
(2002) 05 DEL CK 0134
In the Delhi High Court
Case No : Civil Writ Petition No. 3370/97

Mr. J.L. Khanna

APPELLANT

Vs

Delhi Vidyut Board and Others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Citation : (2002) 99 DLT 782 : (2003) 3 SLJ 252

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Rajiv Awasthi, for the Appellant; Raj Birbal and B.C. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner has impugned the disciplinary proceedings, charge sheet/memo dated 12.7.1988 and the show cause notice dated 5.8.1997 on the ground that the person issuing the charge sheet and show cause notice was not competent to be the disciplinary authority for the petitioner since he was holding a current duty charge and additional charge respectively.

2. The petitioner was working as an Inspector in the Meter Testing Department with respondent No. 1 when a complaint was filed against him. A memo was issued to the petitioner on 12.7.1988 and thereafter departmental proceedings were initiated and Mr. S.N. Jha was appointed as an enquiry officer. The enquiry officer submitted the report dated 6.5.1996 finding the charge against the petitioner partly proved. The petitioner was served with a memorandum/ show cause notice dated 5.8.1997 as to why services of the petitioner should not be terminated by imposition of a major penalty and thereafter filed the present writ petition.

3. In terms of the order dated 21.8.1997 it was directed that the final decision may not be implemented till the next date. This interim order has been continued till date. On 8.5.2002 it was noted in the proceedings that the petitioner had

approached the Court at the stage of issuance of show cause notice by the disciplinary authority itself and in view thereof learned counsel of the petitioner confined his submissions only to the issue of the competency of the disciplinary authority to issue the charge sheet and show cause notice on the ground that the said disciplinary authority was holding only a current duty charge.

4. Learned counsel for the petitioner contended that the case of the petitioner was squarely covered by the judgment of the learned Single Judge of this Court in CW No. 1783/1989 DESU Engineers Association and Anr. v. Municipal Corporation of Delhi and Anr., decided on 29.5.1992. The issue of competency of an officer to initiate disciplinary proceedings who is holding current duty charge was considered in the said judgment. A reference was made in the said judgment to the Government of India instructions to the effect 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. The learned Single Judge took notice of the office order in question where it was mentioned that though the current duty charge was assigned to the Additional General Manager (Administration), the matter relating to exercise of statutory powers be put up to the General Manager direct till further orders. In view thereof it was held that the matter relating to exercise of statutory powers could not be exercised by the Additional General Manager on current duty charge which was also in conformity with the instructions of Government of India.

5. Learned counsel for the petitioner in view of the aforesaid judgment contended that the charge sheet dated 12.7.1998 issued by the Additional General Manager (A) could not have been so issued since the said officer was holding only a current duty charge. It is further contended that even the memorandum dated 5.8.1977 was issued by the officer not competent to act as the disciplinary authority and thus the complete disciplinary proceedings are initiated by officers who are not competent to do so. This was in view of the fact that the petitioner's appointing authority was the General Manager (E) and not the Additional General Manager.

6. Learned counsel for the petitioner contended that it is the same office order of 18.7.1988 which is in issue in the present petition which was considered in the case of DESU Engineers Association case (supra) and the said office order was in respect of the same officer. The said officer could not have exercised the statutory powers and the office order had to be put up to the General Manager. The said office order is as under:

"Shri A.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."

7. Learned senior counsel for the respondents on the other hand has referred to

the office order dated 8.12.1987 in terms whereof the Additional General Manager (A) was delegated the disciplinary powers by General Manager (E) to initiate disciplinary proceedings with powers to impose all penalties for which he was the appointing authority. It is thus contended that the persons holding the office of Additional General Manger (A) was fully competent to take all disciplinary proceedings. This delegation was made prior to the insurance of the charge sheet dated 12.7.1988 and it is thus contended that the delegation was prior to the initiation of the disciplinary proceedings. It was further contended that this was the material difference between the present case and the facts of the case of DESU Engineers Association case (supra) where the charge sheet had been issued on 18.9.1987 which is prior to the delegation of powers on 8.12.1987.

8. Learned senior counsel for the respondents also referred to the office order dated 30.6.1988 to the following effect :

"Delhi Electric Supply Committee vide item No. 115-B in its meeting held on 23.6.85 have approved the appointment of Sh. A.K. Chakraborti, FA & CAO to hold the additional charge of the post of AGM(A) w.e.f. 9.5.88, till Sh. R. Narayanaswami resumes his duties. This is in continuation of the office order No.F.1 (310)/A&G/NT/88/173 dated 4.5.1988."

9. It is thus contended that Shri A.K. Chakraborti was holding the additional charge of post of AGM (A) with effect from 9.5.1988 prior to the issuance of charge sheet and he was not holding the current duty charge.

10. Learned senior counsel for the respondents also contended that the office order dated 18.7.1988 which was also in issue in DESU Engineers Association case (supra) was issued after the charge sheet had been issued in the present case on 12.7.1988. It was thus contended that in view of the earlier delegation of powers vide office order dated 30.6.1988 and the concerned officer Mr. Chakrabarti holding an additional charge, the powers were so vested including in respect of an authority in initiate disciplinary proceedings at least prior to 18.7.1988 and thus charge sheet issued cannot be faulted on that account.

