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

+ LPA 649/2022

BRIJ MOHAN ..... Appellant

Through: Mr.Zahid Hanief with Ms.Manisha  
Chauhan, Advocates.

versus

GOVT OF NCT OF DELHI &amp; ORS. .... Respondents

Through: Mrs.Avnish Ahlawat, standing  
counsel for GNCTD with  
Mrs.Taniya Ahlawat, Mr.Nitesh  
Kumar Singh, Ms.Laavanya  
Kaushik, Ms.Aliza Alam and  
Mr.Mohnish Sehrawat, Advocates.  
Mr.Raj Birbal, Sr.Advocate with  
Ms.Raavi Birbal, Advocates for  
R-2.

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Date of Decision: 11<sup>th</sup> September, 2023**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****MANMOHAN, J: (ORAL)**

1. Since 08<sup>th</sup> September, 2023 was declared a holiday on account of G-20 Summit, the matter has been taken up for hearing today. With consent of parties, the matter has been taken up for hearing and disposal.
2. It is pertinent to mention that the present appeal has been filed challenging the impugned judgment and order dated 18<sup>th</sup> October, 2022 passed by the learned Single Judge, whereby the writ petition, being



W.P.(C) No.6902/2003, filed by the appellant-petitioner was dismissed and the orders dated 29<sup>th</sup> March, 2003 and 30<sup>th</sup> September, 2003 passed by respondent nos.2 and 3 for suspension and termination of services of the appellant-petitioner were upheld.

ARGUMENTS ON BEHALF OF THE APPELLANT

3. Learned counsel for the appellant states that appellant's services had been terminated without there being any evidence on record. He contends that the relevant material had not been considered by the Enquiry Officer and irrelevant material had been taken into account. He states that the burden of evidence was erroneously shifted by the Enquiry Officer to the employee instead of the employer. In support of his submission, he relies upon the following extract from the Enquiry Officer's report dated 06<sup>th</sup> June, 2003:-

*"...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, JE 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 Rs. 35000/- to Shri S.K. Bansal, JE. Shri Ram Padarath Dw-2 is 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 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.”*

4. Learned counsel for the appellant further submits that contrary to Regulation 7(7) of Delhi Electric Supply Undertaking, DMC, (Service, Control and Appeal) Regulations 1976 (in short' Regulations 1976), the Enquiry Officer had not recorded findings and conclusions separately with regard to each charge in the present matter. Regulation 7(7) of Regulations 1976 is reproduced hereinbelow:-

*“At the conclusion of the Inquiry, the Inquiring Authority shall prepare a report of the Inquiry recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority, the proceedings of Inquiry establish charges different from those originally framed, it may record findings on such charges:*

*Provide that findings in such charges shall not be recorded unless the officer or other employee had admitted the facts constituting them or has had an opportunity of defending himself against them.”*

5. Learned counsel for the petitioner also submits that the learned Single Judge failed to appreciate that the appellant was a municipal employee to whom the Delhi Municipal Corporation Regulation Rules (hereinafter referred to as DMC Rules) and Delhi Municipal Corporation Act, 1957 (hereinafter referred to as DMC Act) were applicable and the Appointing and the Disciplinary Authority in the present case were not competent under the DMC Act.



6. Learned counsel for the appellant lastly submits that the impugned order passed by the Disciplinary Authority is a non-reasoned order. The relevant portion of the Disciplinary Authority's order dated 10<sup>th</sup> September, 2003 relied upon by the appellant is reproduced hereinbelow:-

*“.....And whereas, the said Sh. Brij Mohan had 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.....”*

7. He emphasises that the Disciplinary Authority except agreeing with the Enquiry Officer has given no separate reasons for upholding the enquiry report. He submits that the Constitution Bench of the Supreme Court in *S.N.Mukherjee vs. Union of India, (1990) 4 SCC 594* has held that reasons by an administrative authority serve a salutary purpose, namely, it excludes chance of arbitrariness and ensures a degree of fairness in the process of decision-making. He also relies upon the judgment of the Supreme Court in *Allahabad Bank vs. Krishna Narayan, (2017) 2 SCC 308*, wherein it has been held as under:-

*“7. xxxxxxxx The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High*



*Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority.*

9. xxxxxx Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised”

