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

Reserved on: 11th March, 2019

Decided on: 26th March, 2019

LPA 94/2016

DASHRATH LAL (DECEASED) THR. LRsAppellants

Through: Mr.Kamal Mehta, Advocate.

versus

DVB (NOW BSES RAJDHANI POWER LTD.) & ANR.Respondents

Through: Mr.Sandeep Prabhakar with Mr.Vikas
Mehta, Advocates for R1.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S.MEHTA**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This appeal by the legal representatives (LRs) (Appellants 2 to 4) of late Shri Dashrath Lal (Appellant No.1) and three others (Appellants 5 to 7) is directed against the order dated 17th November 2015 passed by the learned Single Judge dismissing WP(C) 4093 of 2000.

2. The challenge in the writ petition was to an order dated 8th March 2000 passed by the Delhi Vidyut Board ('DVB'), the predecessor-in-interest of the Respondent No.1 BSES Rajdhani Power Limited ('BRPL') dismissing Appellant No.1 and three other employees (Appellants 5 to 7) from service. The challenge was also to the order dated 28th August 2001 dismissing the statutory appeals filed by Appellant Nos.1 and 5 to 7. Prior to their dismissal, the Appellant Nos.1, 5 to 7 had been placed under suspension by an order dated 31st January 2000 and that too was challenged in the writ

petition.

Background facts

3. Appellant No.1 Shri Dashrath Lal had joined the DVB on 15th February 1971 and at the time of the filing of the writ petition was working as Assistant Line Man (ALM) (Majdoor) at District Nehru Place. Appellant No.5 Shri Jagwanta had joined DVB in 1972 and was working as Junior Line Man (JLM). Appellant No.6 Shri Munni Lal had joined in 1976 and was working as ALM (Majdoor) whereas Appellant No.7 Shri Bir Singh whose services had been regularized in 1975 was working as ALM (Majdoor).

4. The facts leading to the placing of the aforementioned Appellants under suspension and ultimately their dismissal was that one Shri Nafe Singh gave an interview on Star TV News Channel stating that the line staff of the complaint centre of DVB were accepting bribes. During investigation by the Vigilance Department, the said Shri Nafe Singh is stated to have named the aforementioned four Appellants taking bribe from the owner of one M/s Himalaya Overseas Ltd. on 23rd January 2000 for replacing a burnt meter. The further enquiry revealed that the said burnt meter was in fact replaced on a Sunday. The owner of the factory Shri Saluja is stated to have admitted to paying Rs.2,000/- to the line staff.

5. On 31st January 2000 the four employees were placed under suspension. On 8th March 2000 the impugned order was passed dismissing the Appellants 1, 5 to 7 from service. In the said order passed by the Addl. General Manager (Administration) i.e. the Disciplinary Authority (DA) it

was *inter alia* recorded, after setting out the facts gathered against the four Appellants, that the DA was personally satisfied “that the facts and circumstances of the case are such that it would not be reasonably practicable to hold the departmental enquiry against the four of them.”

DA dispenses with enquiry

6. The above order of the DA further noted that very few people would have the temerity and courage of Shri Saluja to admit their complicity publicly in bribery “and it does not appear to be feasible to hold an enquiry under the aforementioned provision of rules.” An opinion was formed that Shri Saluja and “the like may not give evidence out of various considerations one of which can be organizational hostility and threat of discriminatory treatment in future.” It was further observed by the DA that since the four employees “are low paid employees and virtually belong to labour class” in the event an enquiry is held “there is real danger of their fellow employees, getting influenced by misguided loyalty, creating labour problems resulting in disruption of public services.” It was opined that the four employees were “in an unusually advantageous position and would, therefore, normally be able to influence the witnesses and the enquiry and prevent it from being conducted in an effective and impartial manner.”

7. For the aforementioned reasons, the DA concluded that it would not be reasonably practicable to hold the departmental enquiry and opted to follow the procedure laid down in Rule 14 of the CCS (CCA) Rules. Citing the decision in *Union of India v. Tulsiram Patel AIR 1995 SC 1416* the DA concluded that “the circumstances prevailing the present case gives

sufficient indication that it would be appropriate to dispense with the normal procedure of enquiry by invoking Rule 19(ii) of the CCS(CCA) Rules, 1965.”

