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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 04.07.2019
Pronounced on: 13.08.2019

\+ W.P.(C) 8489/2016

D.P. SHARMA ..... Petitioner

Through Mr.Anuj Aggarwal, Adv. with
Mr.Tenzing Thinlay Lepcha, Adv.

versus

M/S BSES RAJDHANI POWER LIMITED & ANR ..... Respondents

Through Mr.Gulshan Chawla, Adv. with
Mr.Mohan Malik, Adv. for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present writ petition is directed against the impugned Order No. DGM (HR)/ 2015-16/204A dated 29.02.2016 passed by the respondents whereby the departmental appeal preferred by the petitioner against the Order No. SR.MGR(HR)/2015-16/48 dated 08.06.2015 passed by the disciplinary authority was dismissed.

2. Vide the present petition, the petitioner has also challenged the impugned show cause notices dated 19.09.2014, 17.11.2014, 24.04.2015 and 13.05.2015 issued by respondent no.1 to the petitioner.

3. The brief facts of the case are that the petitioner was appointed as a Meter Reader in the erstwhile Delhi Electric Supply Undertaking ("*DESU*") on 08.10.1974 (Employee No. 17068). The petitioner received a Memo dated 24.10.1990 whereby an alleged charge of misconduct was levelled against him, which contained in the Statement of Article of Charge, is reproduced as under:-

> *"Shri D.P. Sharma, while functioning as a Meter Reader, is alleged to be guilty of charge of misconduct as he with ulterior motive and to favour the consumer of K.No. S-115996, SA-11598 did not issue the Statement III and Statement II in the month of June 1980 and October 1982 as detailed in the State of imputations of misconduct."*

4. Further case of the petitioner is that during the course of inquiry proceedings, the Inquiry Officer Shri D. Dass Gupta wrote a letter to Shri U.S. Tripathi, Vigilance Officer (G), RPH thereby bringing to the notice of said U.S. Tripathi that in the case of the petitioner, it had already been stated that the misconduct was alleged to have been committed in the years 1980-82 whereas the departmental proceedings were initiated in the year 1995 i.e. almost 13 years later. It was also stated that one of the listed documents pertaining to year 1956 had not yet been made available before the inquiry and all the additional documents which had been requested by the petitioner in his application dated 24.07.1995 had not been obtained or produced

before the inquiry. One of the listed witnesses Shri R.S. Soni, AFO (retired long ago) and the other PW Shri S.C. Sharma, Senior Clerk (Const. East)-II of XEO (CE)-II, Karkardooma, have not yet been contacted to appear before the inquiry officer inspite of several notices issued to them. In these circumstances, it was requested, thereby, to consider amongst others, to withdraw the proceedings of inquiry against the petitioner.

5. Further case of the petitioner is that the petitioner vide letter dated 07.06.1996, followed by another letter dated 01.04.1998 to the Addl. General Manager (A) of the respondents, made a representation thereby raising objection to the holding of departmental inquiry after an inordinate and unexplained delay of more than 13 years. In the said representations, the petitioner requested the respondents to drop/close the departmental proceedings against the petitioner. Thereafter, the petitioner received a memo dated 28.05.1998 along with a copy of the Inquiry Report dated December 1997. The Inquiry Officer, in its Inquiry Report, exonerated the petitioner from the alleged charges/misconduct and held that the alleged charge of misconduct was not proved against the petitioner. However, the disciplinary authority in its memo dated 28.05.1998 did not agree with the findings of the Inquiry Officer and held that the charge against the petitioner

was fully proved vide its memo dated 28.05.1998 proposed to impose penalty of reduction by 3 stages in his time scale of pay for a period of 3 years with further stipulation that he will not earn any increments of pay. The petitioner by way of the said memo dated 28.05.1998 was called upon to show cause as to why the said penalty be not imposed upon him. Thereafter, the petitioner submitted a reply dated 26.06.1998 to the Additional General Manager (A) of the respondents explaining therein, in detail, the reason as to why the alleged charges were not at all proved against him and he ought to have been exonerated in the matter of alleged charge of misconduct. In the said reply dated 26.06.1998, it was stated that there was no justification to conduct the inquiry proceedings after an inordinate and unexplained delay of 13 years in initiating the inquiry proceedings and 17 years in completing the inquiry proceedings from the date of alleged incident. Thereafter, the petitioner received an order dated 12.08.1998 whereby the disciplinary authority confirmed the punishment as proposed in the aforesaid memo dated 28.05.1998.

