

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

% **Reserved on : 7th July, 2022**
Pronounced on: 18th October, 2022

+ W.P.(C) 6902/2003, CM APPL. 11994/2003, CM
APPL.12652/2003, CM APPL. 1625/2004, CM APPL.
7267/2004 & CM APPL. 1073/2007

BRIJ MOHAN Petitioner

Through: Mr. Zahid Hanief, Advocate
alongwith petitioner.

versus

GOVT OF NCT OF DELHI & ORS Respondents

Through: Ms. Divyanshi Anand, Advocate
for R-1.
Mr. Raj Birbal, Sr. Advocate with
Ms. Raavi Birbal, Advocate for R-
2 & 3.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking issuance of writ of appropriate nature thereby quashing the order dated 29th March 2003 and order dated 30th September 2003 passed by the respondents no. 2 and 3, vide which the petitioner was removed from

services. He has also sought directions to the respondents to release his salary from 1st April 2003 alongwith benefits of service.

BACKGROUND

2. The facts leading to the filing of the instant petition are detailed as follows:-

a. The petitioner was a regular employee, appointed with effect from May 1995, to the post of Telephone Operator with the Delhi Electric Supply Undertaking (hereinafter “DESU”) succeeded by the Delhi Vidyut Board and was thereafter, placed with the respondent no. 2, i.e., Tata Power Delhi Distribution Ltd. (earlier North Delhi Power Limited) upon the Delhi Electricity Reforms Act, 2000 coming into force. The petitioner’s appointment letter indicated that his services were governed by the Delhi Electric Supply Undertaking (DMC) Service (Control & Appeal) Regulations, 1976 (hereinafter “DESU Regulations”) and it is the case on his behalf that even after his transfer to the respondent no. 2, the same terms and conditions were to apply.

b. A complaint by one Ram Padarth dated 10th February 2003 was addressed to the respondent no. 2, its officials and the SHO of PS Rohini, against one S.K. Bansal, Inspector of Delhi Vidyut Board and a private resident of Rohini, namely, Sharan Arora. In the said complaint, it was stated that the concerned Inspector of Delhi Vidyut Board got installed new meters at the houses of residents of Rohini, namely, Raj Bala, Sharan Arora and Harish

Chand and received money from the said residents to the tune of Rs. 10,800/-, however, he did not issue any receipt to certain amount paid to him by the residents. The complainant also stated that the offender Sharan Arora entered his house, slapped him, abused him and threatened him to get three blank papers signed. The complainant sought action against the said persons.

c. In pursuance of the said complaint, the petitioner was served with the Notice dated 29th March 2003 whereby his services were suspended on the ground that disciplinary proceedings were contemplated against him for the reason for his involvement in a vigilance case.

d. A Memo of Charge and Statement of Imputation was served upon the petitioner on 1st April 2003, by the respondent no. 2 holding disciplinary proceedings against him on the charges that, first, he had liaised for replacement of meters with *mala fide* intention and ulterior motives and secondly, he had obtained a meter without jurisdiction from S.K. Bansal, Junior Engineer for replacement of stop meter in favour of one Anurag resident of G-8/19, Sector 15, Rohini, which was stolen from another residence, i.e., G-1/52, Sector-15 and thereafter, installed the spare meter for unauthorized use of electricity at residence at G-7/112, Sector-15, Rohini.

e. An Inquiry Officer was appointed to inquire into the case of the petitioner, who furnished his report dated 6th June 2003

concluding that the petitioner failed to prove his innocence on the charges and held the charges to be proved against the petitioner. On the basis of the report, the respondent no. 3 passed the order dated 30th September 2003 vide which the major penalty of removal from services was imposed upon the petitioner.

3. The petitioner is aggrieved by both the orders dated 29th March 2003 and 30th September 2003 and has moved this Court by way of filing the instant petition.

SUBMISSIONS

4. Mr. Zahid Hanief, learned counsel appearing on behalf of the petitioner submitted that the impugned orders passed by the respondents imposing major penalty upon the petitioner are illegal, arbitrary and perverse. The major penalty was wrongly imposed upon him and his services were terminated by the respondents without any just cause or reason. It is submitted that the vigilance case against him was arbitrarily initiated as the complaint made by Ram Padarth did not make even a whispering mention of the petitioner and no allegations of any kind whatsoever were levelled against him.

5. It is submitted on behalf of the petitioner that there were no reasons assigned for rejecting the reply of the petitioner to the Inquiry Report dated 6th June 2003. It is further submitted that the Inquiry Report prepared by the concerned Inquiry Officer was based on surmises and conjectures wherein the concerned Officer failed to come to a conclusion yet deemed the petitioner to be guilty only on the ground that he was

unable to prove his innocence. The Inquiry Officer did not make any definite observations to state that the petitioner was found guilty on the basis of and after appreciation of the material before it. The Inquiry Officer failed to record findings to each of the charge levelled against the petitioner. It is submitted that the removal order has been passed without affording the petitioner an oral hearing, which he had requested for in his reply dated 20th June 2003 to the Show Cause Notice dated 13th June 2003. Moreover, the Inquiry Report was not in accordance with the guidelines laid in the DESU Regulations. The Inquiry Report failed to bring forth findings with regard to each of the charges alleged against the petitioner and hence, was defective. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***M.V. Bijlani vs. Union of India and Ors.***, AIR 2006 SC 3475, wherein the following observations were made:

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjecture. He

cannot enquire into the allegations with which the delinquent officer had not been charged with.”

