

Rakesh Dhingra vs.national Scheduled Castes Finance & Development Corporation and Anr.

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Court : Delhi

Decided On : Dec-19-2016

Appellant : Rakesh Dhingra

Respondent : National Scheduled Castes Finance & Development Corporation and Anr.

Advocate for Def. : Mr. Jagat Singh

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P. (C) No.2177/1996
Reserved on:

7. h December, 2016 Pronounced on:

19. h December, 2016 RAKESH DHINGRA

... Petitioner

in person.

... Petitioner

Through: versus NATIONAL SCHEDULED CASTES FINANCE &
DEVELOPMENT CORPORATION AND ANR.

... RESPONDENTS

Through: Mr. Jagat Singh, Advocate for R-1. CORAM: HONBLE MR. JUSTICE VALMIKI J. MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. By this writ petition filed under Article 226 of the Constitution of India the petitioner impugns the order of the Disciplinary Authority dated 14.12.1994 imposing the penalty of removal from services. The petitioner was an employee with the respondent No.1/National Scheduled Castes Finance and Development Corporation/employer.

... Petitioner

also impugns the order dated 24.3.1995 passed by the Appellate Authority dismissing the appeal of the petitioner against the order of the Disciplinary Authority dated 14.12.1994.

... Petitioner

also seeks quashing of the Enquiry Report dated W.P. (C) No.2177/1996 Page 1 of 23 26.5.1994 pursuant to which orders were passed by the Disciplinary Authority and the Appellate Authority. Certain other reliefs are also claimed in this writ petition, but, the writ petition has been argued only for quashing the aforesaid decisions of the departmental authorities.

2. The facts of the case are that the petitioner was issued a Charge Sheet dated 6.9.1993 containing a total of six Articles of Charges. These six Articles of Charges read as under:-

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI RAKESH DHINGRA, COMPANY SECRETARY. ARTICLE-I . That the said Shri Rakesh Dhingra intentionally withheld a copy of his graduation (B.Com.) degree at the time of his appointment in NSFDC and thereby claimed service experience of almost two years for working as an Accounts Trainee with M/s Aggrawal Bansal & Associates, Jhandewalan Market, New Delhi during the period 15.7.76 to 25.5.1978, whereas he had completed his graduation only in the year 1977. ARTICLE-II That the said Shri Rakesh Dhingra submitted an experience certificate at the time of his appointment in NSFDC for having worked as an Accountant from 29.6.78 to 31.1.80 with a firm M/s Moon Enterprises whereas enquiries reveal that

the said firm was not in existence at the stated time and place. ARTICLE-III That the said Shri Rakesh Dhingra defied the lawful and reasonable order of his superior by not complying with the instructions issued to him vide Order No.NSFDC/21/89-Pers. Dated 6.8.93 whereby he was placed under suspension w.e.f. 6.8.93 and advised to hand over all the files/documents key(s) of almirah(s) etc. under his custody to Shri Devanand, Assistant Manager (Vigilance) immediately. W.P. (C) No.2177/1996 Page 2 of 23 ARTICLE-IV That the said Shri Rakesh Dhingra sent certain information and representations about restoration of his designation as Company Secretary-cum-Finance Manager, sanction of dual charge allowance to him; complaint alleging wrongful appointment of Dr. S.P.Ram in the Corporation; recording of his ACR as Outstanding by Ex-GM(Finance); alleged denial of opportunity to him for appointment to the post of DGM (Finance) and finally, his appeal against the suspension order, directly to the Board of Directors without any general or special order of the Competent Authority or routing the same through the Competent Authority. ARTICLE -V That the said Shri Rakesh Dhingra unauthorisedly enclosed a copy of an agenda note sent to him for submission before the Board of Directors with his Writ Petition filed against the Corporation and also quoted verbatim from a strictly confidential letter from the CMD addressed to the Joint Secretary (SCD), Ministry of Welfare, Govt. of India in his writ petition. ARTICLE-VI That the said Shri Rakesh Dhingra did not disclose at any stage either at the time of his appointment in the Corporation or even after his induction, the fact that there was a disciplinary case pending against him in his previous organization i.e. Pradeshia Industrial and Investment Corporation of U.P. Ltd. (PICUP) and the proceedings in the case were yet to be finalized. Shri Rakesh Dhingra by his above acts, furnished false information/certificate regarding his previous service, willfully disobeyed a lawful and reasonable order of his superior, unauthorisedly communicated official documents and information and suppressed material facts at the time of his appointment in NSFDC, thereby contravening Rule 5(4), 5(6), 5(20) and 11 of NSFDC Conduct, Discipline and Appeal Rules, 1990. 3. The aforesaid Articles of Charges were supported by imputation of facts with respect to the stated misconduct contained in the Articles of Charges. Enquiry Officer was appointed to enquire into the W.P. (C) No.2177/1996 Page 3 of 23 charges against the petitioner vide letter of

respondent No.1/employer dated 6.9.1993. The Enquiry Officer held proceedings on various dates as under:-

