

\$~7

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

% *Date of Judgment: 19th July, 2018*

+ LPA 38/2016

S S GUPTA

..... Appellant

Through: Ms.Pratima Gupta, Advocate

versus

THE DELHI POWER CO LTD & ANR.

..... Respondents

Through: Ms.Avnish Ahlawat and Ms.Palak
Rohmetra, Advts. for respondent no.1
with Mr.Gaurav Gupta (Legal)
Mr.Gulshan Chawla, Mr.Bhavishya
Mehra and Ms.Heena Malik, Advts.
for respondent no.2..

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Aggrieved by the order dated 08.12.2015 passed by the learned Single Judge of this Court has led to the filing of the present appeal. With the consent of the parties, the present appeal is set down for final hearing and disposal.
2. Facts of the case are that pursuant to a departmental enquiry conducted a penalty of reduction to the lowest stage in the time scale of pay for a period of three years with further stipulation that the appellant will not earn any increment of pay during the period of reduction was imposed upon the appellant by an order of 04.05.1999. It is the order which was subject matter of challenge in the writ petition being W.P.(C) 3457/2001 so filed before a Single Judge of this Court. The appellant at

the relevant time was employed as an Inspector (Special Cell) and was accompanied by senior officer i.e. Superintendent for conducting a routine surprise inspection at I-63 and I-85, Jahangir Puri, Delhi on 01.12.1989. As per the report dated 01.12.1989, the connected load in the aforesaid premises was 9 HP each and the A.E. (Special Cell) of the respondent based on the report of the appellant had imposed the requisite penalty on the customer. It is only after a period of 9 ½ months when a raid was conducted at the aforesaid premises on a complaint and an inspection was carried out by the raiding part, it was found that the connected load of the aforesaid premises was 28 HP and 63 HP respectively. Based on this report, disciplinary proceedings were initiated against the appellant and his immediate officer i.e. Superintendent concerned.

3. Learned counsel for the appellant submits that the order dated 04.05.1999 as also the order dated 08.12.2015 passed by the learned Single Judge are bad in law and thus, liable to be set aside. Learned counsel contends that there was no evidence on record to prove the ulterior motive of the appellant herein. Counsel contends that the learned Single Judge erred by not appreciating that there was no evidence on record which could have led to passing of the order dated 04.05.1999. Counsel submits that the learned Single Judge did not take into consideration that the allegations against the appellant were vague for the reason that the second inspection was conducted after a long gap of 9 ½ months and during this period the customer could have asked for additional load. It is contended that the charge was to be proved by the department independently and merely because the appellant did not lead

any evidence cannot be a ground to pass the order dated 04.05.1999. Counsel further submits that the appellant cannot be faulted for the reason that in the inspection report itself the appellant had made an endorsement that the MTD (Meter Testing Department) staff was not available. Thus, it cannot be said that the appellant had willfully not complied with the circular being CO.II/Comml.26/89-90/7 dated 31.07.1989. Counsel further submits that this court would be well within its right to exercise its jurisdiction to set aside the order dated 04.05.1999 and the order passed by the Single Judge dated 08.12.2015 as the conclusion reached against the appellant are on the face of it wholly arbitrary and capricious. Additionally, learned counsel has contended that the disciplinary authority and the appellate authority did not apply their mind on the report submitted by the enquiry officer and it was accepted without any application of mind.

4. Learned counsel for the respondent has opposed this appeal, firstly, on the ground that there is impropriety or illegality in the manner in which the enquiry was conducted. It is, thus, contended that the scope of an appeal is rather narrow as the enquiry has been held as per the prescribed procedure, there was no violation of principles of natural justice and the conclusion arrived at cannot be said to be extraneous. It is also contended that it has been repeatedly held that the High Court cannot sit as a Court of Appeal in exercise of power under Article 226 of the Constitution of India. Learned counsel for the respondent also submits that there is no explanation as to why the appellant did not comply with the circular dated 31.07.1989. He submits that the appellant has contradicted himself while on the one hand it has been

stated that the MTD staff was not available whereas in the pre-recorded statement he has admitted that the inspection was carried out on account of some sort of a verbal complaint. It is submitted that once a complaint had been received the appellant was duty bound to have engaged the services of the MTD staff. He further submits that four witnesses were examined who have duly proved the charges against the appellant. No evidence was led by the appellant herein.

