

(2003) 03 JH CK 0078
In the Jharkhand High Court
Case No : CWJC No. 1059 of 2000 (R)

Ram Chandra Prasad

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Damodar Valley Corporation Act, 1948 — Section 6
Damodar Valley Corporation Service (Conduct) Regulations, 1955 — Regulation 107, 96, 98

Citation : (2003) 2 JCR 225

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Debi Prasad and Lalit Kumar Lal, for the Appellant; M.M. Bannerjee and M.K. Roy, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—At the very outset, it was found that some important pages of the records of this Writ Petition especially Annexure-4- has been torn and therefore, the learned counsel for the petitioner filed a bound Paper Book of the Writ Application in Court beginning from Page 1 to 293. Let it be kept on record.

2. Heard Mr. Debt Prasad, learned Senior Advocate on behalf of the petitioner assisted by Mr. Lalit Kumar Lal and Mr. Dhananjay Kumar Dubey, Mr. M.M. Bannerjee appears on behalf of the respondents.

3. The Writ Petitioner in the instant case has challenged and prayed for quashing the order of punishment passed on 8.1.1997 (Annexure-17, page 161) whereby and whereunder the Secretary-cum-Disciplinary Authority (respondent No. 3) passed an order in the following terms :

"That he be reduced in rank from the present position of Superintending Engineer in the scale of Rs. 4,100-125-4850-150-5900 to Senior Divisional

Engineer and his pay should be fixed in the lower pay scale of Rs. 2200-75-2500-EB-100-3500-125-5000/-. If his present pay is more than the maximum of the reduced pay scale then his pay in the reduced scale will be fixed at maximum Rs. 5000/-. If it is less than Rs. 5000/-, it would be fixed at appropriate level which would not be less than the present pay he is drawing. He will continue in the reduced scale for three years and he will not be entitled to any stagnation benefit during this period.

After three years he will come back to his original rank of SE but will be placed below the junior-most SE (Mechanical) at that time. This order will come into effect from 1st February, 1997".

4. The petitioner has also challenged and has prayed for quashing of the order dated 24.9.1997 (Annexure-19, page 167) which is the order of the Chairman being the Appellate Authority whereby and whereunder the punishment imposed was modified to the extent that the petitioner was directed to continue in the reduced scale of Senior Divisional Engineer for two years instead of three years as was ordered by the Secretary-cum-Disciplinary Authority (respondent No. 3). On the other aspects, the appellate authority did not interfere and confirmed the order of the respondent No. 3 who had passed the order of punishment in the manner indicated above and as contained at Annexure-17.

5. The petitioner has further challenged and prayed for quashing of the order dated 28.2.2000 (Annexure-21, page 292) issued by the Additional Secretary which is a communication addressed to the petitioner informing him that pursuant to the judgment of the then Ranchi Bench of the Patna High Court passed on 17.11.1999 in CWJC No. 3405 of 1997 (R), (Annexure-1, page 59), the Corporation had carefully perused and considered the Revision Application filed by the petitioner and had confirmed the modified order of the appellate authority referred to above. The petitioner has also made a prayer at paragraph 1 (B) to the effect that the entire disciplinary proceedings be quashed by holding the same to be void and without jurisdiction.

6. It would be relevant to note that being aggrieved by the orders dated 8.1.1997 (Annexure 17) as also by the order dated 24.9.1997 (Annexure 19) and also against the first revisional order passed on 10.11.1997 (i.e. in the Revision that was filed by the petitioner against the order dated 24.9.1997), the petitioner had filed CWJC No. 3405 of 1997(R). It would also be relevant to take note of the fact that after the order was passed on 8.1.1997 (Annexure 17), punishing the petitioner in the manner quoted above, the petitioner initially filed an appeal as has already been stated above which was disposed off by reducing the period from three years to two years. Thereafter, a Service Revision under the Provisions of Regulation 107 of the D.V.C. Service Regulation was filed before the Corporation through its Chairman and that was disposed off on 10.11.1997 which became the subject matter of earlier Revision Application and which rejected the said Revision Application thereby confirming the order passed in Appeal.