6. Further, it is stated on behalf of the petitioner that the charges framed against the petitioner were only that the concerned Junior Engineer, S.K. Bansal, had handed over the meter no. 82501 to the petitioner and there were no charges or findings to the effect that the petitioner was responsible for installation or taking of the meter. No witnesses have been called upon to prove the contents of documents and thus, the inquiry was based on no evidence whatsoever, prosecution witnesses have not supported the charges.

7. It is submitted that the orders passed by the respondents terminating the services of the petitioner are *ex facie* without jurisdiction and are hence, illegal. The respondent no. 3 has passed the orders assuming powers of a Disciplinary Authority which he was not. The Appointing Authority as well as the Disciplinary Authority with respect to the petitioner remained to be the Municipal Officers of respondent no. 1 and the Delhi Vidyut Board, as defined in the DESU Regulations of 1976. The respondent no. 3 is not a Municipal Officer of respondent no. 1 or the Delhi Vidyut Board but was an employee of the respondent no. 2 entity. Therefore, the respondents no. 2 and 3 were not the competent authorities to impose penalties as per the Schedule prescribed under the DESU Service Regulations.

8. It is submitted that the actions on part of the respondents disregard the provisions of Section 95 of Delhi Municipal Corporation Act which mandates that services of petitioner, being a Municipal Employee, are not

liable to be determined by a person subordinate to the Appointing Authority. Moreover, the respondents' actions disregard the provisions of Article 311 of the Constitution of India which also provides protection against dismissal/ removal from service of an employee under Civil Service by an Authority subordinate to them and mandates an enquiry in which reasonable opportunity of being heard is given to the employee.

9. It is submitted on behalf of the petitioner that the respondent, while imposing major penalty upon the petitioner, did not follow the procedure prescribed under Regulation 7 (10) of the DESU Regulations which mandates that no order imposing on an officer or other employee any of the penalties specified in clause (iv) to (vi) of regulation 5 (b) shall be imposed without first giving him notice stating that action is proposed to be taken against them.

10. It is submitted on behalf of the petitioner that the petitioner was given a Show Cause Notice on 13th June 2003, however, the contents of the same revealed that it was furnished with a pre-determined mind which itself vitiated the entire proceedings. At this stage, a reasonable and fair opportunity was denied to the petitioner, since, the departmental enquiry was conducted with a pre-determined mind. Learned counsel for the petitioner has placed reliance on the judgment of ***Oryx Fisheries (P) Ltd. vs. Union of India*, (2010) 13 SCC 427**, wherein the Hon'ble Supreme Court observed as under:-

“27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove

his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

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31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.”

11. It is submitted that the petitioner also filed a detailed reply to the Show Cause Notice on 20th June 2003, however, without considering any facts and material on record, the respondent passed the arbitrary and non-speaking order dated 10th September 2003. It is also submitted that the Disciplinary Authority, while agreeing with the findings of the Inquiry Officer, was ought to bear out application of mind to the questions involved in its order and list out brief reasons in support of the decision.

Reliance has been placed upon *Managing Director, ECIL vs. Karunakar*, AIR 1994 SC 1074, wherein it was observed as under:-

“It would thus, be clear that the report together with the findings on the charge and recommendations, if any, would constitute appropriate material for consideration by the disciplinary authority. It is not incumbent upon the inquiry officer to indicate in his report of the nature of the penalty to be imposed on the delinquent. Neither findings on merits, nor the suggested penalty binds the disciplinary authority who is enjoined to consider the record and the report. It is open to him to agree on the findings of the inquiry officer in which event he need not record elaborate consideration or reasoning in support of his conclusions, but the order must bear out his application of mind to the questions involved and the brief reasons in support thereof, though not like a judgement. If he disagrees on some or all of the findings or the reasons of the inquiry officer then he is enjoined to record the reasons for his disagreement. On the nature of the penalty, though it is discretionary, the discretion must be exercised reasonably, consistent with the gravity of the misconduct having indelible effect on the discipline or morale of the service, etc. and adequate punishment be imposed on the delinquent. Brief reasons in this behalf also always lend assurance of the application of the mind and consideration given to the case by the disciplinary authority which would be a factor the High Court of the Tribunal would take into consideration even on the nature of the penalty.”

12. It is submitted that the respondents have argued that the services of the petitioner were to be governed by the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 (hereinafter “Transfer Scheme”) and the

petitioner has relied upon Rule 5 (2), 6 (1) and 6 (7) laid out therein to argue that the Scheme also suggested that the inquiry against the petitioner was not in accordance with the law.

13. To give force to his arguments, the learned counsel for the petitioner has relied upon the following judgments, amongst others:-

a. *Roop Singh Negi vs. Punjab National Bank & Ors, 2009 (2) SCC 570*

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

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*17. In *Moni Shankar v. Union of India* [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court held: (SCC p. 492, para 17)*

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled

to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.”

18. *In Narinder Mohan Arya v. United India Insurance Co. Ltd. [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] whereupon both the learned counsel relied, this Court held: (SCC p. 724, para 26)*

“26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das [(1970) 1 SCC 709] .) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice.

