

(1992) 05 DEL CK 0067

In the Delhi High Court

Case No : Civil Writ Appeal No. 1783 of 1989

Delhi Electric Supply Undertaking Engineers" Association and
Another

APPELLANT

Vs

Municipal Corporation of Delhi and Others

RESPONDENT

Date of Decision : 29-05-1992

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Delhi Municipal Corporation Act, 1957 — Section 92
Desu (Dmc) Service (Control and Appeal) Regulations, 1976 — Regulation 7
Electricity Act, 1910 — Section 44

Citation : (1992) 23 DRJ 487 : (1993) LabIC 1093 : (1992) 2 SLJ 167

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : Raj Panjwani, A. Ahlawat and Mukta Gupta, for the Appellant;

Judgement

P.N. Nag, J.

(1) The relevant facts as emerged from the pleadings of the parties are that the petitioner No.2 (hereinafter referred to as the "petitioner") who was working as Executive Engineer - Class "A" post u/s 92 of the Delhi Municipal Corporation Act - was issued a memo of charge he sheet dated 18th September. 1987 (Annexure I to the writ petition) by respondent No.3 Shri A.K. Chakrabarti on the charge that while functioning as XEN(D)SRD during the period 25.8.1981 to 5.6.1983 the petitioner with an ulterior motive to give undue favor to the consumer (i) did not get the supply disconnected and meters along with meter boards removed: and (ii) did not lodge report with the Police Authorities u/s 44 of the Indian Electricity Act. The petitioner, thus. failed to maintain absolute integrity and devotion to duty and violated Rule 3(1)(i) & (ii) of the C.C.S.(Conduct) Rules, 1964. Statement of imputation of misconduct in support of the Article of Charge framed against the petitioner were also supplied to the petitioner and the same has been annexed as Annexure-II to the writ petition. Other relevant documents were also supplied to the petitioner.

(2) At this stage it may be noticed that at that time Shri A.K. Chakrabarti was working as Additional General Manager (A) on current duly charge when he issued the charge sheet to the petitioner. Thereafter vide letter dated 28th October, 1988. the General Manager (E). exercising the powers conferred under Sub-Regulation (4) of Regulation 7 of the Desu (DMC) Service (Control & Appeal) Regulations, 1976. appointed Ms, Vijay Lakshmi Sharma. Commissioner for Departmental Inquiries as Inquiring Authority to enquire into the charges framed against certain officers, including the petitioner separately but simultaneously and Shri M.S. Chadha, Assistant Vigilance Officer (P) as Presenting Officer to present the case on behalf of the Undertaking in support of the articles of charge.

(3) The Inquiry Officer conducted the inquiry against the petitioner and submitting her report dated 28th February, 1989 holding that the charges against the petitioner stood proved. The said inquiry report has been filed as Annexure R-2/F to the counter affidavit filed on behalf of respondents 2 to 4 to the show cause notice.

(4) Shri Arun Kumar Mathur, Additional General Manager (A) issued a Memorandum dated 20th June, 1989 to show cause to the petitioner as to why the penalty of removal from service, which shall not be a disqualification for future employment, be not imposed upon him on the basis of the inquiry report dated 28th February, 1989.

(5) Being aggrieved against the initiation of disciplinary proceedings, the petitioner has filed the present writ petition.

(6) On 23rd June, 1989, when the writ petition came up for admission, this Court granted ex parte stay of disciplinary proceedings initiated by respondents No. 1 to 4 and 8. However, vide order dated 22nd August, 1990. the stay order granted on 23rd June, 1989 was vacated. Against the order dated 22nd August, 1990 vacating the stay, the petitioner filed a L.P.A., being L.P.A. No-62/90. and the Division Bench of this Court on 29th July, 1991, while disposing of the L.P.A., has directed that the inquiry proceedings may continue and final order be passed but if any order is passed against the appellant-petitioner, the same shall not be given effect to. Further, the Disciplinary Authority shall pass a reasoned order examining all the contentions raised by the parties.

