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

Date of decision: 11th MAY, 2023

IN THE MATTER OF:

+ **LPA 427/2023**

DELHI STATE CIVIL SUPPLIES CORPORATION LTD.

..... Appellant

Through: Mr. Mohit Madan, Advocate

versus

G S SHERGILL

..... Respondent

Through: Mr. Tarkeshwar Nath, Mr. Lalit Mohan, Mr. Virat Sahara, Mr. Harshit Singh, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CM APPL. 24437/2023 (Exemption)

Allowed, subject to all just exceptions.

LPA 427/2023 & CM APPLs. 24435/2023, 24436/2023

1. The instant appeal has been preferred by the Appellant challenging the Judgment dated 11.11.2022 passed by the Learned Single Judge in WP(C) No. 4696/2011 (“**Impugned Judgment**”) wherein the Ld. Single Judge has allowed the underlying writ petition and set aside the disciplinary proceedings and all consequential proceedings emanating therefrom against the Respondent.

Neutral Citation Number is 2023:DHC:4533



2. The facts in brief are, that the Respondent herein was employed with the Appellant Corporation since 1981. On 31.03.1995, the Appellate Corporation received a written communication NIT followed by an Express Telegram dated 03.04.1995 from the Army Purchase Organisation (APO), proposing to procure 19,000 metric tons (MT) of various varieties of pulses, 9,000 MT of Gram Whole and 11,000 MT of Barley. One of the criteria for eligibility of the said NIT was that the PSU/Federation for negotiation, had to undertake that it would procure the contracted goods directly from the Mandis without involving middlemen.

3. On 04.04.1995, the Chairman of the Appellant Corporation constituted a committee of three members, which also included the Respondent, to identify a supplier for transacting with the APO. After conducting a survey and obtaining information, the committee identified one M/s KNR Trading Co. for transacting with the APO. This decision of the committee was approved by the Chairman of the Appellant Corporation. The rates quoted by M/s KNR Trading Co. were tendered to the APO and accepted by it and a sum of Rs. 2 lakhs as earnest money was deposited by M/s KNR Trading Co. which also agreed to pledge an FDR of Rs 5 lakhs to the Appellant Corporation.

4. However, the transaction could not materialise between the Appellant Corporation and the APO and a dispute arose between the two parties. The APO sent letters between 1996 and 1998, intimating the Appellant Corporation about their claim towards risk purchase, and eventually the matter went to arbitration, wherein the arbitrators allowed the claim of APO to the tune of approximately Rs. 1.18 crore for the risk purchase *vide* three arbitral awards dated 11.07.2000, 12.07.2000 and 30.03.2000 respectively.

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The Appellant filed three petitions under Section 34 of the Arbitration and Conciliation Act, 1996 against the three awards *i.e.* OMP Nos. 207/2000, 208/2000 and 159/2001. The three OMPs came to be decided *vide* a common order dated 04.09.2009 by which the arbitral awards were upheld, however the interest awarded was reduced to 9%. The Appellant Corporation then preferred appeals being FAO (OS) 529/2009, FAO(OS) 531/2009 and FAO(OS) 541/2009 challenging the decision of the learned Single Judge before a Division Bench which came to be dismissed *vide* a judgment dated 19.01.2012 with costs. Three SLPs were thereafter filed before the Apex Court against the said orders, which also came to be dismissed as withdrawn on 20.04.2012.

5. Similarly, M/s KNR Trading Co. also filed a case claiming for refund of earnest money of Rs. 2 lakhs with penal interest which was awarded in its favour. The Appellant Corporation filed RFA No. 681/1999 before this Court challenging the judgment. The said RFA was dismissed by this Court on 17.11.2011.

6. It is during this time, that in the year 2000, after five years the Appellant Corporation states that it requested the Vigilance Department of Government of NCT of Delhi to examine the matter for fixing the responsibility on erring officers. The Vigilance Department *vide* a letter dated 17.06.2002 referred the matter back for taking departmental action as deemed fit against the officers.