(See Khem Chand v. Union of India [AIR 1958 SC 300 : 1958 SCR 1080] and State of U.P. v. Om Prakash Gupta [(1969) 3 SCC 775] .) (3) Exercise of discretionary power involves two elements—(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. SBI [(1984) 1 SCC 43 : 1984 SCC (L&S) 62] .) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan [(1986) 3 SCC 454 : 1986 SCC (L&S) 662] .) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. (See Export Inspection Council of India v. Kalyan Kumar Mitra [(1987) 2 Cal LJ 344] .) (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain [AIR 1969 SC 983 : (1969) 1 SCR 735] and Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] .)”

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21. Yet again in *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] this Court held: (SCC p. 95, para 25)

“25. ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon

analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

b. *Rajbir Singh vs. DTC*, W.P. (C) 2739/2004 decided on 28th May 2013

“20. Coming to the enquiry report, perusal of the same shows that the enquiry officer has merely set out the evidence recorded before him and jumped to the conclusion that the petitioner was guilty of the charges leveled against him. There

is no discussion of the evidence to establish a link between the evidence and the finding returned against the petitioner. As to why the version of the petitioner has been rejected and has not been accepted, is not discussed. Merely because the prosecution witnesses had deposed in a particular way, their version has been accepted. The Supreme Court in Anil Kumar (supra) considered a similar situation. The Supreme Court observed that a disciplinary enquiry is a quasi judicial enquiry to be held in accordance with the principles of natural justice. The enquiry officer has a duty to act judicially. The enquiry officer is required to apply his mind to the evidence. In that case, like in the present case, apart from setting out the names of the witnesses, there was no discussion of the evidence. In the present case, the enquiry officer merely reproduces the statements of the witnesses without discussing the evidence. As in that case, in the present case, the enquiry officer merely recorded his ipsi dixi that the charges are proved. Like in that case, in the present case, the enquiry officer has not assigned a single reason why the evidence produced by the workman did not appeal to him or was not considered creditworthy. Why the evidence of the management was preferred over that of the petitioner has not been disclosed in the enquiry report, as in the case of Anil Kumar (supra). In that case, the Supreme Court, inter alia, observed as follows:

“5. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the enquiry officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India [AIR 1966 SC 671 : (1966) 1 SCR 466 : (1966) 1 SCJ 204] this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad Santosh Kumar v. State of U.P. [AIR 1966 SC 671 : (1971) 1 SCR 201] this Court reiterated that satisfactory

decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a more gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable”.

c. O.P. Gupta vs. Delhi Vidyut Board, 2000 SCC OnLine Del 239

14. Learned counsel on behalf of the petitioner, therefore, submitted that the impugned order is liable to be set aside for the grounds taken as mentioned hereinabove.

15. *Per Contra*, Mr. Raj Birbal, learned senior counsel assisted by Ms. Raavi Birbal, Advocate appearing on behalf of the respondents 2 to 3 as well as Ms. Divyanshi Anand appearing on behalf of the respondent no. 1 vehemently opposed the instant petition and the contents mentioned therein and have submitted that the petitioner has not exhausted all his remedies before approaching this Court since there are alternative remedies available to challenge the impugned order dated 30th September 2003, therefore, at the very outset the petition is liable to be dismissed.

16. It is submitted that the charges against the petitioner were very serious in nature and have led to loss of confidence. The charge regarding fraud pertaining to meters goes to the very functionality of an electricity company and hence, the vigilance enquiry against the petitioner was initiated.

17. Opposing the contentions made on behalf of the petitioner, it is submitted on behalf of the respondents that the services of the petitioner were transferred to the respondent no. 2 in accordance with the Transfer Scheme and accordingly, the said Rules were applicable to him with his absorption to respondent no. 2. Rule 6 (6) of the Transfer Scheme categorically says that the personnel transferred shall cease to be in service of the Delhi Vidyut Board, and shall not assert or claim any benefit of service under the Board. Although under Rule 6 (7) of Transfer Scheme till the new rules were framed, the existing service conditions of the Board were made applicable on the services of the petitioner. However, it did not mean that the Appointing Authority would be as was in the case of DESU or the Delhi Vidyut Board. Accordingly, with effect

from 1st July 2002, the Board of Directors of the Company are the Appointing Authority/Disciplinary Authority of all the employees of erstwhile the Delhi Vidyut Board allocated to respondent no. 2.

18. It is further submitted that the Board vide Resolution dated 1st November 2002 delegated the power to CEO of Appointing as well as Disciplinary Authority in respect of the employees up to the level of Deputy General Manager. CEO vide his order dated 18th March 2003 delegated the power in favour of Deputy General Manager (A) regarding the affairs of the employees including the disciplinary action up to the level of Assistant Manager including suspension, charge-sheeting, appointment of Enquiry Officer, appointment of Prosecuting Officer on behalf of respondent no.2, issuing Show Cause Notice, imposing punishment including that of dismissal, removal etc. Therefore, the concerned person of the respondent no. 2, i.e., respondent no. 3 was the competent authority having complete powers to take disciplinary action against the petitioner. Moreover, the disciplinary action was ratified by the Board of respondent no. 2 on 13th February 2004, being the highest body of the Company. It is submitted that the petitioner was appointed by the Assistant Personnel Officer (E) and it was the Deputy General Manager (A) who issued the letter for removal from services, who is at a much higher rank and hence, in consonance with the provisions of law.