6. Being aggrieved, the petitioner submitted an appeal dated 02.09.1998 before the Chairman of the respondents. The petitioner received an order dated 11.02.1999 whereby the appellate authority reduced the penalty of

"reduction by 3 stages in time scale of pay for a period of 3 years with a further stipulation that the petitioner will not earn any increments of pay to a penalty of reduction by 2 stages in time scale for a period of 2 years with cumulative effect."

7. Again being aggrieved by the aforesaid order dated 11.02.1999, the petitioner preferred a writ petition being Writ Petition(C) No. 3069/1999 before this Court. After filing a counter affidavit dated September, 2001 and during the pendency of the aforesaid writ petition, the DESU was taken over by the year BSES Rajdhani Power Limited in the year 2002. The petitioner, therefore, preferred an application before this Court for impleadment of BSES Rajdhani Power Limited which was allowed by this Court. Thereafter, this Court vide order dated 12.08.2013 allowed the writ petition being W.P.(C) No. 3069/1999 and passed directions as under:-

> *"5. In view of the above, the writ petition is allowed by directing the Disciplinary Authority to now give a show cause notice only mentioning a tentative finding of guilt which according to the Disciplinary Authority is sufficient for issue of a show cause notice to set aside the findings of the Enquiry Officer. The petitioner will be issued a show cause notice as to why the Enquiry Officer's report should not be set aside for the reasons as would be given in the show cause notice. Petitioner will have entitlement to respond to the show cause notice. Petitioner will thereafter be heard by the Disciplinary Authority which will pass a speaking order and the same*

be communicated to the petitioner. The necessary proceedings of the Departmental Authority, considering the facts of the present case which show that it is a very old case, be completed within a period of three months from today.

6. The writ petition is allowed and disposed of with the aforesaid observations. Parties are left to bear their own costs.

7. Learned counsel for the parties state that except that difference of facts and dates, issue in the present case is the same as it decided in W.P.(C) 2676/1998. Accordingly, adopting the ratio in the case of W.P.(C) 2676/1998 this writ petition is also allowed in terms of directions as given aforesaid and disposed of accordingly. Parties are left to bear their own costs."

8. Learned counsel for the petitioner further submitted that vide order dated 12.08.2013 passed by this Court in W.P.(C) 3069/1999 granted a period of three months (from the date of order dated 12.08.2013) to the departmental authority to complete the necessary proceedings. The said period of three months expired on 12.11.2013. However, till then, no communication was received by the petitioner from the respondent. But, on 19.09.2014, i.e. after 13 months from the date of passing of the order dated 12.08.2013, the petitioner received a show cause notice dated 12.09.2014 from the respondent. The said show cause notice was followed by the other show cause notices dated 17.11.2014, 24.04.2015 and 13.05.2015. Thus, the aforesaid show cause notices dated 12.09.2014, 17.11.2014, 24.04.2015 and

13.05.2015 are illegal, unjustified and time barred and therefore, no reply was given by the petitioner to the said show cause notices. Thereafter, the respondents passed the impugned order dated 08.06.2015 whereby the penalty imposed upon the petitioner by the respondent vide order dated 11.02.1999 was confirmed.

9. On the other hand, counsel for the respondents submits that the petitioner was appointed as a Meter Reader in DESU on 08.10.1974. The petitioner retired from the services on 31.12.2003 after availing the benefits of Special Voluntary Retirement Scheme (SVRS) which was accepted pursuant to the effect of penalty imposed by the Appellate Authority at the time of his early voluntary retirement in accordance with the aforesaid scheme and the same was accepted without any protest or demur. It is further submitted that it is well settled that once the VRS has been accepted without any protest or demur, the employee cannot raise any other claim in respect of past services as there is total severance of relationship once the amount in terms of SVRS has been accepted. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of ***A.K. Bindal v. UOI: (2003) 5 SCC 163.***

