. We cannot read show cause notices which are issued by the Department as if they are languages of Statutes and the show cause notices in the departmental proceedings have to be read as a whole for the meaning and purport thereof. The meaning and purport of the Memorandum of Charges dated 7.12.1993 along with its Annexures as also the show cause notice dated 15.3.2000 was already for the purpose of the determining the retrospective operation of the assessment bill for theft of electricity. No doubt, learned senior counsel for the petitioner is correct in arguing that the Department has most

mysteriously given up on the issue of the affidavit of Sh. Gopal Kishan which was adopted for passing of the earlier order of the disciplinary authority dated 20.6.2000, because this affidavit has not seen the light of the day till date, however, once departmental proceedings from the stage of issuing of notice by the disciplinary authority disagreeing with the findings of the Inquiry Officer had to be commenced afresh, there is no legal bar to the disciplinary authority issuing the show cause notice with respect to the same subject of raising of the assessment bill on account of theft of electricity found on 5.6.1991 and as per the Memorandum of Charges dated 7.12.1993. Strict provisions of the Civil Procedure Code, 1908 being Order II Rule 2 should not and ought not to be applied to the departmental proceedings such as the one in the present case especially in view of the language of the Memorandum of Charges dated 7.12.1993 as also the second show cause notice dated 15.3.2000, and in these notices there is very much a live issue with respect to what should be the period of assessment and consequently the amount of the bill i.e whether the bill be only of 5 days of assessment bill of Rs.6,544/- or for three years prior to 5.6.1991 of Rs.7,17,746.

14. Accordingly, I cannot agree with the arguments urged on behalf of the petitioner that the show cause notice dated 23.8.2005 is

illegal and beyond the scope of the order of the Division Bench of this Court dated 6.1.2005 in LPA No. 975/2002. The first argument urged on behalf of the petitioner is, therefore, rejected.

15. The second argument urged on behalf of the petitioner was that even assuming that the show cause notice dated 23.8.2005 was correct as not being issued on any fresh basis, and the petitioner being guilty of overlooking and sidestepping the intermediary authority of Deputy CA [East] and Deputy FO [D] can be looked at in terms of Memorandum dated 7.12.1993, yet, these facts have not been proved by the Department to claim the stand that the petitioner should be held guilty with respect to illegal preparation and approval of the assessment bill for theft of electricity.

16. In support of this argument urged on behalf of the petitioner, learned senior counsel for the petitioner has placed reliance upon the testimony of Director [EDP] as recorded in the Inquiry Officer's Report and this portion of the Inquiry Officer's Report as per the petitioner shows that it was a normal procedure for the Director [EDP] to approve actions of AFO such as the petitioner with respect to assessment bills.

17. Once again, I cannot agree with this second argument urged on behalf of the petitioner for the reason that no doubt the Director [EDP] Sh. Y.N. Reddy has deposed that officers of various districts directly bring their cases to him, however, it is not found that there is anything in the Rules of the employer/department or in the statement of Director [EDP], that the intermediary authority, Deputy FO [D] in this case, could have been validly overlooked and sidestepped. Obviously, in a chain of officers it is very much possible that if there is an inconvenient officer whom a person like the petitioner would want to sidestep for whatever reasons and directly approach the higher authority, but that does not mean in law that there does not exist an intermediary authority whose comments were bound to be taken as per the chain of hierarchy of the Department. The chain of hierarchy is for the purpose that each link in the chain is necessary. If the opinion was taken of the Deputy FO [D], then possibly the Deputy FO [D] could have disagreed with the opinion of the Legal Officer and the AGM in accepting the stand of the tenant Sh. Jagga Singh that he became a tenant from 1.6.1991 and therefore the assessment bill of electricity for theft should only be for five days. After all it cannot be excluded from the scope of the opinion of Deputy FO [D] if taken that Deputy FO [D] would have said that even if Sh.

Jagga Singh was a tenant from 1.6.1991, yet, the assessment bill as per law could be raised for a period of three years prior to 5.6.1991 and subject to the defences of either Sh. Jagga Singh or the owner Sh. Gopal Kishan. Not to raise a bill at all for three years is a different facet than a defence which could be raised by a consumer or a tenant in the premises of the consumer of retrospectivity not being for three years, but once the bill is not raised for three years, then the consumer at that stage itself gets scot free because it is presumed that there is no theft of electricity for three years prior to the date of inspection on 5.6.1991. Therefore, in my opinion, the disciplinary authority was justified in this case for issuing the show cause notice and passing of the impugned order on the basis that there is side stepping of an officer being intermediate authority, i.e. the Deputy FO [D] in the present case. I may note that there was another intermediary authority being Deputy CA [East] in this case, but I am not making any reference to him because this Deputy CA [East] already held opinion in favour of the petitioner by agreeing to the Legal Officer's note that the assessment bill should only be of 5 days for Rs.6,544/- and the period being from 1.6.1991 to 5.6.1991. Therefore, I am not discussing the aspect of there even being a second intermediary authority being the

Deputy CA [East], and which aspect I am taking in favour of the petitioner.

18. In view of the above discussion, even the second argument urged on behalf of the petitioner does not have merits and is accordingly rejected.

19. The third argument urged on behalf of the petitioner is for challenge to the impugned order dated 7.2.2006, and which this Court is inclined to accept, that the impugned order dated 7.2.2006 is completely illegal because by this order there is affirmation of bill of subsistence allowance during the period of suspension, without their firstly having been at all passed an order of suspension of the petitioner from the period from 21.6.2000 to 28.2.2002. In this regard, I have repeatedly queried counsel for the Department but counsel for the Department could not show me any suspension order which was issued by the Department for the period of suspension of the petitioner from 21.6.2000 to 28.2.2002. Learned counsel for the Department could also not show me any earlier order of suspension which was continued by a later order for continuing the suspension of the petitioner from a period from 21.6.2000 to 28.2.2002. Once, there is no order of suspension of the petitioner for the period from 21.6.2000 to 28.2.2002, the impugned order dated 7.2.2006 is without any foundation at all

because once there is no suspension order of the petitioner for the period from 21.6.2000 to 28.2.2002 then the disciplinary authority cannot pass the order to give only subsistence allowance to the petitioner for the suspension period from 21.6.2000 to 28.2.2002. The order dated 7.2.2006, therefore, being without any basis and foundation of existence of a suspension order, and which was a pre-condition, the same is accordingly illegal and therefore set aside.

20. The effect of the above discussion is that the only order which stands against the petitioner is the order of the disciplinary authority dated 6.1.2006, whereas the order of the disciplinary authority dated 7.2.2006 will be set aside. The effect thereof would be that the petitioner would suffer a minor monetary penalty of Rs.7,445/, and as already stated at the inception of this judgment.

21. In view of the above, this writ petition is partially allowed by setting aside the order of the disciplinary authority dated 7.2.2006, but dismissed to the extent of sustaining the order dated 6.1.2006 of the disciplinary authority. Parties are left to bear their own costs.

FEBRUARY 02, 2017

AK/ib/Ne

VALMIKI J. MEHTA, J