8. The DA then went on to hold that he was of the considered view “that it is absolutely necessary in the public interest, not to mention interest of the organisation itself, the exemplary punishment should be meted out in such a case where there is clear and satisfactory evidence of the organised corruption so that a right message is sent down the line that corruption is a zero tolerance zone and can under no circumstances be condoned.” Accordingly, the DA held that each of the four persons was not fit to be retained in public service anymore. The penalty of dismissal from service was imposed on each of them.

Order of the Appellate Authority

9. In the order dated 28th August 2000 while dismissing the appeals, the Appellate Authority referred to the statements given by the four employees themselves admitting to replacing the meter for consideration. Shri Nafe Singh was an office bearer of the DSE Workers’ Union headed by Shri Hira Lal Sharma whereas the Appellants belong to a rival group. They had claimed that Shri Nafe Singh had given the statement against them as a result of union rivalry. This was taken to be an admission on part of the Appellants which itself proved that the DA had rightly observed in his order “that there was a real danger of fellow employees of the dismissed officials getting influenced by misguided sense of loyalty and creating labour problem....”. The Appellate Authority agreed with the DA that “the

Complainant may not have come forward to give evidence in the face of apprehension of hostility of field staff and threat of discrimination in future.” The Appellate Authority was of the view that the DA had rightly dispensed with the usual procedure and that this had not resulted in violation of any principles of natural justice or of the Constitution of India.

Impugned order of the Single Judge

10. It should be mentioned here that during the pendency of the writ petition Appellant No.1 Dashrath Lal died and Appellant Nos.5 to 7 attained the age of superannuation. The learned Single Judge after referring to the decision in ***Ved Mitter Gill v. Union Territory Administration, Chandigarh 2015 (4) SCALE 234*** agreed with the DA and the Appellate Authority held that it was least likely that the meaningful and effective enquiry could be held “due to organizational hostility, disruption of essential services and the advantageous position, which petitioners were having to influence the witnesses.”

11. The learned Single Judge held that the Complainant had publicly admitted to giving “bribe, would not have stood by his statement made during the vigilance proceedings as he was party to giving of bribe without informing the vigilance department.” It was held that in any event the statement made by the Complainant before the Vigilance Authorities could be taken into consideration by the DA. Accordingly it was held that the impugned orders did not suffer from any palpable error.

12. At the hearing on 20th July 2016 the Court directed counsel for the Respondents to produce before the Court on the next date a vigilance report

by which the Appellants were identified “as the persons who had received and were the beneficiaries of the bribe money.” This order was repeated on 28th September 2016. On 8th February 2018 the Court adjourned the matter to enable parties to “work out the modalities of amicable resolution.” This order was repeated on 5th March 2018. On 18th May 2018 the parties reported to the Court that they had been unable to arrive at any settlement.

13. This Court has heard the submissions of Mr. Kamal Mehta, learned counsel appearing for the Appellants and Mr. Sandeep Prabhakar, learned counsel appearing for the Respondents.

Analysis and reasons

14. The short question that arises for consideration is whether the DA was justified in dispensing with the enquiry by invoking Rule 19 (ii) of the CCS (CCA) Rules? Rule 19 (ii) of the CCS (CCA) Rules reads as under:

“Where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules”

15. Rule 19 (ii) is an exception to Rule 14 which deals with the procedure for imposing major penalties and which envisages a full-fledged enquiry. Rule 19 (ii) of the CCS (CCA) is analogous to Article 311 (2) (b) of the Constitution of India which came up for interpretation in ***Union of India v. Tulsiram Patel*** (*supra*). In para 134 of the decision it was observed as under:

“It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particular, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.”

