



Judgment

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

WRIT PETITION NO.6599 OF 2018

Santosh Jitendra Kshirsagar,
aged about 42 years,
occupation service, r/o at post Viwara,
taluka Patur, district Akola. **Petitioner.**

:: V E R S U S ::

1. Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited,
Washim Circle, Civil Lines,
Vidhyut Bhavan, Washim.

2. Chief Engineer, Maharashtra State
Electricity Distribution Company
Limited, Akola Zone, Akola,
Vidhyut Bhavan, Ratanlal Plot,
Akola, taluka and district Akola.

3. Regional Director, Maharashtra State
Electricity Distribution Company
Limited, Nagpur Region, Nagpur,
Vidhyut Bhavan, Katol Road, Nagpur. **Respondents.**

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Shri A.B.Patil, Counsel for the Petitioner.
Shri S.V.Purohit, Counsel for Respondents.

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CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 15/09/2023

PRONOUNCED ON : 03/10/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri Amol Patil for the
petitioner and learned counsel Shri S.V.Purohit for the

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respondents. **Rule.** Heard finally by consent of learned counsel appearing for parties.

2. The challenge is to imposition of punishment on the petitioner by respondent No.1 by order 28.2.2013 and recovery consequent to the said order by issuing show cause notice dated 2.2.2013. The petitioner has also challenged orders of first appellate authority dated 21.6.2016 and second appellate authority dated 15.3.2018 as well as suspension order dated 1.9.2012.

3. The petitioner was initially appointed as Junior Engineer in the year 2003 and continued in service. He was served with order of suspension dated 1.9.2012 when he was working at Washim Sub Division. He was also served with chargesheet on an allegation that due to dereliction in duties by him damage was caused to the respondent/company which is a misconduct under Employees' Service Regulation of the Maharashtra State Electricity Distribution Company Limited (the Regulation) in view of Regulation No86(3).

4. The facts on record show that consumer namely owner of "Hotel Maniprabha" has obtained electricity

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connection in the category of commercial consumer. However, bill charged to him was at the rate of industrial consumers. As per allegations, while issuing the bill, the petitioner has not taken due care and caused damage to the Maharashtra State Electricity Distribution Company Limited (the distribution company). Regarding the alleged incident, an offence was registered against the consumer for committing theft.

5. After receipt of the chargesheet, the petitioner had denied all allegations made in the chargesheet. An enquiry was conducted against the petitioner and Enquiry Officer exonerated the petitioner from charge no.2 and held guilty for two charges. The copy of the enquiry report was served on the petitioner along with show cause notice for imposing punishment. The punishment was imposed by which recovery of Rs.29,42,012/- was directed and annual increment was withheld for three years. In addition to that, suspension period was directed to be treated as punishment and salary and allowances, during the suspension period, have been withheld. The suspension of the petitioner was withdrawn by imposing the said punishment. It is further

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contention of the petitioner that during the pendency of the enquiry, respondent No.1 appointed a two-member committee to fix responsibility of persons who charged bill as per the Industrial Tariff though consumer was charged as per the commercial tariff. The committee held the persons responsible are the administrative officer and from divisional accountant and UDC billing department. Another committee was constituted to identify responsible persons. Thus, the petitioner was not held liable for the loss caused to the company by these two committees.

6. Against the imposition of punishment, the petitioner had preferred an appeal before respondent No.2 - Chief Engineer, Maharashtra State Electricity Distribution Company Limited, Akola Zone, Akola on 4.3.2013, which was first appellate authority, but the same was dismissed on 21.6.2016. The petitioner had preferred second appeal before the Second Appellate Authority. During the pendency of the second appeal, the consumer had deposited entire amount of Rs.29,42,012/-. Considering the same, the second appellate authority modified the punishment directing to withhold two increments and stopped the recovery from

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March 2018. However, the second appellate authority maintained the punishment treating the suspension period as a punishment.

7. The petitioner challenged the order of the second appellate authority on the ground that though the entire amount is recovered from the consumer, the amount was recovered from the petitioner to the tune of Rs.6,46,910/- illegally though he was not responsible for the said damage. The respondents after imposing punishment had granted promotion to the petitioner from Assistant Engineer to the Deputy Executive Engineer by order dated 6.8.2016 and, thereafter, posted him as Additional Executive Engineer by order dated 27.6.2017. Thus, by this fact it can be inferred that the respondents have condoned the act of the petitioner. In the above circumstances, the petitioner claimed that the order imposing the punishment is wrong, illegal, and liable to be set aside and prayed for quashing of the other orders consequent of imposing the punishment.

