Union of India Vs H.S. Roorkiwal and Others

Court: Delhi High Court

Date of Decision: July 23, 2013

Citation: (2013) 6 AD 108 : (2013) LabIC 3662 : (2013) 3 LLN 581

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: R.V. Sinha, for the Appellant; G.S. Lobana and Mr. Deepak Verma, for the Respondent

Final Decision: Allowed

Judgement

V. Kameswar Rao, J.
The writ petition has been filed by the petitioners inter alia praying for quashing the order and judgment dated

February 3, 2012 passed by the learned Central Administrative Tribunal, Principal Bench in Review Application being No. 213 of 2011 and

Original Application being No. 2754 of 2009 wherein the learned Tribunal has held that the respondent No. 1 would be entitled to his normal

pension with effect from his date of retirement and the amount of pension deducted so far shall be refunded to the respondent No. 1 forthwith. The

respondent No. 1 in the instant writ petition was working as Deputy General Manager, Telecom District Dhule, Maharashtra Telecom Circle,

Mumbai when major penalty proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against him vide Memorandum dated

September 22, 2003.

2. The Inquiry Officer, after conclusion of the inquiry, submitted his report dated September 23, 2006 wherein he held the charges framed against

the respondent No. 1 to be fully established inter alia by holding that:

XV. The flaws in the estimate work order, bills along with the joint measurement book were totally not checked by the CO. The CO"s plea is that

he is not supposed to check all these matters and he has only to sign the documents seems little strange and improper. The CO failed to maintain

absolute integrity, displayed gross lack of devotion to duty, acted in a manner unbecoming of a Govt. Servant and also failed to ensure integrity and

Devotion to duty of Shri RM Joshi, SDE and Shri D C Das, DE working Under his control and authority and thereby contravened Rule 3(1) (i),

(ii), (iii) and 3(2) (i) of CCS(Conduct) Rules, 1964.

3. Meanwhile the respondent No. 1 attained the age of superannuation and retired from his services with effect from October 31, 2005 and

thereafter, as a result, the said proceedings were deemed to be under the provisions of Rule 9 of the CCS (Pension) Rules, 1972.

4. The copy of the said inquiry report along with the advice tendered by the Central Vigilance Commission was sent to the respondent No. 1 who

on the receipt of the same responded with a detail detailed representation dated February 14, 2007 against the same to the Disciplinary Authority,

President of India.

5. Thereafter, the records of the entire disciplinary proceedings against the respondent No. 1 were forwarded to the Union Public Service

Commission, impleaded as the respondent No. 1 No. 5 in the instant writ petition, for their advice. On January 21, 2008 the Union Public Service

Commission while tendering its advice about the quantum of punishment observed that the charges proved against the respondent No. 1 constitute

grave misconduct on his part and therefore, the ends of justice would be met if a penalty of 20% cut in monthly pension for a period of 5 years is

imposed on the respondent No. 1.

6. The Disciplinary Authority, President of India, accepted the aforesaid advice of the Union Public Service Commission and vide order dated

February 22, 2008 imposed penalty of 20% cut in pension for a period of 5 years on the respondent No. 1.

7. On September 16, 2008 the respondent No. 1 being aggrieved by such an order passed by the Disciplinary Authority filed a revision

application under Rule 29(i) of CCA (CCA) Rules, 1965. The President of India while treating the said revision application of the respondent No.

1 as a review petition under Rule 29-A of CCS (CCA) Rules, 1965 came to the conclusion that that no new material or evidence has been

brought before it by the respondent No. 1 and therefore the said review petition was held to be devoid of merits and was rejected vide order

dated January 7, 2009.

8. Being aggrieved by the above orders dated February 22, 2008 and January 7, 2009, the respondent No. 1 approached the Tribunal by filling

Original Application being No. 2754 of 2009. The Tribunal observed that there had been no procedural irregularity in the disciplinary proceedings.

It further observed that the inquiry authority has given cogent reasons for holding that the charge against the respondent No. 1. It was also

observed by the Tribunal that since the advice of Union Public Service Commission has been accepted by the disciplinary authority it implies that it

had accepted that the charge constitutes grave misconduct. Therefore, the Tribunal found no merit in the Original Application filed by the

respondent No. 1 and consequently dismissed the same vide its order dated May 16, 2011.