7. Before dealing with the different facets of the arguments of Mr. Debi Prasad, learned Senior Advocate, it would be relevant to also take note of the fact that the above mentioned Writ Application was partly allowed and the impugned order passed in the Revisional Jurisdiction was quashed and the respondent No. 1 (i.e, the Corporation) was directed to consider the Revision filed by the petitioner and dispose off the same in accordance with law. It would be relevant therefore to quote paragraph 10 of the Judgment delivered in the aforementioned case and which clearly shows that it was only the order passed in Revision which was quashed. Paragraph 10 of the Judgment reads as follows :--

"10. The writ application is, therefore, allowed in part and the impugned order of penalty passed by the respondent No. 2 exercising revisional Jurisdiction is hereby quashed. The respondent No. 1, the Corporation, is hereby directed to consider the revision filed by the petitioner against the order passed by the respondent No. 2 in Service Appeal and dispose of the same in accordance with law as expeditiously as possible and preferably within a period of two months from the date of receipt of a copy of this order. It Is made clear that the petitioner shall have the liberty to approach the appropriate forum including this Court after disposal of the revision application by the respondent-Corporation."

8. Another important factor which needs to be taken note of is that the reason for quashing the Revisional Order was because the Chairman of the Corporation, instead of placing the Revision Application before the Corporation disposed off the same himself and therefore it was evident that the Chairman had disposed off the appeal as if he was the appellate authority without taking into consideration that even the appellate order (Annexure 19) was also passed by the Chairman himself. In that background, in the earlier Writ Applications, the High Court held that the Revisional Order was prima facie without jurisdiction. Consequently, the learned counsel who was appearing for the respondents before the 1st Writ Court had submitted (vide paragraph 8 of the Judgment) that the Revision Application, should have been disposed off by the Corporation. Thereafter, the present Revisional Order has been passed on 28.2.2000 by Annexure-21 which is now sought to be impugned in this Writ Application whereby and whereunder the Corporation under the signature of its Additional Secretary has informed the petitioner that the Corporation has confirmed the modified order of the Appellate Authority.

9. Another important factor to be taken note of is that being aggrieved by the Judgment dated 17.11.1999 referred to above (i.e. Annexure-1), the respondents had filed L.P.A. No. 545 of 1999(R) which, after some arguments, was dismissed as withdrawn (vide Annexure-22, page-293).

10. The reason why the aforementioned facts, historically have been taken note of is in order to repel the contention of Mr. M.M. Bannerjee, learned counsel for the respondent who has taken a preliminary objection to the maintainability of this Writ Application. He has submitted that all the points which have now been argued were already dealt with and taken into consideration in the earlier Writ

Application and therefore the same points should not be allowed to be argued in a second Writ Application all over again. This Court has carefully perused the judgment dated 17.11.1999 (Annexure-1) and is of the considered view that In the earlier Writ Application only the Revisional Order had been quashed. However, although the said Court did not quash Annexure-17 and 19 hereto, the arguments of Mr. Debi Prasad were never rejected by reason of the said Judgment. The Writ Application was partly allowed on a very limited issue and the Corporation was directed to dispose off the Revision and thereafter, the Corporation has now passed the Revisional Order and therefore, in the opinion of this Court, the entire matter now lies open for the petitioner and that too specially because specific liberty was given in the last line of paragraph 10 of the Judgment dated 17.11.1999 to the effect that the petitioner shall have the liberty to approach the appropriate Forum including this Court after disposal of the Revision Application by the respondent Corporation. That has now been disposed off by Annexure-21 vide . Order dated 28.2.2000 forming one of the subject matters of challenge before this Court in this Writ Application. Therefore, the argument of Mr. M.M. Bannerjee to the effect that this Writ Application is not maintainable is rejected,