16. The reasons given by the DA in the final order in the present case for dispensing with the enquiry are as follows:

- (i) The Complainant Shri Rajinder Saluja “and the like” may not give evidence out of various considerations one of which could be organisational hostility and threat of discriminatory treatment in future.
- (ii) Very few people will have the temerity and courage of Shri Saluja to admit their complicity publicly in bribery.
- (iii) The four employees “are low paid employees and virtually belong to labour class.” If an “oral enquiry” is held there was “real danger of

their fellow employees, getting influenced by misguided loyalty, creating labour problems resulting in disruption of public services.”

- (iv) In the above circumstances the four employees are “in an unusually advantageous position” and would, therefore, “normally be able to influence the witnesses and the enquiry and prevent it from being conducted in an effective and impartial manner.” It is, therefore, seen that each of the above reasons is based essentially on surmises and conjectures. There is no indication anywhere that Shri Saluja, the proprietor of M/s. Himalaya Overseas Ltd. ever made a statement that he is not prepared to come and give evidence or make a statement.

17. Shri Saluja was not the only witness. Based on his complaint a vigilance enquiry was held. What happened in the vigilance enquiry is set out in the impugned order dated 8th March 2000 as under:

“As the news was really distressing, an investigation was conducted to know the veracity of the news and to arrive at the truth. During vigilance investigation Delhi Vidyut Board employee who was shown on the news programme and who had admitted to accepting bribes and dividing the booty amongst them was identified as Shri Nafe Singh, ALM, E.No.19542 posted in District NHP. In his statement dated 24.1.2000 recorded before Vigilance Staff, Shri Nafe Singh admitted to have spoken to a lady reporter on 23.1.2000 at around 10.10.30 AM. He further admitted to be aware about his colleagues Shri Jagwanta and Shri Veer Singh having visited the premises of 1-2, Okhla Indl. Area, Ph-II on 22.1.2000 at 7.00 PM and having struck a deal with one of the staff members of the firm for replacement of their meter on Sunday viz. 23.1.2000 for a consideration of Rs.5000/-. During vigilance investigation Shri Rajinder Saluja too in fact confirmed to Shri. V.K. Khullar, SE (Vig.), a senior officer of

Vigilance Deptt., the fact of his having paid through one of his staff members Rs.2000/- as graft to the line staff for replacement of the burnt meter.”

18. It is thus evident that in the vigilance enquiry Shri Nafe Singh admitted to have spoken to a lady reporter of the TV news channel at around 10-10.30 am on 23rd January 2000. The impugned order, however, treats the statement of Shri Nafe Singh as an extra judicial confession that he too was part of the corrupt practices and that by not informing his superiors about the conduct of his colleagues was also guilty of contravening of Rule 9 of the CCS Conduct Rules, 1964. Also, Shri Saluja also spoke to the Vigilance Officer. There is nothing to indicate that he would, thereafter, also not speak in the enquiry.

19. Then we have Shri V.K. Khullar, SE (Vigilance) who probably recorded the statement of Shri Saluja. There is nothing to indicate that Shri Khullar was not inclined to speak in an enquiry. The TV reporter to whom Shri Nafe Singh spoke was a third witness. There is nothing to indicate that the said TV reporter had refused to appear in the enquiry. Neither Shri Saluja nor the TV reporter nor Shri Khullar could have been apprehending threats from anyone.

20. In the circumstances, the statement that because the four employees belonged to “the labour class” they may be in an advantageous position and would be able to influence witnesses smacks of bias against the labour class as a whole. There is no question of persons like Shri Saluja or the TV reporter or Shri Khullar being influenced by “misguided loyalty” or “creating labour problems resulting in disruption of public services.” None

of this can be accepted as a conclusion that could be arrived at by a reasonable person.

21. The scope of judicial review in such instances has been explained in para 137 of the judgment of *Union of India v. Tulsiram Patel* (*supra*) as under:

“Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and the approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in

the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

22. In the present case, the Court finds that the reasons given for dispensing with enquiry are indeed irrelevant even if one places himself in the shoes of the DA. The prevailing situation was not such that it was not going to be possible to hold an enquiry. The situation has to be adjudged on the basis of the prevailing facts. There is no indication that the DA was facing in hostility that made it impossible for him to hold an enquiry. Shri Nafe Singh had spoken to the TV reporter on 23rd January 2000 and on the very next day the vigilance investigation was ordered. Shri Nafe Singh's statement was recorded by the vigilance officer on 24th January 2000. On 31st January 2000 each of the employees had been placed under suspension. These three factors were relevant for deciding whether it was impracticable to hold an enquiry. These factors do not appear to have entered the frame of reference of the DA when he decided that it was not practical to hold an enquiry.

