

Y.N. Moitra Vs. D.V.B. and Another

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Court : Delhi

Decided On : May-04-2012

Judge : Suresh Kait

Appeal No. : W.P.(C) NO. 3902 OF 2002

Appellant : Y.N. Moitra

Respondent : D.V.B. and Another

Judgement :

SURESH KAIT, J.

(Oral)

1. Vide the instant petition, the petitioner has sought to set aside the impugned order dated 18.02.2000 reverting the petitioner to the post of Foreman.
2. It is further prayed that the petitioner be continued in service as A.E. and he is entitled to all the benefits of the post of A.E. from 05.04.1999 till 31.03.2002 with subsequent promotion which he is entitled to as per rules and benefit attached to such promotion.
3. He further sought direction to the respondent to pay the salary and all other benefits from 05.04.1999 to 31.03.2002 to which the petitioner is entitled either as A.E. or for subsequent promotion.

4. The brief facts of the case are that the petitioner was employed with the respondent as Superintendent(Tech.). In the year 1989-90, one Nahar Singh applied for electric connection which was installed in the village Pooth Kalan within the area of lal dora as per the policy of the D.V.B. and meters Nos. K. No.172496/IP and 172497/IL were installed by the D.V.B. at the appropriate place.

5. It was revealed that Shri Nahar Singh dishonestly and with malafide intentions got shifted those connections to some other place beyond lal dora area which was not notified area for installing the electricity meters nor the area was covered within the policy of the respondents.

6. After shifting the above mentioned meters unauthorisedly, one Shri Ajit Singh resident of the same area lodged a complaint to this effect with the respondents. Upon said complaint, the respondents inspected the premises and found the same to be true, accordingly, the electricity of Nahar Singh was disconnected by the respondents.

7. Being aggrieved with the disconnection, the said Nahar Singh filed a suit for declaration and injunction being Suit No.1221/92 against the respondents and notice was issued to the respondents. The respondents in their written statement had clearly stated and admitted that initially meters were installed within the lal dora area. A copy of the same is placed on record as Annexure-B.

8. On 16.05.1995 an enquiry officer was appointed by the respondents to enquire into the alleged misconduct. The enquiry officer proceeded with the matter and ultimately submitted his report dated 31.05.1996 holding the petitioner not guilty of the alleged misconduct.

9. The respondents did not satisfy with the findings of enquiry officer. Accordingly, constituted Board, which held the petitioner guilty of misconduct and the petitioner was reverted from the post of A.E. to the post of Superintendent (Tech.) vide order dated 04.08.1998 duly signed by Shri H.P. Singh, AGM(A).

10. On 05.04.1999, a show cause notice was issued to the petitioner to submit reply within 15 days. On receipt of show cause notice, the petitioner requested the

respondents to provide copies of the papers, which were not supplied by the respondents. In absence of papers the petitioner could not submit his reply, accordingly, the matter has been decided on 05.04.1999 without hearing the petitioner on 05.04.1999.

11. Being aggrieved, the petitioner preferred an appeal which was also turned down vide letter dated 18.02.2000.

12. Thereafter, the Revision Petition filed by the petitioner under Rule 29 of the CCS(CCA) Rules before learned Lt. Governor of Delhi on 06.09.2001 is still pending.

13. Mr. Bahl, Id. counsel for the petitioner, submitted that in the enquiry report the enquiry officer recorded that as the Test Report/Test Card says that the installation at the correct place of the premises within lal dora at village Pooth Kalan was installed by V.K. Singhal, another CO in this case under the supervision of the petitioner herein, how could it be said that the petitioner with a malafide intention had installed the connections at wrong premises or he had shifted the connections from the correct premises to wrong premises.

14. Therefore, he has opined that prosecution could not prove the charge against the petitioner beyond all doubts, therefore, no charge against him has been proved.