5. Counsel for the respondent has relied on the decision rendered by the Supreme Court on ***Bank of India vs. Apurba Kumar Saha*** reported in (1994) SCC 615, para 4 of which reads as under:

“4. Having regard to the arguments addressed by learned counsel on both sides we have gone through the papers and seen that the High Court's view that there was violation of principles of natural justice, in conducting the disciplinary proceedings against the respondent, was wholly unjustified. The records of the disciplinary proceedings show that the respondent had avoided filing of the written explanation for the charges of misconduct levelled against him and also had for no valid reason refused to participate in the disciplinary proceedings. A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the Bank-employer had resulted in violation of principles of natural justice of fair hearing.”

6. We have heard learned counsels for the parties.
7. The facts which we have narrated hereinabove are not in dispute. Learned counsel for the appellant submits that the charges so framed

against the appellant have not been proved. Learned counsel for the appellant has urged that there has been no application of mind by both the disciplinary authority and the appellate authority. We may note that upon receipt of the report of the enquiry officer, recommendation for the dismissal from service of the appellant was made and it is only the disciplinary authority that had reduced punishment. Upon receipt of the enquiry report the disciplinary authority issued a show cause notice to the appellant as to why his services be not terminated. However, the disciplinary authority imposed the penalty of reduction to the lowest stage in the time scale of pay for a period of five years with a further stipulation that the appellant will not earn any increment of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. We also find that the appellate authority on an appeal had reduced the same to three years. Thus, in our view, the submission made that the disciplinary authority did not apply their minds would not hold any ground. Learned counsel for the appellant has laboured hard to convince us that there was no evidence before the enquiry officer and also that the conduct of the appellant cannot be faulted for the reason that the MTD staff was not made available to the appellant herein. We also do not find any force in the submission because of the endorsement made on the report dated 01.12.1989, which reads as under:

“Meter seals position could not be verified due to non availability of M.T.D.”

8. The reading of the endorsement certainly gives an impression that the MTD staff was not available but it does not suggest that the appellant

had sought the services of the MTD and they were not made available to the appellant. The endorsement as extracted above only shows that the meter seals position could not be verified due to non-availability of MTD staff. In the case of ***Union of India and others vs. P.Gunasekaran*** reported in (2015) 2 SCC 610, the Apex Court has reiterated and in fact cautioned the High Court from re-appreciating the evidence or to interfere with the conclusions in enquiry proceedings if they are conducted in accordance with law or go into the reliability/adequacy of evidence or correct error of fact however grave it may be or go into proportionality of punishment unless it shocks the conscience of Court. The scope of interference is only in cases where the enquiry held by the competent authority was not in accordance with the procedure established by law and principles of natural justice were not followed or when irrelevant or extraneous considerations were taken into consideration while rendering the decision. Paragraphs 12 to 19 of ***P.Gunasekaran*** (*supra*) read as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;

- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf,

and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

15. In *State of A.P. v. Chitra Venkata Rao* [(1975) 2 SCC 557 : 1975 SCC (L&S) 349 : AIR 1975 SC 2151], the principles have been further discussed at paras 21-24, which read as follows: (SCC pp. 561-63)

“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of A.P. v. S. Sree Rama Rao* [AIR 1963 SC 1723]. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article

226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in *Railway Board v. Niranjan Singh* [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh* case [(1969) 1 SCC 502 : (1969) 3 SCR 548] this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent

was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on 31-5-1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477] .)

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the

evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.”

16. These principles have been succinctly summed up by the living legend and centenarian V.R. Krishna Iyer, J. in *State of Haryana v. Rattan Singh* [(1977) 2 SCC 491 : 1977 SCC (L&S) 298] . To quote the unparalleled and inimitable expressions: (SCC p. 493, para 4)

“4. ... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.”