19. It is also submitted on behalf of the respondents that the petitioner was given opportunity of hearing during the inquiry proceedings and was given a proper chargesheet, cross examination and even a Show Cause Notice. Ample opportunity was given to the petitioner to defend his case

before the passing of the impugned order and hence, it cannot be said that there has been a violation of principles of natural justice.

20. To give force to his arguments, learned senior counsel for the respondents has relied upon the following judgments:-

- a. *Apparel Export Promotion Council vs. A.K. Chopra*, (1999) 1 SCC 759
- b. *State of Haryana vs. Rattan Singh*, (1977) 2 SCC 491
- c. *Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane*, (2005) 3 SCC 254
- d. *Bank of India & Ors. vs. Degala Suryanarayana*, (1995) 5 SCC 762
- e. *The Divisional Controller, KSRTC vs. M.G. Vittal Rao*, (2012) 1 SCC 442
- f. *Bharat Heavy Electricals Ltd. vs. M. Chandrasekhar Reddy and Ors.*, (2005) 2 SCC 481
- g. *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) and Ors. vs. The Secretary, Sahakari Noukarara Sangha and Ors.*, (2000) 7 SCC 517
- h. *Chandrama Singh vs. Managing Director*, 1992 (1) SCT 465 (Allahabad)

i. *U.P. State Bridge Corporation Ltd.and Ors. vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, (2004) 4 SCC 268*

j. *G. M. (Personal Wing), Canara Bank and Ors vs. M Raja Rao, 2003 (5) SCALE 66*

21. Learned senior counsel for the respondents no. 2 and 3, therefore, submitted that there is no error or illegality in the order of termination of services. It is submitted that the instant petition is liable to be dismissed for being devoid of merit.

22. In rejoinder, it is submitted on behalf of the petitioner that the services of the petitioner were governed by the DESU Regulations wherein the Municipal Officers of respondent no. 1 and Delhi Vidyut Board were the Appointing and Disciplinary Authority. It is submitted that the respondents failed to show that the passing of suspension order and imposition of penalty as well as removal from services were not arbitrary, illegal or perverse.

23. It is submitted on behalf of the petitioner that transfer of service of petitioner to respondent no. 2 was subject to rider stated in petitioner's proforma letter dated 31st August 2002. There is no merit in respondents relying upon Rule 6(4)(5) of the Transfer Scheme. It is denied that the petitioner was absorbed in respondent no. 2 w.e.f. 1st July 2002. The petitioner came on rolls of respondent no. 2 on 2nd September 2002, evident from endorsement appearing on petitioner's form.

24. Heard learned counsel for the parties and perused the record.

ANALYSIS AND FINDINGS

25. At the very outset, the learned counsel for the respondents have raised objection to the maintainability of the petition on the ground of alternative efficacious remedy being available with the petitioner. The contention regarding whether an alternate remedy is a bar to the entertainment of Writ Petition by the High Court, it is settled law that in the ordinary course, the High Court would not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available. However, it is also established that the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies.

26. In the landmark case of ***Whirlpool Corporation vs. Registrar of Trade Marks, (1998) 8 SCC 1***, the Hon'ble Supreme Court had held as follows: -

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

27. In the case of *Radha Krishan Industries vs. State of Himachal Pradesh*, 2021 SCC OnLine SC 334, the Hon'ble Supreme Court has reiterated and summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Hon'ble Supreme Court has observed as under:

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule

of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

28. Therefore, it is crystallized that existence of an alternate remedy is no bar to entertaining the writ petition by the High Court in exercise of its jurisdiction under Article 226 of the Constitution. Non-entertainment of the writ petitions in such cases is a manifestation of self-restraint by the High Court to avoid the exercise of extraordinary powers in each and every case at the throw of a hat, and to reserve the same for cases where the interests of justice and the Court's conscience requires them to be exercised. In the instant case, having considered the peculiar facts, this Court is not inclined to dismiss the case on the basis of the existence of alternative remedy. In view of the aforesaid, the contentions *qua* maintainability and the arguments raised by the respondents in their support do not find favour with this Court and are accordingly rejected.

29. The Hon'ble Supreme Court in ***Union of India vs. P. Gunasekaran*, (2015) 2 SCC 610** has categorically and comprehensively laid out the powers of the High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India when adjudicating upon cases of disciplinary proceedings and inquiry as under:-

12. ... 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.”

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20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is “moral uprightness; honesty”. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values.

30. Therefore, this Court shall also limit itself to the appreciation of the instant petition, keeping in view the directions of the Hon'ble Supreme Court and shall deal with the questions posed therein accordingly.

I. Whether the removal order is passed by a competent authority.

31. The first challenge raised by the petitioner is that the order of removal from services was not passed by the competent authority, since, the services of the petitioner were governed by the DESU Regulations and hence, could have only been initiated by the Officers of respondent no. 1 or the original employer, however, the order was passed on behalf of the respondent no. 2 by the respondent no. 3. On the other hand, the respondents have argued that the rules applicable were in terms with the Transfer Scheme and the authority passing the removal of services order was passed by the competent authority. This Court has considered the contentions raised on behalf of both the parties. The petitioner was absorbed by the respondent no. 2 from the Delhi Vidyut Board. The transfer of services of the petitioner was regulated in terms of the provisions of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 as post the absorption of the petitioner, the rights and entitlement available to the petitioner were to be regulated in accordance with the Scheme until the regulations of the respondent no. 2 were to be made applicable to the petitioner. Once the petitioner's services ceased to be with the Delhi Vidyut Board, there remained no benefit, entitlement or claim which could be sought by him under the regulations of the DESU.

