



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

% **Judgment reserved on : 02 December 2024**
Judgment pronounced on : 18 December 2024

+ **LPA 558/2017**

R.K. BHATIA

.....Appellant

Through: **Anil Mittal and Mr. Atul Chauhan, Advs.**

versus

CHAIRMAN-CUM-MANAGING DIRECTOR DELHI POWER COMPANY LTD & ANR.Respondents

Through: **Mr. Sandeep Prabhakar, Senior Advocate with Mr. Vikas Mehta, Advs.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G E M E N T

1. This LPA¹ is directed against the judgment rendered by the learned Single Judge dated 04.07.2017 in terms of which the writ petition preferred by the appellant came to be dismissed.

2. We take note of the reliefs which were principally claimed in the writ petition and which read as follows: -

- “(a) issue a writ of certiorari or any other appropriate writ, order, orders or direction in the nature and circumstances for quashing the impugned Order dated 21.12.1999, 10.3.2000 and 08.6.2002;
- (b) pass such an order or orders the status quo to be maintained till the pendency of the writ petition before this Hon'ble Court;
- (c) pass such other or further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case to meet the justice.

¹ LPA



3. The brief facts leading to the filing of this appeal are that the appellant was appointed as a Meter Reader with DVB² in August, 1974. On 11.11.1991, a charge-sheet was issued wherein it was *inter alia* alleged that the appellant, who was deputed to record readings of the meters of consumers, did not record the readings properly and did not issue requisite statements in respect of the defects and discrepancies noticed during his readings rounds.

4. Subsequently, on 25.02.1992 the respondents issued a second charge-sheet with an allegation that the appellant during the year 1991, in disregard to office order dated 29.05.1982 did not issue Statement-III in respect of the defective/stopped meter No. E-6067551 installed against connection No. 604/131028. Further, inquiry with respect to the second charge sheet dated 25.02.1992, wherein the inquiry officer has held the charge framed against the appellant as 'proved' *vide* his report dated 21.07.1997. Pursuant to the inquiry officer's report, punishing authority Shri N.P Singh, Additional General Manager, by its order dated 21.12.1999 imposed the punishment of “*Reduction of pay scale to five stages in his time scale for a period of five years with no increment during those five years and postponement of his future increments*” on the appellant. The appellant filed a departmental appeal against the order dated 21.12.1999 but the same was dismissed by the Appellate Authority *vide* order dated 10.03.2000.

5. In the meantime, inquiry with respect to the first charge-sheet dated 11.11.1991 was being conducted and after examining witnesses

² DVB



and several documents, including Office Order dated 06.11.1989 *vide* which earlier instructions dated 29.05.1982 were superseded, it was held that the charge had not been proved. The report of the Inquiry Officer with respect to the first charge sheet dated 11.11.1991 exonerating the appellant was accepted by the same Disciplinary Authority and the charges were dropped *vide* order dated 03.12.2001.

6. In view of his acquittal in the first charge sheet, the appellant filed a review dated 18.12.2001 against the punishment order dated 21.12.1999 and the order of appellate authority dated 10.03.2000 before the Reviewing Authority, which was dismissed *vide* order dated 08.06.2002. The appellant then challenged the said three orders dated 21.12.1999, 10.03.2000 and 08.06.2002 by instituting a writ petition being W.P. (C) No. 3944 of 2002 before this court.

7. The learned Single Judge *vide* order dated 13.08.2004, stayed the operation of the order 21.12.1999. Subsequently, the writ petition was dismissed *vide* judgment dated 04.07.2017 and the relevant paragraphs of the said judgment are reproduced herein below:

“6. Even though, Mr. Mittal has tried to draw a comparison in the findings of the inquiry officer's report dated July 21, 1997 (second charge sheet) and dated nil, Page 83 to 85 of the paper book (first charge sheet), he could not draw my attention to the office order dated November 6, 1989 to show that (the said order had, superseded the office order dated September 25, 1982 and there was no requirement for submitting a statement in respect of defective/stopped meters. I may note here that the Reviewing Authority in its order dated June 8, 2002 did comment that there is no link between the two cases. I may state here that it is not the case of Mr. Prabhakar that the subject matter of the charge sheet dated February 25, 1992 was not the subject matter of the charge-sheet dated November 11, 1991. Such an observation may not be a correct observation. Be that as it may, it would be quite late in the day for this Court to remand the matter back to the Reviewing



Authority, more so, as I have already concluded that the challenge in the writ petition to the aforesaid three orders being December 12, 1999, March 8, 2000 and June 8, 2002 is unsustainable. In so far as the judgment relied upon by Mr. Anil Mittal in the case of B.S. Chowdhary (Supra) is concerned, the same is not applicable in the peculiar facts of this case.

