

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

Date of Order: January 10, 2018

+ **W.P.(C) 240/2018**

PUSHKAR KAPOOR Petitioner
Through: In person with Mr. Dinesh Prashar,
Advocate

Versus

TATA POWER DELHI DISTRIBUTION LIMITED ...Respondent
Through: Mr. Ankit Agarwal, Advocate for
Mr. Sujit Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGEMENT
(ORAL)

1. Petitioner claims to be a Junior Officer with respondent for last about one decade, and was departmentally proceeded against after being charge-sheeted on 22nd November, 2016 for exhibiting unwillingness to work in the transferred group. The Inquiry Officer vide Inquiry Report of 6th June, 2017 held that the charges framed against petitioner stood proved. The Disciplinary Authority vide order of 4th July, 2017 (*Annexure-G*) concurred with the Report of the Inquiry Officer and inflicted the penalty of “*removal from service*” upon petitioner.

2. In the statutory appeal filed by petitioner, it was averred that the penalty inflicted is disproportionate to the charges framed and that period of two months only has been considered to arbitrarily arrive at a conclusion that petitioner was unwilling to work. It is asserted in the appeal that petitioner has meritorious service of ten years and there were

two persons, including petitioner, responsible for round-the-clock duty, whereas after petitioner's removal from service, three persons were deputed and although petitioner had worked under the supervision and control of more than seven officers, only one officer—*Praveen Singh Saini* had reported against him and the evidence of defence witness-S. *Hariharan, Manager (HR)* has not been considered by the Inquiry Officer. The stand taken by petitioner in the appeal is that despite tendering unconditional apology to the charges framed, penalty of "*removal from service*" has been inflicted upon him, which is unjustified, as petitioner was recommended for Shabash Award by Commercial Manager D-PPR. Appellate Authority vide order of 13th October, 2017 (*Annexure-I*) has dismissed petitioner's appeal on finding no merit in it.

3. Learned counsel for petitioner assails the impugned orders of Disciplinary Authority as well as Appellate Authority, on the ground that the charges framed against petitioner do not stand proved. To submit so, attention of this Court is drawn to deposition of *Sh. Rajender Singh (PW-3)* and *Sh. Praveen Singh Saini (PW-4)* to point out that none of the witnesses, who have deposed against petitioner, has stated about the leaves taken by petitioner and no '*Advisory Memo*' was given to petitioner prior to taking such a harsh step of inflicting punishment of "*removal from service*". It is submitted on behalf of petitioner that duty hours were up to 06:00 p.m. but on oral instructions, petitioner was made to work upto 08:00 p.m. for an indefinite period and that the punishment of "*removal from service*" is unduly harsh and so, it is submitted that impugned order of Disciplinary Authority as well as Appellate Authority ought to be set aside and petitioner be reinstated in service.

4. Supreme Court in *Central Industrial Security Force v. Abrar Ali*, (2017) 4 SCC 507 has re-emphasized that the Courts are reluctant in interfering with disciplinary matters in exercise of jurisdiction under Article 226 of *the Constitution of India* and are not expected to act like an Appellate Authority and dwell upon the merits of the case. The pertinent observations of Supreme Court in *Abrar Ali (supra)*, are as under: -

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

5. Upon hearing and on perusal of impugned orders, material on record and the legal position, as noted hereinabove, I find that though the Court is not expected to go into the merits of the case, but I have perused the evidence of relevant witnesses i.e. PW-3, PW-4 and DW-1 and

thereupon, has come to conclusion that the Inquiry Report of 6th June, 2017 cannot be said to be suffering from any arbitrariness or perversity.

6. So far as the proportionality of the punishment inflicted upon petitioner is concerned, I find that this Court cannot substitute its own opinion with that of Disciplinary Authority. The discretion exercised by Disciplinary Authority in inflicting the penalty appears to be in consonance with the misconduct committed. Neither the order of Disciplinary Authority nor of Appellate Authority is capricious nor is vitiated by any extraneous consideration. Thus, finding no substance in this petition, it is dismissed *in limine*.

(SUNIL GAUR)
JUDGE

JANUARY 10, 2018

r/s

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