Errors of the Appellate Authority

23. The Appellate Authority merely concurred with the DA without advertng to the above factors. The scope of the appellate proceedings in such cases has been explained in *Union of India v. Tulsiram Patel* (*supra*) as under:

“136A. A government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provisions of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules, he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the

penalty of dismissal, removal or reduction in rank has been imposed upon him **unless the same or a similar situation prevails at the time of hearing of the appeal or revision application.** If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case as the government servant if dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department **if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.**" (emphasis supplied)

24. The above portion of the ratio of *Union of India v. Tulsiram Patel* (*supra*) was further explained by the Supreme Court in *Satyavir Singh v. Union of India* (1985) 4 SCC 252 as under:

"A civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Article 311 (2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal."

25. The Appellate Authority was therefore required to examine whether at the stage of appeal, the same situation prevailed that made it impractical for the DA to hold an enquiry. In the present case, the Appellate Authority overlooked the above requirement of the law. The appeal was being heard nearly three years after the alleged incident. Clearly, the same situation that prevailed at the time of dismissal could not have prevailed at the time of

appeal.

26. Further the points urged in the appeal have not been dealt with on merits by the Appellate Authority. It transpired from the appeals filed by the dismissed employees, which has also been adverted to in the appellate order, that Shri Nafe Singh was an officer bearer of the DSE Workers' Union headed by Shri Hira Lal Sharma and that the Appellants belong to a rival group. Their allegation was that Shri Nafe Singh had given the statements against them "out of union rivalry." The contention of the employees that Shri Nafe Singh had given a statement out of "union rivalry" was taken to be "admission on the part of the Appellant" and in proof of the observation of the DA that "there was a real danger of fellow employees of the dismissed officials getting influenced by a misguided sense of loyalty."

27. The Appellate Authority obviously misunderstood what the ground urged was. There was no question of Shri Nafe Singh having any "misguided sense of loyalty" to the dismissed employees as it was the contention of the dismissed employees that he had spoken against them out of 'union rivalry.' They had already been placed under suspension. Therefore, there was no question of Shri Nafe Singh creating labour problems resulting in disruption of public services. Further this could hardly be an admission by the dismissed employees. Their case was that Shri Nafe Singh out of union rivalry had falsely implicated them.

Decisions cited by counsel for Respondents

28. Mr. Prabhakar, learned counsel for the Respondents, referred to the decision in ***Kuldeep Singh v. State of Punjab AIR 1997 SC 79***. There the

allegation was that the delinquent police head constable had links with terrorists. The specific finding was that he had been supplying secret information of the police department to the terrorists and this was creating hindrance in the smooth functioning of the police department. That is hardly the situation in the present case. Therefore, the said decision is of no help to the Respondents.

29. Mr. Prabhakar then referred to the decision *Manojit Ghosh v. Union of India 2012 Law Suit Del 417*. That case involved the dismissal of a constable of the CISF who happened to be on duty with the Indian embassy in Nepal. He was alleged to have entered a hotel room in Kathmandu occupied by a Turkish national and then outraged her modesty despite strong protest by her. He was nabbed by the hotel staff and handed over to the police. This happened in Kathmandu in Nepal. The officials of the Indian embassy persuaded the Complainant not to file a criminal case with a view to saving the country from embarrassment and a compromise note was also signed by her. These circumstances persuaded the DA in that case to come to a conclusion that it would not be reasonably practicable to hold a regular departmental enquiry. Again there is no such situation in the present case which persuades the Court to hold that it was not reasonably practicable for the DA to have held an enquiry.