32. The relevant provisions of the said Transfer Scheme is reproduced hereunder:-

“6. Transfer of Personnel-

(6) Subject to the provisions of these rules, the personnel transferred to a transferee shall cease to be in the service of the Board and shall not assert or claim any benefit of service under the Board.

(7) Subject to the provisions of the Act and these rules, the transferee may frame regulations governing the conditions of service of the personnel transferred to the transferees under these rules which shall not in any way be less favourable or inferior to those applicable to them immediately before the transfer and till such time, the existing service conditions of the Board shall mutandis apply.”

(11) All proceeding including disciplinary proceedings pending against the personnel prior to the date of the transfer from the Board to the transferees, or which may relate to misconduct, lapses or acts of commission or omission committed before the date of transfer, shall not abate and may be continued by the relevant transferee.”

33. It is evident from a bare reading of the provisions that subsequent to the absorption of the petitioner to the respondent no. 2, he was not entitled to claim any benefit from the transferor entity. Moreover, the Sub-clause 11 of Clause 6 of the Transfer Scheme stipulates that the pending disciplinary actions against any employees initiated prior to the transfer were to be continued, and not abated, by the transferee. This provision makes it abundantly clear that the intention of the framers of the Scheme was that the provisions of the transferee entity were to be

made applicable on the personnel after their services were transferred and absorbed into the transferee Company and had to be continued accordingly. The conclusion which reasonably flows upon a bare reading of this provision suggests that the intention was to subject the personnel to the regulations of the Company to which the employees were being transferred. Therefore, an inquiry based on the Transfer Scheme or the rules and regulations of the respondent no. 2 cannot be said to be in violation of the law or procedure laid down.

34. Evidently, the DESU Regulations were to remain applicable to the petitioner only until the regulations of the transferee, i.e., the respondent no. 2 were framed for governing the services of the employees. The appointment of the petitioner with the respondent no. 2 after the transfer of his services was also subject to the Transfer Scheme. The respondent no.2, being a corporate entity had at its highest post the Board of Directors, which allocated the powers of Appointing as well as Disciplinary Authority to the CEO of the Company till the post of Deputy General Manager, which is evident from the Minutes of the Meeting dated 13th February 2004. The respondents have placed on record the Minutes of the Board meeting dated 13th February 2004 wherein the Schedule of Authority, decided in the Board Meeting on 1st November 2002, was approved. The relevant portion of the same is reproduced hereunder:-

“Chief Executive Officer (CEO) has been vested with powers with respect to initiate disciplinary action/punishment against employees upto the level of DGM & making recommendations and to approve of

termination of service/appointment / suspension / enquiry / punishment in accordance with terms of appointment or on the basis of the recommendations of the Enquiry Officer in disciplinary proceedings duly approved by the disciplinary authority [Clause 6.0 (c) & (d) of the schedule]. CEO has also been authorized to subdelegate his authority to other officers.”

35. The CEO was clearly awarded the powers of looking into the matters of disciplinary actions, including issues such as suspension, charge-sheeting, appointment of Inquiry Officer, appointment of Prosecuting Officer on behalf of respondent no. 2, issuing Show Cause Notice, imposing punishment including that of dismissal, removal regarding employees up to the level of Assistant Manager to the Deputy General Manager (Admin) and had the complete authorization to further delegate the powers to the competent authority. Since, the powers flowed from the CEO to the concerned authority of respondent no. 2, i.e., the respondent no. 3, cannot have said to be on a post subordinate to that appointing the petitioner at the first instance. Moreover, the Hon'ble Supreme Court in ***Marathwada University vs. Seshrao Balwant Rao Chavan, (1989) 3 SCC 132*** observed as under:-

“20. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury's Laws of England (Vol. I, 4th End., para 32) summarises these principles as follows:

“32. Sub-delegation of powers.— In accordance with the maxim delegatus non potest delegare, a statutory power must be exercised only by the

body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind.”

36. In the matter at hand as well, the powers to carry out disciplinary actions were duly delegated by the resolution of the Board to the CEO and further to the concerned authority by the CEO, vide documents that have been brought on record by the respondents, hence, the situation falls within the principles of law established by the Hon’ble Supreme Court as above.

II. Whether the enquiry was held according to the procedure prescribed in that behalf.

37. The rules and procedures for carrying out disciplinary action against an employee have been reiterated by Hon’ble Supreme Court time and again requiring the Authority to issue a Show Cause Notice to the petitioner, afford him the opportunity of being heard, consider his reply/objection to the Memorandum of Charge, appoint inquiry officer and hold inquiry proceedings, have the Inquiry Report submitted and be considered by the Disciplinary Authority, and ultimately, have the Authority pass an order upholding or disagreeing with the decision of the Inquiry Officer.