9. Thereafter, the respondent No. 1 again approached the Tribunal by filing a Review Application No. 213/2011. The Tribunal while considering

the said Review Application noticed that certain grounds though raised in the Original Application and taken note in the order still no specific

conclusion on such points were given by the Tribunal. Thus, the Tribunal recalled the order dated May 16, 2011 and restored the Original

Application to its original number.

10. After hearing the parties the Tribunal in paragraph 9 of the impugned order and judgment dated February 3, 2012 noted that:-

9. Having heard the contentions of the parties, we have carefully perused the order passed by the Tribunal on 16.05.2011 and the pleadings in

OA. It is noticed that though in paragraph 3 of the order the Tribunal has noted the contention of procedural and supervisory lapse but the finding

has not been indicated in the order as to what was the role of the applicant in the said case. This issue is being addressed now. Admittedly, the

primary responsibility of preparation of the estimates was that of the SDE or Divisional Engineer and the applicant was not expected to visit the

site, and his role is to endorse the estimates by counter signing the same prepared by the Divisional Engineer/Sub Divisional Engineer. Such act on

the part of the applicant being procedural one, the alleged misconduct can at best be visited with minor punishment. There will be material changes

in the conclusion as the decision of the Tribunal was earlier based on the conclusion that the charge against the applicant was grave in nature and,

therefore, penalty of 20% cut in pension for five years was imposed by the Disciplinary Authority. We notice that in the order of the Tribunal this

particular aspect that the applicant has only a secondary and supervisory role, has not been analysed, as a result of which, real miscarriage of

justice has taken place.

11. The Tribunal held that the role of the respondent No. 1 had been considered and found to be a supervisory and the act on the part of the

Respondent No. 1 would only amount to a procedural irregularity. Noting Rule 9 of CCS (Pension) Rules 1972, the Tribunal held that supervisory

or procedural lapse could not be considered to be grave misconduct or negligence for the respondent No. 1 to suffer the penalty of cut in pension

and accordingly quashed the order of penalty dated February 22, 2008 and review order dated January 7, 2009.

12. In view of the above the Tribunal held that the respondent No. 1 would be entitled to his normal pension with effect from his date of retirement

and the amount of pension deducted so far to be refunded to the respondent No. 1 forthwith.

13. Mr. R.V. Sinha, learned counsel for the petitioner has submitted that the respondent No. 1 was guilty of grave misconduct and negligence

inasmuch as he apart from himself failed to maintain absolute integrity and devotion to duty he also failed to ensure integrity and devotion to duty of

his subordinates of his subordinates whereby a loss of substantial amount of Rs. 13,41,203.70 has been caused to the petitioner and hence the

punishment imposed is justified and the Tribunal has erred in interfering with the same contrary to the settled law of the Supreme Court and this

Court that the judicial review in the matter of departmental enquiry is very limited. He further states that the findings of the Inquiry Officer is based

on sound reasoning. Such a finding could not have been brushed aside by the Tribunal.

14. On the other hand, learned counsel for the respondent No. 1 would support the judgment of the Tribunal and prays for dismissal of the writ

petition. According to him the Tribunal had rightly held that the finding against the petitioner only indicate a supervisory lapse.

15. The question that arises for our consideration is whether the finding of the Inquiry Officer could be said to be a supervisory lapse which would

not be construed as a grave misconduct/grave negligence to entail a penalty of 20% cut in pension for 5 years?

16. It is an accepted position that on the retirement of respondent No. 1 on October 31, 2005, the proceedings continued under Rule 9 of the

CCS (Pension) Rules. Relevant part of Rule 9 of the CCS (Pension) Rules is reproduced to understand the intent of the same.

The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in

part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss

caused to the Government, if any in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence

during the period of service, including service rendered upon reemployment after retirement.

17. The CCS (Pension) Rules 1972 are statutory in nature. Since the penalty under Rule 9 can entail deprivation of pension, surely the said

punishment must commensurate with the gravity of misconduct committed by an employee. Rule 9 of the CCS (Pension) Rules contemplate that

the pension can only be withheld in full or in part whether permanently or for a specified period only when the pensioner is found guilty of grave

misconduct or negligence during the period of service. The CCS (Pension) Rules, 1972 do not define misconduct"" or a ""grave misconduct"".

Similarly it does not define ""negligence""/""grave negligence"".

18. The Supreme Court in its recent opinion reported as Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, . has after referring to

the various judgments including the definition given in Black''s law dictionary etc. has held as under:

MISCONDUCT:

Misconduct has been defined in Black''s Law Dictionary, Sixth Edition as:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character,

improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offense, but not

negligence or carelessness.

Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had

no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

P. Ramanatha Aiyar''s Law Lexicon, Reprint Edition 1987 at page 821 defines ''misconduct'' thus:

The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct

involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context

wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or

improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left,

except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of

action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an

indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be

defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

Thus it could be seen that the word "misconduct'' though not capable of precise definition, on reflection receives its connotation from the context,

the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or

wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct

but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the

statute and the public purpose it seeks to serve.....

(See also: State of Punjab and Others Vs. Ram Singh Ex. Constable,).

Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working

diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond

authority may be a misconduct. When the office bearer is expected to act with absolute integrity and honesty in handling the work, any

misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. (Vide: Disciplinary Authority-

cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, ; Government of Tamil Nadu Vs. K.N. Ramamurthy, ; Inspector Prem Chand Vs.

Govt. of N.C.T. of Delhi and Others, ; and State Bank of India and Others Vs. S.N. Goyal, .

In Government of A.P. Vs. P. Posetty, , this Court held that since acting in derogation to the prestige of the institution/body and placing his present

position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had

behaved in a manner which is unbecoming of an incumbent of the post.

In M.M. Malhotra Vs. Union of India (UOI) and Others, , this Court explained as under:

....It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise

definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the

discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with

reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks

to serve.

A similar view has been reiterated in Baldev Singh Gandhi Vs. State of Punjab and Others, .

Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for

punishment.

(See: Union of India (UOI) and Others Vs. J. Ahmed,).

It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must

examine as to whether misconduct has been detrimental to the public interest. (Vide: General Manager, Appellate Authority, Bank of India and

Another Vs. Mohd. Nizamuddin,).

The expression "misconduct" has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful

behaviour, wilful in character. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or

carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or

loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

Further, the expression "misconduct" has to be construed and understood in reference to the subject matter and context wherein the term occurs

taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of

misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest.

19. Even this Court while deciding writ petition (civil) Nos. 559/2010 & 2292/2010 has held as under:

Acts of moral turpitude, acts of dishonesty, bribery and corruption would obviously be an aggravated form of misconduct because of not only the

morally depraving nature of the act but even the reason that they would be attracting the penal laws. There would be no problem in understanding

the gravity of such kind of offences. But that would not mean that only such kind of indictments would be a grave misconduct. A ready example to

which everybody would agree with as a case of grave misconduct, but within the realm of failure to maintain devotion to duty, would be where a

fireman sleeps in the fire office and does not respond to an emergency call of fire in a building which ultimately results in the death of 10 persons.

There is no dishonesty. There is no acceptance of bribe. There is no corruption. There is no moral turpitude. But none would say that the act of

failure to maintain devotion to duty is not of a grave kind.

It would be difficult to put in a strait jacket formula as to what kinds of acts sans moral turpitude, dishonesty, bribery and corruption would

constitute grave misconduct, but a ready touchstone would be where the "integrity" to the devotion to duty is missing and the "lack of devotion" is

gross and culpable it would be a case of grave misconduct. The issue needs a little clarification here as to what would be meant by the expression

"integrity" to the devotion to duty. Every concept has a core value and a fringe value. Similarly, every duty has a core and a fringe. Whatever is at

the core of a duty would be the integrity of the duty and whatever is at the fringe would not be the integrity of the duty but may be integral to the

duty. It is in reference to this metaphysical concept that mottos are chosen by organizations. For example in the fire department the appropriate

motto would be: ''Be always alert''. It would be so for the reason the integrity of the duty of a fire officer i.e. the core value of his work would be to

be ''always alert''. Similarly, for a doctor the core value of his work would be ''duty to the extra vigilant''. Thus, where a doctor conducts four

operations one after the other and in between does not wash his hands and change the gloves resulting in the three subsequent patients contacting

the disease of the first, notwithstanding there being no moral turpitude involved or corruption or bribery, the doctor would be guilty of a grave

misconduct as his act has breached the core value of his duty. The example of the fireman given by us is self explanatory with reference to the core

value of the duty of a fireman to be ''always alert''.

20. On perusal of both the judgments, it would be seen that in a given case even the negligence or carelessness may also be held as a misconduct.

Any act which would breach the core value of an officer''s duty can be termed as a grave misconduct. Similarly if in exceptional circumstances, not

working diligently may be a misconduct.