"S. No. INQUIRY DATES REMARKS

1	29.12.1993	2.
3.	4.	
5.	6.	
7.	8.	
9.	11.01.1994	09.02.1994 18.02.1994 25.02.1994 02.03.1994 04.03.1994 08.03.1994 15.03.1994
10.		
11.		
12.	17.03.1994 21.03.1994 25.03.1994	13. 29.03.1994 14. 04.04.1994 15. 08.04.1994
16.	21.04.1994	to referred Preliminary hearing was stayed on account of the objection raised by the CO on the appointment of IO. Matter was the Disciplinary Authority. CO attended the proceedings till end and received the DOS. CO attended the proceedings but left the inquiry without signing the DOS. CO not attended the proceedings. CO visited office, made entry in the Visitors Register but not attended the proceedings. CO not attended the proceedings. CO came to office but not attended the proceedings CO attended the proceedings but left the inquiry mid-way. CO did not attend the proceedings. Proceeding was adjourned to enable CO to appear and submit his defence. CO did not attend the proceedings. CO did not attend the proceedings. CO did not attend the proceedings but sent Medical Certificate for 2 days received on 28.3.94 at 4.30 p.m. A telegram was received from the CO informing his inability to attend the inquiry due to his illness. Hence the inquiry was suspended on that day. CO did not attend the inquiry. Last opportunity was extended to the CO to be present on 08.04.1994. CO did not attend the proceedings but sent Medical Certificate after inquiry time. CO not attended the proceedings. Sent a letter claiming leave of absence on medical grounds. W.P. (C) No.2177/1996
17.	06.05.1994	18. 10.05.1994
CO	did not attend the inquiry nor sent any communication.	CO did not attend the inquiry nor sent any communication.

4. It is seen from the aforesaid dates of proceedings that the petitioner regularly sought adjournment to delay the proceedings and ultimately failed to appear, whereby he was proceeded ex-parte. The department led evidence and proved various documents which were exhibited as Ex. S-1 to Ex. S-44 totaling to 83 pages.

5. Before I refer to the findings and conclusions of the Enquiry Officer, it is relevant to state that a Domestic Tribunal is not bound by the strict rules of the Evidence Act. Also, the Domestic Tribunal decides the case on the principle of preponderance of probability. Once two views are possible, and the departmental authority takes one possible and plausible view, this Court is not entitled to interfere with the findings and conclusions of the departmental authorities by substituting its view for that of the departmental authorities. This aspect becomes all the more relevant when the department leads evidence but the charged officer has failed to lead any evidence.

6. At the outset, it is relevant to note that during the course of hearing in this writ petition, repeatedly it was put to the petitioner, that in W.P. (C) No.2177/1996 Page 5 of 23 would be advisable for the petitioner to agree to have the ex-parte proceedings set aside and the petitioner to lead evidence before the departmental authorities in his defence, and with respect to which aspect counsel for respondent No.1/employer was inclined to take instructions, however, the petitioner insisted that the writ petition be decided as it is on merits on the basis of record. The effect of this is that this Court has to decide the writ petition on the basis of the record and evidence before the Enquiry Officer. Once, before the Enquiry Officer petitioner has failed to lead evidence by remaining ex-parte, this Court cannot allow while hearing a writ petition challenging the orders of the departmental authorities, the petitioner to refer to documents and evidence which was not led before the Enquiry Officer and which evidence is therefore not a part of the proceedings/file of the Enquiry Officer. It is not permissible for the petitioner/charged officer to contend and argue that he can remain ex-parte in the enquiry proceedings yet treat the writ petition as original proceedings whereby evidence can be led to disprove the charges against the petitioner/charged officer. Accordingly, I have disallowed the petitioner to refer to any evidence which is

beyond the record of the Enquiry Officer except on one aspect of inherent lack of jurisdiction as regards the disciplinary proceedings wherein I have taken the necessary documents filed by both the parties before this Court so as to determine this issue on merits. W.P. (C) No.2177/1996 Page 6 of 23 7. This Court would now seek to refer to the tactics and strategy adopted by the petitioner before the Enquiry Officer to delay the proceedings and these aspects are noted by the Enquiry Officer in paragraphs 5.1 to 5.12 of the Enquiry Report dated 26.5.1994 and which paras read as under:-

"5.1 The CO appeared before the IO on 29.12.1993 for preliminary hearing. To begin with, he questioned my appointment as the Inquiry Officer and in that regard submitted letter No.: SP/RD/ dated 27.12.92 (CF :

