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

Date of decision: 09.09.2025

\+ W.P.(C) 6845/2011
J K ROHATGI .....Petitioner
Through: Mr.Himanshu Gautam, Adv. (DHCLSC).

versus

NATIONAL BUILDING CONSTRUCTION CORPORATION LTD & ANR .....Respondents
Through: Mr.Soumyajit Pani and Mr.Aishwary Bajpai, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 25.03.2010 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in T.A. No.958/2008, titled ***J.K.Rohtagi, v. The Chairman-cum-Managing Director, National Building Construction Corporation & Anr.,*** dismissing the application filed by the petitioner herein. The petitioner further challenges the Order dated 05.04.2010 passed by the learned Tribunal dismissing his Review Application, being R.A. No.118/2010.

2. The petitioner had originally filed the above T.A. before this Court in the form of a Writ Petition, being W.P.(C) 984/1998, challenging the Order dated 25/26.07.1996 dismissing him from

service, and the Order dated 20.10.1997 passed by the Appellate Authority rejecting his appeal against the said order of dismissal. This Court, by its Order dated 02.03.2009, had transferred the said petition to the learned Tribunal for adjudication.

3. To give a brief background of the facts in which the present petition arises, the petitioner was working as an Assistant Engineer (Electric) Grade-I from 23.03.1992 to 03.01.1994 with the respondent no.1, that is, National Building Construction Corporation, at their Project Office at Guwahati. He was served with a Memorandum dated 01.11.1994, proposing to initiate disciplinary action against him. After considering his response thereto, a Memorandum of Charges dated 13.07.1995 was issued to the petitioner, on the following charges:

> *"**ARTICLE - I***
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> *Shri J.K. Rohatgi, AE(E) Gr.I while working at ASSCA (Assam State Seed Certification Agency), Guwahati from 25.3.92 to 3.1.94 recorded false measurement of certain items of work on page 38 to 45 and 57 to 69 of MB No.4040 in favour of contractor, M/s. Hie Line Electricals. He has thus failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of an employee of the Corporation. He has thus contravened Rule 3(1) of the NBCC Service (Conduct) Rules, 1969.*
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> ***ARTICLE-II***
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> *The said Shri Rohatgi has allowed excess payment of Rs.2,11,658/- to the contractor, M/s.Hie Line Electrical by recording excess measurements vide RA Bills No.1 and 2 in the MB No.4040. Shri Rohatgi did not recover the excess count paid to the contractor and thus caused financial loss amounting to Rs.2,11,658/- to the Corporation. He has thus failed to maintain absolute integrity and*

devotion to duty and acted in a manner unbecoming of an employee of the Corporation. He has thus contravened Rule 3(1) of the NBCC Service (Conduct) Rules, 1969.

ARTICLE-III

Shri Rohatgi on his transfer from Guwahati works on 3.1.1994 did not handover the charge properly to his successor. He did not furnish the status of work and did not handover the materials etc., for which he had already made payment to the contractor He has thus failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of an employee of the Corporation. He has thus contravened Rule 3(1) of the NBCC Service (Conduct) Rules, 1969."

4. The Inquiry Officer in his Report dated 11.03.1996, opined that while Charge-I was proved against the petitioner, while Charge-II and Charge-III were not proved.

5. With regards to Charge-I, the Inquiry Officer found that the petitioner had recommended the excess payment of not less than Rs.2,11,658/- to the contractor through bills and entries in the Measurement Book, though the said work had not been completed by the contractor, and that but for the petitioner recommending the payment to the contractor through such bills and entries in the Measurement Book, this payment would not have been made to the contractor. Therefore, Charge-I was held to be proved. However, with regards to Charge-II, the Inquiry Officer was of the opinion that as the contractor was still working with the respondent no.1 at Guwahati, as such, at that stage it was too early to say whether the respondent no.1

was put to a loss of the amount of Rs.2,11,658/- as a result of the action of the petitioner, therefore, Charge-II was held to be not proved. With regards to Charge-III, the Inquiry Officer found that the evidence produced shows that the petitioner had handed over the work properly to his successor, therefore, Charge-III was held to be not proved.