(7) In this petition, the petitioner has attacked the orders passed by the authorities for initiating disciplinary action by issuing the charge sheet, appointing the Inquiry Officer, memorandum to show cause as to why penalty should not be imposed etc. aforementioned on the ground that under the Desu (DMC) Service Regulations 1981 it is the Delhi Electric Supply Committee, which is only competent authority to initiate disciplinary proceedings and to impose penalty of removal from service. According to the petitioner, the Additional General Manager has no power to initiate disciplinary proceedings. The second ground on which the initiation of disciplinary proceedings has been assailed is that even if it is assumed that the Additional General Manager is a disciplinary

authority, then the memo of charge sheet could not have been issued by respondent No.3 who was only a Financial Advisor & Chief Accounts Officer of D.E.S.U. and was entrusted the assignment of only looking after the current duties charge of the post of Additional General Manager (Admn.) till such time as a regular incumbent assumes charge of the post of Additional General Manager (Admn.) vide office order dated 18th July, 1988 (Annexure R-2/E to the counter affidavit). It has further been stipulated in this Office Order that the mailers relating to exercise of statutory powers, however, shall be put to the General Manager (respondent No.4) direct. According to the petitioner, the statutory duties under the Desu (DMC) Service Regulations, 1981 (hereinafter referred to as the "Regulations") for initiating disciplinary inquiry, issue of memo of charge sheet, appointments of Inquiry Officer and Presenting Officer etc. are to be discharged by the statutory authority mentioned in the Regulations and that authority alone can discharge the functions and none else. There fore, the officer entrusted with the functions of looking after the current duty charge of the post of Additional General Manager has no power to issue the charge sheet and that is evident from the aforementioned letters (annexures R-2/E) also that the statutory powers shall not be exercised by such an officer and the matter relating to exercise of power will only be put up to the General Manager direct.

(8) The petitioner has relied upon Government of India's Instructions (hereinafter referred to as the "Instructions") (Annexure 2 to the Rejoinder). According to the Instructions, an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (i.e.. Income Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g. Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules, etc.). In such circumstances, according to the petitioner, there is left no manner of doubt that respondent No.3 had no jurisdiction and power to issue the memorandum of charge sheet to the petitioner and, Therefore, the very initiation of disciplinary proceedings and all other consequential proceedings in pursuance to the memo of charge sheet are void ab-initio.

(9) Another ground on which the petitioner has assailed the order is that it is respondent No.4 who has appointed the Inquiry Officer as well as the Presenting Office." vide order dated 28th October, 1988. According to him, respondent No.4 has no power under the Regulations to do so as the power can be exercised only by an officer/authority who has been vested with the same. Therefore, the inquiry report and further proceedings taken by the respondents in pursuance of the inquiry report are also void ab-initio in the eyes of law. In substance, all disciplinary proceedings initiated by respondents against the petitioner are void and without jurisdiction and deserve to be set aside.

(10) The respondents' stand in the counter affidavit is that so far no penalty

from removal from service has been imposed on the petitioner and as such the writ petition is pre-mature. According to them, in column 3 of the Schedule to the Regulations, authorities competent to impose penalties have been provided and in column 4 thereof what penalties can be imposed by which authority is provided. Therefore, the competent authority to impose penalty of removal/reduction in rank/dismissal is the Delhi Electric Supply Committee whereas for all other penalties. Additional General Manager (E) or any officer or other employee to whom powers to make appointment is delegated u/s 491 of the Act is the competent authority. Since it cannot be anticipated that ultimately what penalty will be imposed on the incumbent, Therefore, for the initiation of disciplinary proceedings. Additional General Manager is also the competent authority and not necessarily the Delhi Electric Supply Committee.

(11) Next ground which the respondents have taken for resisting the petition is that no doubt the General Manager, respondent No.4, has issued the order appointing the Inquiry Officer and the Presenting Officer but he is fully competent and every jurisdiction to do so as he is higher officer than the Additional General Manager. Further, he has every jurisdiction to pass any order by virtue of the powers vested in him u/s 64 of the Delhi Municipal Corporation Act. According to the respondents, the General Manager is the Chief Executive of D.E.S.U. and u/s 64 of the Dmc Act. he has got all the powers to conduct, control and supervise all the affairs of D.E.S.U. and its employees and dispose of all matters relating to the service of the officers p73 and other employees of D.E.S.U., their pay, privileges, allowance and other conditions of service. The General Manager is vested with the entire executive power for the purposes of carrying out the provisions of the Municipal Corporation Act pertaining to D.E.S.U. and is required to exercise all the powers and perform all the duties conferred or imposed upon him including such other functions as may be required to be done by him by the Delhi Electric Supply Committee and the Corporation. In this view of the matter, the General Manager being the Chief Executive is empowered to appoint the Inquiry Officers, including an officer of the Central Vigilance Commission.