#### ARGUMENTS ON BEHALF OF RESPONDENT NO.2

8. *Per contra*, Ms. Birbal, learned counsel for respondent no.2-Tata Power Delhi Distribution Limited states that the contention of the appellant that he became a DMC employee under the provision of DMC Act is incorrect as the Delhi Vidyut Board (DVB) had adopted CCS (CCA) Rules, 1964 through order No.F.2/2/99\_AO(Confd.)/6 dated 25<sup>th</sup> May, 1999 i.e. prior to unbundling of DVB. According to her, after the unbundling of DVB, the appellant became an employee of Tata Power Delhi Distribution Limited (earlier known as NDPL). In support of her contention, she relies upon paragraphs 3, 4, 5 & 6 of her counter affidavit in the present appeal, which are reproduced hereinbelow:-

*“3. In view of the above, the employees who have been absorbed in NDPL, and has no claim/any benefit of service under the Board. Though under rule 6(7) of Delhi Electricity Reform (Transfer Scheme)2001, till the new rules are framed, the existing service conditions of the Board are applicable . However, it does not mean that the Appointing Authority will be as was in the case of DESU/DVB. According, w.e.f. 01.07.02, the Board of Directors of the Company are the Appointing Authority/Disciplinary Authority of all the employees of erstwhile DVB*



*allocated to NDPL(erstwhile it is now Tata Power Delhi Distribution Ltd.)*

*4. The Board vide resolution dated 01.11.02 delegated the power to CEO for appointing as well as disciplinary authority in respect of the employees up to the level of DGM, CEO vide his order dated 18.03.03 delegated the power in favour of DGM (Admin.) regarding the affairs of the employees including the disciplinary action up to the level of Asst. Manager including suspension, charge-sheeting, appointment of Enquiry Officer, appointing of Prosecuting Officer on behalf of NDPL, issuing show cause notice, imposing punishment including that of dismissal, removal etc.*

*5. In view of the above DGM (Admin.) of NDPL was the competent authority to take disciplinary action including removal from service in the matter of Sh. Brij Mohan on 10.09.03.*

*6. Without prejudice to what is submitted above, it is further submitted that the disciplinary action against the petitioner Sh. Brij Mohan/appellant has been ratified by the Board of NDPL on 13.02.2004 the highest body of the company. It is well settled the ratification relates back to the original action and as such also the disciplinary action including punishment imposed against Sh. Brij Mohan appellant is legal, valid and justified.”*

9. She further contends that the Enquiry Officer has given a finding as well as a conclusion on each of the charges. According to her, the Enquiry Officer, in the present instance, has considered only the relevant evidence and as the allegations against the appellant were serious, the Tata Power Delhi Distribution Limited had no other option but to terminate the services of the appellant.

10. She also denies that the order passed by the Disciplinary Authority is a non-reasoned order. In any event, she submits that it is settled law that reasons have to be given by the Disciplinary Authority only when it dissents from the report of the Enquiry Officer. In support of her submission, she relies upon the judgment of the Supreme Court in ***National Fertilizers Ltd. & Anr. Vs. P.K.Khanna, (2005) 7 SCC 597,***



wherein it has been held as under:-

*“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 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 (Suppl.) 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's case [1987 (Suppl.) 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....”*

### COURT'S REASONING

11. It is settled law that scope of the writ court under Article 226 of the Constitution of India is extremely limited while adjudicating upon cases of disciplinary proceedings and inquiries. The learned Single Judge in the impugned order has rightly referred to the judgment of the Supreme Court of India in ***Union of India vs. P. Gunasekaran, (2015) 2 SCC 610***, wherein it has been held as under:-

*“12. ... The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappraisal 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) reappraise 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.”*

12. This Court finds that the appellant had been appointed to the post of Junior Clerk/Telephone Operator vide appointment letter dated 10<sup>th</sup> May, 1995 on *ad hoc* basis on compassionate ground.

13. It is admitted by both the appellant and the consumer (Shri Gaurav Jindal) that the appellant had written an application to the DVB for replacement of the meter on behalf of the consumer, even when it





was beyond his call of duty. Further, Sh.S.K.Bansal, Junior Engineer in his pre-recorded statement as well as during his deposition before the Enquiry Officer had confirmed that he had handed over a Meter No.82501 to the appellant for installation purposes. Though it was the appellant's case that Shri S.K.Bansal had never handed over the Meter No.82501 to the appellant, yet according to the Enquiry Officer, the appellant had not cross-examined Sh.S.K.Bansal on the said issue. Before this Court, learned counsel for the appellant had vehemently disputed the said finding of the Enquiry Officer. We had asked the learned counsel for the appellant to produce the entire statement of Sh.S.K.Bansal, Junior Engineer. However, despite taking sufficient time, the said statement was not produced. Accordingly, this Court has no other option but to believe what has been recorded by the Enquiry Officer as well as by the Disciplinary Authority and the learned Single Judge.