8. The respondents by way of affidavit denied the contentions and submitted that the punishment has been

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imposed upon the petitioner after conducting proper departmental enquiry against the petitioner and by affording sufficient opportunity to him. It is not denied that the petitioner was serving as Junior Engineer and he was served with the chargesheet and punishment was imposed on him. As per contentions of the respondents, it was responsibility of the petitioner to charge the bill by considering the consumer as per the commercial tariff, but consumer was charged by applying the Industrial Tariff which had caused loss to the respondent/company and, therefore, action of imposing punishment is legal and proper one and prays for dismissal of the petition.

9. Heard learned counsel Shri A.B.Patil for the petitioner and learned counsel Shri S.V.Purohit for the respondents.

10. Learned counsel for the petitioner submitted that the chargesheet was issued to the petitioner on three charges; (1) negligence which caused loss to the company which had two parts, (a) theft by consumer, and (b) charging of wrong tariff; (2) breach of companies rules and

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regulations; and (3) negligence and ignorance towards work. The petitioner was exonerated of charge No.2 and charge Nos.1 and 3 are held to be proved. Though the Enquiry Officer recorded a finding that the petitioner cannot be held responsible for theft and exonerated him, still contradictory finding is recorded that charge No.1 is proved. At the relevant time, the disciplinary authority had also constituted expert committee to enquire into the matter to ascertain the responsibility of the persons and the said committee exonerated the present petitioner and came to the conclusion that one Rajesh Sule, Deputy Manager (Finance and Accounts) is responsible for the same and had imposed punishment on him. The disciplinary authority without considering these aspects held the petitioner liable and imposed the punishment of barring three increments with cumulative effect and recovery of Rs.29,42,012/- and suspension period is treated to be punishment period. Despite the disciplinary committee had full knowledge of the fact that expert committee exonerated the petitioner, the disciplinary authority held the petitioner liable. The said action is arbitrary. The first appellate authority in a very

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cryptic manner rejected the appeal. The second appellate authority without considering the entire controversy by an unreasoned order modified the punishment and partly allowed the second appeal and erroneously held the petitioner liable by modifying the punishment barring two increments with cumulative effect and continued suspension period as punishment period. The entire exercise is carried out by the disciplinary authority, the first appellate authority, and the second appellate authority without considering the material on record. They ought to have considered that the petitioner was exonerated by the expert committee which was constituted to ascertain the person responsible and to fix the responsibility. Thus, the orders passed by the disciplinary authority, first appellate authority, and the second appellate authority suffer from perversity and, therefore, the present petition is filed by the petitioner.

11. In support of his contentions, learned counsel for the petitioner placed reliance on the decisions of the Honourable Apex Court in the cases of :

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- 1. State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya¹;**
- 2. Managing Director, ECIL, Hyderabad and ors vs. B.Karunakar and ors²**
- 3. Allahabad Bank and ors vs. Krishna Narayan Tewari³.**

12. *Per contra*, learned counsel for the respondents submitted that the evidence on record especially Form-MR9 would show that the petitioner, who was taking meter reading for more than six years, was negligent and was not doing his job properly. Every Engineer basically knows that the tariff applicable to the hotel is commercial and despite the fact being within the knowledge of the petitioner he never communicated or reported to the office about the incorrect tariff applied to the hotel and, therefore, the petitioner is liable for the loss caused to the company. The internal committee was formed to investigate the matter and findings recorded were used for identifying the guilty persons. The said report does not deal and consider the aspect of Junior Engineer/petitioner's duty and denied that the committee had exonerated the petitioner as claimed. Thus, the orders

1 (2011)4 SCC 584

2 (1993)4 SCC 727

3 (2017)2 SCC 308

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passed by the disciplinary committee, first appellate authority, and second appellate authority are in pursuance of the settled law and no judicial review is permissible. Hence, the writ petition is devoid of merits.

13. In support of his contentions, learned counsel for the respondents placed reliance on the decisions of the Honourable Apex Court in the cases of

1. Union of India and ors vs. P.Gunasekaran⁴

2. Union of India and ors vs. Subrata Nath⁵

14. Having heard learned counsel for the parties, there is no dispute as to the fact that initially the petitioner was serving as Junior Engineer. In the year 2012, he was working at Washim Sub Division wherein he was served with order of suspension and the chargesheet. The Enquiry Officer held him guilty after conducting the departmental enquiry. He preferred the appeal before the first appellate authority and the second appellate authority. The first appellate authority maintained the punishment imposed on him, whereas, the second appellate authority modified the

⁴ (2015)2 SCC 610

⁵ 2022 SCC OnLine SC 1617

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said punishment by holding that the petitioner is guilty, however reduced the punishment by barring two increments and treating the suspension period as his punishment. However, the said authority set aside the punishment to the extent of recovery of amount from March 2018. The order passed by the second appellate authority is under challenge in this petition.