10. . Therefore no inquiry was conducted on 29.12.93 and the matter was referred to the Disciplinary Authority for a decision (CF :

112. A). The Disciplinary Authority vide letter No. NSFDC/GM(P)/ENq/93/07/U-1419 dated 29.12.1993 (CF :

115. rejected the reason on which the CO objected to the appointment of IO and advised him to participate in the proceedings. Later he attended the hearing of inquiry intermittently. 5.2 In the second hearing on 11.1.1994, the CO admitted having received the Charge Sheet containing 94 pages of 6 charges and denied all the charges, hence enquired all the charges. The CO submitted during the hearing that he would submit his defence after appointment of his Defence Assistant. Though CO was advised letter No.: NSFDC/GM(P)/ENQ/93/07/U-1182 dated 15.12.1993 (CF :

110. , he sought further time during the hearing and the same was extended up to 27.1.1994 (DOS :

11. 1.1994; page -2(vii)). The CO was advised to give the list of additional documents by 18.1.1994 and he agreed for the same and he was also allowed to inspect the additional documents on or before 28.1.1994 (DOS :

11. 1.1994). to appoint his Defence Assistant vide 5.3 The CO did not provide any list of additional documents nor inspected the documents as he agreed. On the contrary, with the intention to delay the proceedings he indulged in lodging false complaints which were dealt in the hearing on 9.2.1994 (Ref. DOS :

9. 2.94). He was further allowed time to inspect the documents on 15.2.94. The CO was provided with all relevant documents to prepare his defence. Points raised in his letter No.: CP/RD/ (CF :

25. was replied vide letter No.: NSFDC/GM(P)/ENQ/93/07/U-1816 dated 2.2.1994 (CF :

125. . His request for extension of time to appoint DA was not considered as he took no steps in this regard up till 9.2.1994. Nearing end of the days proceedings, the CO misbehaved with the PO, shouted at him and left the inquiry without signing the DOS dated 9.2.94. The DOS was sent by speed post to CO. The behavior of the CO was brought to the notice of Disciplinary Authority vide my note dated 9.2.1994 (CF :

127. . W.P. (C) No.2177/1996 Page 7 of 23 5.4 The CO did not attend the next proceedings of the inquiry on 18.2.94 and has not inspected the documents till that date. He neither informed me any leave of absence for 18.2.94. However, the PO made a submission that there involves no witness from Disciplinary Authority and all charges are to be established through documentary evidence only. All the listed documents in original were submitted by the PO. They were taken by me on record of the inquiry after marking them from Ex.S-1 to Ex.S-44 containing 83 pages. It was ensured that all the copies of listed documents were given to the CO to defend his case and the DOS was sent by speed post to CO (DOS :

18. 2.1994) The CO visited the office on 25.2.94 at 11.30 am. but did not attend the 5.5 proceedings held on that day. He preferred to make a wrong entry in the visitors register regarding his time of arrival as 10.50 a.m., the details of which may be seen from page -1, S.No.5 & 6 of DOS dated 25.2.94. During the next hearing of the inquiry on 2.3.94, his request through his letter No.: SP/RD/

dated 15.2.94 (CF :

52. for appointing DA was considered and he was advised to appoint his DA as noted on page - 2 at S. No.3 of DOS dated 2.3.94. For the subsequent hearing held on 4.3.94, the CO visited office at 11.45 a.m. but neither attended the proceeding nor sought any leave of absence and also not made any entry in the Visitors Register at the reception this time. 5.6 For the hearing on 8.3.94, scheduled at 11 a.m., the CO came for inquiry late at 11.40 a.m. along with another person. The CO insisted for the presence of the other person, who mentioned his name as Mr. Mittal, during the inquiry proceedings though the CO himself confirmed that he was not COs DA. The presence of Mr. Mittal during the proceedings was not accepted. The CO in his letter No.: HD/RD/

dated 8.3.1994 (CF :

72. , handed over to me during the inquiry gave details of Mr. M.Y. Khan, a practicing Advocate to be nominated as his DA. His request to appoint a practicing advocate as his DA was declined and he was advised to nominate persons other than practicing advocate as recorded on page - 2, S.No.6 & 7 of DOS dated 8.3.94. As the PO completed his presentation, the CO was asked to state his defence. The CO neither stated his defence nor sought further time, but abruptly left the proceedings without permission. The issues raised by CO in his letter No.: SP/RD/

dated 8.3.1994 (CF :

78. received on 9.3.1994 was replied vide my letter No.: NSFDC/GM(P)/ENQ/93/U-2193 dated 11.3.1994 (CF :

