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## **Delhi Jal Board and Others Vs Sudhir Kumar Gupta**

### **Writ Petition (C) 4470 of 2010**

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**Court:** Delhi High Court

**Date of Decision:** July 9, 2010

**Hon'ble Judges:** Pradeep Nandrajog, J; Mool Chand Garg, J

**Bench:** Division Bench

**Advocate:** Vivek Kishore, for the Appellant; Akshat Shrivastava and Anand K. Shrivastava, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Pradeep Nandrajog, J.

Caveat No. 129/2010.

Since the respondent-caveator appears through counsel as above-noted. The Caveat is discharged. W.P.(C).4470/2010.

1. The respondent is an employee of Delhi Jal Board and was issued a charge sheet vide memorandum dated 01.04.2001.

2. The gravamen of the allegation of misconduct against the respondent was that he failed to detect the unauthorized water connection at House

No. 1570 to 1575, Gali Hira Singh, Navin Shahdara.

3. The respondent denied the charge and stated that after a complaint was received that an unauthorized water connection was in existence in the

house in question he visited the house on 19.06.2000, but found that the allegation was incorrect.

4. The disciplinary authority was not satisfied with the reply filed to the charge sheet and appointed an inquiry officer.

5. The inquiry officer submitted a report, and after discussing the evidence returned a finding as under:

Sh. Sudhir Kr. Gupta - as regards the first allegation of his failure to detect the unauthorized water connection on 19.06.2000 his ZE has confirmed

the visit of site as DW3. DW3 also stated that there was no connection at the site when he inspected also DW1 has stated that the connections

were connected on 3rd July, 2000 and there is no evidence to the contrary adduced in the enquiry. SW.2 also stated that on 3rd July, 2000 the

building was vacant and no consumption of water. In view of this the allegation does not establish against the CO beyond doubt. As regards

charge No. 2 the same set of evidence as against allegation 1 is relevant and the charge cannot be fully established. However, since the

unauthorized connection existed on the date of vigilance raid, the allegation as a whole is taken as partly proved as nothing has come on record to

indicate since when these connections were there.

6. It is apparent that the inquiry officer held in favour of the respondent in respect of the misdemeanor alleged that on 19.06.2000 he failed to

detect the existence of an unauthorized water connection. A positive finding has been returned by the inquiry officer that it stands conclusively

proved that by said date no unauthorized connection existed. A positive finding has been returned that the evidence suggests that the owner of the

house got the unauthorized water connection, i.e., connected the internal pipes of his house to the main service line on 03.07.2000.

7. Surprisingly enough, a self contradictory finding came to be returned by the inquiry officer who held that, since it stood proved that on the date

of the vigilance raid, unauthorized connection certainly exists, the charge was partially proved.

8. The inquiry officer has clearly held that the charge stood partially proved.

9. We shall be dealing with this self contradictory finding a little later.

10. The disciplinary authority submitted the report of inquiry to the respondent and called upon him to furnish a response, which he did.

11. In the response filed, the respondent pointed out that the charge as alleged had totally collapsed and that the finding that part of the charge

stood established was the result of a self contradictory conclusion drawn by the inquiry officer.

12. Disposing of the response by the respondent to the report of the inquiry officer, the disciplinary authority passed an order dated 06.08.2003

imposing the penalty of reduction of salary to one lower stage in the time scale of pay for a period of two years with further directions that the

respondent will not earn increment of pay during the period of such reduction and on the expiry of such period the reduction will have the effect of

postponing the future increments of pay.

13. The order dated 06.08.2003 reads as under:

Shri Sudhir Kumar Gupta S/o Shri Parma Nand Gupta working as JE(C) was issued a charge sheet for major penalty vide memo No.

DJB/VIG/Disp/Major/CS-14/01/1421 dated 11.04.2001.

In brief, the charge against Shri Sudhir Kumar Gupta is the failed to detected the unauthorized water connections running in H.No.1570 to 1575

Gali Hira Singh, Navin Shahdara.

He submitted reply in response to the charge sheet.