14. Consequently, the suspension and termination orders are based on relevant material and evidence on record and the Enquiry Officer has recorded findings and conclusions separately in accordance with Regulation 7(7) of Regulations 1976.

15. Further keeping in view the averments in the counter affidavit, which have been reproduced hereinabove, this Court is of the view that the appellant was not an employee of the Delhi Municipal Corporation but of DVB and subsequently of the North Delhi Power Limited and thereafter of Tata Power Delhi Distribution Limited.

16. As far as non-furnishing of reasons by the Disciplinary Authority is concerned, this Court is of the view that if the said Authority agrees



with the reasoning of the Enquiry Officer and is of the view that it cannot improve upon the same, the Disciplinary Authority is not supposed to “cut and paste” the said reasoning. It is sufficient if the Disciplinary Authority states that it is in agreement with the finding of the Enquiry Officer – as has been done in the present instance. The Supreme Court of India as well as High Courts have in the following judgments held to the same effect as under:-

**(i) *Boloram Bordola vs. Lakshmi Gaolia Bank & Ors., (2021) 3 SCC 806***

*.....Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. As the departmental appeal was considered by the Board of Directors in the meeting held on 10-12-2005, the Board's decision is communicated vide order dated 21-12-2005 in Ref. No. LGB/I&V/Appeal/31/02/2005-06. In that view of the matter, we do not find any merit in the submission of the learned counsel for the appellant that the orders impugned are devoid of reasons.*

**(ii) *State Bank of Bikaner and Jaipur vs. Prabhu Dayal Grover, (1995) 6 SCC 279***

*.....In our considered opinion, when the disciplinary authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to reappraise the evidence to arrive at the same findings....*

**(iii) *G.M (Personal Wing) Canara Bank vs. V.M. Raja Rao, 2003 (5) SCALE 66***

*.....When a Disciplinary Authority agrees with the findings and conclusions of the Enquiring Authority, it is not necessary in law to give any detailed reasons as to why he intends to agree with the findings of the Enquiring Authority.*

**(iv) *Jagdamba Prasad vs. Commissioner, Varanasi and Ors., 1999 SCC Online ALL 1611***

*Be that as it may, the disciplinary authority not being bound to accept the suggestion of the (Enquiry Officer) disciplinary authority and there*



*having been no difference of opinion with regard to the finding, it was not necessary to record any reason. It is only when there is a difference in the opinion of the disciplinary authority with regard to the finding, the reason may be necessary. In the case Ram Krishan (Supra), it was observed that in case of disagreement with the findings of the Enquiry Officer for the purpose of enabling the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the Enquiry Officer, the reasons are to be given. In the present case, it was not difference with regard to the finding but with regard to the suggestion of the punishment Since the Enquiry Officer has no authority to inflict punishment the suggestion is only a pious wish. Therefore, there is no question of disagreement of the disciplinary authority if it inflicts different punishment. The decision cited by Mr. G.K. Singh therefore, does not help in view of the distinguishing feature in this case where the disciplinary authority did not disagree with the finding.*

17. The judgment of the Supreme Court in **Allahabad Bank vs. Krishna Narayan** (supra) offers no assistance to the appellant as in the said case, the Supreme Court had found that the enquiry was found vitiated on account of violation of principles of natural justice and the Courts below had found no allegation or evidence to show loss, if any, suffered by the Bank. However, in the present case, the appellant who was a Telephone Operator had not only written an application for replacement of meter on behalf of the consumer Shri Gaurav Jindal, but also without jurisdiction/authority had obtained a meter being Meter No.82501 from Shri S.K.Bansal, Junior Engineer for replacement of stop meter of Shri Anurag, wherein subsequently a stolen meter was installed, whereas Meter No.82501 was installed at G7/112, Sector-15, Rohini for unauthorized use of electricity. It is pertinent to mention that service of Shri S.K.Bansal, Junior Engineer had also been terminated by respondent no.2-Tata Power Delhi Distribution Limited.



18. Consequently, the present appeal, being bereft of merit, is dismissed. No order as to costs.

**MANMOHAN, J**

**MINI PUSHKARNA, J**

**SEPTEMBER 11, 2023**  
**KA**