38. In the instant matter, the petitioner was served with the Memo of Charges detailing the charges framed against him on 1st April 2003, to which the petitioner furnished his reply/defence on 10th April 2003. Thereafter, upon consideration of all the facts and circumstances, material on record including the reply of the petitioner to the Memo of Charge the Inquiry Report was submitted on 6th June 2003 and a Show Cause Notice dated 13th June 2003, whereafter, the petitioner sent his reply dated 20th June 2003, to the Deputy General Manager, respondent no. 2. The Disciplinary Authority, finally, made its observations on the Report and gave its final findings on 30th September 2003. Therefore, after perusal of the entire record, it is found that, at the relevant time, the disciplinary proceedings initiated against the petitioner were in accordance with the procedure prescribed under law, and this Court does not find a deficiency to this effect that the procedure prescribed was not followed in the instant matter while passing the order of removal from services.

III. Whether there is a violation of the principles of natural justice in conducting the proceedings and passing of the orders

39. The next consideration is whether the principles of natural justice were violated by the respondents while passing the impugned order of removal from services. The Memorandum of Charge was admittedly served upon the petitioner on 1st April 2003 which required him to furnish his reply/objections. The relevant portion of the Memo of Charge is reproduced hereunder:-

“The undersigned proposes to hold an enquiry against Sh. Brij Mohan, T.O. E.No.34829. The substance of the

imputations of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I) A Statement of the imputations of misconduct or misbehavior in support of each article of charge is enclosed (Annexure-II). A list of documents as well as list of witnesses by which the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

2. Sh. Brij Mohan is directed to submit within 10 days of the receipt of this Memorandum, a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an enquiry will be held only in respect of those articles of charge which are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Sh. Brij Mohan is further informed that if he does not submit his written statement of defence on or before the date specified in para-2 above, or does not appear in person before the Inquiring Authority or otherwise fails the orders/directions issued, the Inquiring Authority may hold the inquiry against him ex-parte....”

40. Articles of Charges annexed to the Memo of Charge were also served upon the petitioner which are also reproduced herein:-

“Article I.

That Shri Brij Mohan T.O. E.No.34829, while working as such at complaint Centre Zone-III during the year 2002-2003, with malafide intention and ulterior motive had been liaisioning for replacement of meters against K. Nos. 581-126268, R/C Smt. Sahani Bajaj and 581-138836, R/C Shri Gaurav Jindal.

Article-2.

That said Shri Brij Mohan, while working as T.O. in the Zone as aforesaid during the year 2002-2003, without jurisdiction obtained the meter No. 082501 from Shri S.K. Bansal, J.E. (Zone-III) for replacement of stop meter against K. No. 581-137432 in favour of Shri Anurag, G-8/19, Sector-15, Rohini and instead of the meter as aforesaid, the meter No. 00421, which was stolen from C-1/52, Sector- 15, Rohini was installed and thereby the meter No. 082501 was spared and subsequently used at G-7/112, Sector-15, Rohini for unauthorized use of electricity.

By exhibiting misconduct as aforesaid, Shri Brij Mohan, T.O. has failed to maintain absolute integrity and devotion to duty and acted in a manner highly unbecoming of him employee of North Delhi Power Limited.”

41. The Memorandum dated 13th June 2003 suggests that only after an oral inquiry the Inquiry officer had submitted its report holding the charges against the petitioner as proved. The Inquiry Report also reveals that inquiry proceedings were held on 24th Aril 2003, 28th April 2003, 3rd May 2003, 9th May 2003, 21st May 2003, 24th May 2003, 30th May 2003 and 4th June 2003. The petitioner has annexed to his petition, the reply dated 20th June 2003 which he furnished to the Authority extensively explaining and denying the charges framed and the Inquiry Report submitted against him. The said reply was considered by the Inquiry Officer as well as the Disciplinary Authority while passing the final order of removal from services. Therefore, it cannot be said that the opportunity of being heard was not afforded to the petitioner before passing the impugned order.

IV. Other considerations

42. Other considerations, as per the directions of the Hon'ble Supreme Court, include whether the authorities have disabled themselves from reaching a fair conclusion, or been influenced by extraneous considerations, or the conclusion is so apparently arbitrary and capricious that no reasonable person could have arrived at this conclusion, or the admissible material was not admitted and vice-versa, or the findings were based on no evidence. The entire material on record, the contentions in the pleadings as well as the submissions on behalf of the parties do not suggest that there existed a bias or prejudice on the part of the Inquiring or the Disciplinary Authority, neither has it been the contention of either of the party. The Inquiry Officer considered the relevant material presented before it at the time of the inquiry, including documentary and oral evidence. There is nothing on the record to suggest that the Inquiry Officer or the Disciplinary Authority were influenced by any extraneous circumstances. The record also reveals that ample, much less sufficient, opportunity was afforded to the petitioner before passing the impugned orders and hence, the question of the same being arbitrary decisions also does not arise. Upon perusal of the comprehensive Inquiry Report furnished by the Inquiry Officer, there is nothing to suggest that the Inquiry Officer did not consider the evidence on record or was influenced by any extraneous considerations while giving his findings in the final report. Therefore, in appreciation of the limited considerations as stipulated by the Hon'ble Supreme Court, there appears to be no

deficiency in the impugned orders dated 29th March 2003 and 30th September 2003.

