

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

+ **W.P.(C) No.3053/2010& conn. matters**

% **23rd March, 2017**

1. **W.P.(C) No. 3053/2010**

DR. S.P. RAM Petitioner

Through: Mr. Neeraj Malhotra, Advocate
with Mr. Rupal Luthra,
Advocate.

Versus

NATIONAL SCHEDULED CASTES FINANCE AND
DEVELOPMENT CORPORATION & ANR. Respondents

Through: Mr. Jagat Singh, Advocate with
Mr. Apurv Yadav, Advocate.

2. **W.P.(C) No. 13320/2009**

NAND KISHORE Petitioner

Through: Mr. Sahil Mullick, Advocate
with Mr. Bikram Singh,
Advocate.

versus

NATIONAL SCHEDULED CASTES FINANCE AND
DEVELOPMENT CORPORATION & ORS. Respondents

Through: Mr. Jagat Singh, Advocate with
Mr. Apurv Yadav, Advocate.

3. **W.P.(C) No. 1898/2010**

S.S. NAYAGAM Petitioner

Through: Mr. Sahil Mullick, Advocate
with Mr. Bikram Singh,
Advocate.

Versus

NATIONAL SCHEDULED CASTES FINANCE AND
DEVELOPMENT CORPORATION & ANR. Respondents

Through: Mr. Jagat Singh, Advocate with
Mr. Apurv Yadav, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. These three writ petitions under Article 226 of the Constitution of India, are filed by three petitioners, namely Dr. S.P. Ram, Sh. Nand Kishore and Sh. S.S. Nayagam, impugning the orders of the departmental authorities being the disciplinary authorities and the appellate authorities, whereby these petitioners have been imposed the punishment of removal from services.

2. So far as the petitioner Dr. S.P. Ram in W.P. (C) No. 3053/2010 is concerned, the order of the disciplinary authority is dated 22.6.2007 and the order of the appellate authority is dated 25.5.2009. So far as the petitioner Sh. Nand Kishore in W.P. (C) No. 13320/2009 is concerned, the order of the disciplinary authority is dated 28.7.2006 and the order of the appellate authority is dated 28.6.2007. In the case of Sh. S.S. Nayagam in W.P. (C) No. 1898/2010, the order of the disciplinary authority is dated 27.12.2005 and the order of the appellate authority is dated 3.10.2006.

3. I may note that in all the three cases, the three petitioners had filed review petitions before the concerned authorities and which were dismissed. Therefore finally all the three petitioners have been imposed the punishment of removal from services.

4. For the sake of convenience, I am referring to the facts of W.P. (C) No. 3053/2010 inasmuch as except with respect to dates of the charge-sheets and the different dates of the orders of the departmental authorities, the facts and issues are the same. The Articles of Charges in the case of Dr. S.P. Ram read as under:-

“3. Article of Charges

The article of charges framed against Shri Dr. S.P. Ram, Executive Director, NSFDC, New Delhi.

Article of charge-I:

Dr. S.P. Ram while functioning as the Executive Director and a Member of the Investment Committee, National Scheduled Castes Finance and Development Corporation (NSFDC) during the period June 1997 to September 1999, took reckless and unsound commercial decisions by investing a total amount of Rs.15.00 crore of the NSFDC in a sinking company Punjab Wireless System Ltd. (PWSL), as a result a huge amount of Rs.15.00 crore of the surplus funds of the NSFDC was lost.

Dr. S.P. Ram by his above acts failed to maintain absolute integrity devotion to duty, committed the acts unbecoming of a public servant failed to ensure the integrity and devotion to duty of the employees under his control and authority, acted in a manner prejudicial to the interests of the Corporation caused neglect of work or negligence in the performance of duty and thus contravened Rules 4.1(i), 4.1(ii), 4.1(iii), 4.2, 5.5, 5.9 and 5.30 of the NSFDC Conduct, Discipline and Appellate Rules, 1990.

Article of charge-II:

Besides causing the specific loss of Rs.15.00 crore of the NSFDC's surplus funds in the Punjab Wireless Systems Ltd. Dr. S.P. Ram Executive Director being a Member of the NSFDC Investment Committee caused loss of a substantial amount of interest to the NSFDC by delayed investments of the NSFDC's surplus funds, during the period September 1996 to March 2001 when amounts exceeding Rs.5.00 crore were kept uninvested beyond 15 days on account of which, the NSFDC lost a substantial amount of interest which it could have earned by investing its surplus funds in short term deposits during the said period. Being ED and Member of the Investment

Committee, Dr. S.P. Ram did not take due care to make proper utilization of the Corporation's surplus funds by investing these funds in short term deposits and thereby earning income for the Corporation by way of interest on these investments.