10. While the petitioner strongly raises concern regarding the time lapse,

it is pertinent to mention here that the delay is only attributable to the petitioner. Upon first stage advice from the CVC dated 30.03.1990, a memorandum of charge and show cause notice for initiation of disciplinary proceedings were issued against the petitioner on 24.10.1990. Thereafter the petitioner filed his response on 24.04.1994 after a time gap of almost four years and the I.O. was appointed by the department soon after on 12.01.1995. After giving several opportunities to the parties, the I.O. concluded the enquiry and submitted the Enquiry report in December, 1997. After seeking second stage advice from CVC dated 31.03.1998, the Disciplinary Authority while holding the petitioner guilty of misconduct, issued memorandum of penalty and show cause notice dated 28.05.1998. The petitioner again failed to file his response within the stipulated period of 15 days and, accordingly, the Disciplinary Authority confirmed the penalty, as proposed in the aforesaid memo, vide order dated 12.08.1998. Being aggrieved, the petitioner challenged the order dated 12.08.1998 before the Appellate Authority & the authority rejected the appeal, however reduced the punishment on compassionate grounds vide order dated 11.02.1999.

11. Learned counsel for the respondent further submitted that the disciplinary proceedings were initiated against the petitioner under

regulation 7 of the Delhi Electric Supply Undertaking (DMC) service (C & A) Regulation, 1976, while working in DESU during the period of 1980-82 vide memo No. VC-26-28/90/VIG.III/AV(O)/2699 dated 24.10.1990.

12. Pursuant to the statement dated 06.11.1987, the petitioner had accepted that he did not issue statement II and III after his reading round in the month of June 1980 and October 1982, accordingly, an Article of Charge was framed against the petitioner as below:

> *"Sh. D.P. Sharma, while functioning as a Meter Reader, is alleged to be guilty of misconduct as he with ulterior motive and to favour the consumer of K.No. S-115996, SA-11598 did not issue the Statement III and Statement II in the month of June 1980 and October 1982 as detailed in the State of imputations of misconduct."*

13. While the petitioner did not prefer to examine any witness or produce any document, the respondents examined two witnesses i.e. Sh. S.C. Sharma and R.C. Sony and produced three documents before the Enquiring officer. Although the Enquiry officer has opined that the aforesaid charge has not been proved beyond all doubts, and at the same time recorded in his findings that the petitioner should have been more cautious that he could have made a written statement to MSR showing all these facts of premises being locked and the constant reading of the meters. The enquiry officer further acknowledged in his report that the petitioner admitted in writing about non-

issuance of statement II and statement III without consulting MSR register regarding the aforesaid statements. It is pertinent to mention here that during the enquiry, Mr. S.C. Sharma was examined and the document was proved on record.

14. Learned counsel submitted that since the nature of departmental enquiry is different than that of a criminal trial, it is a well settled preposition of law that the principle of preponderance of probability will prevail over principle of proving beyond reasonable doubt in such proceedings. The Disciplinary Authority being conversant with the correct position of law, took a contrary view and held the petitioner guilty of the aforesaid charge on the basis of the petitioner's own statement recorded at Vigilance department on 06.11.1987.

15. Pursuant to taking second stage advice from the Central Vigilance Commission, Government of India, advised non-acceptance of the I.O.'s report and suggested imposition of "*a suitable major penalty*" vide its memorandum of advice dated 31.03.1998. The Disciplinary Authority after following due procedure proposed to impose the penalty of reduction by three stages in his time scale of pay for a period of three years with further stipulation that he will not earn increments of pay during the period of the

reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay upon the petitioner vide memorandum no. VC-26-28/90/VIG./AVO-II/JMB/99 dated 28.05.1998. Through the same memo, the Disciplinary Authority also called the petitioner to show cause within 15 days as to why the aforesaid penalty may not be imposed upon him.

16. Learned counsel for the respondents further submitted that the Disciplinary Authority while keeping aside the delay, considered the response filed by the petitioner wherein he insisted that the Disciplinary Authority must take the same approach as taken by the Enquiry Officer in his report on December, 1997. However, the Authority finding no merits, held the petitioner guilty of misconduct and confirmed the penalty as proposed in the memo dated 2/9.05.1998 vide its order dated 12.08.1998.

17. It is further submitted that the petitioner preferred an appeal before the Appellate Authority and the Appellate Authority while keeping in view the time lapse of 16 years took a compassionate approach and reduced the penalty of reduction of pay by three stages in the same time scale for a period of three years, to "*reduction by two stages in his time scale or pay for a period of two years with cumulative effect"* vide its order no. VC-26-

28/90-Vig/JMB/650 dated 11.02.1999.