11. The service history/details of the petitioner need not be unnecessarily repeated because that has already been stated by the petitioner not only in the Writ Application but also extensively dealt with by the High Court while passing the earlier Judgment. However, what is relevant to be taken note of is that while the petitioner was working as a Superintending Engineer (Mechanical) at the Chandrapura Thermal Power Station of the Corporation, a charge-sheet was served upon him being charge-sheet No. 864, dated 1.3.1995. The aforementioned charge-sheet, according to the petitioner was in relation to an offence alleged to have been committed by the petitioner five years ago and contained five charges. By reason of the said charge-sheet, the petitioner was asked to file his cause and explain as to why it should not be held that he was guilty. After receipt of the charge-sheet, the petitioner filed his cause on or about 14.3.1995 whereafter, an inquiry was conducted and finally, the inquiry drew to its close upon submission of tile report of the Enquiry Officer on 11.1.1996 vide Annexure 12.

The Enquiry Officer, in his report gave the following findings :--

CHARGE FINDINGS

Article of charge- 1

While functioning as SE (M), DTPS "B", during the year 1991-92, you have shown undue favour to M/s. AICAM by recommending and getting the work of "attending day to day teething trouble" awarded to M/s. AICAM at a very exorbitant rate of Rs. 2.89.000/- per month vide W.O. No. BT/BCON/3MI/3/2822 dated 23.12.1991. However, the Ownkar Enterprises was executing the same work @ Rs. 3,200/- per day. As a result, the Corporation has to suffer huge

financial loss on this account.

Thus the allegation of Charge- 1 against Shri R.C. Prasad, S.E. (M), holds good though not fully but to a major extent.

Article of charge-2

While functioning in the above capacity you resorted to limited tendering, without approval of the competent authority, by Inviting quotations for the above named work. As the estimated value of the work exceeded Rs. 8 lakhs, this act on your part tantamounts to contravention of the circular No. S/CE/Works General/88-16, February 9th. 1990 of the Corporation.

Considering all these facts stated here in above, the charged officer Shri R.C. Prasad cannot be made solely responsible for his actions of limited tendering in violation of standing Corporation's Circular in this respect. He acted very fast bypassing normal procedure and rules to get the work started at the shortest possible time probably to meet with the urgency as certified in the noting dated 2.11.1991 of the Chief engineer- I. BTPS (M-27).

Article of charge -3

You allowed M/s. AICAM to undertake the execution of the work of "attending day to day teething trouble" on 6.11.1991, much before according of technical sanction by the CE- 1, on 21. 12.1991

It is noted from management exhibit (M-10 & M-I 1) that the work started from 6.1 1.1991. But from Exhibit M-6 (Work Order upon M/s. AICAM) it is seen that the date of commencement of work has been mentioned to be reckoned from- 12.11.1991. The anomaly in the date of commencement is not clear. Whatever the reason may be, there is no scope of doubt that the work started much earlier than the date of accordance of technical sanction and the finance concurrence (M-26). It is clear departure from norm and practice. The charged officer Shri R.C. Prasad, being in charge of the area of work must have full knowledge of commencement of the work and without any order or permission either from his superior or from him it is not possible for contractor to start work. But there is lack of documentary evidence to prove that the charged officer. Shri R.O. Prasad, gave the order or permission to M/s. AICAM to start the work from 6.11.1991/12.11.1991 and thus gets benefit of doubt.

Article of charge-4

You have received and considered the offers of the M/s. Brothers Erectors and M/s. G.H. Erectors in response to your quotation notice bearing No. BT/BCON/3MI/3-2611 dated 6.11.1991 even without obtaining from them prescribed documents like (a) Credentials for past performance (b) Labour Licence Certificate (c) I.T. Clearance Certificate.