Dr. S.P. Ram by his above acts failed to maintain absolute integrity, devotion to duty, committed the acts unbecoming of a public servant, failed to ensure the integrity and devotion to duty of the employees under his control and authority, acted in a manner prejudicial to the interests of the Corporation, caused neglect to work or negligence in the performance of duty and thus contravened Rules 4.1(i), 4.1(ii), 4.1(iii), 4.2, 5.5, 5.9 and 5.30 of the NSFDC Conduct, Discipline and Appeal Rules, 1990."

5. The case of the department is mentioned in paras 4.1 to 4.7 of the enquiry officer's report dated 30.7.2004, and which paras read as under:-

"4.1 PO has first given background of NSFDC and position of various officers including COs.

4.2 Thereafter PO clarified that surplus funds of the Corporation (NSFDC) which are not immediately required for disbursement, are deposited by the Corporation as per the Department of Public Enterprise (DPE) guidelines. In this context, the DPE, Government of India has issued the following Circulars/Office Memoranda:

- (a) O.M. No. DPE/4/3/92-Fin. dated 27.6.1994
- (b) No. DPE/4/6/94-Fin. dated 14.12.1994
- (c) O.M. No. DPE/4(6)/94-Fin. dated 1.11.1995
- (d) No. DPE/4(6)/94-Fin. dated 11.3.1996
- (e) O.M. No. DPE/4/6/94-Fin. dated 14.2.1997
- (f) O.M. No. DPE/4(6)/94-Fin. G-XVII dated 25.11.1999

The above-said DPE guidelines lay down the following broad guidelines for investment of surplus funds by the Public Sector Enterprises (PSEs).

- i) Investments should be made only in instruments with maximum safety.
- ii) There should be no element of speculation on yield obtaining from the investment.
- iii) There should be a proper commercial appreciation before any investment decision of surplus funds is made.
- iv) Investment decision should be based on sound commercial judgment.

The availability should be worked out based on cash flow estimates taking into working capital requirements, replacement of assets and other foreseeable demands.

- v) Investments may be made in one or more of the following instruments, subject to principles outlined in the previous paras:

- a) Term deposit with any scheduled commercial bank with a paid up capital of at least Rs.100.00 crore fulfilling the capital adequacy norms as prescribed by the RBI from time to time.
- b) Instruments which have been rated by an established Credit Rating Agency (CRA) and have been accorded the highest credit rating signifying highest safety like Certificates of Deposits, deposit schemes or similar instruments issued by scheduled commercial banks/term lending institutions including their subsidiaries as well as commercial paper of Corporates.
- c) Inter-corporate loans are permissible to be lent only to Central PSEs which have obtained highest credit rating awarded by one of the established Credit Rating Agencies for borrowings for the corresponding period.
- d) Any debit instrument which has obtained highest credit rating from an established Credit Rating Agency.
- vi) Decisions on investment of surplus funds shall be taken by the PSU Board. However, decisions involving investing short term surplus funds upto one year maturity may be delegated upto prescribed limits of investment, to a designated group of director(s), which should invariably include CMD and Director (Finance)/Head of Finance internally where such delegation is made, the delegation order should spell out the levels of approval and the powers of each official which should be strictly observed. Where such delegation is exercised there should be a proper system of automatic internal reporting to the Board at its next meeting in all cases.

4.3 PO explained that a sum of Rs.15.00 crore was deposited by the NSFDC as per the decision taken by the Investment Committee [comprising Shri P.T. Wangdi, Ex-CMD as its Chairman and Dr S.P. Ram, Executive Director and Shri S.S. Nayagam, Ex-DGM (Finance) and Members] in the Secured Non-Convertible Debentures (SNCDs) of the Punjab Wireless Systems Ltd. (PWSL) during the period April 1998 to July 1998. Neither the principal amount nor the interest accrued thereon towards the above sum of Rs.15.00 crore was paid by the PWSL on the due dates of maturity (except that an amount of Rs.15 lakh of the principal was cleared by the PWSL). Rather, the PWSL kept on making requests for “roll over of funds” and “extension of repayment dates of these loans” time and again. The PWSL’s requests for “roll over” and “extension in the repayment period” were acceded to by the Investment Committee upto 25.9.99. Ultimately, the four post-dated cheques dated 25.9.99 and 30.9.99 respectively for a total sum of Rs.15.00 crore of the PWSL (as given by it to the NSFDC towards the purported discharge of its liability to repay the said debit of Rs.15.00 crore) were presented by the NSFDC for encashment in the bank. However, all the above cheques got bounced and dishonoured for the reasons “exceeds arrangements” due to insufficiency of funds in the PWSL’s bank account.