7. The writ petition is dismissed. No orders as to costs.”

8. Eventually, aggrieved by the impugned judgment dated 04.07.2017, the appellant has filed this LPA on 21.08.2017.

LEGAL SUBMISSIONS ON BEHALF OF THE PARTIES

9. In the writ proceedings *vide* counter affidavit dated 22.04.2003, the respondents canvass the plea that as of 30.06.2002 the DVB had ceased to exist and it has been unbundled into 6 companies, one holding company, one generation company, one transmission company and three distribution companies which are 51% privately owned and run by private management. In terms of the notification dated 15.11.2001, the staff of the erstwhile Delhi Vidyut Board was divided amongst the five companies on the principle of ‘as is where is’, and the petitioner/appellant came to be assigned to the BSES Rajdhani Power Limited³.

10. Further, the respondents argued that the petitioner/appellant has been punished for his failure to report the status of the meter which he read on two occasions inspite of the reading being same both the times and that the petitioner/appellant is attempting to bring extraneous issues to divert from the real issue of the readings being same.

11. Subsequently, the petitioner/appellant in its rejoinder dated 24.11.2003 contended that in respect of the consumer complaint dated

³ BSES-RPL



18.09.1989, the respondent had not replaced the defective meter within six months by virtue of the Indian Electricity Act, 1910, section 26 (6)⁴. The defective meter was not replaced from September 1989 upto 25.02.1992 by the respondents' staff and later on, framing false/fabricated charges with *malafide* intention were slapped on the petitioner/appellant; and that statement III was not issued by the petitioner/appellant. Hence, the respondents violated Section 26 (6) of the Indian Electricity Act, 2003.

ANALYSIS & DECISION:

12. After hearing the learned counsels for the parties and on perusal of the record, we find that the impugned Judgment dated 04.07.2017, passed by the learned Single Judge, cannot be sustained in law.

13. The record shows that the statement of imputation of misconduct or misbehavior against the appellant in the case of first charge-sheet dated 11.11.1991 i.e. Annexure-2 provided as under:

“Statement of imputations of misconduct or misbehaviour in support of article of charge framed against Shri R.K. Bhatia, MR, E, NO. 16758 (Buglosed with Memo. No. VC-245-252/91 dated 11:11.91)

Shri B.K.Bhatia, Meter Render (E.No 18758) while working as such during the year 1991 in Distt. Mayur Vihar was required to maintained absolute integrity and and devotion to duty and to do nothing which is unbecoming of an employee of this Undertaking.

⁴ 26 (6) – Where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of Such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during Such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity: Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days I notice of his intention so to do.



2. It has, however, been noticed that Shri R.K. Bhatia was deputed to record the readings of the meters of the consumers in Mayur Vihar Phase II, but he, with malafide intention, did not record the readings properly and did not issue requisite statements, in pursuance of the instructions contained in DFO (D)'s letter No. DFO(D)/2/225 dated 29.1.82 in respect of the following K. Nos., where certain discrepancies were noticed or where the meter was suspected defective at the time of his reading round on 7.1.91, 2.5.91 and 3.5.91.

S.No.	K.No.
1.	642-121339
2.	642-120618
3.	642-131028
4.	642-120324
5.	642-120985
6.	642-120313
7.	642-121516
8.	642-121535

3. It has further been observed during the Joint Inspection carried out by Vig Deptt., no reading had been taken by Shri Bhatia in respect of the meters of the following K.Nos.