A regular Department Enquiry was conducted by Shri. D.D. Lohan, EO(W). The Enquiry Officer has submitted his enquiry report and provided

the charge against Shri Sudhir Kumar Gupta.

The copy of the inquiry report was sent to Shri Sudhir Kumar Gupta for comments. He submitted his reply in response to the findings of the enquiry

report.

I, S.P. Marwah, Member (Admin) being the disciplinary, after considering the facts and circumstances of the case in totality feel that the ends of

justice would be met if penalty of  $\tilde{\sim}\hat{\Delta}\hat{\Delta}\frac{1}{2}$  Reduction of salary to one lower stage in the time scale of pay for a period of two years with further

directions that he will not earn increments of pay during the period of such reduction and on the expiry of such period the reduction will have the

effect of postponing the future increments of his pay is imposed upon Shri Sudhir Kumar Gupta, JE(C) and I order accordingly.

14. It is apparent that the disciplinary authority treated the issue as if the charge in its entirety stood established against the respondent. It is

apparent that the disciplinary authority was oblivious to the fact that even as per the inquiry report the charge was partially proved and not in its

entirety.

15. It is also apparent that the disciplinary authority has just not dealt with the submissions urged by the respondent pertaining to the self apparent

contradictory finding recorded by the inquiry officer.

16. The respondent preferred an appeal before the appellate authority against order dated 06.08.2003 passed by the disciplinary authority.

Needless to state, in the appeal, afore-noted issues were highlighted. By an order which on its own face is a non-speaking order, the appellate

authority dismissed the appeal vide order dated 05.03.2004, which reads as under:

Charge sheet for majority penalty was issued to Sh. Sudhir Kumar Gupta, S/o Shri Parmanand Gupta, JE(C) vide memo

No.DJB/Vig./Dis./Major/CS-14/1421 dated 11.04.2001.

In brief, the charge against him is that he failed to detect the unauthorized water connections running in H.No.1570 to 1575, Gali Hira Singh,

Naveen Shahdara.

After following the prescribed procedure, Member (Admin.), in the capacity of Disciplinary Authority, after considering facts and circumstances of

the case in totality, imposed the penalty of "Reduction of salary to one lower stage in the time scale of pay for a period of two years with further

directions that he will not earn increments of pay during the period of such reduction and on expiry of such period, the reduction will have the effect

of postponing the future increments of his pay upon Sh. Sudhir Kumar, JE(C), which was conveyed to him vide Order No. 55 dt. 6.8.2003.

Sh. Sudhir Kumar Gupta preferred an appeal against the orders of the disciplinary authority to the undersigned.

I, P.K. Tripathi, Chief Executive Officer, Delhi Jal Board, being the appellate Authority, have gone through his appeal and other facts on record. I

see no merit in his appeal and the same is therefore, rejected.

17. A perusal of the order passed by the appellate authority shows that the appellate authority has not dealt with the submissions urged in appeal.

18. Good luck for the respondent inasmuch as the Central Administrative Tribunal before which the challenge to what it happened was finally

considered has noted the afore-noted facts and vide impugned order dated 13.11.2009 has held that there is a complete non-application of mind

by the appellate authority of the petitioner, the disciplinary authority of the petitioner as also the inquiry officer.

19. The Tribunal has returned the finding that the self contradictory findings returned by the inquiry officer required corrected action to be held that

the later part of the finding returned by the inquiry officer was without any evidence.

20. For the facts noted by us herein above it is apparent that having returned a finding that the unauthorized water connection was not existing on

the date the respondent went for inspection and that the offending act was done on 3.7.2000, it is apparent that the inquiry report, holding that the

charge stood partially proved has recorded a perverse finding. It is also a case where the disciplinary authority has acted mindlessly. It is a case of

non-application of mind by the appellate authority.

21. It is apparent that the finding returned by the Tribunal is correct. The finding returned by the Tribunal that the penalty order has to be quashed

is correct.

22. The writ petition is dismissed in limine.

C.M. 8880-81/2010.

In view of the order passed hereinabove disposing of the writ petition at the preliminary hearing itself, the afore-noted applications stand disposed

of as infructuous.