15. The disciplinary authority did not agree with the said report. Vide Memorandum dated 04.08.1998, it is observed/opined as under:-

“The Board does not agree with the finding of the Enquiry Officer. From the perusal of the Enquiry Report, it is observed that the electricity connection was found energised outside the lal dora limits of village Pooth Kalan, which was not permissible under the prevalent instructions. This fact has clearly been established the contents of the joint inspection report. This was also confirmed by the prosecution witness. The only point of dispute is whether the connection was shifted after installation or it was originally installed at the place i.e. outside lal dora where it was found by the joint inspection team. In case, the connection would

have been shifted after installation, then the Meter Reader concerned would have intimated this fact. Since there is no report from the Meter Reader, it is established that the K.No.s172495IP and 172497 IL were originally installed outside lal dora. Secondly, the statement of Shri V.K.Singhal, inspector, that the installations were made as per the instructions of AE, Shri Y N Moitra, also show that the connections were originally installed outside the “Lal Dora”. Thus, it is clear that the charge of deliberate installing the aforesaid connection at a place outside the Lal Droa for which the same were not sanctioned is proved against the CO Sh.Y.N.Moitra, AE. Keeping in view the misconduct and the charge on the part of the CO the Board proposes reduction in rank to Superintendent (Technical) till retirement imposed on Shri Y.N.Moitra, AE E.No.12884. During the period of reduction, he will not earn any increment.”

16. As the petitioner is concerned, he was further directed to respond as to why the penalty of reduction in rank to Supdt.(T.) till retirement with the stipulation that during the period of reduction he will not earn any increment may not be imposed upon him.

17. Ld. counsel for the petitioner has pointed out that in the show cause the disciplinary authority, i.e., Addl. General Manager(A) had already imposed the penalty of ‘reduction in rank to Supdt.(T) till retirement with the stipulating that during the period of reduction he will not earn any increment’, therefore, the alleged notice cannot be considered as a show cause notice. Therefore, the petitioner is punished without a show cause notice which is not permissible under law.

18. Ld. counsel for the petitioner has relied upon the decision of this Court in the case of **V.K. Singhal vs. D.V.B. and Anr.** in WP(C) No.6712/1999 dated 13.03.2002, which is reproduced below:-

“Learned counsel for the respondents fairly states that in view of the judgment of the Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra (1999) 7 SCC 739, the charged employee is liable to be granted opportunity of hearing before the reversing the finding of enquiry officer. This issue has also been considered and decided in CW 3316/2001 SC Mehta Vs. Delhi Vidyut Board decided on

14.02.2002.

The result is that the actions taken by the disciplinary authority in pursuance to the memorandum dated 11/15.09.1998 cannot be sustained in law. Consequently, the order of the Appellate Authority also cannot be sustained. The memorandum dated 11/05.09.1998 issued by the disciplinary authority dated 28.06.1999 and the order of the Appellate Authority dated 01.10.1999 are thus quashed. However, it is left open to the Disciplinary Authority to issue a fresh notice to the petitioner stating the reasons for disagreeing with the report of the enquiry officer and calling upon the petitioner to show cause why the disciplinary authority should not differ from the same and thereafter proceed in accordance with the law laid down by the Supreme Court in *Yoginath D. Bagde* case (*supra*).

In view of the aforesaid discussion this petition is allowed leaving the parties to bear their own costs."

19. Ld. counsel submitted that since the petition of the co-charged officer of the petitioner has been allowed by this Court in the case of **V.K. Singhal(supra)** , therefore, the instant petition may also be allowed.

20. In the aforesaid judgment of **V.K. Singhal (supra)**, it was left open to the Disciplinary Authority to issue a fresh notice to the petitioner therein.

21. I am of the view that if the respondents had issued any notice pursuant to the aforesaid judgment in **V.K. Singhal (supra)** the co-charged officer, then the respondent is at liberty to proceed further, accordingly, if not, then the petitioner is entitled to all the consequential benefits as per law at par with V.K. Singhal, co-charged officer.

22. In view of the above discussion, the instant petition is allowed.

23. No order as to costs.

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