18. Being aggrieved, the petitioner filed a writ petition bearing W.P.(C) No.3069/1999 and during pendency of which the DESU (former employee/respondent) was taken over by the BSES Rajdhani Power Limited in the year 2002. The Court while disposing of the matter on 12.08.2013, directed the respondents to give a show cause notice *"only"* mentioning a tentative finding of guilt which according to the Disciplinary Authority is sufficient for issue of a show cause notice to set aside the findings of the enquiry Officer.

19. In compliance to above, the petitioner was issued show cause notice and reminders thereto on several occasions i.e. on 19.09.2014, 17.11.2014, 24.04.2014 and 13.05.2015. The Authority passed an order confirming the penalty imposed by the Appellate Authority on 11.02.1999 as the petitioner neither submitted his response nor attended personal hearing granted by the disciplinary authority.

20. Consequently, the petitioner has filed another petitions bearing W.P.(C) No.1846/2014, 6815/2015, 653/2016 and 5493/2016 and all were withdrawn vide order dated 06.04.2015, 01.10.2015, 10.03.2016 and 15.07.2016 respectively.

21. In the meanwhile, the petitioner simultaneously resorted to departmental remedy and preferred an appeal dated 06.10.2015 to the Appellate Authority against the order of the Disciplinary Authority dated 08.06.2015. The Appellate Authority while rejecting the said appeal and reiterating the findings of the Disciplinary Authority observed that "*the appeal preferred by Sh. D.P. Sharma is devoid of any merit and there is nothing new in the appeal which needs any interference in the penalty order dated 25.08.1998 passed by the Disciplinary Authority of the DVB and which was again confirmed vide order dated 08.06.2015 by the BRPL Disciplinary Authority.*"

22. It is further submitted that the petitioner has been granted several occasions to prove his case against the respondents. In a nutshell, during the first round of Disciplinary proceedings, the petitioner did not lead any evidence to prove his defence during the Departmental enquiry and further failed to reply to the show cause notice within the stipulated time of 15 days, pursuant to which the authority imposed a penalty on 12.08.1998. Subsequently, the petitioner again failed when the Appellate Authority rejected his appeal on 11.02.1999, although reduced the penalty on compassionate grounds after considering the delay and observing as follows:

> *" In view of the above and the fact that the case has been pending for over sixteen years, the penalty imposed appears too harsh. I am, therefore, of the considered opinion that the ends of justice will be met by "reducing the penalty to that of reduction by two stages in his time scale or pay for a period of two years with cumulative effect."*

23. Thereafter, the Court while passing an order dated 12.08.2013 directed the respondents to issue fresh show cause notice, the petitioner again failed to reply to the letters dated 19.09.2014, 17.11.2014, 24.04.2014 and 13.05.2015 nor attend personal hearing even after several reminders from the authority. The Disciplinary Authority after giving several opportunities passed an order dated 08.06.2015 upholding the revised penalty imposed on the petitioner vide order dated 11.02.1999. Instead of exercising the departmental remedy effectively, the petitioner misused the process of law and approached this Court against the said order dated 08.06.2015 and sought the liberty from this Court to approach the Appellate Authority. Thereafter once again the petitioner failed to make a case and the Appellate Authority rejected the appeal being devoid of merits vide order dated 29.02.2016, which is impugned before this Court in the present Writ Petition. In so far the overall delay in the matter is concerned, the petitioner has not alleged any prejudice being caused to him at any point of time and

thus cannot be taken as ground to challenge the same, as law is well settled. Even otherwise, keeping in view the approach taken by the petitioner and multiplicity of litigation at behest of the petitioner it is justified to attribute the overall delay to no one but the petitioner.

24. To strengthen his case, counsel for the respondents has relied upon the case of ***A.K. Bindal v. UOI: (2003) 5 SCC 163,*** which reads as under:

> *"28. ...Learned counsel has submitted that the employees of both the Companies having taken advantage of VRS and having taken the amount without any demur, the relationship of employer and employee had ceased to exist. They cannot therefore raise any grievance regarding the non-revision of pay scale at this stage and consequently the Writ Petitions have become infructuous. Even Shri A.K. Bindal who filed the writ petition in his capacity as President of Federation of Officers Association had also taken voluntary retirement and after acceptance of the amount had left the company and had gone out."*
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> *"32… The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights…*
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> *33. The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency….*
>
> *34. This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme*

and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

25. He further relied upon the case of ***Apparel Export Promotion Council vs. A.K. Chopra: AIR 1999 SC 625,*** the Supreme Court has held as under:

"The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were

wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceeding which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Haltom in Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, observed.

