

IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 7094/2015

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18th January, 2017

SATNAM SINGH PABLA

..... Petitioner

Through: Mr. Arvind Kumar Sharma, Advocate

versus

TATA POWER DELHI DISTRIBUTION LIMITED

..... Respondent

Through: Mr. Vikram Nandrajog, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 7094/2015 and C.M. Appl. No. 13008/2015 (for stay)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner/Sh. Satnam Singh Pabla impugns the order dated 8.7.2015 passed by the respondent for recommencing the enquiry proceedings. The petitioner also impugns the enquiry notice dated 13.7.2015. This order dated 8.7.2015 and the enquiry notice dated 13.7.2015 read as under:-

1. **Order dated 8.7.2015**

**“TATA POWER –DDL
No. TPDDL/Discip/Head (HR)/15-16/25**

Dated: 08/07/2015

ORDER

WHEREAS, THE Hon'ble High Court of Delhi vide order dated 02.01.2014 passed in writ petition filed by Sh. Santnam Singh Pabla bearing number W.P.(C) 6971/2002 has given a liberty to re-commence the enquiry. In compliance with the said order the undersigned being the Competent Disciplinary Authority hereby orders for recommencement of the enquiry under Rule 14 of CCS(CCA) Rule, 1965.

Since it is necessary to appoint an Inquiry Officer and a Presenting Officer, therefore in exercise of powers conferred, the undersigned appoints Sh. V.P. Garg as the Inquiry Officer and Sh. V.K. Puri as the Presiding Officer.

Sh. Satnam Singh Pabla, Ex. Emp. No. 8201, Ex. Shift Officer will be given adequate opportunity for his defence at the enquiry.

Sd/-
Shushil Kumar Srivastava
Head (Human Resources)
Competent Disciplinary Authority

Sh. Satnam Singh Pabla
Ex. Empl. No. – 8201
Ex. Shift Officer
Address: 1721-B, Tri Nagar,
Delhi- 110035

Through: Registered Post with AD

Copy to:

Sh. V.P. Garg- For information please.

Sh. V.K. Puri- Presiding Officer: Along with case file.

2. Inquiry notice dated 13.7.2015

“TPDDL

TATA Power Delhi Distribution Limited

Office of the Inquiry Officer

Sub-Station Building, Press Area Complex-Ring Road, Wazirpur, Delhi-10035

Tel. No. 65515126

No. TPDDL/Inq./2015/284/706

Dated: 13-07-2015

Sh. Satnam Singh Pabla
House No. 1721-B, St. No.125,
Tri Nagar
Delhi – 110035

By Speed Post

**Subject: Departmental Enquiry into the charges framed against Sh.
Satnam Singh Pabla, Ex. Shift Officer, E.No.8201**

I have been appointed as Inquiry Officer to conduct Regular Departmental Enquiry in the above cited case vide Order No. TPDDL/Discip/Head(HR)/15-16/25 dated 08.07.2015, issued by Head (HR), a copy of which has already been endorsed to you.

Accordingly, a Preliminary Hearing of the case will be conducted by me on **27.07.2015** at **11 AM**. You are required to attend the hearing along with your Defence Assistant, if any and wait until further directions.

In case, you fail to appear at the appointed date and time, proceedings will be held **Ex-parte**.

It may be noted that no witness will be examined on the said date. The purpose of the preliminary hearing is to sort-out the preliminaries and to lay-down a time schedule for inspection of the listed documents and submission of the list of Additional Documents and Defence Witnesses.

Receipt of this notice may please be acknowledged.

Sd/-
(V.P. GARG)
Inquiry Officer

CC to:

1) **Presenting Officer, TPDDL** : He is requested to attend the preliminary hearing at the appointed date and time along with all listed documents in original.

Inquiry Officer”

2. In this case as against the petitioner enquiry proceedings had earlier commenced pursuant to the Memorandum of Charges/Show Cause Notice dated 8.9.1997. There were a total of three Articles of Charges against the petitioner and which Articles of Charges read as under:-

“DELHI VIDYUT BOARD

ANNEXURE-1

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SH. SATNAM SINGH PABLA, SHIFT OFFICER, E.NO. 8201, WORKING UNDER XEN 33KV SSM IV

ARTICLE – I

That the said Sh. Satnam Singh Pabla, E. No. 8201 while functioning as Shift Officer in 33 KV Grid Sub Stn. (N) has been willfully remaining absent from duty unauthorisedly w.e.f. 21.11.96 onwards.