11. In nut shell the submission of the learned senior counsel for the respondents is that firstly there is no requirement of the charge sheet to be issued by the appointing authority or the disciplinary authority. Secondly, in any case the charge sheet has been issued on 12.7.1988 by Shri A.K. Chakraborti the then F.A. & C.A.O. who was holding the additional charge of AGM (A) in view of the clear delegation in favor of AGM (A) in terms of the office order dated 8.12.1987 and had powers to initiate disciplinary proceedings in pursuance to office order dated 30.6.1988 till the office order dated 18.7.1988 was issued. Thirdly, the memorandum/ show cause notice dated 5.8.1997 has been issued by Mr. Chaman Lal, Additional General Manager (A) who was competent to issue the show cause notice in view of delegation of powers on 8.12.1987. Lastly, the ratio of DESU Engineers Association case (supra) would not be applicable as stated

above since in that case the charge sheet was issued on 18.9.1987 prior to the delegation on 8.12.1987.

12. Learned senior counsel for the respondents relied upon the judgment of the Division Bench of this court in D.K. Puri v. Municipal Corporation of Delhi, 1996 (39) DRJ 66 where it was held that since the Additional General Manager was the disciplinary authority in the case of the petitioner therein and was also competent to impose minor penalty, initiation of disciplinary proceedings and framing and serving of charges upon the petitioner cannot be said to be wholly without jurisdiction and it was not the stage to interfere and quash the charge sheet.

13. Learned senior counsel for the respondents also relied upon the judgment of the Supreme court in Inspector General of Police and another Vs. Thavasiappan, , where it was held that the initiation of departmental proceedings and conducting of enquiry can be by an authority other than the authority competent to impose the proposed penalty.

14. I have heard the learned counsel for the parties.

15. As mentioned at the inception the issue is restricted to the competency of the disciplinary authority which issued the charge sheet and thereafter the authority which issued the show cause notice. It is apparent from the judgment in DESU Engineers Association case (supra) that a person holding a current duty charge cannot exercise the disciplinary authority. In fact the mater pertains to the same period of time and the officer concerned is also the same Shri A.K. Chakraborti. However, certain crucial dates differ between that case and the present case which have material bearing on the controversy in question.

16. The reading of the office order dated 8.12.1987 shows that the Additional General Manager (A) has been vested with authority to initiate disciplinary proceedings with powers to impose all penalties for which he is the appointing authority. In DESU Engineers Association case (supra) the charge sheet was issued on 18.9.1987 which was thus prior to the delegation of power on 8.12.1987. This is not the position in the present case where the charge sheet has been issued on 12.7.1988. This aspect has also to be appreciated keeping in mind the ratio of the Supreme Court in Inspector General of Police and Another case (supra) holding that the initiation of departmental proceedings and conducting enquiry can be by an authority other than the authority competent to impose the proposed penalty.

17. Shri A.K. Chakraborti was holding the post of F.A. and C.A.O. and since the than Additional General Manager (A) was on leave Shri A.K. Chakraborti was granted the additional charge of the post of Additional General Manager (A) vide office order dated 4.5.1988 issued with the approval of the General Manager (E). Not only this, it is apparent from the reading of office order dated 30.6.1988 that Shri A.K. Chakraborti was to hold the additional charge of the post and not the current duty charge. All this is occurred prior to the issuance of charge sheet in

the present case. It is also relevant to note that the office order dated 18.7.1988 was considered in DESU Engineers Association case (supra) and the reading of the said office order had a material bearing in that case. In my considered view a reading of the said office order clearly shows that the matters relating to exercise of statutory powers were to be put up to General Manager. This was not the position prior to that office order. The charge sheet was issued on 12.7.1988 which is prior to the said office order and thus the office order dated 18.7.1988 would not affect the powers vested in Mr. Chakrabarti prior to the said office order. A reading of the office order dated 4.5.1988 read with office order dated 30.6.1988 make it clear that Shri A.K. Chakrabarti was holding the post of Additional General Manager (A) in addition to his post as an additional charge and was thus, in my considered view, competent to take out disciplinary proceedings exercising powers in that capacity.

18. The show cause notice/ memorandum dated 5.8.1997 has been issued by the Additional General Manager (A) and as noted above the delegation of authority had been made on 8.12.1987 for taking disciplinary proceedings to the person holding the said charges. Thus show cause notice also cannot be faulted on the account.

19. In view of the aforesaid discussions, it is apparent that the authority issuing the charge sheet and the memorandum/ show cause notice were competent to issue the same.

20. The Petitioner approached the Court at the there should itself. The petitioner has departmental remedy against the order of disciplinary authority if he is so aggrieved and the occasion to exercise the same had not even arisen.

21. In view of the aforesaid. I find no merit in the writ petition and the same is dismissal leaving the parties to bear their own costs.

C.M.No. 6573/1997

Dismissed.

Interim orders stand vacated.