(12) According to the respondents, as to who should pass the final punishment or appellate orders in absence of the competent authority on leave or deputation etc, the Government of India has clarified that necessary investigation etc. may be completed in the absence of the competent authority and final orders in the case should be held or pending the return of the competent authority who should pass the necessary orders in the matter. Learned counsel for the petitioner, Mr. Panjwani vehemently submits that the respondent No.3 as Additional General Manager (Admn.) on current duties charge has no jurisdiction and power to issue the memo of charge sheet along with statement of imputation of misconduct and other relevant documents as under the Regulations, it is the Delhi Electric Supply Committee, which is disciplinary authority, and could have issued the same.

(13) In order to appreciate the contention of Mr, Panjwani. learned counsel for

the petitioner, it is necessary to quote the relevant provisions of the Regulations which are as under:

"2(B)Appointing Authority" in relation to a municipal Officer or other municipal employees means the authority empowered by or under the Act to make appointments to the post which such officer or employee for the time being holds or such officers to whom the powers have been delegated." "2(c) Disciplinary Authority in relation to the imposition of a penalty on a municipal officer or other municipal employees means the authority competent under these regulations impose on him that penalty."

"2(c) "Schedule" means the schedule to these regulations." "2(g) "Committee" means the DESC.

"5.The following penalties may. for good and sufficient reasons and as hereinafter provided: be imposed on an officer or other employee, namely: (a) Minor penalties: (i) Censure. (ii) Withholding of his promotion: (iii) Withholding of increments of pay. (h) Major penalties: (iv) Reduction in rank which shall mean either reversion to a lower post or to a lower stage in the same lime scale depending on gravity of charge. (v) removal from service which shall not be a disqualification for future employment."

"6.The authority specified in col.3 of the schedule may impose on any of the officer or other employees holding a post specified in col. 1 hereof any of the penalties specified there against in col.4 thereof. Any such officer or employee may appeal against the order imposing upon him any of those penalties to the authority specified in col.5 of the said schedule."

"7(2)The disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Municipal Officer or other municipal employee, and he shall be required to submit within such time as may be specified by the Disciplinary Authority a written statement of his defense and also to state whether he desires to be heard in person."

"7(4)On receipt of the written statement of defense. or if no such statement is received within the time specified. the Disciplinary authority may itself inquire into such of the charges as are not admitted or. if it considers it necessary so to do, appoint a Board of Inquiry or any Inquiry Officer (hereinafter in this regulation referred to as the Inquiring Authority) for the purpose."

"7(5)The Disciplinary Authority may nominate any person to present the case in support of the charges before the Inquiry Authority. The officer or other employee may present his case with the assistance of any other officer or employee approved by the Disciplinary Authority, but shall not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner."

Col. 3 of the Schedule clearly demonstrates that Delhi Electric Supply Committee is the authority competent to impose penalties on the officers of category (A) post and the Additional General Manager is authority competent to impose penalties on the officers of category (A) post other than removal/reduction in rank/ dismissal. There is no dispute that the petitioner belongs to category (A) post. According to counsel for the petitioner. Mr. Panjwani, since the major penalty of removal from service is sought to be imposed on the petitioner as is apparent from the Memorandum to show cause, Therefore, it is the- Delhi Electric Supply Committee alone, which can issue the memo of charge sheet and appoint the Inquiry Officer and the Presenting Officer etc. So far as Additional General Manager is concerned, he can exercise power only in respect of the penalties except removal/reduction in rank/dismissal. On the other hand, Ms. Ahlawat, learned counsel for the respondents vehemently contends that the Additional General Manager has power and jurisdiction to initiate disciplinary action and to issue the memo of charge sheet to the petitioner as at that stage it can not be known as to what penalty is likely to be imposed by the disciplinary authority in the matter. In this connection, she has relied upon D.S. Garewal Vs. The State of Punjab and Another, . In that case, the question arose as to when the charge against the petitioner was serious that he was likely to be dismissed, removed or compulsorily retired from service, was it the Central Government which was entrusted with the power for instituting the inquiry being the disciplinary authority and not the State Government? The Statement Government under the rules could impose punishment in respect of other four minor penalties only and not in respect of major penalties mentioned above, and which could be imposed by the Central Government only. The Supreme Court in paragraph 9 has held that "it cannot be postulated at the very outset of the inquiry whether there would be any punishment at all, and even if there is going to be punishment, what particular punishment out of the seven mentioned in Rule 3 would be imposed. Therefore, even on the assumption that the Government which has to impose the punishment must also institute the inquiry, it cannot be said at this stage that the Punjab Government which can impose at least four out of seven penalties is not the proper government to institute the inquiry.