147. . 5.7 The CO was repeatedly extended further opportunity to appear before the inquiry on 15.3.94, 17.3.94, 21.3.94 and 25.3.94 to defend his case. The CO did not appear for these four hearings. But for the inquiry held on 25.3.94, the CO sent a Medical Certificate advising him 2 days rest, which was received in my office on 28.3.94 at 4.30 p.m. (CF :

90. . To the request of CO vide his letter No.: RG/RD/38/
dated 25.3.1994 (CF :

90. to appoint a practicing advocate as his DA, a letter No.: NSFDC/GM(P)/ENQ/93/07/U-2270 dated 28.3.1994 conveying no objection to appoint anyone other than a practicing advocate (CF :

149. . sent vide my reply was W.P. (C) No.2177/1996 Page 8 of 23 5.8 A telegram was received on 29.3.94, the day of the proceeding stating that the CO was sick (CF :

91. . Hence the inquiry was suspended for the day and the hearing was scheduled for 4.4.94. The CO again did not attend the inquiry on 4.4.94 at 11 a.m. but his letter No.: SP/RD/ dated 31.3.94 (CF :

98. was received in my office on 4.4.94 at 3.20 p.m. enclosing therein a medical certificate dated 29.3.94 advising medical rest for 7 days i.e. upto 4.4.94. Through DOS dated 4.4.94 the CO was extended a last opportunity to defend his case on 8.4.94 at 11 a.m. 5.9. For the inquiry scheduled on 8.4.94, the CO sent a letter No.: FAX/RD/ dated 5.4.94 (CF :

101. received in my office at 3 p.m. on 8.4.94, informing that he was advised rest for further 2 weeks i.e. upto 19.4.94. He has not sent any medical certificate but a medical prescription was enclosed from Safdarjung Hospital, New Delhi. 5.10. The hearing was again scheduled on 21.4.94 i.e. after expiry of further 2 weeks. But the CO did not attend the inquiry on 21.4.94 but sent a letter No.: FX/RD/ dated 19.4.94 (CF :

103. seeking further medical rest for 4 weeks from 5.4.94 i.e. upto 3.5.94 as he was suffering from Cervical Spondylitis. Hence the inquiry was suspended till May 3, 1994 and was scheduled again for 6.5.94 and subsequently on 10.5.94. To CO did not attend the proceedings on these days nor sent any request for his absence. 5.11 As the CO was extending his medical leave, the same was brought to the notice of the Disciplinary Authority for advice (CF :

152. & 158). The Disciplinary Authority directed me to expedite the disposal of the case and submit the Inquiry Report (CF :

173. . From the above it may be seen that I had extended ample opportunities 5.12 and all possible cooperation and consideration to help the CO to put forth his defence as summarized below: - When he questioned the authority of appointment of IO. I suspended the inquiry and referred the matter to the Disciplinary Authority.- . I had left the time limit open for the CO to appoint his DA at any point of time during the period of inquiry (DOS :

2. 3.94, page - 2, S. No.:

3. .-. Extended the time limit to inspect the documents up to 15.2.94, though the inquiry hearing was commenced from 29.12.93.-. Scheduled inquiry hearings for 18 times including the first adjourned hearing and the last 11 hearings from 8.3.1994 onwards were scheduled mainly to enable the CO to submit his defence. The CO has not utilized the ample opportunities extended to him to defend his case. (underlining added) W.P. (C) No.2177/1996 Page 9 of 23 8. In my opinion, therefore, the petitioner was rightly proceeded ex-parte and evidence of the petitioner was closed and the Enquiry Officer therefore rightly decided the case as per the evidence led on behalf of the department.

9. This Court, now, therefore has to refer to the relevant portions of the report of the Enquiry Officer as to whether the findings and conclusions arrived at are such which can be set aside in these proceedings under Article 226 of the Constitution of India by invoking extraordinary jurisdiction of this Court. As already stated above, once the findings and conclusions are the findings and conclusions which are based upon evidence and the petitioner/charged officer did not lead evidence, this Court cannot interfere with the findings and conclusions of the departmental authorities which takes one possible and plausible view.

10. The first Article of Charge against the petitioner was as regards the petitioner concealing the factum with respect to completing of graduation of B.Com degree in the year 1977 and this was done in order to claim service experience of two years from July, 1976 to May, 1978 and which the petitioner would not have had if the

petitioners service experience has to be taken after obtaining the B.Com degree in 1977. In this regard, the Enquiry Officer has held that since petitioner obtained the W.P. (C) No.2177/1996 Page 10 of 23 B.Com degree in 1977, therefore, petitioner cannot claim service experience prior to 1977. Accordingly, the Enquiry Officer has, in my opinion, rightly decided this Article of Charge against the petitioner as under:-