15. The chargesheet was issued to the petitioner on 19.9.2012. Following three charges were framed against the petitioner:

(i) negligence which caused loss to the company (misconduct under Employees' Service Regulation of the Maharashtra State Electricity Distribution Company Limited in view of Regulation No.86(3);

(ii) breach of companies rules and regulations (misconduct under Employees' Service Regulation of the Maharashtra State Electricity Distribution Company Limited in view of Regulation No.86(3), and

(iii) negligence and ignorance towards work (misconduct under Employees' Service Regulation of the Maharashtra State Electricity Distribution Company Limited in view of Regulation No.86(3).

16. Admittedly, by this petition, the petitioner has challenged the findings of the Enquiry Officer and orders

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passed by the disciplinary authority, first appellant authority, and second appellate authority by invoking the writ jurisdiction. This court has limited jurisdiction in exercise of powers under Article 226 of the Constitution of India. It is well settled that in exercise of judicial review, the court does not act as an Appellate Forum over findings of disciplinary authority. The Court does not re-appreciate evidence on the basis of which finding of misconduct has been arrived at in the course of a disciplinary enquiry. The court in exercise of judicial review must restrict its examination to determine, whether (a) rules of natural justice have been complied with, (b) finding of misconduct is based on some evidence, (c) statutory rules governing conduct of disciplinary enquiry have been observed, and (d) findings of disciplinary authority suffer from any perversity or the punishment is disproportionate to the proven misconduct.

17. Learned counsel for the petitioner has taken us through the entire material and pointed out that it was not the petitioner who was responsible for applying the wrong tariff, but the official, who was working in the Finance and Accounts Department, who was responsible for the same.

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The enquiry was conducted against the petitioner wherein the Enquiry Officer specifically observed that the petitioner was taking meter reading and on Form MR9 it was specifically mentioned that tariff of industrial was applied to the consumer when consumer has obtained the connection under the commercial category. Despite the petitioner was knowing about the same, he neither taken any action nor reported the said fact to the respondents. Thus, there was dereliction in the duty by the petitioner and, therefore, the petitioner is held liable for causing loss to the company. The findings of the Enquiry Officer specifically show that it was the petitioner who was taking meter reading on Form MR9 and, therefore, it was his duty to verify whether the billing is as per the industrial tariff or commercial tariff as tariff code specifically is mentioned on the said form. There is no dispute as far as the exoneration of the petitioner from charge No.2. However, by making the above said observations, the petitioner was held responsible for non reporting of the said fact to the office and for not taking the action against the concerned consumer.

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18. There is no dispute that internal committee was constituted to ascertain and fix the responsibility of the persons who are responsible to charge the consumer who is the owner of the "Hotel Maniprabha" by applying the wrong industrial tariff instead of commercial tariff. The investigation was carried out by the said committee and the report of the said committee shows that the consumer "Hotel Maniprabha" at Washim was provided with commercial connection with consumer No.326010100430 having load 8kw. The consumer further applied for enhancement of load with additional 27kw load by furnishing an affidavit on 9.10.2007. The load was sanctioned vide NO.EEWSM/07-08/LS/61 dated 10.12.2007 for CL and F Connection by the then Executive Engineer. The additional load was sanctioned to the consumer and since the total load was more than 20KW, new consumer number 326019082200 was allotted and the billing was transferred in the division office as per the prevailing practice. After release of the connection, the form to be fed to the industrial tariff for billing purpose are prepared by the Junior Engineer and signed by the Dy Executive Engineer and Executive Engineer, Washim. It is

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further observed that from the forms it can be seen that the tariff code is 701 and description of the load shows the purpose of hotel consumption is commercial. While feeding the NSC Report, the tariff code was changed and the tariff applied as the industrial category. While feeding the NSC by the account section, it was necessary to compare first bill with the parameters entered in the form received from the field which was not done by the revenue stamp of the division office. It is specifically held by the committee that since proper details are given by Junior Engineer, Deputy Executive Engineer and Executive Engineer, responsibility of changing tariff does not lie on them. Feeding of proper tariff is not discharged by the then officials of the accounts section and concerned UDC Billing Section. They have also not checked applicable tariff after printing of first bill. Hence, they are responsible. The said committee further constituted another committee of three persons. Thus, by these reports the committee specifically observed that the petitioner, who was Junior Engineer at the relevant time, is not responsible for applying the wrong tariff. However, it was the person, who fed NSC Report, who has changed the tariff code and,

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therefore, the persons from Finance and Account Department are responsible for the loss caused to the company.

