Before D. V. Sehgal, J.

GURMUKH SINGH,—*Petitioner.*

versus

HARYANA STATE ELECTRICITY BOARD,—*Respondent.*

Civil Writ Petition No. 998 of 1986.

August 4, 1988.

Constitution of India, 1950—Art. 311(3)—Haryana State Electricity Board Employees (Punishment and Appeal) Rules, 1980—Regls. 8, 9, 10, 11, 12 and 13(ii)—Removal from service of an employee for corruption and malpractices—Procedure of holding regular enquiry dispensed with by the Board—Board concluding that it was not reasonably practicable to hold enquiry—Ground that enquiry may be long drawn out and non-availability of direct evidence—Such apprehension—Whether germane for not holding an enquiry—Employee—Whether has a right to be heard—Order of removal—Whether bad.

Held, that it is for the Board to set its own house in order. Merely because the departmental enquiries ordered by it against the delinquent officials get delayed would not be a ground to dispense with the procedure of affording reasonable opportunity provided by Regulations 8 to 12 of the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1980. The Board should appoint such a person as enquiry officers who are known for their honesty and efficiency. When this is so done the enquiries can be expedited and the delinquent and corrupt officers cannot 'manage their way to escape punishment'. The determination that such corrupt delinquent officials need to be dealt firmly and expeditiously and awarded examplary punishment, is no doubt praise-worthy but this by no stretch of imagination, can be a factor which can weigh with the punishing authority to do away with the prescribed procedure for holding enquiry against the delinquent officials. Ours is a democratic set up. Every quasi-judicial orders which visit civil consequences on a citizen has to comply with the rules of natural justice. The resolve to eradicate corruption and malpractice is landable and unexceptionable. This should be one of the guiding principles for an Administrator but expediency cannot override the rule of law. This apprehension that the enquiry may be long drawn out is no ground to dispense with the procedure provided by Regulation for enquiry.

(Paras 9 and 11)

Held, that the mere fact that the evidence would not be direct but circumstantial and might fail to convince the enquiring authority ought not to be a reason to do away with the procedure of enquiry. It is thus not a factor germane to clause (ii) of Regulation 13. (Para 10)

Held, that in examining the relevancy of the reasons, the court will consider the situation, which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the enquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. (Para 11)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—

(*i*) *complete records of the case be summoned;*

(*ii*) *an appropriate Writ, Order or Direction quashing the order dated 24th February, 1985, Annexure P/1, and the appellate authority's order dated 29th January, 1986, Annexure P/2, removing the Petitioner from the post of Assistant Engineer without holding any inquiry, be issued;*

(*iii*) *this Hon'ble Court may also grant any other relief deemed just and fit in the peculiar circumstances of the case;*

(*iv*) *costs of the petitioner be also awarded;*

(*v*) *condition regarding service of advance notice of the writ petition be dispensed with;*

(*vi*) *condition regarding filing of certified copies of the Annexures be dispensed with.*

Paramjit Singh Patwalia, Advocate, *for the Petitioner.*

S. P. S. Chauhan, Advocate, *for the Respondent.*

JUDGMENT

D. V. Sehgal, J.

This judgment shall dispose of Civil Writ Petition Nos. 998, 4738, 4739 and 5454 of 1986 as common questions of law and fact are involved therein. Reference to the facts and documents unless otherwise specifically mentioned shall, however, be made from C.W.P. No. 998 of 1986.

(2) Shri Gurmukh Singh petitioner in C.W.P. No. 998 of 1986 was working as an Assistant Engineer in the Haryana State Electricity Board—respondent. Sarvshri Ran Singh, T. S. Rana and Anil Kumar petitioners in C.W.P. Nos. 4738, 4739 and 5454 of 1986 respectively were working as Junior Engineers under him in the employment of the respondent. Shri Gurmukh Singh petitioner joined service as a Lineman Grade I in the year 1956. Climbing the ladder of promotion he was appointed as an Assistant Engineer on 15th December, 1978 and had been working as such in the service of the respondent till the impugned order dated 24th February, 1985 Annexure P/1 was passed removing him from service. It is this order which the petitioner has impugned. Similar orders removing the petitioners in the connected writ petitions were passed by respondent No. 1 on the same date.

(3) In the year 1974, the respondent undertook the construction of Pinjore—Panchkula transmission line. The line consisted of 80 towers. The petitioner was incharge of 1/4th of the work. The remaining was entrusted to the Sub-Divisional Officers, Yamunanagar, Panipat and Ambala. The petitioners in the connected writ petitions were the Junior Engineers on this work. The petitioner was placed under suspension on 30th January, 1985 but no charge sheet was served on him. The procedure for holding a departmental enquiry and ultimate punishment on the employees of the respondent is laid down in the Haryana State Electricity Board Employees (Punishment and Appeal) Regulations, 1980 (for short 'the Regulations'). Regulations 8, 9, 10, 11 and 12 provide for service of a chargesheet on the delinquent official his reply to the same, appointment of an Enquiry Officer, holding of enquiry, service of second show cause notice and ultimate punishment. Regulation 13 lays down thus:—

> "13. Notwithstanding anything contained in regulation 8, 9, 10, 11 and 12 :—
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> (i) where a penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge ; or
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> (ii) where the punishing authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said regulations; or

(iii) where the Board is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure;

the Punishing Authority may consider the circumstances of the case and pass such orders thereon as it deems fit."