"From the copy of the B.Com certificate produced, I note that the CO passed his B.Com Degree in 1977. Assuming that he had passed his B.Com exams in May 1977, his period of experience before graduation may be a period of 10 months and thus his experience would have got reduced by this period from the 2 years he claimed. But the experience he claimed also was that of Accounts Trainee which was not considered as a recognized experience as was certified by the Apex Institution in the field of accounts i.e. The Institute of Chartered Accountants of India (Ex.S-5/1). If the CO had felt that he had not deliberately suppressed the fact of his having passed the B. Com Degree in 1977, then when the P & A Deptt. asked him to submit this B. Com Certificate on 28.12.1990 (Ex.S-3/1), he should have readily complied with as it is the prime responsibility of any employee to cleanse himself first and could have claimed innocence on his omission of furnishing the detail at the time of his seeking employment in the organization. But the sequence of the events detailed above such as; providing evasive answer, questioning the G.M. (P&A) for the need for asking this certificate, stating that he misplaced the certificate, involving in perjury by stating that he had already submitted the certificate, raising logical question as to how one could have acquired higher education without this certificate, furnishing not the original but a photo copy of the certificate, that too after dodging the issue for 3 years, 8 months i.e. upto April 28, 1993 without any valid reason; etc. did not lead to see even a remote possibility of innocence on the part of the CO on this issue. Further when the COs action to furnish all his other degree certificates including his secondary education certificate but not his B.Com certificate alone strengthen the charge that he intentionally suppressed the fact of having passed his B. Com in 1977. Therefore the CO deliberately suppressed the fact that he passed B.Com Degree in 1977 to claim undue experience to his account. The CO joined NSFDC on deputation basis and later got absorbed in the services of NSFDC. The CO, not

furnishing the details of his B.Com Degree should have been noticed by the G.M. (P&A) from COs application (Ex.S-2/1) and should have called for the same at the time of his interview or at the time of his joining NSFDC or at the time of his absorption in NSFDC or atleast at the time he applied for the post of DGM(F) in NSFDC. Uptil 11.2.1993 (Ex.S-4/1) the G.M. (P&A) has not taken any substantial step to get the details of the B.Com Degree of CO verified. Though the CO had claimed undue experience by suppressing the fact, the negligence on the part of GM (P&A) with regard to W.P. (C) No.2177/1996 Page 11 of 23 verification of certificates of an employee at various points of time cannot be overlooked. Based on the information available, I conclude that Charge - I as stated above is sustained. 11. I do not find any illegality or perversity in the aforesaid finding and conclusion of the Enquiry Officer as regards the first Article of Charge and therefore it is held that the Enquiry Officer has rightly concluded the first Article of Charge against the petitioner.

12. The second Article of Charge against the petitioner was that he submitted an experience certificate of having worked as an Accountant from 29.6.1978 to 31.1.1980 with a firm M/s. Moon Enterprises, whereas on enquiry it was reported that the firm was not in existence at the stated time and place. For this purpose, the Enquiry Officer has referred to various documents and the personal enquiries made by the office of the department showing that the firm M/s. Moon Enterprises did not exist. Also, the Enquiry Officer noticed that the workplace of the firm M/s. Moon Enterprises at Jaipur was separated by 250 kms from Delhi where the petitioner was attending classes and, therefore, it would not be conceivable for the petitioner to have got experience from the firm M/s. Moon Enterprises. To arrive at this conclusion the Enquiry Officer referred to various documentary evidences, and the same reads as under:- W.P. (C) No.2177/1996 Page 12 of 23 In connection with the above charge, I have verified the documentary evidence produced before me as detailed in DOS dated February 25, 1994, at page 2, S.No.11 and DOS dated March 17, 1994, at page 1, S. No.6 and at page - 2, S. No.8.-. The CO produced experience certificate for having worked in M/s. Moon Enterprises from 29.6.1978 to 31.1.1980 (Ex.S-7/1). He also produced M.Com Degree Certificate, which he had passed in 1980 from Delhi University (Ex. S- 8/1).- Registered letter addressed to both the head office address and branch office address of M/s. Moon