The purpose of judicial review is to ensure that the individual receives fair treatment. And not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court."

26. He further relied upon a case of ***Chairman and Managing Director, United Commercial Bank and others vs. P.C. Kakkar: 2003 (4) SCC 364,*** the Supreme Court has held as under:

> *"11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case2 the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.*
>
> *12. To put it differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further, shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.*
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> *13. In the case at hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on this aspect. The only discernible reason was the punishment awarded in M.L. Keshwani's case. As was observed by this Court in Balbir Chand vs. Food Corporation of India Ltd. even if a co-delinquent is given lesser punishment it cannot be a ground for interference.*

Even such a plea was not available to be given credence as the allegations were contextually different.

14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

42. To strengthen his arguments, he further relied upon the case of ***Director General, RPF and others vs. Ch. Sai Babu: AIR 2003 SC 1437,*** the Supreme Court has held as under:

"As is evident from the order of the learned Single Judge there has been no consideration of the facts and circumstances of the case including as to the nature of charged held proved against the respondent to say that penalty of removal from service imposed on the respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a

delinquent officer. The learned Single Judge has not recorded reasons to say as to how the punishment imposed on the respondent was shockingly or grossly disproportionate to the gravity of charge held proved against the respondent. It is not that in every case of imposing a punishment of removal or dismissal from service a high court can modify such punishment merely saying that it is shockingly disproportionate. Normally, the punishment imposed by disciplinary authority should not be disturbed by high court or tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly of shockingly disproportionate, after examining all the relevant facts including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the concerned delinquent person works."

27. It is submitted that scope of judicial review for the High Court in departmental disciplinary matters is limited. Reliance is placed on the judgment of ***General Manager (P), Punjab & Sind Bank Vs. Daya Singh,*** it has been observed as under:

"As held in T.N. C.S. Corporation Ltd. vs. K. Meerabai (2006) 2 SCC 255 the scope of judicial review for the High Court in departmental disciplinary matter is limited. The observation of this Court in Bank of India vs. Degala Sriramulu (1999) 5 SCC 768 are quite instructive.

11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which

a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel (AIR 1964 SC 364, (1964) 4 SCR 718). the Constitution Bench has held.

"23…the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

28. In the matter of ***National Housing Bank vs. B.C. Baliga: 2006 (III) AD Delhi 751,*** the Court while dealing with similar nature of case as under:

"46. In Bank of India v. Degala Suryanarayana 1999 VI AD (S.C.) 337 = AIR 1999 SC 2407 the Supreme Court observed:

"The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in

> *the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."*

29. I have heard learned counsel for the parties at length and perused the material available on record.

30. It is not out of place to mention here that the erstwhile DESU had advertised a scheme for grant of higher pay scale vide office order dated 02.01.1991 and the same was allowed to every employee, including the Meter Readers, vide office order dated 25.03.1992 as well as order dated 08.09.1993. Thus, the petitioner was entitled to the benefit of higher pay scale as well as first, second and third round promotional scale but, the said benefits were not given to the petitioner during the pendency of some vigilance cases, whereas, at the same time, the said benefits were given to all the employees including the counter parts as well as juniors of the petitioner. The petitioner also filed a civil suit seeking first, second and third time bound promotional scale with effect from 02.09.2002 i.e. when punishment imposed upon the petitioner was completed. The said civil suit being No. 165/2005 was dismissed by the learned Civil Judge as *"not maintainable"*

vide order dated 27.09.2011. Being aggrieved, the petitioner preferred an appeal before the learned Additional District Judge. However, said appeal was withdrawn by the petitioner himself in view of the judgment dated 12.08.2013 passed by this Court in ***W.P.(C) 2767/1998*** and ***W.P.(C)3069/1999.*** The petitioner being aggrieved by the inaction on the part of the respondent in granting the benefit of higher pay scale and first, second and third time bound promotional scale, preferred a writ petition before this Court being W.P.(C) no. 1846/2014 and the same was disposed of vide order dated 06.04.2015. The relevant part of the order dated 06.04.2015 is reproduced herein below:-