21. The Black''s Law dictionary define ''''negligence'''' as conduct whether of action or omission which may be declared and treated as negligence

without any argument or proof as to the particular surrounding circumstances either because it is in violation of a statute or valid municipal

ordinance or because it is so palpably oppose to the dictates of common prudence that it can be said without hesitation or doubt that no careful

person would have been guilty of it.

22. In the present case the Inquiry Officer in his report dated September 23, 2006 has proved the charge against the respondent No. 1 on the

basis of the following conclusion.

I. From the oral inquiry with various witnesses, the following facts were found out:-

(1) No work order, no register, no other records were handed over by Shri R.M. Joshi to his substitute when relinquished the charge of AVPL-

VI.

(2) While investigating, no relate documents were available, no BMC permission, no cable diagram showing joint locations were available.

(3) Sanctioned estimates did not have any diagram.

(4) Requisition slips for issuing the stores through different gate passes were not available.

(5) The gate passes issued during 31-10-98 to 23-11-98 from AVPL-VI stores did not contain the estimate nos.

(6) List attached as mentioned in the joint measurement sheets were not found during investigation.

(7) Shri Ansari and his predecessor Shri R.M. Joshi could not show the locations and the same was recorded in the statement.

(8) Assuming that the estimates as covering estimates for the faults in the cable, the estimate quantity is very huge and there is no record to show

the faults in cable which are attended. If location of the cable faults is not available and not known, how can CO accept the bills for payment.

The above facts clearly establish the absence of work supposed to have been carried out as per bill.

II. DGM when counter-signs a bill take the responsibility for passing the bill. If his subordinates submit a bill and signing the bill for payment

without properly checking is the mistake on the part of DGM. DGM cannot escape from his responsibility by saying that he had signed in principle.

All the signatures bear a responsibility and an authority to make payment. Because of his signature authorizing the payments, payments have been

made.

III. Estimates were prepared for anticipated faults and used as covering estimates for faults already attended. Estimate was for anticipatory nature

but justification in the estimate said that nature of work was very urgent. These two conflicting statements are provided in the estimate. The CO

also could not state where the work was done and at which location during the whole inquiry even we assume the works were done for attending

to the cable faults already developed.

IV One of the charges against the CO is that he failed to ensure integrity and devotion of duty of Shri RM Joshi, SDE and Shri D.C. Das, DE who

wee working under his control. If PO has found out that the SDE and DE has faltered in the estimate preparation, work order preparation and bill

payment, then the charge is provided against the CO. It is not clear how CO is refuting this statement of PO.

V. The 17,000 cm equal to 0.170 km is imaginary findings of PO. Let it be imaginary. We shall only refer to 17,000 cu. Cm of work supposed to

have been done. The CO is only trying to divert the attention of the matter by his statement.

VI DGM"s signature is required for making payment of particular bills to the tune of Rs. 13 lakhs. Each officer is designated with some financial

responsibility for execution. If the officer does not see the reasons, he should not have signed. His argument is that he signed the estimates without

applying his mind and also signed the bills for payment just because the bills were signed by SDE and DE concerned is not correct.

VII. His argument and defence that within 14 to 17 days work could have been done if contractor works day and night. It is also not clear whether

more than one trench was taken for one cable fault or not as the bill of the contractor does not contain the date, location and size of the fault. The

JTO informed that he did not sign the joint measurement on 13-11-98.

VIII. If there is no rule for DGM to sign the bill, what made the Charged Officer to sign the bill? He should have refused to sign the bill. If DGM is

not supposed to supervise or conduct check on the work carried out by his subordinates, then what is the rule of DGM? How a DGM can

perform the function of DGM if he has not enforced discipline and check on the activities of his subordinates.

IX. The bills states that work commenced on 1-11-98 and completed on 15-11-98. But measurements were taken on 14-11-98 before the work

was completed. The bill amount for the works is around Rs. 13 lakhs which were paid to the contractor. Since no concrete evidence is there to

prove that the work was carried out and payment is justified, we have to come to a conclusion that works were not carried and bills for about Rs.

13 lakhs were paid without any check by the DGM concerned.

X. Estimate is very ambiguous and imaginary. The DGM had sanctioned without applying his mind. PO also has mentioned this in his statement that

17000 cu. Mtr. was done in 17 days time without any record. The estimates also are not clear whether it is covering estimate or not. This fact is

not checked by DGM.