Enterprises were returned with remarks regarding non- existence of the address (Ex.S-9/1, Ex.S-10/1, Ex.S-10/2, Ex.S-10/3, Ex.S-10/4, Ex.S-11/1). Enquiries made with regard to existence of M/s Moon Enterprises by the vigilance officer of NSFDC by site visit, enquiry with the local police station, local postal office, local residents and Sale Tax Deptt. confirmed the remarks of the postal authorities.-. CO was advised of the outcome of the above enquiries made and was also asked to produce evidence of existence of M/s. Moon Enterprises (Ex.S-12/1, Ex.S-14/1, Ex.S-15/1, Ex.S-17/1, Ex.S-22/1).- Mr. Atul Mittal, who was identified as the partner of M/s. Moon Enterprises by CO, could not produce any evidence such as Sales Tax documents, registration number etc. to establish the existence of the firm except saying that the CO worked in their erstwhile firm at Jaipur which was liquidated. (Ex.S- 19/1, Ex.S-20/1, Ex.S-21/1-2, Ex.S-25/1).- The CO avoided the issue with evasive and irrelevant replies. He has not furnished required details but raised queries such as: whether records of all other officers are verified and alleged that the motive behind verification of his documents was vindictive as he pointed out the wrong information furnished by Dr. S.P. Ram, G.M.(P&A) in his case during his appointment as G.M.(P&A) in NSFDC. (Ex.S-13/1, Ex.S-16/1, Ex.S-18/1, Ex.S-18/3, Ex.S-23/1-2). (underlining added) 13. In my opinion, once the second Article of Charge was duly established in terms of the documentary evidence clearly showing non- existence of the firm M/s. Moon Enterprises it has to be held that the findings of the Enquiry Officer are not in any manner illegal or perverse for interference by this Court under Article 226 of the Constitution of India. W.P. (C) No.2177/1996 Page 13 of 23 The findings of the Enquiry Officer therefore with respect to the second Article of Charge are correct and upheld by this Court.

14. The third Article of Charge against the petitioner was that in spite of the order dated 6.8.1993 placing the petitioner under suspension and petitioner being advised to hand over all the files, documents, keys of almirah, etc. to Sh. Devanand, Assistant Manager (Vigilance) immediately, the same was not done by the petitioner/charged officer and he wrongly dilly dallied.

15. The fact of the matter is that the petitioner did not dispute that he did not hand over the charge along with the documents, keys, etc, because, the petitioner

raised the issue that CMD of the respondent No.1/employer had no powers to suspend him. Enquiry Officer has held that CMD was the appropriate authority to initiate the disciplinary proceedings against the petitioner and suspend him and which becomes clear from the 33rd and the 34th Minutes of the meetings of Board of Directors of respondent No.1/employer whereby with respect to officers up to the level of Manager Grade - I with pay scale of Rs.3950-5300 it was the CMD who was the disciplinary authority. By these Minutes of meetings of the Board of Directors the relevant earlier portions of the Article of Association were amended whereby it was the Board of Director who was the appointing and W.P. (C) No.2177/1996 Page 14 of 23 the disciplinary authority for persons of the level of Manager Grade - I. Enquiry Officer accordingly with reference to the 33rd Minutes of the meeting of the Board of Directors has rightly held that CMD was the correct disciplinary authority to suspend the petitioner and initiate the disciplinary proceedings against him by issuing of the charge-sheet and by appointing of the Enquiry Officer and thereafter pass the penalty order by accepting the report of the Enquiry Officer. This aspect I will deal again later by also referring to the additional facts when I go to the last argument urged on behalf of the petitioner with respect to the lack of jurisdiction with respect to the disciplinary proceedings initiated against him.

16. The fourth Article of Charge was that the petitioner directly corresponded by sending the note to the Board of Directors for restoring his designation as Company Secretary-cum-Finance Manager and for sanctioning of allowance for holding dual charge without going through a proper channel. Enquiry Officer has, in my opinion, rightly held this charge against the petitioner by reference to the documents being Ex. S-34 to Ex. S- 37, and which findings read as under: CHARGE -IV :The CO sent the following information and note to the Board of Directors without the approval of Competent Authority or routing the same through the Competent Authority:-

"To restore his designation as Company Secretary-cum-Finance Manager (Ex.S-35/1). i) W.P. (C) No.2177/1996 Page 15 of 23 ii) iii) iv) v) vi) For sanction of allowance for holding dual charge (Ex.S-34/1). Complaint alleging wrongful appointment of Dr. S.P. Ram, G.M.(P&A) (Ex.S-35/1, Ex.S-35/2) Informing Board

regarding recording of the COs ACR as outstanding by Ex-GM (Finance) (Ex.S-35/2). Note on Service matters (Ex.S-3 to Ex.S-36/4). His appeal against the suspension order (Ex.S-37/1). Verification of the above mentioned documents cited in DOS dated 4.3.1994; page-1, S.No.:

3. (i), (ii) & (iii) indicates that the CO did not obtain the approval of the Competent Authority to send his notes to the Board of Directors or routed the same through the Competent Authority to the Board of Directors. (underlining added) 17. The fifth Article of Charge against the petitioner is not dealt with by this Court because the petitioner has been exonerated with respect to the fifth Article of Charge.