6. The Disciplinary Authority issued a Disagreement Note/Memorandum dated 26.03.1996, disagreeing with the findings of the Inquiry Officer as far as Charge-II was concerned. As much of the arguments of the petitioner revolve around this Disagreement Note, we shall reproduce the relevant extract of the same as under:

> *"With regard to Charge-II, the Inquiry Officer has been given the finding "C.O allowed excess payment of not less than Rs. 2,11,658/- to the contractors by recording excess measurements of items and he did not recover the excess amount thus paid to the Contractor. It was however, not proved that this caused financial loss amounting to Rs.2,11,658/- to the Corporation as yet". In this connection Shri Rohatgi is further informed that the latter part of the I.O.'s aforesaid finding "it was, however, not proved that thus caused financial loss amounting to Rs.2,11,658/- to the Corporation, as yet" is not acceptable to the undersigned, as it is observed from the evidence on record that only a sum of Rs.22,600/- (Rs.14,600/- + Rs.8,000/- being Security Deposit and EMD respectively) is available with the unit for recovery against the excess payment of Rs.2,11,658/- made to the Contractor. As the Contractor abandoned the work and there is no scope for recovery of the balance amount of excess payment of Rs.1,89,058/- (Rs.2,11,658/- - Rs.22,600/-), the Corporation has incurred a loss of not less than Rs.1,89,058/-."*

7. Upon receiving the response of the petitioner to the Disagreement Note and the notice calling upon the petitioner to respond to the Report of the Inquiry Officer, the Disciplinary Authority *vide* Order dated 25/26.07.1996 dismissed the petitioner from service.

8. As far as Charge-II is concerned, the Disciplinary Authority in its Order dated 25/26.07.1996 observed as under:

> *"With regard to the observation by I.O. that, it is too early that a loss of Rs.2,11,658/- has been caused to the Corporation as M/s. Hie Line Electricals is still working in NBCC, it has been confirmed by the CPM, Guwahati, that the same contractor has been over paid against Assam Government Agriculture Work at Dhemaji also and hence recovery of the above said loss is impracticable. I also find that this observation of the Inquiry Officer is fallacious in as much as even if recovery could be made from the contractor against dues of another site the causing of the loss at the subject site is not disproved."*

9. As noted hereinabove, the petitioner challenged his dismissal from service before the Appellate Authority, which came to be dismissed *vide* Order dated 20.10.1997.

10. The learned Tribunal also dismissed the challenge of the petitioner to the order of dismissal as also the order of the Appellate Authority rejecting his appeal, *vide* Impugned Order dated 25.03.2010, *inter alia* observing therein that it cannot re-appreciate the evidence adduced before the Disciplinary Authority as also the Appellate Authority.

11. Aggrieved by the same, the petitioner has filed the present petition.

12. The learned counsel for the petitioner, placing reliance on the judgments of this Court in ***Sunil Kumar v. Union of India & Ors.*** 2018 (246) DLT 687 and ***Union of India & Ors. v. Ravi Shankar Kumar Sinha***, 2025:DHC:1903-DB, submits that the Disciplinary Authority, while issuing the Disagreement Note/Memorandum dated 26.03.1996, has taken a final decision on the Charge-II and issued it with a pre-determined mind that the petitioner is guilty of having caused the loss to the respondent no.1. He submits that the same would, therefore, be a violation of the principles of natural justice, thereby vitiating the entire proceedings.

13. He further submits that before the Inquiry Proceedings, the respondent no.1 had placed reliance on *inter alia* an alleged Letter dated 16.01.1995 written by Mr.Baldev Singh. He submits that the same was exhibited as Ex.P-6 and was relied upon by both the Inquiry Officer as also the Disciplinary Authority in their findings and for the punishment imposed on the petitioner, though Mr.Baldev Singh was never produced as a witness before the Inquiry Officer. Placing reliance on the judgment of this Court in ***Ravi Shankar Kumar Sinha*** (supra), the learned counsel for the petitioner submits that in absence of Mr.Baldev Singh being examined as a witness, no reliance could have been placed on the said Letter written by him.

14. The learned counsel for the petitioner further submits that in any case, the finding of the Disciplinary Authority that loss had been caused to the respondent no.1 due to the inaction of the petitioner,

cannot be sustained. He submits that the respondent no.1 had also filed a Civil Suit, being Money Suit No.215/1997, impleading the petitioner as defendant no.3 therein along with the contractor and the other employees of the respondent no.1, and alleging connivance between them. The learned Civil Judge by his judgment dated 06.10.2007, however, rejected the claim of the respondent no.1 of there being any connivance between the employees of the respondent no.1 to favour the contractor. He submits that therefore, the entire allegation against the petitioner, of him having acted in connivance with the contractor, cannot be sustained.

15. On the other hand, the learned counsel for the respondents, placing reliance on the judgments of the Supreme Court in ***S.R. Tewari v. Union of India & Anr.*** (2013) 6 SCC 602 and ***Union of India & Ors. v. P.Gunasekaran*** (2015) 2 SCC 610, submits that this Court cannot act as an Appellate Authority against the findings of the Inquiry Officer and the Disciplinary Authority. He submits that the jurisdiction of this Court is rather limited, and is confined only to cases where there is a procedural lapse in the inquiry proceedings. He submits that in the present case, no such lapse have been shown by the petitioner and, in fact, the petitioner has admitted to have made false entries and cleared bills of the contractor in excess of the amount due. He submits that in the Civil Suit filed by the respondent no.1, such excess payment made to the contractor was proved and the contractor was directed to refund the excess amount paid to it to the respondent no.1. He further submits that the Memorandum dated 26.03.1996 was only a tentative opinion of the Disciplinary Authority on the acts of

the petitioner having caused loss to the respondent no.1, and cannot be treated as a final finding of the Disciplinary Authority. He submits that, therefore, there is no warrant for interference with the punishment imposed upon the petitioner.