(14) I have given careful consideration to the submission of the learned counsel and in my opinion the submission of learned counsel for the respondents is well founded. As already stated, the Delhi Electric Supply Committee has been empowered to impose penalties in respect of all penalties whereas the Additional General Manager has also been empowered to impose penalties in respect of all except removal/reduction in rank/dismissal. Since at the stage of initiation of disciplinary inquiry it cannot be postulated at the very outset whether there will be any punishment at all and even if there is going to be any punishment what particular penalty is likely to be imposed, Therefore, the Additional General Manager can also in my opinion, in the light of the reasoning given by the Supreme Court in Garewal's case (supra) issue the memo of charge sheet.

(15) "HOWEVER, the matter does not rest here. The next question that arises for

consideration and is vehemently contended by learned counsel for the petitioner, Mr. Panjwani, is that respondent No.3 Mr. Chakrabarti who is working as Financial Advisor & Chief Accounts Officer was assigned the charge of looking after the current duties of the post of Additional General Manager (Admn.) vide office order dated 22nd June, 1987. Again, he was assigned the charge of looking after the current duties of the post of Additional General Manager (Admn.) vide office order dated 4.5.1988 which was continued vide office order dated 30th June, 1988. Again, he was assigned the same current duties charge of the post of Additional General Manager (Admn.) vide office order dated 18th July, 1988. It is clearly stipulated in the office order dated 18th July, 1988 that the matters relating to exercise of statutory powers may, however, be put up to the General Manager direct till further orders. In other words, the matters relating to exercise of statutory powers was not to be exercised by the Additional General Manager on current duties charge. The issuance of this office order is quite in conformity with the Instructions dated 24.1.1963 issued by the Government of India (Annexure - 2 to the Rejoinder), which has been relied upon heavily by counsel for the petitioner. Relevant portion of this office order reads as under:

"SHRIA.K. Chakrabarti, F.A.& C.A.O. will look after the current duties of the post of Addl, General Manager (Admn.) till such time as a regular incumbent assumes charge of the post of AMC(A). Matters relating to exercise of statutory powers may. however, be put up to me direct till further orders."

In the aforementioned Government of India's Instructions dated 24.1.1963 it has been provided that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post. but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (i.e.. Income Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g.. Fundamental Rules. Classification. Control and Appeal Rules. Civil Service Regulations, Delegation of Financial Powers Rules, etc.). A perusal of the office order dated 18th July, 1988 and the Instructions leaves no manner of doubt to my mind that Mr. Chakrabarti has been appointed only to look after the current duties charge of the post of Additional General Manager and the statutory duties cannot be exercised by him.

(16) It may be noticed here that the Regulations have been approved by the Lt. Governor, in pursuance of the provisions of sub-section (2) of Section 480 of the Delhi Municipal Corporation Act. They have statutory force and the appointing authorities and the disciplinary authorities indicated therein and referred to in the Schedule are the statutory authorities. No doubt, as held by me above, the Additional General Manager regularly appointed can exercise the functions- by initiating disciplinary proceedings but not by a person who has been asked to look after the current duties charge of the post of Additional General Manager when he is specifically asked not to carry out the statutory functions in the officer order of his appointment. In the face of this restriction laid down on his power in