It is revealed from Exhibit M-13 (Quotation Notice) that the charged officer while inviting quotation from the 3 firms (namely M/s. A1CAM, M/s. Brother Erectors

and M/s. G.H. Erectors) did not ask for essential documents like credentials, labour licence, Income Tax Clearance Certificate etc. required for finalization of any tender/ contract. This is a serious procedural lapse on his part.

The quotations were opened without the presence of any Accounts Official. This is also a procedural lapse.

The quotation notice itself was defective as there was no mention to submit credentials, labour licence, I.T. Clearance Certificate etc. alongwith the quotation,

M/s. Brother Erectors and M/s. G.H. Electors were not the running contractors engaged by DVC (Ref. M-16 and M-17). They, it appears were the sub-contractors to M/s. A1CAM (Ref. D-7 and D-8). Hence it should have been proper to invite the limited tenders from firms/contractors like M/s. AICAM, M/s. ABL, M/s. Burn & Standards etc. who were the running contractors of DVC and had the requisite expertise. This was also suggested by the Controller of Accounts in his observation (M-27).

Though M/s. Brother Erectors and M/s. G.H. Electors failed to complete and therefore It did not become necessary to get the above required document from them to finalise the tender, but the available documents prove that the charged officer for some reason or other did not resort to actual competitive bidding. He restricted his limited tender within three parties only, out of which M/s. Brother Erectors & M/s. G.H. Electors were the sub- contractors of the third party M/s. AICAM (Ref. D-7 and D-8) and made a gross omission by not asking for credentials, labour licence. Income Tax Clearance Certificate etc. while Inviting the Quotation Notice which is a statutory requirement to finalise any tender.

Article of charge-5

You accepted the offer of M/s. AICAM without obtaining Earnest Money and Security deposit in violation of Rule 5 and Rule 10 of T-3 Form in respect of executing the work of "attending day to day teething trouble" awarded to M/s. AICAM vide W.O. No. BT/BCON/3MI/2822 dated 23.12.1991

The contention of the charged officer in defence of his action that the placement of the said order of M/s. AICAM was an extension of L.O.I, placed on them for erection of Boiler No. 2 & 3 (Ref. M-27 and D-4) is not tenable, because the two works were completely different in nature. A quotation notice was therefore invited separately for this work to attend the post commissioning day-to-day teething trouble in the Ash System of Unit No. 2. A new Agreement in T-3 Form was made for execution of this work (M- 18). This work therefore can not be clubbed together and treated as an extension of the earlier L.O.I, placed on them. Had it been so there was no necessity to invite fresh quotation and execution of new Agreement. It is not clear why the Finance also overlooked this aspect while giving their observation on the Comparative Statement (M-27). The contention of the charged officer that the order was placed on M/s. AICAM in line with the then Chief Engr. (PPC), DVC, Calcutta, letters (Ref. D-27 and D-28) also

does not hold good and Justify his action.

It is a violation of rule and an omission committed by the charged officer.

Article of charge-6

You tried to mislead the then VO, BTPS. by giving false signed statement dated 6.5.1999, that all the three firms which submitted their quotation are running contractors inside the Plant area, whereas two of the contractors have not executed any work at BTPS, under DVC.

The management Exhibit M-19 contain the above charge.

That the two firms M/s. Brother Erectors and M/s. G.H. Erectors to whom quotation notice was issued (Ref. M-13) are not the running contractors of DVC is proved by the written statement given by the Controller of Accounts. BTBPS "B1 Project and Addl. Chief Accounts Officer, BTPS (Ref. M-16 and M-17) to the Vigilance Officer, BTPS. It appears that these two firms were the local sub-contractors of M/s. AICAM (Ref. D-7 and D-8). Therefore the signed statement dated 6.5.1992 given to the then Vigilance Officer, BTPS is not correct so far as certifying M/s. Brother Erectors and M/s. G.H. Erectors as running contractors of DVC,

Article of charge-7

After expiry of the contract awarded to M/s. AICAM on 11.2.1992 you again resorted to limited tendering without obtaining prior consent of the Finance / Controller of Accounts. You continued the award of the subject work in favour of M/s. AICAM vide your letter No. BT/BCON/3MI/3/-3173 dated 30.3.1992, Ignoring the advice of Controller of Accounts, dated 24.2.1992.