Order of Removal from Services

43. The findings of the Inquiry Report are reproduced hereunder which lay out the conclusion of the Inquiry Officer passed after consideration of evidence as well as all relevant material on record:-

“I have come to the conclusion that the charged official has failed to prove his innocence on the ground that Shri S.K. Bansal, Jr. Engineer in his pre-recorded statement as well as during his deposition before the Enquiry Officer has confirmed that he had handed over the meter No.82501 to the charged official. The charged official in turn had not cross examined on this issue. The contention of the charged official that during cross examination Shri Bansal had stated that he had installed meter no.82501 is not tenable as Shri S.K. Bansal, JS has never stated that he has not given the meter to the charged official. Installation of meter is the responsibility of the Jr. Engineer concerned and the meter is carried by the staff of Jr. Engineer and not by Jr. Engineer himself. The charged official has produced a number of Defence Witnesses which contradicts statement of each other except that they got the application written from the charged official and this fact the charged official has himself admitted that he was doing social work. This shows that the charged official has been doing this social work at the cost of his own duties. One of the Defence Witness namely Shri Sushil Kumar DW-1 working as a Lecturer stated that he had handed over the money to Sh. Ram Padarath, DW-3 but Shri Ram Padarath in his statement before the Enquiry Officer contradicts the same and stated that Smt. Raj Bala r/o G-7/112, Sector-15 Rohini, had

given the amount of Rs3500/- to Shri S.K. Bansal, JE. Shri Ram Padarath DW-3 an unauthorised person and is visiting the zonal office frequently for getting the work of the consumers done in an unauthorised manner, thus indulging himself in illegal activities. This he has admitted that work done by him is against the law. The charged official in his statement Ex.S-4, 4A had admitted that he recognises Shri Ram Padarath. Therefore, if we weigh the statements of Defence Witnesses with that of the statements of Prosecution Witnesses, the weightage goes more in favour of the statement of Shri S.K. Bansal, Jr. Engineer, who had stated that he had given meter No. 82501 to the charged official as the charged official requested that the consumer is known to him. Shri Bansal is the custodian of the meters and a supervisory officer, his statement carry more weight. Hence, the charges against Shri Brij Mohan, Telephone Operator (under suspension) E.No.34829 are proved.

44. This Court deems it necessary to peruse the contents of the impugned order of removal from services. The said order dated 10th September 2003 bearing no. VC-1-2/2003-Vig/NDP/03-04/1086 signed on 30th September 2003 is reproduced hereunder:-

“Whereas, disciplinary proceedings were initiated against Shri Brij Mohan, TO, E.No.34829 vide Memo. No. VC-1 -2/2003-VIG./NDPL/02 dated 01.04.03.

And whereas, on denial of the charges by the said Shri Brij Mohan, an inquiry was ordered to be conducted. The Enquiry Officer submitted his report dated 06.06.03 holding the charges as proved.

And whereas, after considering carefully the enquiry report with reference to the evidence both oral and documentary brought on record of enquiry and

accepting the findings of the Enquiry Officer, a copy of the report was sent to the charged official Sh. Brij Mohan, TO vide Memo. No. VC-l-2/2003-Vig/NDPL/03-04/406 dated 13.06.03.

And whereas, the said Sh. Brij Mohan has submitted his reply dated 20.06.03 to the Disciplinary Authority viz. Dy.General Manager (Admn.).

And whereas, the undersigned as Competent Disciplinary Authority has carefully gone through the representation dated 20.06.03 submitted by the CO Sh. Brij Mohan, in response to the Show Cause Memo dated 13.06.03. The undersigned does not find any merit in the said reply submitted by the CO Sh. Brij Mohan. It is observed that the Enquiry Officer has already considered the points raised by the CO in his representation and the undersigned agreeing with the findings of the Enquiry Officer in this regard, hold the charges as proved.

Now, therefore, the undersigned, taking into consideration all facts and circumstances of the case in totality and keeping in view the maxim that the penalty imposed should be commensurate with gravity of the misconduct, hereby imposes the penalty of removal from service upon the CO, Sh. Brij Mohan and orders accordingly.”

45. This Court, in its writ jurisdiction, is bound by the limitations imposed under law while considering the impugned orders at hand. Without re-appreciating the evidence, the record shows that the statement of the witnesses revealed that the petitioner had made requests on behalf of certain consumers in his own hand-writing and had them processed with deficient documents. The record before the Inquiry Officer showed that the requests for meters were written and moved in the name of the

petitioner on behalf of the residents of the concerned locality, i.e., Rohini, wherein except the electricity bills no other requisite documents were attached. To this effect the findings regarding the statement of PW-3, Pradeep Purohit, ASI (Intl) Vigilance, and DW-2, Gaurav Jindal, resident of Rohini, recorded at the time of inquiry proceedings, were as follows:-

Qua PW-2

“According to this witness, the Ex. S-2, S-3 were written by the charged official in his own hand-writing and Shri K.K. Grover as per Ex. S-5 has also written/confirmed that the writing of the charged official on S-2 and S-3.”

Qua DW-2

“Shri Gaurav Jindal has clearly mentioned that he got his application for replacement of meter written from the charged official.”

46. Moreover, the meter no. 082501 was handed over to the petitioner who did not install it to the house of the resident of G-8/19, Sector-15, Rohini. Instead, another meter bearing no. 00421 was installed at the said residence which was found to be stolen and replaced at the aforesaid residence and meter no. 082501 was found installed at G-7/112, Sector-15, Rohini. This led to the installation of original meter no. 82501 to a residence which was not authorized to use the same. An observation in this regard was revealed in the statement of PW-3 which reads as follows:-

“This witness has further confirmed that during investigations the Jr. Engineer Shri S.K. Bansal in Ex.