18. The sixth Article of Charge against the petitioner was that petitioner did not disclose the fact that there was a disciplinary case pending against the petitioner with his previous organization PICUP and proceedings of which case were yet to be finalized. The charge against the petitioner by his previous employer PICUP was that the petitioner was over paid and the respondent No.1/NSFDC was therefore requested by PICUP to recover the excess amount paid to the petitioner from the salary of the petitioner. This charge has been rightly held against the petitioner by the Enquiry Officer by observing as under:-

"W.P. (C) No.2177/1996 Page 16 of 23 In connection with this charge, Exhibits cited in DOS dated March 4, 1994 at Page - 3, S.No.:

3. c) iv was verified. The CO joined in NSFDC on deputation in April, 1989 and was absorbed in October, 1989. The CO should have divulged the fact that an enquiry was pending against him in PICUP on either of the above two occasions or at a later stage voluntarily. It is also surprising to note that PICUP did not inform NSFSC about the pending enquiry against the CO until such time NSFDC verified the antecedent of the CO from PICUP. It is also not known by GM (P&A) could not detect these facts at the time of appointment or absorption of the CO in NSFDC and waited up to November, 1991 (Ex.S-42/1). Further it is also not clear how PICUP relieved its officer (CO) from its service when enquiry was pending and accounts not settled with them. The CO before joining NSFDC should have settled these issues with PICUP as it happened to be his immediate previous employer or should have kept NSFDC informed of the same. The failure to do so by the CO

raise various doubts about the integrity of the CO. The CO had suppressed the fact that an enquiry was pending against him in PICUP. Considering the above available information, I conclude that the Charge - VI is sustained. (underlining added) 19. In view of the above discussion it is held by the Enquiry Officer that the department in terms of the evidence led had duly proved the Articles of Charges I, II, IV and VI against the petitioner by filing various documents and this Court cannot interfere with such findings which are not in any manner illegal or perverse, more so because the petitioner/charged officer did not lead evidence and wrongly remained ex-parte.

20. Before this Court it was argued on behalf of the petitioner that the entire disciplinary proceedings against the petitioner are liable to fail because CMD of the respondent No.1/employer was not the authorized person to initiate disciplinary proceedings against the petitioner and the W.P. (C) No.2177/1996 Page 17 of 23 competent authority was the Board of Directors. For this purpose the petitioner has placed reliance upon para 64 of the Articles of Association of the respondent No.1/employer and which reads as under:-

"Subject to the applicable provisions of the Act, a Company Secretary 64. may be appointed by the Board for such time and at such remuneration and upon such conditions as it may think fit and any secretary so appointed may be removed by the Board. 21.

... Petitioner

also argued that the Minutes of the 33rd Board of Directors meeting have been fabricated by the respondent No.1/employer inasmuch as it was the petitioner who was the Company Secretary at the time of holding of the 33rd meeting of the Board of Directors and as per the Minutes of meeting submitted by him to the Board of Directors for approval there was no such agenda item No.11 that CMD is designated as the competent authority to initiate disciplinary action against the persons such as the petitioner who was in the level of Manager Grade-I.

22. Learned counsel for the respondent No.1/employer in response placed reliance upon the Minutes of 33rd meeting of the Board of Directors of the respondent No.1/employer with respect to agenda item No.11 and as confirmed by

the Board of Directors in its next meeting i.e 34th meeting, read with consequent circular/office order dated 13.7.1993 issued by the respondent No.1/employer whereby the CMD was to be the disciplinary authority with respect to persons in particular pay-scales as specified in the W.P. (C) No.2177/1996 Page 18 of 23 office order dated 13.7.1993. For the sake of convenience, the agenda item No.11 of the 33rd Minutes of meeting, confirmation thereof in the 34th meeting of Board of Directors and the circular dated 13.7.1993 are reproduced as under:-

"(i) Agenda Item No.11 of the 33rd Minutes of Meeting:-

"DELEGATION OF DISCIPLINARY POWERS TO CHAIRMAN- 11. CUM-MANAGING DIRECTOR OF NSFDC. After discussion, the Board passed the following resolution:-

"RESOLVED that Delegation of Disciplinary Powers to Chairman-cum- Managing Director, as placed before the Board be and are hereby approved. (ii) Item No.1 of the 34th Meeting of the Board of Directors of respondent No.1. ITEM No.1 Minutes of the 33rd Board Meeting held on 30/6/93. After discussions, the Board passed the following resolution:-