1. 602-120143 (No reading noted on 7.1.91 & 3.5.91)
2. 642-121332 (No reading taken during January 01)
3. 642-121516)

4. In his statement recorded in the Vig. Deptt. on 10.7.91 Shri Bhatia has stated that in respect of K.No.642-121339 (D1 he had issued statement III on 2.5.91 and entry was also made in the Register. The entries in the MSR 15 register, however show that the same were made therein on or after 5.6.91 though the premises was visited by Shri Bhatia on 7.1.91 and again on 2.5.91 when the meter was found defective.

5. Thus the said Shri R.K.Bhatia, Meter Reader failed to maintain absolute integrity and devotion to duty and violate Rule 3(1) of the CCS (Conduct) Rules, 1964 which for good and sufficient reasons make him liable for disciplinary action against him under Regulation 7 of DESU (DMC) Service (C&A) Regulations 1976 read with article 95 of the DMC Act.

Sd/-
K. Sethuraman
Addl. General Manager(A)''



14. Alluding to the contents of the second charge-sheet against the petitioner dated 25.02.1992, it was a specific imputation that the appellant disregarded in the office order No. DFO(D)/2/225 dated 29.05.1982 and misconducted himself for not issuing statement-III in respect of the defective/stopped meter No. E-6067551 installed against K.No. 604-131028 registered in the name of Shri Ram Saran Dass R/o 108-D, Pokcet-‘C’, Mayur Vihar, Phase-II.

15. Evidently, the imputation in the second charge-sheet also formed part and parcel of the imputations leveled against the petitioner in the first charge-sheet dated 11.11.1991, a fact acknowledged by the learned Single Judge. However, the observation by the learned Single Judge that it would be too late for this Court to remand the matter back to the Review Authority is flawed in law. This is because the second charge-sheet could not have been issued by the department against the petitioner regarding an imputation that formed part of the compound imputations against him in the first charge-sheet.

16. *A fortiori*, the issuance of the second charge-sheet was without jurisdiction and tantamount to subjecting the petitioner to two disciplinary inquiries on the same charge, i.e., non-compliance with departmental instructions regarding the defective electricity meter bearing K. No. 642-131028. It is pertinent to note that the respondent does not claim that material evidence regarding the aforementioned meter was not available at the time the first charge-sheet was issued, or that such evidence was unearthed at a subsequent stage.

17. Be that as it may, Article 20(2) of the Constitution of India,



1950 categorically provides that no person shall be prosecuted and punished for the same offense more than once. The principle of ‘double jeopardy’, which emanates from common law and is recognized by the Constitution, also applies to departmental proceedings. This principle implies that an employee should not face multiple inquiries based on the same factual allegations, unless there is a new or separate cause of act.

18. In reaching such view, reliance can be placed on a decision by this Court in the case of **Rajesh Kumar PV v. Union of India**⁵, wherein the Coordinate Bench of this court has held that:

“48. The respondents have claimed in their counter-affidavit that on the directions of the superior authority, the Chargesheet was again served under Section 53(2) of the BSF Act, 1968 to the petitioner on 19.08.2017. The Inspector-General apparently while considering the case of Shri R C Yadav, AC/AE(Elect.), and SI/JE(Elect.) Shri Dharamvir Singh of SHQ BSF Barmer for whom he was the Competent Authority, felt there was enough evidence against the petitioner. However, he was neither the Competent Authority nor has the powers of *suo moto* review of the Order which had attained finality. The same charges, as were framed in the first Chargesheet, were re-considered. What more can be clinching factor that even the evidence which had been recorded in the first Chargesheet, was taken as the evidence in the second Chargesheet and was awarded the punishment of “*severe reprimand*” vide Order dated 21.08.2017. There is no mention under what provision of the Act, 1968 second Departmental Enquiry was directed to be held after the first Enquiry on the same charges stood concluded.

49. Interestingly, we find that neither Order of the superior Authority directing the dissatisfaction with the first SCOI or the grounds for directing a fresh enquiry has been placed on record. It is settled service jurisprudence that once the Departmental Enquiry has been concluded by a competent Authority, it can be varied either by way of Review or Appeal. Axiomatically, the respondents are completely silent about the procedure adopted for directing

⁵ 2023 SCC OnLine Del 3807



a second Departmental Enquiry when for the same charges, the petitioner having already been exonerated by the DIG, the Competent Authority. Admittedly, the respondents never challenged the findings in the First Chargesheet; this practice of condemning a person without any basis and depriving him of his legitimate claim to promotion, year after year, is highly depreciable.