S-6 has clearly mentioned that meter No. 82501 was handed over to the charged official on his request as the consumer was known to him and he had assured that he will get the meter replaced through the Complaint Centre L/Man.”

47. Therefore, as per the findings pursuant to the inquiry proceedings, it was found that petitioner had liaised meters which was not only beyond the scope of his duties as Telephone Operator with the respondent no. 2 but also illegal and unlawful. He deliberately and knowingly tampered with the meters to be installed in his area of duty and had not only procured and retained the original meters to be installed at the residence of concerned resident, but also used the meter so retained to install it to another property and facilitate its unauthorized usage. The material on record, including the documentary and oral evidence adduced became the reason for framing of the Inquiry Report and the findings therein. He failed to carry out his duties with diligence and hence, the Inquiry Report held the charges against him as proved.

48. Keeping in view the nature of the job of the petitioner, facilitating unauthorized use of meters by the petitioner was in dereliction of his duty and was indeed a misconduct which could not have been excused by the Inquiry Officer or the Disciplinary Authority, especially in the circumstances where sufficient records against the petitioner was found after elaborate proceedings were conducted against him.

49. It is a law established by precedence that while dissenting with the Inquiry Report the Disciplinary Authority shall furnish detailed reasons for such dissent, however, the same is not the case in the instant petition.

Before this Court, the Disciplinary Authority upheld the report of the Inquiry Officer observing that all the relevant material on record was duly considered and appreciated by the Inquiry Officer before submitted the Inquiry Report. The Hon'ble Supreme Court in *National Fertilizers Ltd. vs. P.K. Khanna*, (2005) 7 SCC 597 has observed as under:-

“9. Apart from misreading the enquiry officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of the enquiry officer. In this case the disciplinary authority had concurred with the findings of the enquiry officer wholly. In Ram Kumar v. State of Haryana [1987 Supp SCC 582 : 1988 SCC (L&S) 246] the disciplinary authority after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the enquiry officer, the finding of the enquiry officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order passed by the disciplinary authority in this case. Learned counsel appearing on behalf of the respondent sought to draw a distinction on the basis that the disciplinary authority had, in Ram Kumar case [1987 Supp SCC 582 : 1988 SCC (L&S) 246] itself quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words : (SCC p. 584, para 8)

“8. In view of the contents of the impugned order, it is difficult to say that the punishing

authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the enquiry officer which means that he has not only agreed with the findings of the enquiry officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the enquiry officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order.”
(emphasis supplied)

*We respectfully adopt the view. The position is further clarified by Rule 33 of the Employees (Conduct, Discipline and Appeal) Rules. It reads as follows:
“1. The disciplinary authority, if it is not itself the enquiring authority may, for reasons to be recorded by it in writing remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold further enquiry according to the provisions of Rule 32 as far as may be.*

2. The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

3. If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule 29 should be imposed on the employee shall, notwithstanding anything contained in Rule 31, make an order imposing such penalty.

4. If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned."

10. It is apparent from sub-rule (2) that the disciplinary authority is not required to record its reasons if it concurs with the enquiry officer's findings in contradiction with the situation in which the disciplinary authority disagrees with the findings of the enquiring authority. Only in the latter case does sub-rule (2) expressly mandate that the disciplinary authority shall, if it disagrees with the findings of the enquiry officer record its reasons for such disagreement as well as its own findings on such charges.

11. The respondent's reliance on the decision in M.D., ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] is misplaced. That decision relates to the right of a delinquent officer to a copy of the enquiry officer's report. In the course of the judgment, the Court had no doubt said that the report of the enquiry officer is required to be furnished to the employee to make proper representation to the disciplinary authority before such authority arrives at

its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the disciplinary authority. It does not require the disciplinary authority to record separate reasons from those given by the enquiry officer. The concurrence of the disciplinary authority with the reasoning and conclusion of the enquiry officer means that the disciplinary authority has adopted the conclusion and the basis of the conclusion as its own. It is not necessary for the disciplinary authority to restate the reasoning."

50. Therefore, this Court does not find force in the argument advanced on behalf of the petitioner that the impugned order dated 30th September 2003 was bad in law on the ground that the Disciplinary Authority failed to furnish reasons for upholding the observations of the Inquiry Officer made in the Inquiry Report. The impugned order passed by the respondent was in accordance with the facts and findings of the concerned department.

CONCLUSION

51. Keeping in view the above stated facts, circumstances, contentions raised in the pleadings, as well as the law laid down by the Hon'ble Supreme Court and also keeping in consideration the limits to the extent of powers under Article 226 of the Constitution of India, this Court is not inclined to interfere with the impugned orders of suspension of service and termination of services dated 29th March 2003 and 30th September 2003, respectively.

52. The petitioner had carried out the offending actions by tampering with the meters and had allowed, even facilitated, their unauthorized use. Therefore, this Court does not find any cogent reason to invoke its writ jurisdiction and pass an order allowing the reliefs sought by the petitioner since the orders passed by the respondents do not suffer from any gross illegality or error apparent on record which would warrant interference from this Court.

53. Accordingly, the instant petition is dismissed for being devoid of merit.

54. Pending applications, if any, also stand disposed of.

55. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 18, 2022

Aj/MS

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