> *"1. Petitioner is present in person. Petitioner instructs his counsel that this writ petition, in view of the earlier judgment of the Civil Court dated 27.09.2011 passed by Sh. Abhilash Malhotra, Civil Judge, Tis Hazari is pressed only to the extent that since the penalty order against the petitioner is set aside by the order of this Court dated 12.08.2013 in W.P.(C) Nos. 2676/1998 and 3069/1999, by directing the disciplinary authority to pass a fresh order, and in case the disciplinary authority either reduces the penalty imposed against the petitioner or removes the penalty by not imposing any punishment, then as per the facts and situations then emerging in terms of the order of the disciplinary authority, petitioner only seeks the relief of being granted a higher SVRS package on the orders of the disciplinary authority becoming final, if the same reduces or withdraws the punishment against the petitioner.*
> *2. Of course, the petitioner always has the liberty in*

accordance with law to question/challenge the orders of the disciplinary authority in case fresh penalty order is passed against the petitioner reiterating the earlier penalty imposed or any other penalty.
3. The writ petitioner is withdrawn, however, subject to the aforesaid observations.

31. The further case of the petitioner is that after unbundling of Delhi Vidyut Board (herein after referred as DVB), the petitioner became an employee of BSES Rajdhani Power Limited, the respondent herein. The petitioner retired from the services of BSES Rajdhani Power Limited on 31.12.2003 after availing the benefits of Special Voluntary Retirement Scheme (SVRS). The date of superannuation of the petitioner is 31.07.2011 and till said date, the petitioner has received his pension from BSES Rajdhani Power Limited and, therefore, the petitioner has remained an employee of BSES Rajdhani Power Limited till 31.07.2011. Even thereafter, the petitioner has been receiving pension from Delhi Vidyut Board(DVB).

32. Being aggrieved by the order dated 08.06.2015 as well as the show cause notices dated 19.09.2014, 17.11.2014, 24.04.2015 and 13.05.2015, the petitioner, through his Advocate, sent a legal notice dated 11.07.2015 to the respondents, however, no reply till date.

33. At last, being aggrieved by the order dated 08.06.2015 as well as the show cause notices mentioned above, the petitioner filed a writ petition

being W.P.(C) No.6815/2015 and the same was disposed of vide order dated 01.10.2015 by observing as under:-

> *"Mr. Ashok Agarwal, Learned counsel appearing for the petitioner wishes to withdraw the present petition with the liberty to invoke departmental remedy by filing an appeal before the Appellate Authority against the order dated June, 08, 2015. Granting liberty, as prayed for, the petition is dismissed as withdrawn."*

34. Accordingly, the petitioner preferred an appeal dated 06.10.2015 to the CEO M/s BSES Rajdhani Power Limited and the same was duly received by the respondents. However, despite lapse of more than 3 months, the respondents failed to decide the departmental appeal of the petitioner. Therefore, the petitioner was constrained to file another writ petition being W.P.(C) No. 653/2016 whereby challenging the order dated 08.06.2015 as well as the show cause notices mentioned above. During the pendency of the said writ petition, the respondents vide impugned order dated 29.02.2016 dismissed the departmental appeal dated 06.10.2015. Thereafter, vide order dated 10.03.2016, the petitioner was allowed to withdraw the aforesaid petition with liberty to challenge the order dated 29.02.2016. Hence, the present petition.

35. The impugned penalty order dated 29.02.2016 as well as the impugned show cause notices dated 19.09.2014, 17.11.2014 and 13.05.2015

are barred by limitation and, therefore, illegal as well as unjustified. It is pertinent to mention here that vide order dated 12.08.2013 passed in W.P.(C) No. 3069/1999, the penalty order dated 11.02.1999 was set aside with the liberty to the respondent to issue fresh show cause within a period of three months from the date of passing of the said order dated 12.08.2013. The show cause notice dated 19.09.2014 was issued after expiry of about 13 months and was, therefore, illegal, unjustified and time barred.

36. It is also pertinent to mention here that no permission whatsoever was taken by the respondent from this Court seeking extension of time for issuing the show cause notice. It seems that the respondent was predetermined of confirming the penalty order dated 11.02.1999 and the show cause notice dated 19.09.2014 was merely a formality.