16. We have considered the submissions made by the learned counsels for the parties.

17. It needs no reiteration that this Court, in exercise of its powers under Article 226 of the Constitution of India, would not act as an Appellate Authority to the findings of the Inquiry Officer or the Disciplinary Authority. Its jurisdiction is confined only to cases where it finds procedural lapse having caused prejudice to the delinquent officer in the inquiry proceedings, or same having been conducted in violation of the principles of natural justice, applicable rules, or other like cases.

18. As far as the plea of the petitioner that the Memorandum dated 26.03.1996 of the Disciplinary Authority gave a final opinion of the Disciplinary Authority of disagreeing with the Inquiry Officer and finding the petitioner guilty of Charge-II, is concerned, we have already quoted the said Memorandum hereinabove. As noted, the Inquiry Officer in its Report dated 11.03.1996, had, after finding the petitioner guilty of recommending excess payment of not less than Rs.2,11,658/- to the contractor, and having prepared false bills and entries in the Measurement Book, also held that as the contractor was still working with the respondent no.1 at Guwahati, therefore, it was too early to say whether the respondent no.1 will be put to a loss of the said amount. The Disciplinary Authority expressed its tentative

opinion of disagreement with the said findings, observing that the contractor had abandoned the work and was no longer working with the respondent no.1 and, therefore, there was no scope of recovering the balance amount of excess payment made to the contractor by the respondent no.1. We are of the view that the same was only a tentative disagreement, since the Disciplinary Authority thereafter considered in detail the reply of the petitioner, examined the record afresh, and only thereafter was the final order of dismissal dated 25/26.07.1996 passed. It was further observed therein that even if the said amount could have been recovered from the contractor against dues of another site, the same would not absolve the petitioner of having caused the loss to the respondent no.1 due to his acts. Thus, the Disciplinary Authority did not treat the Disagreement Note as a conclusive opinion, but only as a preliminary view, subject to the reply of the petitioner. The subsequent Order dated 25/26.07.1996 shows conscious application of mind to the reply of the petitioner, satisfying the requirement that a disagreement note cannot reflect a conclusive opinion or be an order of punishment in itself.

19. The Disciplinary Authority in its Order dated 25/26.07.1996 also placed reliance on the own admission of the petitioner of having made the said bills and recorded the said entries in the Measurement Book, purportedly only to get payment from the clients due to the shortage of funds. Therefore, there was an admission on the part of the petitioner of having made false entries in the Measurement Book, which eventually resulted in the excess payment being made to the contractor.

20. The fact of excess payment being made to the contractor is also evident from the judgment dated 06.10.2007 passed by the learned Civil Judge, Guwahati in Money Suit No.215/1997, whereby the said Suit was decreed in favour of the respondent no.1 and against the contractor for a sum of Rs.1,93,720.51 with interest. The contention of learned counsel for the petitioner that the Civil Court had rejected the plea of connivance among the employees, does not assist the petitioner, as the Articles of Charge framed against him never alleged connivance or conspiracy, but were confined to the acts of false measurement, excess payment, and improper handover. His dismissal was, therefore, based on his proven individual misconduct, independent of any allegation of collusion.

21. As far as the plea of the petitioner that reliance had been placed by the Inquiry Officer and the Disciplinary Authority on the Letter dated 16.01.1995 written by Mr.Baldev Singh and exhibited as Ex.P-6 is concerned, we find that the Inquiry Officer had rejected the said plea by observing that the same details incidents that took place much before Mr.Baldev Singh came into the picture and the main part of the same was the appendix prepared by Mr.Gautam Dey (PW-2), which was being relied upon and had been taken on record as Ex.P-4. It was further observed that Mr.Gautam Dey (PW-2), the originator, had been produced as PW-2 in the proceedings, and the petitioner had also had an opportunity to cross-examine him, which is why there was no justification to ignore Ex.P-6. Therefore, as the primary reliance was placed on the testimony of PW-2, Gautam Dey, who was duly cross-examined by the petitioner, no prejudice was caused to the petitioner

on account of reliance on the said letter.

22. The said Letter dated 16.01.1995 was taken into account by the Disciplinary Authority in its findings dated 25/26.07.1996 only as far as the finding that the contractor had abandoned the work and there was no chance of making the said recovery of excess amount from the contractor is concerned.

23. In the above conspectus of facts, we find no infirmity in the orders passed by the learned Tribunal. The petition is, accordingly, dismissed.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 9, 2025/Arya/SJ