

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

+ **W.P.(C) No.202/2017**

% **10th January, 2017**

M.K. SAINI Petitioner

Through: Mr. Chandra Prakash, Advocate.

versus

INDRAPRASTHA POWER GEN. CO. LTD. & ORS. Respondents

Through: Mr. Jyotindra Kumar, Advocate for
respondent Nos.1 and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. No.946/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

**+W.P.(C) No.202/2017 and C.M. No.947/2017 (under Section 151 CPC
for taking lengthy list of dates and synopsis on record)**

2. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the orders of the departmental authorities; of the disciplinary authority dated 22.5.2014 and the appellate authority dated 15.5.2015; by which petitioner was imposed a minor penalty of reduction of

pay scale for one year with consequence of postponing his future increments of pay and on expiry of the period, petitioner to regain the original seniority in the higher grade. It may be noted that the disciplinary authority had imposed vide its order dated 22.5.2014 a higher punishment of reduction of existing grade of pay of Rs.7,600/- to the lower grade of pay of Rs.5,400/- for a period of three years with the direction that the reduction shall postpone his future increments of pay and on expiry of the period, petitioner shall regain his original seniority in the higher grade, but, this higher penalty has been reduced to a lower penalty of reducing the grade pay of the petitioner only for one year with appropriate consequences.

3. Petitioner was issued a charge sheet on 6.9.2012 containing three articles of charges and which read as under:-

“Article-I

Sh. M.K. Saini, President of the so called GENCO Officers Association (not recognized) and working as Asstt. Manager (T) in the Fuel Management Cell, was issued a Show Cause Notice vide Memorandum No.GM(HR)/2012-13/36 dated 22-6-2012 directing him to submit his explanation within two weeks, on the false/baseless allegations made by him against the Senior Level Executives of the Company in his representation dated 10.05.2012 but in spite of a lapse of more than two months he has not cared to submit his reply to the said SCN dated 22.06.2012. This act on his part is construed as disobedience of the official communication and thus amounts to insubordination.

Article-II

Sh. M.K. Saini, President of the so called GENCO Officers Association (not recognized) and working as AM(T) in the FM Cell has formed the Association in the name and style of GENCO Officers Association without prior permission of the Company and misused/sent false and baseless complaints directly to the Principal Secretary (Finance) without following the proper

channel and thus violating the provisions of Conduct Rules with regard to the addressing complaints/allegations directly to the Principal Secretary (Finance), Govt. of NCT of Delhi.

Article-III

Shri M.K. Saini, President of the so called GENCO Officers Association and working as AM(T) in the FM Cell made false and baseless allegations with an ulterior motive to tarnish the image of the Company and its Senior Executive.”

4. Petitioner however took up an intransigent stand by not only not replying to the show cause notice, but, the petitioner in fact did not participate in the inquiry proceedings. Inquiry proceedings were therefore held *ex-parte* and Inquiry Report dated 18.1.2014 was passed against the petitioner. Once petitioner did not reply to the show cause notice, did not participate in the inquiry proceedings and remained *ex-parte* whereby the petitioner has not led evidence or contested the charges, and the Inquiry Report is drawn up against the petitioner, such a petitioner ordinarily has no right to challenge the orders passed by the disciplinary authority based on the Inquiry Report inasmuch as there is no defence whatsoever of the charge-sheeted officer in the inquiry proceedings culminating in the Inquiry Report dated 18.1.2014.

5. Learned counsel for the petitioner only argued one aspect to challenge the orders of the departmental authorities and which is that the charge sheet which was issued in this case on 6.9.2012 was by Mr. Azimul Haque, Director (HR), and it is argued that the charge sheet is issued by the

officer who did not have jurisdiction and who also passed the order dated 22.5.2014, inasmuch as, as per the service rules, the Director concerned should be the disciplinary authority i.e the petitioner held the post of Assistant Manager (Technical), and therefore, the Director (Technical) should have been the disciplinary authority and not the Director (HR), and which post was held by Mr. Azimul Haque who was the disciplinary authority in this case.

4. I have gone through the relevant rules of the respondent no.1/employer pertaining to disciplinary proceedings to be held against the employees of the respondent no.1, and it is found that as per these rules, so far as the minor penalty proceedings are concerned, a charge sheet has to be issued by the concerned Director but for major penalty proceedings, charge sheet should be issued by the Director (HR) and which position was held by Mr. Azimul Haque. When inquiry proceedings commence, it is not known whether a major penalty or a minor penalty will be imposed on the charge-sheeted officer, and therefore, at that stage ordinarily and rightly it is the higher authority which issues the charge sheet and which is the Director (HR) in the present case. If in the facts of this case the petitioner by the appellate authority has not been given a major penalty but only has been given a minor penalty, the same will however not mean that inquiry

proceedings conducted against the petitioner were without jurisdiction. Admittedly, the Director (HR) was the authority who was the disciplinary authority with respect to major penalty proceedings against the officers such as the petitioner, who held the Group A post, and therefore, I do not find that departmental proceedings in this case are without jurisdiction as is sought to be argued on behalf of the petitioner.

5. In view of the above, the writ petition, being without any merit, is dismissed, leaving the parties to bear their own costs.

JANUARY 10, 2017
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VALMIKI J. MEHTA, J