

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5022 OF 2022

Petitioner : Sachin Tulsiram Kohad,
Aged about 51 Years, Occu. Service,
R/o 13, Shastri Layout, Jaitala Road,
Subhash Nagar, Nagpur 440 022.

– Versus –

Respondents : 1. State of Maharashtra,
Through its Principal Secretary,
Power and Energy, having its Office at Mantralaya,
Mumbai.
2. Regional Director and Second Appellate Authority,
Nagpur Region, MSEDCL, Nagpur.
3. Chief Engineer and First Appellate Authority,
MSEDCL, having its Office at Nagpur.
4. Superintendent Engineer,
MSEDCL, having its Office at Vidyut Bhavan,
Ground Floor, Katol Road, Nagpur.

Mr. S.P. Bodalkar, Advocate for the Petitioner.

Mr. N.S. Rao, A.G.P. for Respondent No.1.

Ms. Mohini Sharma, Advocate h/f Mr. S.V. Purohit, Advocate
for Respondent Nos.2 to 4.

CORAM: **ROHIT B. DEO AND M.W. CHANDWANI, JJ.**

DATE : **9th JUNE, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. Heard finally by consent of
the parties.

02] The petition challenges the orders dated 07/08/2019, 19/10/2016 and 23/07/2015 passed by respondent Nos.2, 3 and 4 respectively. The petitioner was deputed in Kuhl as an Assistant Engineer. Departmental action was initiated against the petitioner on the ground that he was not following the directions given in Circular dated 13/01/2011 while submitting the proposal for grant of B-80 credit. A charge-sheet came to be issued on the allegation of misconduct. The petitioner submitted his explanation. In the departmental enquiry initiated against the petitioner, the petitioner was held guilty of misconduct. After issuance of 'show cause notice', respondent No.4 imposed punishment of withholding one annual salary increment. The first appeal was preferred by the petitioner before respondent No.3, which came to be dismissed on 19/10/2016. An unsuccessful attempt of second appeal before respondent No.2 was also made by the petitioner. Respondent No.2 also did not interfere with the order of punishment. Feeling aggrieved with the order of punishment, this petition has been filed.

03] Respondent No.4 filed reply contending that the petitioner while working as Deputy Executive Engineer/Assistant Engineer unauthorisedly, illegally and without following the procedural as contemplated under Circulars dated 05/04/2002 and 13/01/2011 prepared a statement and

directly submitted the statement to the Divisional Office in August, 2013 and granted B-80 credit to the consumer viz. M/s. Infratech Real Estate Pvt. Ltd., whereby the MSEDCL suffered monetary loss of Rs.4,10,101.68 paise. Departmental enquiry was initiated, which was conducted and completed giving full opportunity of hearing to the petitioner and by following the principles of natural justice. Out of five charges, the Enquiry Officer found three charges against the petitioner were proved and appropriate punishment of withholding one annual increment came to be passed. It is contended that the petitioner is guilty of misconduct, therefore, the appropriate punishment has been awarded to him. Further, because of his inaction, the Labour Court has passed an *exparte* order. Therefore, the MSEDCL suffered monetary loss of Rs.4,78,915/- along with the interest at the rate of 12%. The petition, being devoid of merits, requires to be dismissed.

04] Indisputably, the petitioner did not follow the Circulars dated 05/04/2002 and 13/01/2011 issued by the MSEDCL. The contention is, mere not following the Circulars, it does not amount to misconduct within the meaning of MSEDCL Employees Service Regulations, 2005. According to him, on that ground, the enquiry as well as the orders of punishment of first and second appellate Court do not stand in law.

05] At the outset, we may state that the judicial review of departmental enquiry by the High Court is very limited. It is impermissible for the High Court to re-appreciate the evidence, which has been considered by the Enquiry Officer, the Disciplinary Authority and the Appellate Authority. The jurisdiction of High Court is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or in a case of no evidence.

06] Perusal of enquiry report shows that charges of collusion with other person with a view to deprive the company of its revenues or other dues; gross negligence resulting in or likely to result in loss to the company; and committing breach of rules, regulations, circulars and orders or instructions; have been proved. No doubt, mere breach of Circulars issued by the department may not be tantamount to misconduct, but the fact remains that the petitioner, who is a qualified Engineer, not only breached the Circular, but also inspite of having no power and/or was not competent to deal with the issues in relation to granting of B-80 credit, granted B-80 credit to M/s. Infratect Real Estate Pvt. Ltd. The petitioner cannot take a defence of ignorance on this ground. We do not find any perversity or illegality in the orders impugned in the petition. It is a case of not following the proper

procedure or the case of no evidence, rather we find that while implicating the punishment, the respondents have taken a lenient view.

07] Considering this aspect of the matter, we do not find that any interference is required under Articles 226 of the Constitution of India in the order of punishment. Hence, the petition stands dismissed.

08] Rule is discharged with no order as to costs.

**sandesh*

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)