XI. CO is accusing that the vigilance team had committed blunder of improper investigation. It is not clear why he accuses the vigilance team now

in his defence brief.

XII There could be no fall of pressure on any leakage between 31-10-98 and 17-11-98 when the work was done. The exact work done on this

period is not clear. During this period, the compressor was faulty. No pressurization was maintained. It is not clear what fault and how many were

attended during this period and at which locations. DGM did not check these lapses in the bills and simply signed the bills.

XIII The reasons for BMC permission not available is attributed to emergency fault attendance. It is very difficult to imagine that these faults of so

much magnitude (17000 c. Meter trenching) employing so many labours (160 labour days) for night watcher and for watching tents and tools were

claimed in the bills. The entire work shown as done is very much imaginary and not a simply and straight forward case.

XIV. From the inquiry, it is proved beyond doubt that the CO did not verify any matter regarding the estimates and simply sanctioned the

estimates. He did not verify the work order issued by SDE AVPL-VI and the controlling DE, which do into contain any information. He simply

signed the bills for payment without any cross check on the joint measurement book along with the bills. The joint measurement had no description

of the size of the trenches in cu. Meter, length, breadth and depth of trench were available.

XV. The flaws in the estimates, work order, bills, along with the joint measurement book were totally not checked by the CO. The CO"s plea is

that he is not supposed to check all these matters and he has only to sign the documents seems little strange and improper. The CO failed to

maintain absolute integrity, displayed gross-lack of devotion to duty, acted in a manner unbecoming of a Govt. Servant and also failed to ensure

integrity, and devotion to duty of Shri R.M. Joshi, SDE and Shri D.C. Das, DE working under his control and authority thereby contravened Rule

3(1)(i),(ii),(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964.

In view of the above, the charge is held to be proved to the extent indicated in para XV pre-page and above.

FINDINGS

Article 1.

Held proved to the extent

mentioned in para XV above.

23. On reading of the conclusion arrived at by the Inquiry Officer it is seen that the Inquiry Officer has clearly brought out the facts on which he

concludes the charge has been proved.

24. We find the facts which had weighed with the Inquiry Officer to hold the charge as proved would definitely show that the conclusion of the

Inquiry Officer is justified.

25. The magnitude of the loss is enormous. The respondent No. 1 being a Deputy General Manager was holding a responsible post. He was

required to ensure that the procedure laid down has been scrupulously followed; how the works were awarded; the manner in which the work

orders have been issued to the contractor; whether the permission was taken from local authorities to do the work; sanctioned estimates have been

properly prepared; the stores which were alleged to have been issued have the proper requisition slips; whether the gate passes issued contains all

the information as required, whether the work in nature could have been done within a period of 14 to 17 days; whether the joint measurement

book had all the details of the work done etc. The plea of the Respondent No. 1, that he was not supposed to check all the matters and he has

only to sign the documents has not been accepted by the Inquiry Officer, being strange and improper stand.

26. The petitioner was the sanctioning authority. Being a sanctioning authority he surely knows the purpose and importance of his signature.

Without his signature no payment could have been released to the contractor. At the level of Deputy General Manager he is the custodian of the

finances on behalf of the petitioner. He is required to be attentive to the fact that every paisa released to the contractor is accounted for.

27. Surely it is a case where the Respondent No. 1, not worked diligently and the acts of omission/commissions were detrimental to the public

interest, as it has caused loss to the exchequer, shows lack of devotion to duty and would constitute grave misconduct/grave negligence. The

Tribunal has clearly erred by holding it to be a case of a supervisory lapse. Even otherwise in the facts of this case the ''Supervisory Lapse'' would

constitute a grave misconduct/negligence. The respondent No. 1 must own the responsibility of a sanctioning authority which surely is different from

the responsibility of a Sub Divisional Engineer/Divisional Engineer. Hence it is a case which falls within the parameters of Rule 9 of CCS (Pension)

Rules. The grave misconduct/grave negligence having been proved in the present case, the disciplinary authority was within its right to impose the

punishment of 20% cut in pension for a period of 5 years which was upheld in the review. The Tribunal could not have interfered with the said

decision, that to at the stage of Review.

28. We set aside the order of the Tribunal dated February 03, 2012 in Review Application No. 213/2011 and in Original Application No.

2754/2009 and dismiss the Original Application No. 2754/2009. The writ petition is allowed in terms of the above. No costs.