30.1 Next Mr. Prabhakar referred to the decision in *Sahadeo Singh v. Union of India AIR 2003 SC 1568*. There the Appellants dismissed were on duty on a goods train as *Rakshaks* (guards). They were accused of colluding with other officials in the train and certain other miscreants by assisting

them in the theft of large quantities of rice bags. The enquiry reports clearly shows that those who had seen the incident “none of them was willing to either give a statement in writing or give evidence apprehending danger to his life” there were internal reports which showed that the Appellants were in leave with certain desperate miscreants and, therefore, “the locals who witnessed the theft were not willing to come forward to give any evidence.”

30.2 In the present case there are no such internal reports. In fact there is no material whatsoever to enable the Court to come to a conclusion that the situation was such that it was not reasonably practical to hold an enquiry. Further as already noted there is nothing to show that even at the stage of hearing and disposing of the appeal in August 2001 the situation had undergone no change and it was still not reasonably practicable to hold an enquiry.

31.1 In *Ved Mitter Gill v. Union Territory Administration, Chandigarh* (*supra*) the facts were that the dismissed Appellants were holding the charge of Deputy Superintendent of Police, Model Jail, Burail, Chandigarh. The other two Appellants were working as Head Warden and Warden respectively. Four under-trials were facing trial for assassination of a former Chief Minister of Punjab escaped from the Model Jail by digging an underground tunnel. The enquiry report confirmed that the under-trials had dug the tunnel of large proportions under the jail to enable their escape. In dismissing the Appellant the enquiry was dispensed with. It was noted that in view of the involvement of the under-trials with Babbar Khalsa International, a known terrorist organisation, no witness was likely to come

forward to depose against him in the disciplinary proceedings if initiated. The escaped under-trials were likely to cause danger to the lives of the people.

31.2 The Supreme Court noted as under:

“It is a matter of common knowledge, and it would be proper to take judicial notice of the fact, that a large number of terrorists came to be acquitted during the period in question, on account of the fact, that witnesses did not appear to depose against them on account of fear, or alternatively, the witnesses who appeared before the concerned courts, for recording their deposition, turned hostile, for the same reason. The situation presented in the factual narration noticed in the impugned order, clearly achieves the benchmark, for the satisfaction at the hands of the competent authority, that it would not have been reasonably practicable, to hold a departmental proceeding against the Appellant/Petitioners, in terms of the mandate contained Under Article 311(2) of the Constitution of India.”

31.3 It is clear that no such situation exists as far as the present case is concerned. Here we are talking of the dismissal of three ALM of the DVB in a situation where there was no threat to any law and order. It should be noted that in one set of cases in *Union of India v. Tulsiram Patel* (*supra*) the situation was of an All India Railway strike where the atmosphere was so charged that the Army had to be called out to control the situation. There was hunger strike (dharna) shouting of rebellious slogan and threats of violence and bodily harm to supervisory officers and royal members of staff. There was no such situation as far as the present case is concerned.

Conclusion

32. For all of the aforementioned reasons the Court finds that in the present case there is no justification whatsoever for dispensing with the enquiry and proceeding to dismiss the Appellant Nos.1, 5 to 7 from service. Accordingly, the impugned order dated 8th May 2000 as well as the Appellate order dated 28th August 2001 and the impugned order dated 17th November 2015 of the learned Single Judge are hereby set aside.

33. Appellant No.1 has expired during the pendency of the appeal and Appellant Nos. 5 to 7 have superannuated. The Court accordingly directs the Respondent No.1 to pay to the LRs of Appellant No.1 and to Appellants 5 to 7 the arrears of back-wages calculated from the date of their respective dismissal up to the date of superannuation including other statutory payments like leave encashment, gratuity, PF etc. and also fix their respective pensions and make those payments within a period of eight weeks from today failing which the LRs of Appellant No.1 and Appellant Nos.5 to 7 would be entitled to 6% simple interest per annum on the respective sums in addition to the sums themselves till the date of payment.

34. The appeal is allowed in the above terms with costs of Rs.10,000/- each payable by Respondent No.1 to the LRs of Appellant No.1 and Appellant Nos.5 to 7 within four weeks.

S. MURALIDHAR, J.

I. S.MEHTA, J.

MARCH 26, 2019/tr