It can therefore be reasonably presumed that the charged officer acted with the consent of Chief Engr. I So that the work entrusted to M/s. AICAM can be continued uninterrupted since as per statement of Chief Engr. -I mentioned above (D-23) no alternative arrangement could be made by DVC for the maintenance of the Ash System. As such the charged officer Shri R.C. Prasad can not be held responsible in this case for violation of normal tender procedure as per Corporation's rule.

12. Mr. Debi Prasad, learned Senior Advocate, has stated that the entire proceedings has not only been dealt with in an extremely slipshod manner but the very initiation of the proceedings at the instance of the Secretary, was wholly without jurisdiction and therefore, the same must be quashed.

13. Mr. Debi Prasad in fact confined his arguments only to the jurisdiction of the Secretary and submits that the entire exercise was totally non est, vitiated and void on account of the fact that the said Secretary had been totally and completely divested of all the powers to initiate any action against the petitioner. His second limb of argument is that the respondent corporation, while disposing off the Revision Application, had not even bothered to deal with this aspect

obviously because, they had no answer and therefore, the Corporation had cleverly avoided even to touch this issue by not giving a single reason although specific assertion was made by the Writ Petitioner in the Revisional Application itself wherein it had been stated and submitted that the Secretary suffered from want of jurisdiction. Mr. Debi Prasad, learned Senior Advocate has further submitted that the Secretary (respondent No. 3) had no jurisdiction at all nor did he have the competence to issue the charge-sheet. He drew attention of this Court to Annexure 14 at page 147. From a perusal of Annexure 14 (at page 147), it appears that it is an Office Memorandum which is in the nature of a Circular informing that the Corporation had delegated all administrative and financial powers to the General Manager and the Secretary except cases of disciplinary action where dismissal was proposed in respect of an Officer whose minimum pay scale exceeded Rs. 3,000/-. This Office Memorandum is dated 20.5.1988. The aforementioned Office Memorandum was withdrawn and superseded by a communication dated 8.12.1997, issued from the Office of the Corporation under the signature of its Additional Secretary by Annexure-28 and the relevant portion of the said document which is at page 377 reads as follows :--

"7. The previous order No. EV DA -3/89 (Part) 94- 95/017. dated 12.3.1996 on the subject is hereby superseded. This order also superseded Clause 1(x), 1(xi) and 2 of OM No. EV/DA- 3/811-88/1153 dated 20.5.1988 and Clause 2(a), (b), 8 of OMEV/DA- 381-88(N) 116 dated 18.3.1994."

14. Thus, from a perusal of the aforesaid clause of the letter dated 8.12.1997, it is clear that the Office Memorandum dated 20.5.1988 (Annexure-14) and especially Clause 1(x), 1(xi) and 2 thereof was superseded. In other words, upon a plain reading of Annexure 14, it is evident that the secretary had all the powers but he did not have the power in relation to dealing with cases of disciplinary action where dismissal was proposed. This divestment of power of the Secretary came into effect on 20.5.1988 and continued till the date of issuance of Annexure 28 i.e. till 8.12.1997. In spite of the aforementioned fact that the Secretary had no power to initiate action in relation to the aforesaid period i.e. 20.5.1988 to 8.12.1997 yet, on 1.3.1995, the Secretary issued the charge-sheet and upon conclusion of the proceedings, he proposed to impose the punishments as specified in Clause (iv), (vii) of Regulation 96 of the D.V.C. Service Regulations. The proposal of the Secretary reads as follows :

"In view of my comments as noted above I propose to impose on you any of the penalties as specified in Clause (iv) to (vii) of Regulation 96 of DVC Service Regulations."