ARTICLE – II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Satnam Singh Pabla has left the country without taking prior approval of the competent authority.

ARTICLE – III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Satnam Singh Pabla also left the country during the period 1994-96, without taking prior approval of the competent authority, and has thus became habitual of flouting the rules/regulations/instructions in this regard.

By his aforesaid acts, the said Shri Pabla has failed to maintain devotion to duty and acted in a manner unbecoming of the employee of the Board.

Sd/-
(CHAMAN LAL)
ADDL. GENERAL MANAGER (A)
DISCIPLINARY AUTHORITY”

3. The aforesaid Memorandum of Charges dated 8.9.1997 was accompanied with a detailed imputation of facts of misconduct.

4. The enquiry proceedings took place pursuant to the memorandum dated 8.9.1997 and the disciplinary authority passed its order dated 29.7.1999 imposing the penalty of removal from services on the petitioner. It may be noted that the petitioner had replied to the show-cause

notice dated 8.9.1997, but thereafter had not appeared as he had left for Canada.

5. The order of the disciplinary authority dated 29.7.1999 was taken by the petitioner in appeal and the appellate authority vide order dated 19.10.2000 had dismissed the appeal filed by the petitioner.

6. The petitioner by W.P. (C) No. 6971/2002 impugned the orders which were passed by the disciplinary authority and the appellate authority dated 29.7.1999 and 19.10.2000 respectively. This W.P.(C) No. 6971/2002 was disposed of by the learned Single Judge of this Court holding that principles of natural justice were violated and therefore the enquiry proceedings should re-commence after giving notices to the petitioner. The relevant observations of the learned Single Judge in the judgment dated 2.1.2014 are contained in paras 10, 10.1, 10.2 and 11 and which paras read as under:-

“10. Having regard to the above, I am of the view that the entire proceedings were vitiated as due opportunity was not granted to the writ petitioner to defend the charge levelled against him. It is trite to say that what appears at first blush to be an open and shut case, it often takes a different turn once the party, which is proceeded against, is heard in defence of his/ her case. This principle of law is best typified by the following observations made in **John vs Rees (1969) 2 All. ER 274**:

“It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. “When something is obvious,” they may say, “why force everybody to go through the tiresome waste of time involved in framing charges and giving an

opportunity to be heard? The result is obvious from the start.” Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were of unanswerable charges which, in the end, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.”

10.1 The aforesaid principle was adopted with approval in a Division Bench judgment of this court in: ***Moser Baer India Ltd. vs The Additional Commissioner of Income Tax & Anr.*** and connected petitions (2008) ILR 13 Delhi 125. The SLPs preferred against the said judgment being: SLP (C) No. 20513/2009 and connected petitions, were dismissed in limine vide order dated 29.01.2010.

10.2 The respondent, in my view, committed a grave error in not sending notices to the writ petitioner at his Canadian address, since it had due knowledge of his address in Canada. Accordingly, the impugned orders are set aside. The respondent shall, however, be at liberty to re-commence the inquiry and proceed; albeit in accordance with law, after duly notifying the writ petitioner.

11. The writ petition is, accordingly, disposed of with the aforesaid directions.”

7. It is therefore seen that the present enquiry proceedings which have now commenced against the petitioner are in fact only in continuation of the enquiry proceedings in terms of the Memorandum dated 8.9.1997 and pursuant to the judgment of the learned Single Judge of this Court dated 2.1.2014 in W.P. (C) No. 6971/2002. Learned counsel for the petitioner argues that the impugned notice dated 8.7.2015 talks of commencement of

enquiry under Rule 14 of CCS (CCA) Rules, 1965 and which Rule pertain to major penalty and that major penalty cannot be imposed upon an employee by commencing enquiry after the date of the employee's retirement/superannuation. The petitioner superannuated on 30.11.2006. Reliance in support of the preposition is placed upon the judgment of the Supreme Court in the case of *Anant R. Kulkarni Vs. Y.P. Education Society and Others*, (2013) 6 SCC 515. It is also argued on behalf of the petitioner that the notice dated 13.7.2015 is liable to be quashed on account of delay as a long time has elapsed between passing of the judgment by a learned Single Judge of this Court on 2.1.2014 in W.P. (C) No. 6971/2002 and issuing of the impugned notice dated 13.7.2015.