50. In *Lt. Governor, Delhi v. HC Narinder Singh*, (2004) 13 SCC 342, the Apex Court held that if the second proposed action is based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned Show-Cause Notice, it would amount to double jeopardy. Such an action has to be annulled.

51. In *Nand Kumar Verma v. State of Jharkhand*, (2012) 3 SCC 580, the Supreme Court observed that the second Departmental Enquiry would not be out of place where a first completed enquiry is set aside by the competent forum on the technical or on the ground of procedural infirmity. It thereby implies that the second enquiry can be undertaken only after the first enquiry is set aside. We find that the procedure at its own whims and fancies has been adopted by the respondents victimising advertently or inadvertently, the petitioner which has caused serious prejudice to him.

52. It is rightly contended by the petitioner that it is the case of Double Jeopardy. A person who has been exonerated in the first Departmental Enquiry by the DIG, the Competent Authority, cannot be tried and held guilty for the same Charges on the same evidence, in the second Departmental Enquiry held at the whims of the superior authority without there being any ground, basis or provision under the law and without setting aside the first Inquiry. The second Departmental Enquiry, therefore, is without any basis and is vitiated being contrary to the principles of service jurisprudence.

53. We, therefore, find that the second Departmental Enquiry on the same charges and the same evidence, was hit by the principle of double jeopardy and the same is liable to be quashed.”

19. Likewise, in the case of **S.S. Lamaba S/o Shri Gyani Ram v. Wildlife Institute of India**⁶, the Uttaranchal High Court held that:

“The contention of the respondents that the first chargesheet initiated against the petitioner was defective and, therefore, the

⁶ 2011 SCC OnLine Utt 776



respondents were justified in initiating a second inquiry is patently erroneous. The mere fact that the authority who had issued the first chargesheet was only the Incharge Director does not mean that he was not the disciplinary authority or that he was not competent to issue a chargesheet against the petitioner under Rule 14 of the CCS Rules, 1965. We further find that the Central Govt. had issued an order dated 8th August, 2003 directing the said authority holding the additional charge to initiate a disciplinary proceeding against the petitioner. Once such an order has been issued, it was no longer open to the respondents to now contend that the authority was not competent to issue the chargesheet. Further, no rule, regulation or form has been brought forward to indicate that a chargesheet is required to be issued in a prescribed format.

In the light of the aforesaid, we are of the opinion that once a disciplinary inquiry has been closed and the matter has come to an end and the petitioner has been exonerated of the charges levelled against him, the respondents cannot restart the exercise of initiating a second inquiry on the same subject in the absence of any specific power to review, revise or reinstate a second inquiry. In the absence of any legal provision, we are of the view that the second inquiry on the same subject cannot be sustained and, accordingly, we quash the second chargesheet dated 8th January, 2007. The writ petition is allowed.”

20. In summary, both charge-sheets undoubtedly stemmed from allegations concerning the appellant's failure to address defective/stopped meters. The appellant was exonerated in respect of the first charge-sheet by the same Disciplinary Authority, which accepted the findings of the Inquiry Officer. It is unconscionable that the Disciplinary Authority failed to appreciate that the second charge-sheet was based on allegations forming part of the first charge-sheet, thereby violating the principles of double jeopardy applicable in departmental proceedings. Needless to say, the punishment order dated 21.12.1999 *qua* the second charge-sheet imposed severe penalties on the appellant. To reiterate, the respondents have failed to



demonstrate any new or distinct factual basis justifying the initiation of disciplinary inquiry *vide* the second charge-sheet.

21. In view of the foregoing discussion, the present appeal is allowed, and the impugned judgment dated 04.07.2017, passed by the learned Single Judge, is hereby set aside. Consequently, the punishment imposed upon the appellant in respect of the second charge-sheet dated 25.02.1992, through the order dated 21.12.1999, and as confirmed by the Appellate Authority *vide* order dated 10.03.2000, is also hereby quashed.

22. The present appeal stands disposed of accordingly.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 18, 2024

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