Now, Regulation 96(vii) relates to dismissal from service of the Corporation. Clearly, therefore, the Secretary exceeded his jurisdiction. He considered the matter relating to proposal of punishment under Regulation 96 which included dismissal from service. The Secretary did not have this power in view of the Office Memorandum dated 20.5.1988 (Annexure 14) which was alive, in force

and in existence till 8.12.1997 divesting him, amongst others, from this specific power. Apart from the aforesaid, it would also be relevant to note that the Secretary did not have the aforementioned power till 8.12.1997 as has already been stated above. However, at the risk of repetition, it is reiterated that the charge-sheet was issued on 1.3.1995, the enquiry was concluded on 12.5.1995 (page 130), and the Report of the enquiry officer was submitted on 11.9.1996 (page 130). The second show-cause was given by the Secretary on 2.4.1996 (page 142) and the order of punishment was passed by the secretary on 8.1.1997 (page 155).....: all acts resorted to and taken at the level of the Secretary between the period 20.5.1988 to 8.12.1997 when he prima facie did not have this power at all.

15. Another very important fact which must be taken note of is that the Secretary seems to have taken all actions when he was himself in an "officiating" and "extended" status. Interestingly, the Secretary who issued the charge-sheet (page 73) is one Mr. D.K. Mukhopadhaya. He also appointed the Enquiry Officer (page 283). This Mr. D.K. Mukhopadhaya was allowed to officiate as the secretary in addition to his own duties with effect from 16.11.1993 as is evident from Annexure 23 at page 363. The same officer namely D.K. Mukhopadhaya actually was going to superannuate on 30.4.1994 but, his services were extended by one more year or till appointment of a permanent Secretary by Office Order dated 29.4.1994 (vide Annexure 24 at page 364). In other words, he got an extension before superannuation i.e. on 29.4.1994. From a perusal of the aforementioned two documents it is therefore apparent that Mr. D.K. Mukhopadhaya was functioning in an officiating status at the time when he issued the charge-sheet. In this context, it is relevant to mention that under the D.V.C. Act, the Secretary of the Corporation is supposed to be the Chief Executive Officer of the Corporation. The Secretary of the Corporation, as per Regulation 6(1), has to be appointed by the Central Government. The two documents referred to above, i.e. Annexures 23 and 24 show that Mr. D.K. Mukhopadhaya was merely allowed to officiate as a Secretary and he was not a full fledged Secretary duly appointed by the Central Government as contemplated u/s 6 of the D.V.C. Act. That being the position, he had absolutely no jurisdiction to issue the charge-sheet at all because not only was he not a regular Secretary but also because of the fact that he lacked the inherent jurisdiction to take action in these matters as explained above.

16. Mr. M.M. Bannerjee, learned counsel for the respondents could not meet the aforementioned argument of Mr. Debi Prasad. The aforementioned argument cuts at the root of the case. The Revisional Authority, by reason of Annexure 1 (i.e. the earlier Judgment) was required by a Judicial order to dispose off the matter in accordance with law. The aforementioned argument was specifically asserted by the Writ Petitioner as will be evident from pages 177, 190, 191 and 192 of the brief. Page 177 reads as follows :

"(B) That the Honourable appellate authority has not taken into consideration

that the disciplinary authority has no authority to give proposal for dismissal. The moment he has made proposal for dismissal he ceases to be the disciplinary authority and the order passed by him awarding punishment is illegal and contrary to the service regulation of the Corporation and the circulars issued from time to time. Moreover, the Secretary had no power for punishment to an officer whose pay is more than 3000/- (three thousand) i.e. class A officers".