4.4 PO further mentioned that NSFDC filed criminal proceedings (on 3-12-1999) and winding up petition [on 2-11-2000] against the PWSL under the provisions of the Negotiable Instruments Act, 1881 and the Companies Act, 1956 respectively to recover its funds. However, the funds of the Corporation have not been recovered from the PWSL till date.

4.5 PO emphasized that a critical observation was made by the Statutory Auditors of the NSFDC in their Audit Report for the year 2000-01 that the above amount is doubtful of recovery from the PWSL as the said Company could not fulfil its obligations towards the repayment of the principal amount as well as the interest accrued thereon. The above audit observation was discussed by the Members/Shareholders of the NSFDC in the 12th Annual General Meeting of the Corporation held on 28.9.2001. Thereafter, the administrative Ministry of the Corporation [i.e., the Ministry of Social Justice & Empowerment (MOSJ&E)]. vide its letter dated 9.10.2001 communicated that Rs.15.00 crore deposited by the NSFDC with the PWSL appear to have become bad and doubtful and directed the CMD, NSFDC to take action (i) to realize the amount and (ii) to fix the responsibility on officers responsible for the lapses.

4.6 PO mentioned that in compliance of the above directions of the Government, necessary investigations were carried out in the matter, which revealed facts of omissions and commissions against the NSFDC officials namely, Dr S.P. Ram (ED, NSFDC), Shri S.S. Nayagam (Ex.DGM(Finance), NSFDC) and Shri Nand Kishore (Senior Manager, NSFDC). On the basis of findings of the investigation, two no. Articles of Charges were framed against the said officials vide Memoranda No.NSFDC/VIG/51/2003/4394; NSFDC/VIG/52/2003/4395 and NSFDC/VIG/53/2003/4396 dated 28.10.2003 and PO mentioned about article of charges against three officials.

4.7 PO stated that in response to the Charge Sheets, the above-said three Charged Officers submitted their written statement of defence wherein they denied the Articles of Charge framed against them. In this context, written statement of defence dated 12.11.03 of CO-1 (Dr. S.P. Ram), dated 11.11.2003 of CO-II (Shri S.S. Nayagam) and dated 10.11.03 & 24.12.03 of CO-III (Shri Nand Kishore) are available on the record of the Inquiry. As the Charged Officers denied the charges in their written statements of defence, the Competent Disciplinary Authority appointed an independent Inquiring Authority to inquire into the truth of the charges.”

(underlining added)

6. The two petitioners being Dr. S.P. Ram and Sh. S.S. Nayagam were part of the three member Investment Committee and of which committee the CMD of the respondent no.1/company Sh. P.T. Wangdi acted as the Chairman. This is clearly mentioned in para 4.3 of the enquiry officer's report which is reproduced hereinabove. So far as Sh. Nand Kishore is concerned, he was the coordinating officer of this Investment Committee and he put up the necessary notices and

papers before the Investment Committee. In fact therefore Sh. Nand Kishore is one step below the members of the Investment Committee because the decisions as such are of the Investment Committee comprising of Sh. P.T. Wangdi, the CMD of the respondent no.1/company being the Chairman of the Investment Committee and the other two members of the committee being Sh. S.S. Nayagam who was the DGM (Finance) and Dr. S.P. Ram, who was the Executive Director. Also Sh. S.S. Nayagam and Dr. S.P. Ram were though the members of the Investment Committee, the actual decision for Investment Committee was to be of the CMD of the respondent no.1/company, and who was the Chairman of the Investment Committee. The CMD of the respondent no.1/company had been delegated the powers of investing by the Board of the respondent no.1/company.

7. It is therefore seen that effectively against all the three members of the Investment Committee namely Sh. P.T. Wangdi, (CMD of the respondent no.1/company and the Chairman of the Investment Committee), Dr. S.P. Ram (Executive Director) and Sh. S.S. Nayagam (DGM (Finance)), identical charges were of investing the funds of the respondent no.1/company in a negligent manner without following due procedure as also lacking in follow up of the

investments made and in addition there was the charge of not investing the idle funds of the respondent no.1/company. Investments were made in a government control company M/s. Punjab Wireless System Ltd. (PWSL).