"RESOLVED that the minutes of the 33rd Board Meeting, as placed before the Board, be and are hereby approved. (iii) Office Order of the respondent dated 13.07.1993 NATIONAL SCHEDULED CASTES AND SCHEDULED TRIBES FINANCE AND DEVELOPMENT CORPORATION Of. No.NSFDC/P&A/CDA/92 July 13, 1993 OFFICE ORDER In pursuance of the decision taken by the Board in its 33rd Meeting held on 30.6.1993 whereby the Chairman-cum-Managing Director had been delegated full appointing/disciplinary powers in respect of employees/posts in the pay scale of Rs.1640-2900 up to Rs.3950-5300, the SCHEDULE forming a part of the NSFDC Conduct, Discipline and Appeal Rules, 1990 stands amended and the revised SCHEDULE is enclosed herewith for reference and records. Hindi version will follow. W.P. (C) No.2177/1996 Page 19 of 23 Sd/- (DR. S.P.RAM) GENERAL MANAGER (P&A) Encl: as above DISTRIBUTION :

1. General Manager (Projects)

2. Deputy General Manager (Fin.)

3. Company Secretary

4. Secretary to CMD/Zonal Manager (Lucknow)/Manager (MPD)

5. Deputy Zonal Manager (Patna/Karnal)

6. Assistant Zonal Manager (Shillong/ Bombay/Bangalore)

7. Assistant Manager (Vigilance/OL)

8. Notice Board. : : : : : With a request to bring the contents of this order to the notice of all employees working under their administrative control. GENERAL MANAGER (P&A) (DR. S.P. RAM) Sd/-

23. I cannot agree with the argument urged on behalf of the petitioner that the CMD of the respondent No.1/employer is not the disciplinary authority of the petitioner inasmuch as no doubt originally the respondent No.1 company as per para 64 of its Articles of Association specified that the Board of Directors was the competent authority for appointing the Company Secretary and also take disciplinary proceedings, however, in law it is perfectly possible for the Articles of Association of a company to be amended by the Board of Directors, this the Board of Directors did when it amended the Articles of Association para 64 in its 33rd meeting agenda item No.11 whereby the CMD of the respondent No.1/employer became the disciplinary authority with respect to post which the W.P. (C) No.2177/1996 Page 20 of 23 petitioner occupied. It is impermissible for the petitioner to argue that since the petitioner was the Company Secretary when the 33rd Board meeting of the Board of Directors was held, it should be held that this agenda item No.11 of the 33rd meeting of the Board of Directors did not exist, inasmuch as petitioner has no locus standi to question the minutes of the meeting of the Board of Directors with respect to the 33rd meeting once the copies of the agenda item No.11 of the 33rd meeting has been filed in this court and in fact which have been also approved in the subsequent meeting i.e 34th meeting of the Board of Directors of the respondent No.1/employer. In fact a necessary and consequent office order pursuant to agenda item No.11 of the 33rd meeting was

issued by the respondent No.1/employer on 13.7.1993 and which has been reproduced above showing that it was the CMD who was designated to be the competent authority to initiate disciplinary proceedings for the post which the petitioner was appointed and occupying, and which was in the pay-scale as found in the agenda item No.11 of the 33rd meeting of the Board of Directors of the respondent no.1/employer and further details of which are found in the office order dated 13.7.1993 issued by the respondent No.1/employer as stated above.

24.

... Petitioner

in support of this proposition that the petitioner could not have been proceeded against by the CMD because CMD was an W.P. (C) No.2177/1996 Page 21 of 23 authority below the Board of Directors, has placed reliance upon the judgments of the Supreme Court in the case of The Management of D.T.U. vs. Shri B.B.L. Hajelay and Another, (1972) 2 SCC744 and the later judgment of the Supreme Court in the case of Municipal Corporation of Delhi vs. Ram Pratap Singh, (1976) 4 SCC828 and which follows the ratios of the judgment in the case of The Management of D.T.U. (supra). However the judgments relied upon by the petitioner does not support the case of the petitioner because in the case of The Management of D.T.U. (supra) and Ram Pratap Singh (supra) the issue was that as to whether a subordinate legislation being the rules and regulations could violate the provisions of the principal Act/Statute in that whereas in the main provision of the Act a particular authority was specified as the authority to take disciplinary action, but by the rules a lower authority was authorized to take disciplinary action, and it is in such circumstances that the Supreme Court held that a lower authority as per the rules cannot be said to be authorized to take disciplinary action against the employee. In the present case, there is no question of violation of any provisions of any Act/Statute because the Articles of Association of a company can always be amended by the Board of Directors, and once that is done whereby the CMD is designated as the appropriate authority to take disciplinary against a particular set of employees such as the petitioner, it cannot be held that the disciplinary W.P. (C) No.2177/1996 Page 22 of 23 proceedings against the petitioner were without jurisdiction because para 64 of the Articles of

Association requiring taking of disciplinary action by the Board of Directors stood substituted by entitling the CMD of the respondent No.1/employer to take disciplinary action against persons in the designation at which the petitioner was working.

25. In view of the above, I do not find any merit in the present writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.
DECEMBER19 2016 AK/godara VALMIKI J.

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