Page 190 to 192 reads as follows :--

"1. At the outset, I beg to submit and elaborate the point-B of the ground of Revision Petition for better appreciation of legal aspects and facts involved in this case as hereunder :--

(i) With regard to the Order authorizing the learned Secretary, DVC, to act as Disciplinary Authority of Superintending Engineer (Le. of mine in particular, I submit that the Office Memorandum No. EB/DA-3/89 (Part)/94-95/023 dated 27.2.1995 was not issued by the Corporation, rather, it has been issued by the competent authority and as such the learned Secretary could not have either issued by the charge-sheet under Regulation 98(2)(a) of DVC, S.R. or appointed Enquiry Officer under Regulation 98(2)(c)(d).

(ii) That the above office Memorandum even No. 023 dated 27.2.1995 (Annexure 1) was superseded by office Memorandum No. EB/DA-3/89 (Part) 94-95/17 dated 12.3.1996 under its serial No. 8. A bare perusal of both the said order shall lead to the conclusion that what-ever powers delegated to the learned Secretary in respect of Superintending Engineer (Le. mine) vide Office memo even No. 023 dated 27.2.1995 were superseded.

(iii) The Order imposing penalty was passed by the learned Secretary, DVC on 8.1.1997 vide Order No. Compt./ 01/92 (Pt.-V)/12 dated 8.1.1997 despite the fact that his so called power was no longer in existence on that date. Thus the said order imposing the penalty is illegal and power was no longer in existence on that date. Thus the said order imposing the penalty is illegal without jurisdiction and is a nullity.

17. None of these points have been dealt with by the Revisional Authority. This Court therefore has no option but to draw an adverse inference and holds that the final order issued under the signature of the Secretary on 28.2.2000 (Annexure 21) has been passed in such a manner so as to deliberately and willfully avoid answering the aforesaid points of law raised by the petitioner because the respondents did not seem to have any answers to these points.

18. Besides the aforesaid point of law, the petitioner had also raised points in relation to irregularities committed by the Enquiry Officer. These are to be found In the elaboration of grounds taken in the Revision Application at Page-192. These have also not been touched by the Revisional Authority.

19. Apart from the aforesaid, the above mentioned points of law are mentioned in various paragraphs of the Writ Application. For example, at paragraph 31, the

petitioner has specifically stated that in view of Office memorandum No. EV/DA-3/81-88/153 dated 20.5.1988 read with Explanation of Clause 2 of Regulation 98 of the Service Regulation of D.V.C. the respondent No. 3 had no jurisdiction to act as disciplinary authority of the petitioner as he was neither his appointing authority nor was he vested with any such power to act as a disciplinary authority in the matter of Superintending Engineers for awarding any punishment far less the punishment of dismissal from the service.

20. In reply to the aforesaid, the specific point asserted by the petitioner to the effect that the respondent No. 3 had no jurisdiction nor was he vested with any such power, all that the respondents have stated is at paragraph 59 of the Counter affidavit which reads as follows :

"59. That with regard to the statement made in paragraph 31 of the writ application it is humbly stated and submitted that the point raised in this paragraph is useless since the Secretary, DVC is fully empowered to impose any penalty as per service Regulations and power conferred to him as per circular mentioned in the previous paragraph."

21. Similarly, at paragraph 32 and 33 of the Writ Application, the petitioner has specifically stated that by Office Memorandum dated 18.3.1994 (i.e. Annexure 15), it was only the Chairman of the Corporation who acts as the appointing authority as well as disciplinary authority of Officers up to the rank of Superintending Engineer (the petitioner being an Officer of Group A) and yet, the respondents in their reply given at paragraph 60 have merely repeated that power was delegated to the Secretary to take disciplinary action as per Circular annexed to the petition and that the D.V.C. was fully empowered. This is to be found at paragraph 60 which reads as follows :

"60. With reference to the statement made In paragraph 32 and 33 of the Writ Application under reply it is humbly stated and submitted that as already mentioned earlier the power was delegated to the Secretary to take disciplinary action as per the circular annexed by the petitioner which cannot be a matter of challenge since DVC is fully empowered to authorize the Secretary to take such action."

