

(2013) 04 DEL CK 0218

In the Delhi High Court

Case No : LPA 52 of 2013

Delhi Power Supply Company Limited and Others

APPELLANT

Vs

Rajeev Sapra

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0218

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Avnish Ahlawat and Ms. Latika Chowdhary, for the Appellant;

Judgement

LPA 52/2013 & CM 1103/2013 (stay)

1. The respondent who was posted as Inspector (T) in Prehaladpur Zone of Delhi Vidyut Board was on leave from 2nd March, 1992 to 18th March, 1992. During the period of his leave, an inspection was carried out on 16th March, 1992 and five unauthorized electricity poles were found erected and lines installed for feeding electricity to premises adjacent to M/s. Bombay Biscuit Factory. The appellant was, therefore, served with the following charge sheet:-

Shri Rajiv Sapra, E. No. 30829, while working as Inspector in Zone No. 616(D) BWN during the year 1991-92 and 1992-93 with ulterior motives and with a view to extend undue benefit to the consumers, did not report the unauthorized erection of 5 PCC Pole/service line by a private agency, in a lane adjacent to M/s. Bombay Biscuit Factory in the area of Vill. Shahbad Daulatpur. The five PCC Poles/ service line was illegally erected for extension of DESU LV mains for theft of electricity by the residents of the area. Shri Rajiv Sapra being area inspection was well aware of the unauthorized erected poles/line but he failed to take up the matter with his superior officers for dismantling/removal of the aforesaid unauthorized erected PCC Poles/service line, which caused theft of electricity in the area and incurred heavy financial loss to the Undertaking by violating the instructions of office order No. CO-II/Comm. 26/86-87 dt. 6/10/86.

Thus, the said Shri Rajiv Sapra failed to maintain absolute integrity and showed lack of devotion to duty and acted in a manner unbecoming of a public servant by violating Rule-3 of CCS (Conduct) Rules, 1964 as applicable to DESU employees.

The statement of imputation of misconduct in support of the articles of charges, inter alia, reads as under:-

Since the connections being fed from the unauthorized poles/service lines were illegal, therefore, the zonal staff was required to take prompt action, in consultation with the higher authorities, for removal of the said unauthorized erected poles/line as per the direction of Joint Inspection dated 16/03/1992. But no prompt and proper action had been taken by Shri Sapra for removal of the unauthorized erected poles/line. From the sequence of the events, it is understood that Shri Sapra was well aware of the illegally erected PCC poles and service line, therefore, he should have taken no action on his own to remove the poles/line which were illegal.

From the above, it is quite evident that Shri Rajiv Sapra Inspector in utmost dereliction of duty on his part in connivance with the consumers failed to report the unauthorized erection of PCC Poles/line to his superior officers and did not take prompt and proper action for removal of the unauthorized poles/line, incurring heavy financial loss to the undertaking by violating the instructions of office order No. CO-II/Comm. 26/86-87/12 dt. 6/10/86.

2. The Inquiry Officer returned a finding that the respondent had come to know about the erection of unauthorized poles/service lines only after 24th March, 1992 by which time the Delhi Vidyut Board had already come to know of these poles on 16th March, 1992. The Inquiry Officer was of the view that there was possibility of the poles having been erected when the respondent was on medical leave and, therefore, he could not have come to know of the same. However, the Inquiry Officer declined to fully absolve the respondent of his responsibility on the ground that he ought to have informed his superior officers about the unauthorized poles/service lines, immediately after the joint inspection carried on 16th March, 1992. To this extent, the charge against the respondent was held to be substantiated.

3. Pursuant to the report of the Inquiry Officer, the Disciplinary Authority passed an order removing the respondent from service. In an appeal filed by the respondent, the Appellate Authority, considering the report of the Inquiry Officer, modified the penalty by converting it into that of reduction by three stages in his time-scale of pay for a period of three years with cumulative effect, with further stipulation that he will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments. The review against the order of the Appellate Authority have been rejected vide Resolution dated 28th April, 1999, a writ petition was filed by the respondent challenging the penalty imposed upon him vide impugned

order dated November 26, 2012. The learned Single Judge quashed the impugned orders and allowed the writ petition with costs amounting to Rs. 5,000/-. Being aggrieved from the said order, the appellant is before us by way of this appeal.

4. During the course of hearing, when we pointed out to the respondent that even assuming that he was not aware of the poles having been erected, during the period of his leave, he ought to have informed his superiors and taken action for removal of the poles immediately after joining duty on 20th March, 1992. Admittedly, the respondent had not taken any action either to inform his superiors or for removal of the aforesaid electric poles and lines till he received an official communication in this regard on 24th March, 1992 whereafter he had no option but to initiate action for removal of the poles by seeking Police aid for the purpose. In this regard, we also pointed out to the respondent that in terms of the office order dated 16th October, 1986, he ought to have taken action for removal of the aforesaid unauthorized poles and lines, soon after he had joined duty on 20th March, 1992. The respondent after giving a thoughtful consideration to the matter states that he would not seek exoneration of the charge need proved against him, but would seek modification of the penalty imposed upon him by converting into a minor penalty, considering the fact that no mala fide intention in the matter can be attributed to him.

5. In *B.C. Chaturvedi Vs. Union of India and others*, , Supreme Court, after considering a Constitution Bench decision in *State of Orissa Vs. Bidyabhusan Mohapatra*, and some other decisions, inter alia held as under:

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

In *Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another*, , the Apex Court while observing that a Court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, hold that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation its may make an exception in rare cases and impose appropriate

punishment with cogent reasons in support thereof. In the case before it, the court, noticing that the charge established against the appellant was not motivated by any ulterior consideration and at the most could be an act of negligence, substituted the penalty imposed upon him by punishment of withholding one increment stoppage at the efficiency bar and also directed that he would not be entitled to any back-wages for the period of suspension.

It would thus be seen that in appropriate cases, where the Court finds the punishment to be outrageously disproportionate to the charge proved against the delinquent, it can intervene in the matter and substitute the penalty imposed by the Disciplinary Authority, by an appropriate penalty. Considering the fact that neither the Inquiry Authority nor the Disciplinary Authority found any connivance between the appellant and the persons who had erected the unauthorized polls and installed unauthorized lines, there is no evidence of the polls and lines having been put up before the appellant proceeded on medical leave on 2.3.1992 and that there was time lag of only four days between the appellant joining duty after availing medical leaves and his receiving the official communication with respect to erection of polls and installation of unauthorized lines, we are of the considered view that the major penalty of reduction by three stages in the time scale of pay for a period of three years with cumulative effect would be wholly disproportionate to the charge held proved against the respondent.

The next question which arises for consideration is as to whether we should, after setting aside the major penalty imposed upon the respondent remit the matter back to the appropriate authority or we should ourselves pass an order substituting an appropriate penalty for the major penalty imposed upon the respondent. Since the Chairman of DVB was the Appellate Authority, the review petition filed by the respondent was considered and rejected by the Board itself. Therefore, if the matter is to be remitted back for imposing an appropriate minor penalty upon the respondent, such an exercise will necessarily have to be undertaken by the Board itself, which by its very nature is likely to take quite some time. Considering the facts and circumstances of the case, we substitute the penalty imposed upon the appellant, by minor penalty of withholding three increments, without cumulative effect.

The appeal stands disposed of accordingly. There shall be no orders as to costs.