8. Learned counsels for the petitioners have argued only one aspect before this Court and which is that there is discrimination against the three petitioners because whereas the Chairman of the Investment Committee who was the CMD of the respondent no.1/company has only been given a lesser punishment of a cut in pension, these three petitioners have been given the severe punishment of removal from services. It is argued that once Articles of Charges are same, roles played by the petitioners are more or less the same, the two petitioners, namely Dr. S.P. Ram and Sh. S.S. Nayagam were members of the Investment Committee with Sh. P.T. Wangdi, and the third petitioner Sh. Nand Kishore was only a Coordinating Officer who put up the papers of the same Investment Committee, all of them should have been treated equally by giving all the co-delinquents the same punishment and not discriminating against them so far as the punishment is concerned based on the same facts, findings and conclusions of the Enquiry Officer as per the enquiry officer's report. Reliance on behalf of the petitioners is placed upon the two judgments

of the Supreme Court in the cases of *Man Singh Vs. State of Haryana and Others (2008) 12 SCC 331* and *Rajendra Yadav Vs. State of Madhya Pradesh and Others (2013) 3 SCC 73*.

9. The relevant paras of the judgment in the case of *Man Singh (supra)* are paras 20 to 22 and which paras read as under:-

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.

21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

22. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable,

unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis HC Vijay Pal, the driver of the vehicle.”

(underlining added)

10. The relevant paras of the judgment in the case of ***Rajendra Yadav (supra)*** are paras 8 to 12, and which paras read as under:-

“8. We have gone through the inquiry report placed before us in respect of the Appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the Appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the Appellant. Both Appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, Appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is *D.G. of Police v. G Dasayan* wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among

co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In *Shaileshkumar Harshadbhai Shah* case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the Appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the Appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs. (underlining added)

11. It is therefore seen that law is well-settled that the co-delinquent who is alleged to be guilty of more or less the same charges on the same set of facts, there cannot be discrimination in the imposition of punishment with one delinquent being given a higher punishment and other delinquent being given a lesser punishment. Thus the three petitioners could not have been imposed a higher punishment than that imposed upon Sh. P.T. Wangdi.

12. (i) Learned counsel for the respondent no.1/company argued that the aforesaid judgments relied upon by the petitioners will have no application in the facts of the present case because the three petitioners have been proceeded against departmentally by the respondent

no.1/company but Sh. P.T. Wangdi has not been proceeded against with disciplinary proceedings by the respondent no.1/company inasmuch as Sh. P.T. Wangdi was an IAS officer who was reverted to his parent department in the Government of India, and wherein he was proceeded against departmentally, and therefore, there is no parity between the three petitioners and Sh. P.T. Wangdi.

(ii) I cannot agree with the argument urged on behalf of the respondents inasmuch as mere difference of disciplinary authorities cannot entitle the separate disciplinary authorities to impose separate punishment once the factual foundation with respect to the findings in the enquiry officer's report are the same and the charges in the Articles of Charges are more or less the same. As already stated above, the first Article of Charge against the petitioners is with respect to following incorrect and defective procedure for investment of the funds of the respondent no.1/company, and inappropriate follow up of the investment made. The second charge pertains to the extra funds of the respondent no.1/company being not adequately invested resulting in loss of the income as would have been obtained on account of interest earned from investment of the idle funds of the respondent no.1/company.

13. In view of the aforesaid discussion, these writ petitions are allowed to the limited extent that the punishments which have been imposed upon the three petitioners of removal from services are converted to the punishment imposed upon Sh. P.T. Wangdi. It emerges from the pleadings in the present case that Sh. P.T. Wangdi was imposed the punishment of cut in pension but the services of the petitioners with respondent no.1/company are not pensionable. Effectively therefore a similar punishment involving same monetary calculations and effect would have to be imposed by the disciplinary authorities upon the petitioners in this case. It is therefore directed that the petitions are disposed of by setting aside the orders of the disciplinary authorities in these cases but the appropriate authority in the respondent no.1/company will now give fresh show cause notices to the petitioners as regards the roughly equivalent penalty which could be imposed upon these petitioners as compared to the penalty which has been imposed upon Sh. P.T. Wangdi. Petitioners will be given a hearing by the appropriate authority, and thereafter speaking orders will be passed by the appropriate authority imposing the appropriate punishments upon the petitioners which would have parity to the extent possible with the punishment imposed upon Sh. P.T. Wangdi. The necessary proceedings in this regard be completed by the appropriate

authorities of the respondent no.1/company within a period of four months from today.

14. Writ petitions are accordingly disposed of with the aforesaid observations.

MARCH 23, 2017/ Ne

VALMIKI J. MEHTA, J