37. In case of ***Abhishek Prabhakar Avasthi vs. The New India Assurance Company Ltd. & Anr.,*** service single no. 7179/2009, decided on 04.12.2013, the full Bench of Allahabad High Court (Lucknow Bench) whereby held that a Court has prescribed time for the disposal of a disciplinary inquiry, and the inquiry is not concluded within the time so fixed, would the consequence in law be to vitiate the inquiry proceedings resulting in rendering the penalty imposed as being without jurisdiction. In

above noted case, the following questions have been referred in the order of the learned single judge for determination by the Full Bench:-

> *"(a) Whether if an inquiry proceeding is not concluded within a time frame fixed by a court and concluded thereafter, without seeking extension from the Court then on the said ground the entire inquiry proceeding as well as punishment order- passed, is vitiated in view of the judgment in the case of P.N. Srivastava; and*
>
> *(b) Whether the law as laid down by a Division Bench of this Court in the case of P.N. Srivastava that if an inquiry proceeding is not concluded within a time frame as fixed by a Court, it stands vitiated is still a good law in view of the judgment rendered by the Supreme Court in the case of Suresh Chandra as well as a judgment dated 24.07.2009 of a Division Bench of this Court in Writ Petition No. 1056 (SB) of 2009 (Union of India v. Satendra Kumar Sahai)."*

38. The full Court answered the above questions as under:-

> *"(A) Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the court to consider, whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;*
> *(B) Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra (supra) as well as the judgment of the Division Bench, of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a*

> *mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer. The court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time sup motu in order to ensure that a serious charge of misconduct does not go unpunished-leading to a serious detriment to the public interest. The court has sufficient powers to grant an extension of time both before and after the period stipulated by the Court has come to an end.*

39. It is not in dispute that the disciplinary proceedings were instituted against the petitioner after an inordinate delay of 10 years. The alleged misconduct pertains to the year 1980-82 whereas the charge-sheet was issued on 24.10.1990 i.e. after delay of 10 years. Further, the penalty order was issued on 25.08.1998 i.e. after 18 years of the alleged misconduct. The inquiry officer was appointed on 12.01.1995 i.e. after 15 years of the alleged

misconduct. In case of ***UOI vs. Yuvraj Gupta &Ors: MANU/DE/3605/2015,*** *i*t is observed that the conduct of the disciplinary authority shows that it was not at all interested in holding the inquiry, but it was interested only to keep the applicant under the cloud of disciplinary proceedings, thereby denying him his retirement dues. It is well settled position of law that unless the charge is proved in the disciplinary proceedings, giving an opportunity to the employee to cross-examine the inquiry cannot be held as found. There was no explanation for the unwarranted delay of 10 years in ensuing the proceedings.

40. It is further observed that the delinquent officer has erred that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering, whether, delay was vitiated the disciplinary proceedings, the Court has to consider the nature of charge, its complexity and on what account the delay was occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative

justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, the disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeat the justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations. It is further observed in the aforesaid judgment that if the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice, the delinquent in defending the inquiry ought to be interdicted.

41. In addition to above, there is no reason or justification of the Disciplinary Authority to differ with the finding of the inquiry officer. The inquiry officer had given a finding in favour of the petitioner and held that the charges against the petitioner were not proved. The findings of the inquiry officer were based on material available on record. The purported reason given by the Disciplinary Authority to differ with the findings of the

inquiry officer was considered by the inquiry officer in its inquiry report and, therefore, the disciplinary authority had no occasions/justifications to differ with the findings of the inquiry officer.

42. Moreover, the Appellate Authority failed to consider the submissions made by the petitioner in its departmental appeal. The order passed by the Appellate Authority is a non-speaking order and suffers from vice of non application of mind.

43. In case of "***Yogendra Singh vs. Indian Oil Corporation Ltd.",*** passed by this Court in ***W.P.(C) No. 5237/2000,*** decided on 20.12.2017 and "***Roop Singh Negi vs. Punjab National Bank & Ors.",*** in ***W.P.(C) 7431/2008,*** decided on 19.12.2008, whereby after setting aside the impugned orders no fresh inquiry may be directed to be conducted by the respondents against the petitioner at that stage. In the case in hand, the petitioner is a retired employees and is currently 67 years of age. However, it is a third round of litigation/writ petition. The alleged misconduct was purportedly committed in the year 1980-82 and period of almost 38 years have passed since the said alleged misconduct. Moreover, it is a case of no evidence against the petitioner and, therefore, fresh inquiry, if directed to be conducted, would be a futile exercise.

44. In view of above facts and circumstances, the arguments advanced and the case laws relied upon by the counsel for the respondents are of no help.

45. In view of above discussion and settle position of law, I hereby set aside the impugned orders and show cause notices.

46. Consequently, the writ petition is allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 13, 2019
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