the appointment of Mr. Chakrabarti and also in the Instructions, I have no hesitation to hold that respondent No.3 Mr. Chakrabarti has no jurisdiction and power to initiate disciplinary proceedings and issue memo of charge sheet to the petitioner etc. Since the very issue of memo of charge sheet has been issued by an authority not having the jurisdiction and power to do so, the action of respondent No.2 regarding initiation of inquiry is entirely without jurisdiction and has to be set aside. Learned counsel for the respondents has, however, relied upon the clarificatory Instructions dated 26.12.1949 read with Memo dated 26.2.1951 (Annexure - 2 to the Rejoinder) and submitted that the officers holding current duties charge can also issue the memo of charge sheet as necessary investigations can be completed by any officer holding current duties charge. However, the final order of penalty should be passed by the competent authority. I have carefully considered the submission of the learned counsel for the respondents. But I regret I am unable to accept this contention because this clarification which has been relied upon by counsel for the respondents, refers to necessary investigation and does not refer to any inquiry. The investigation cannot be equated with the exercise of statutory power, which can be exercised by the statutory authority only as would p:"6 be discussed hereinafter. It was next contended by Mr. Panjwani that not only the memo of charge sheet has been issued by a person not authorised to do so but even the Presenting Officer and Enquiry Officer have been appointed by the General Manager, respondent No.4, who under the Regulations have no power to appoint them. In fact he is an intruder and has no jurisdiction to pass such an order. This contention is equally well founded.

(17) Learned counsel for the respondents, however, again submitted that such power could very well be exercised by the General Manager as higher officer and u/s 64 of the Delhi Municipal Corporation Act, as already stated, has every power to have control over the officers and jurisdiction to appoint the Enquiry Officer and the Presenting Officer.

"NO doubt u/s 64 of the Delhi Municipal Corporation Act all the executive power pertaining to the Delhi Electric Supply Undertaking vest in the General Manager (Electricity). It may be noticed that Section 64(1) itself provides that all executive powers vested in the General Manager shall be subject to the provisions of the Act and Regulations made there under and under the Regulations the Additional General Manager has been given such a power to appoint the Inquiry Officer or the Presenting Officer under Regulation 7(4) and 7(5). The executive power given to the General Manager cannot militate against the statutory powers. Reliance has been placed by Mr, Panjwani on Marathwada University Vs. Seshrao Balwant Rao Chavan, . In that case a similar question arose whether the Vice Chancellor, who is a principal executive officer of the University, was competent to take disciplinary action and punish the officer when such power vested under the Act and statutes with the Executive Council. The findings of the Supreme Court in paragraph 19 of that judgment are relevant and are quoted as under:

"THE Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under S.24(I) (xxix) of the Act. It is, Therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury's Laws of England (Vol. 1, 4th Ed., para 32) summarises these principles as follows: "32. Sub-delegation of powers. In accordance with the maxim delegatus non potest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express I words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be p:"6 said of any power to the exercise of which the designated body should address its own mind." "

(18) In the face of this authoritative judgment of the Supreme Court, when the General Manager has not been empowered under the Regulations to appoint Presenting Officer or the Inquiry Officer under regulation 7, his action for the appointment of Inquiry Officer or Presenting Officer is void ab-initio and without jurisdiction.

(19) Ms. Ahlawat, learned counsel for the respondents, relied upon the decision of the Division Bench of this Court in Shri B.K. Kaul v. Mcd (Civil Writ Petition No.3086/89 decided on November 1, 1989. According to her, in that case, at the relevant time, it was the Deputy General Manager who could impose the penalty on the officers of the category "A" and not the Additional General Manager who had issued that order. The Court upheld that order on the ground that the Additional General Manager being higher in rank could pass that order. This decision cannot be relied upon, in view of the decisions of the Supreme Court to the contra. Apart from this, that decision has not given any reasoning and laid down any principle. It was been held by the Supreme Court in Marathwada University's case (supra) that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. This principle is very well settled in series of decisions of the Supreme Court. Therefore, there is left no manner of doubt in my mind except to hold that the statutory authorities provided under the Regulations itself could exercise the power of issuing memo of charge sheet and also appointing Inquiry Officer and the Presenting Officer and none else.

(20) In the light of what is discussed above, the initiation of disciplinary inquiry and other actions of appointing the Inquiry Officer and the Presenting Officer and all subsequent steps taken by the respondents in pursuance of the memo of charge sheet are quashed. The petitioner will be entitled to all consequential benefits also, if any.

(21) In the facts and circumstances of this case. I make no order a-s to costs.