19. Though learned counsel for the respondents placed reliance on work norms of Sub Engineer/Junior Engineer of section office, the said document does not bear either date or signature or seal to show authenticity of the document. It further reveals from the record that the amount of loss caused to the respondents is recovered from the consumer and penal action was also taken against the consumer. Employee namely Rajesh Sule was held responsible for changing the code of tariff and was held guilty for the same and enquiry was conducted against him and the punishment was imposed.

20. The enquiry report was submitted by the concerned Enquiry Officer on 24.12.2012. Whereas, the committee report was submitted on 29.12.2012 subsequent to enquiry report. However, the said report was available when the first appellate authority confirmed the punishment imposed by the disciplinary authority. The first appellate authority had passed a very cryptic order and confirmed the

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punishment. The second appellate authority had also not considered these aspects though modified the punishment. It is pertinent to note that admittedly, the tariff code was fed by the accounts department. From the record, it is crystal clear that the connection form for the billing purpose was prepared by the petitioner and signed by the Deputy Executive Engineer and they have given proper details by mentioning the correct tariff. However, the said tariff code was subsequently changed while feeding the NSC report by the accounts section. The accounts section had not compared the first bill while feeding the NSC Report. Thus, it was the official of the accounts department who was responsible for the said act. The Enquiry Officer though considered the nature of the duties of the petitioner, held him guilty only because he has obtained subsequent meter reading on MR9 Forms wherein it was specifically mentioned the activity as industrial activity. Whereas, it is contention of the petitioner that in MR9 Form he has only mentioned the meter reading and he was not concerned regarding the details which are fed by the accounts department. The Enquiry Officer has also considered the aspect that it was

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difficult for the petitioner to check all minute details on MR9 Form as he has to record readings of several consumers, but not considered these aspects while giving the reasons and held him guilty. Admittedly, these observations are sufficient to hold that the findings recorded by the Enquiry Officer are perverse. The first appellate authority had also not considered these aspects and passed a cryptic order. While modifying the punishment, the second appellate authority had also not considered these aspects and maintained the punishment of suspension period as his punishment. The second appellate authority also barred the petitioner from getting two annual increments. It is well settled that punishment is to be imposed appropriately by considering the nature of misconduct. After appreciating the entire material, only role attributed to the petitioner is that he has not done his duty with due care and caution. He was under obligation to check all details while taking the meter reading. However, he ignored the fact that though the consumer was under the category of commercial use, the tariff applied to him was industrial use. This aspect definitely covers dereliction of the duties.

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21. Learned counsel for respondents vehemently submitted that this court is not empowered to re-appreciate the evidence as the scope of judicial review is very limited. He placed reliance on the decision of the Honourable Apex Court in the case of **Union of India and ors vs. Subrata Nath** cited *supra* wherein it is held that "it is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere." There is no dispute as far as well settled legal position is concerned. As observed earlier, there is no dispute that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry nor interfere on the ground that another view is possible on the material on record.

22. It is held by the Honourable Apex Court in the case of **State Bank of Bikaner and Jaipur vs. Nemi Chand**

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Nalwaya cited *supra*, as relied by learned counsel for the petitioner, that if the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

23. Integrity and honesty are the essence of organizations and employees working in organizations are expected to work for welfare and beneficial purpose of organizations and, therefore, it is duty of employees to take utmost care while discharging their official duties.

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24. Though the petitioner is not responsible for changing the tariff or applying the wrong tariff, he has not taken care to see details while taking the meter reading which is definitely a negligence on his part.

25. When the court is considering an aspect of punishment, it is necessary to see whether punishment imposed is excessive or disproportionate to the gravity of proved misconduct.

26. Admittedly, the petitioner was not responsible for the loss caused to the respondent/company and, therefore, contrary findings as recorded on that ground can definitely be said to be perverse as a result of which recovery from the petitioner by the disciplinary authority is excessive and disproportionate punishment. Till March, 2018, amount of Rs.6,46,910/- was recovered which is required to be refunded to him. The punishment barring the petitioner from getting two annual increments is also disproportionate and requires to be modified by barring the petitioner from getting annual increment for one year only.

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27. For the reasons as aforesaid, the writ petition is partly allowed by modifying the punishment imposed on the petitioner by restricting the same to the petitioner from getting one annual increment. The respondents are also directed to refund amount of Rs.6,46,910/- with interest @ 6% from August 2013 to March 2018. The respondents are directed to refund the said amount within a period of six weeks from today.

The writ petition stands disposed of.

(URMILA JOSHI-PHALKE, J.) (AVINASH G.GHAROTE, J.)

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