22. Similarly, at paragraph 14 of the reply filed by the petitioner to the Counter Affidavit it has been stated specifically that the Secretary was not competent and the relevant portion of that paragraph are quoted below :--

"14. That with regard to submission made in para 24 to 29 of the counter affidavit, it is stated that the same are misconceived and misleading. Clause 1(x) and 1(xi) read with Clause 2 of O.M. dated 20.5.1988 (Annexure 14) issued by the order of Corporation and remained in force till 8.12.1997 are very much relevant for showing that the Secretary, D.V.C. was neither the appointing authority nor empowered as competent authority for taking disciplinary action during relevant time against the petitioner rather he was specifically prohibited from taking any such action against the petitioner particularly in view of the

punishment proposed. The aforesaid O.M. dated 20.5.1988 remained in force continuously during the relevant period and the same was superseded by the order of Corporation only on 8.12.1997 by Clause 7 of O.M. No. EW/DA-3181-93/076 dated 8.12.1997."

23. No reply has been filed by the respondents to the aforesaid paragraph. Additionally, at paragraph 39 of the Writ Application, the petitioner has stated that on the date of punishment order viz. the Memorandum dated 27.2.1995 was no longer in force. In this context, it is relevant to mention that the Memorandum dated 27.2.1995 is contained at Annexure-16 of the writ application. That office memorandum lays down that the Corporation authorized the officer in Column-4 of the Schedule thereto to exercise administrative power detailed in Column-2. Clause IV relates to reduction to a lower Class or post or to a lower pay scale in relation to various employees of different categories and so far as the petitioner is concerned, he being an officer of the Rank of Superintending Engineer falls under Group A mentioned therein. The officer empowered to exercise Administrative power so far as the Group A is concerned, has been shown as the Secretary. This power that was given to the Secretary on 27.2.1995 was however taken away by Annexure 18 which is the office Memorandum dated 12.3.1996 and the relevant portion is at page 166 which shows that the power given to the secretary by Office Memorandum dated 27.2.1995 will be regarded to have been superseded by the said order. In other words, on 12.3.1996, the Secretary was not competent. However, an argument was made that at least on 12.3.1996, the Secretary had the power. But it is relevant to mention that in the instant case, the Secretary who issued the charge-sheet and appointed the Enquiry Officer was not competent, he being in an "officiating, Ad hoc status and therefore he could not have been said to have been a regularly appointed Secretary of the Corporation at that stage.

24. Thus from the aforesaid discussion, it is, therefore evident that the initiation of the proceedings by the charge-sheet issued by an Officiating and Ad hoc Secretary was wholly without jurisdiction. The respondents had the option to rectify the mistake because these points were taken specifically and asserted even before the Revisional Authority. The Revisional Authority has not even bothered to touch these aspects. Apart from the aforesaid, Mr. Debi Prasad has further argued that in a similar matter, the Chairman of the Corporation had himself set aside the orders passed by an incompetent authority and in support thereof, the learned counsel has relied upon Annexure-27 (page 367). According to Mr. Debi Prasad, one Manoj Kumar Thakur was also proceeded against by a similar Secretary who had not been appointed by the Central Government and accordingly, the Chairman himself held that the order had not been passed by the appropriate authority and therefore, the order of punishment dated 28.6.2000 was cancelled by him. Mr. Debi Prasad therefore argued that what is sauce for the goose is also sauce for the gander and that there should not have been a different treatment in so far as this petitioner is concerned.

25. There is sufficient force in what Mr. Debi Prasad has argued and these could not be met by the learned counsel for the respondents. In that view of the matter, it is held that the entire departmental proceeding was wholly illegal and therefore totally non est and vitiated in the eyes of law.

Accordingly, the Writ Petition is allowed, the proceedings, including the impugned orders are hereby quashed.

The respondents, if they so like, may initiate fresh proceedings in accordance with law.