17. In all the subsequent decisions of this Court up to the latest in *Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu* [*Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu*, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] , these principles have been consistently followed adding practically nothing more or altering anything.

18. On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28-2-2000, had arrived at the following findings:

“Article I was held as proved by the inquiring authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz. letter dated 11-12-1992 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11-12-1992 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23-11-1992 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ...”

19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to reappraise the evidence in exercise of its jurisdiction under Articles 226/227 of the Constitution of India.”

9. In the present case the following articles of charge were framed :

“Article-I

Shri S.S. Gupta while functioning as Inspector (Enforcement II) during the year 1990-91 with ulterior motives and with a view to extend undue favour to the consumer, submitted false inspection reports in respect of the connected loads with the result that the consumers could not be charged appropriately and the Undertaking was put to revenue loss.

Article-II

The said Sh. S.S. Gupta, while working in the aforesaid capacity during the aforesaid period, carried out inspection of the premises of the consumers of K.No.1394022 IP and 1381905 IP without associating the MTD staff and thus violated the instructions

contained in office order no. CO.II/Comml. 26/89-90/7 dated 31.07.89.”

10. The following findings were rendered by the enquiry officer:

“The charged official had not associated the representative from MTD, thus contravening the provision of circular No. Co.II/comml. 26/89-90/7 dated 31.07.89. The instructions were intentionally conducted without the representative from MTD to extend undue favour to the above-said consumer as the seals of the meter of these consumers had been tampered as subsequently confirmed during the aforesaid joint inspection on 14.9.90 by the vigilance/MTD/Zonal Staff.

The charged official has stated in his pre-recorded statement i.e. Ex. S 4 and 4A and Exhibit D-1 and D-1/A that the area of Jahangirpuri, I-Block were inspected on the verbal instructions of the XEN (Special Cell), Shri S.S.Gupta, C.O. had stated in his pre recorded statement i.e. Ex. S.4 and S 4A that he was not aware of the type of complaints because it was marked to Sh. S.C.Aggarwal, Supdt. (Tech.), another C.O. The above statement of Sh. S.S.Gupta is self contradictory because no one can believe that he was not aware of the type of complaint that he was associated with Sh.S.C.Aggarwal who is the co-accused in this case. The above two statements Ex. S 4 and 4A is also self contradictory and does not held to the charge of C.O.

Ex. D-1 does not help to the charge because C.O. had not produced any defence witness or documents who has confirmed that the MTD staff were not made available at the time of joint inspection on 1.12.89 nor he reinspected the said premises with MTD staff during the period 1.12.89 to 14.9.90.

It clearly shows that the charged official conducted the inspection on 1.12.89 without the representative from MTD staff to extend undue favour to the said consumer, as the seals of the meter of these consumers had been tampered with as subsequently confirmed during the aforesaid joint inspection conducted by joint team on 14.9.90.

Ex. D-2, 2A to 2C is the written defence statement of Sh. S.C. Aggarwal, C.O. in which he had explained the position in respect of the charge levelled against him but the case was referred to Inquiry Officer. Inquiry order for conducting the Departmental Inquiry is self explanatory about the exhibits D-2, 2A to Ex. D3 is the office order repeating instructions vide office order dated 17.7.87 according to which it was necessary to give an opportunity to the C.O. to explain the position before the case registered against the C.O. The C.O. has taken a plea that the C.O. was chargesheeted without giving him reasonable opportunity. The plea taken by C.O. seems to be wrong and do not help to substantiate the charge because Ex.D-1 is the pre-recorded statements of the C.O. prior to the charge sheet.”

11. During the course of hearing, the learned counsel for the appellant has failed to establish that either the inquiry was not held by a competent authority, or that proper procedure was not followed, or there was violation of principles of natural justice. The appellant was granted full opportunity to defend himself, however the appellant even failed to lead evidence. In our view, no interference is called for in the order dated 04.05.1999 or the order dated 08.12.2015 passed by the Single Judge. Resultantly, the appeal is dismissed.

C.M.1664/2016 (additional documents)

12. The application stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JULY 19, 2018/rb