8. The arguments which have been urged on behalf of the petitioner are totally frivolous to say the least. Obviously, the petitioner somehow or the other does not want the enquiry proceedings to go on thereby resulting in a conclusion. Reliance placed on behalf of the petitioner in the judgment in the case of *Anant R. Kulkarni (supra)* is completely misplaced because the said judgment only holds that after the retirement of a person enquiry proceedings cannot be commenced against an employee unless so provided by the Rules. The said judgment does not deal with the position that enquiry, if it has commenced before the retirement of

an employee, cannot continue after retirement. In fact, the observations of the Supreme Court in para 24 of this judgment are otherwise than that as argued by the petitioner, because para 24 states that the enquiry initiated against a delinquent employee while he was in service would even continue after retirement. This para 24 of the judgment reads as under:-

“24. Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed.”

9. As already stated above, the fresh inquiry proceedings against the petitioner are pursuant to a judgment of a learned Single Judge of this Court dated 2.1.2014 disposing of W.P. (C) No. 6971/2002 and by the judgment dated 2.1.2014 the enquiry proceedings were ordered to “recommence” i.e. to commence again and i.e. the proceedings which have already started in terms of the original Memorandum of Charges/Show Cause Notice dated 8.9.1997. Also, the Supreme Court in *Anant R. Kulkarni (supra)* case itself clarifies this position in para 12 with its sub-para 13 and which paras read as under:-

“12. The appeal raises the following substantial questions of law:

12.1 In case the punishment is set aside by the court/tribunal as the enquiry stood vitiated for technical reasons, whether the employer is entitled to hold the enquiry afresh from the point it stood vitiated?

12.2 Whether the enquiry can be quashed on the ground of delay?

12.3 Whether the enquiry can be permitted to be held on vague and unspecified charges? and

12.4 Under what circumstances enquiry can be conducted against the delinquent employee who has retired on reaching the age of superannuation?

In case the punishment is set aside:

13. It is a settled legal proposition that, once the court set asides an order of punishment on the ground that the enquiry was not properly conducted, the court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the concerned case to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings before the same are concluded on the aforementioned grounds.” (underlining added)

10. Para 13 in the case of ***Anant R. Kulkarni (supra)*** is categorical that when the punishment is set aside and the enquiry proceedings are asked to be commenced on account of defects in the earlier enquiry proceedings, then the enquiry commences from the point when it stood vitiated i.e. the enquiry proceedings are not *de novo* enquiry proceedings commencing after retirement of an employee but only continuation of what were already initiated in the service period of an employee.

11. Even the argument of the petitioner that the notice dated 13.7.2015 should be quashed on account of delay is misconceived argument and the Supreme Court in the case of ***Anant R. Kulkarni (supra)*** itself has

made apposite observations against the argument as is advanced on behalf of the petitioner in this case, and which para 14 of the judgment in the case of *Anant R. Kulkarni (supra)* reads as under:-

“14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of a delay in their conclusion.” (underlining added)

12. Therefore, in my opinion, it cannot be said that there is such a huge delay in the present case which has caused such grave prejudice to the petitioner for enquiry proceedings being quashed on account of delay, and taken in light of the observations of the Supreme Court in para 14 in the case of *Anant R. Kulkarni (supra)* that there is such delay to defeat clean and honest administration, and which is not so in the facts of the present case.

13. In view of the above, it is clear that this writ petition has been filed by the petitioner somehow or the other to frustrate the continuation and conclusion of the enquiry proceedings against the petitioner.

14. In view of the above, this writ petition being wholly misconceived, the same is dismissed with costs of Rs. 20,000/-. Costs shall be paid to the respondent within a period of six weeks from today.

JANUARY 18, 2017/ AK

VALMIKI J. MEHTA, J