7. On 21.07.2005, a chargesheet was issued to the Respondent for the transactions that took place in the year 1995 and the Respondent was asked to file his reply to the same. The Respondent replied to the same on 29.07.2005, denying all charges. The Disciplinary Authority, not being



satisfied with the reply of the Respondent appointed an Inquiry Officer to inquire into the charges as mentioned in the chargesheet *vide* an order dated 08.03.2006. The Inquiry Officer, after appreciating all evidence, filed his Inquiry Report on 01.01.2008 to the effect that the charges against the Respondent do not stand proved.

8. Thereafter, on 13.04.2010, the Disciplinary Authority issued a disagreement note to the Petitioner, calling him to make a representation on the reasons for disagreement within a period of 15 days from the date of memorandum. The Respondent responded to the same by submitting its representation dated 14.05.2010. The Disciplinary Authority *vide* an order dated 27.07.2010 held all charges as proved against him and imposed a penalty of recovery from the pay of the Respondent or such other amount as may be due to him to the extent of 5% of the pecuniary loss allegedly caused to the Corporation under Rule 26 of the Conduct, Discipline & Appeal Rules, 1985 of the Appellant Corporation.

9. Aggrieved by the aforesaid decision of the Disciplinary Authority, the Respondent filed an appeal dated 17.08.2010 before the Appellate Authority under the relevant service rules. The Appellate Authority dismissed the appeal filed by the Petitioner *vide* an order dated 05.07.2012.

10. Aggrieved by the orders passed by the Disciplinary Authority as well as the Appellate Authority, the Respondent approached this Court *vide* the underlying writ petition stating that the entire disciplinary proceedings ought to be vitiated on the ground of delay as the chargesheet was issued against the Respondent 10 years after the concerned transaction had taken place and there was no reasonable explanation for the delay. The Learned Single Judge agreed with the Respondent and allowed the writ petition and set aside the

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disciplinary proceedings and all consequential proceedings emanating therefrom.

11. The Appellant Corporation has filed the instant appeal stating that the Learned Single Judge has erred by quashing the disciplinary proceedings on the grounds of delay. It is stated by the Appellant Corporation that the proceedings were initiated only in 2005 as till that time, no pecuniary loss was actually caused or could be quantified by the Corporation. It states that the APOs claims were filed only in between 1996-1998 and the arbitral awards came later. It is submitted that after the judgment was passed in the case of M/s KNR Trading Co. and the arbitral awards had been passed against the Appellant Corporation, it had requested the Vigilance Department to examine the matter. It states that the penalty imposed against the Respondent is a minor penalty as per the relevant service rules and no prejudice has been caused to the Respondent by initiating the disciplinary proceedings in 2005.

12. Heard Learned Counsels for the parties and perused the record.

13. From a perusal of the Impugned Judgment, it is apparent that the learned Single Judge after going through the material on record has held that the disciplinary proceedings and all consequential proceedings against the Respondent ought to be set aside on the grounds of unexplained delay. The learned Single Judge has relied on various judgments that reiterate the well settled principle of law that disciplinary proceedings ought to be conducted soon after the irregularities are committed or discovered and cannot be initiated after a lapse of considerable period of time as the same would be unfair to the delinquent officer.



14. The submission made by the Appellant that the delay in initiating the disciplinary inquiry occurred as no pecuniary loss was actually caused or could be quantified. This is erroneous as the claims of the APO had been made between 1996-1998 and the arbitral awards were passed soon after. The Appellant Corporation had ample information to initiate disciplinary inquiry during such time and it has failed to establish any reasons for the 10 years delay in initiating the disciplinary proceedings against the Respondent.

15. This Court having heard learned Counsel for the Appellant and having perused the material on record is of the opinion that no interference is required in the present case. The appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MAY 11, 2023

Arsh/Rahul

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