(4) The respondent without holding an enquiry or affording an opportunity to the petitioner to defend himself against the charges levelled was removed from service through the impugned order Annexure P/1. The enquiry was dispensed with in the purported exercise of power under clause (ii) of Regulation 13. The petitioner has impugned the order Annexure P/1 mainly on the ground that the enquiry had been dispensed with by the respondent on grounds which are altogether extraneous and irrelevant and not germane to clause (ii) of Regulation 13.

(5) The petition has been opposed by the respondent and a written statement on its behalf has been filed. It is maintained that the respondent while considering the case of the petitioner felt satisfied that the petitioner had effaced and eliminated the evidence against him and left no trace or proof of irregularities/malpractices on his part. Situation had thus been created when crucial and material evidence would not be available in the enquiry. Moreover, the Junior Engineers who are the petitioners in the connected writ petitions were the co-workers of the petitioner and were directly responsible and concerned in the work. Their evidence was crucial and material if an enquiry was held against the petitioner but they would not have come forward to depose against him as they themselves were facing disciplinary action which culminated in their removal from service. No peripheral evidence was available regarding the malfunctioning of the petitioner. Therefore by giving detailed reasons the Punishing authority recorded its satisfaction that it was not reasonably practicable to follow the procedure prescribed in Regulations 8 to 12 for holding enquiry against the petitioner. The impugned order of removal of the petitioner from service has been thus defended.

(6) I have heard the learned counsel for the parties. It is educative to refer to the contents of the impugned order Annexure P/1. It, *inter alia*, states that the petitioner was the supervisory

engineer and directly responsible for construction of 66 KV Pinjore-Panchkula Transmission line which could not take load in spite of repeated efforts on account of the fact that there was major bungling in eraction of towers and most of the specifications and parameters had not been adhered to by him while erecting this line. In addition to the structural defects there were serious malpractices on the part of the petitioner causing heavy financial loss and embarassment to the respondent as also the State Government. During the construction of this line, tower No. 45 collapsed in January, 1985 and Tower No. 68 sometime in December, 1984. The collapse of the later tower was hushed up by the petitioner. All evidence regarding its collapse was effaced by surreptitiously erecting a new tower in its place. It further states that the Board was satisfied that there has been a complete lack of supervision and complacency on the part of the petitioner and lot of bungling in the construction of fallen towers. Serious technical defects were found in general construction of the above towers which delayed the energisation of the line as it failed to take proper load in spite of repeated efforts.

(7) The impugned order further states that the respondent after full consideration of the material before it had felt that a long drawn departmental enquiry against the officer/officials, who were directly responsible for fallen towers may prove to be counter productive and may frustrate the very purpose for which the enquiries are held, besides causing irreparable and irrecoverable damage to the cause of eradiction of corruption in the office of the respondent. It may rather act counter to the said purpose. Otherwise also, it may not be reasonably practicable to hold a regular fact finding enquiry as in place of the fallen tower, one tower had already been erected and as such practically no direct evidence is available to hook in the officers/officials who had bungled in the matter. The matter regarding fallen tower No. 68 was hushed up thus eliminating nearly all evidence to prove the same. The officers/officials who are directly responsible for bringing bad name to the respondent and causing financial loss to it by such bungling need to be dealt with firmly and expeditiously and need to be given examplary punishment to serve as eye opener to other employees of their category and to eradicate corruption in the matter of erection of transmission lines which are life line to agriculture and industry in the State as well as other public utility services.

(8) The impugned order also states that the past experience shows that a long drawn process of departmental enquiry sometimes

takes years together and in the mean while such delinquent officer/ officials manage their way to escape punishment. For the above said reasons the Board is satisfied that it was not reasonably practicable to follow regular procedure of holding regular departmental enquiry in the case of the petitioner. It was also opined that it would not be expedient in public interest to adopt the procedure under the Regulations applicable to the petitioner. Therefore, in exercise of the powers vested in respondent No. 1 under Regulation 13 and allied Service Rules, it was decided to dispense with the procedure laid down therein and on taking into consideration all facts and circumstances it was considered to be a fit case where the petitioner should be removed from the service of the Board. The petitioner was, thus, ordered to be removed from service with immediate effect.

(9) The break-up of the factors which had weighed with respondent No. 1 to dispense with the procedure of holding a regular enquiry and allowing opportunity to the petitioner to defend himself can be made thus :

(i) Two towers i.e. tower Nos. 44 and 68, the construction of which was carried out under the supervision of the petitioner had collapsed.

(ii) Out of these two towers, tower No. 68 was got erected by the petitioner surreptitiously, thus, eliminating the evidence of the fallen tower.

(iii) The two towers had collapsed because of the structural defects. The respondent was satisfied that there had been complete lack of supervision and complacency on the part of the petitioner and lot of bungling in the construction of fallen tower. Serious malpractices had been indulged into by the petitioner causing, heavy financial loss and embarassment to the respondent and the State Government. Serious technical defects were found in the general construction of the above towers which delayed its energisation as it failed to take proper load in spite of repeated efforts.

(iv) Long drawn departmental enquiry against the petitioner who is directly responsible for the fallen towers might prove counter productive and might frustrate the purpose for which such enquiries are held in addition to causing

irreparable damage to the cause of eradiction of corruption in the office of the respondent and may rather act counter to the said purpose.

(v) Since out of the two fallen towers, one tower has already been erected, direct evidence to hook in the petitioner and the other delinquent officials who bungled is practically not available.

(vi) The petitioner and other officials who are directly responsible for bringing bad name to the Board and causing financial loss to it by such bungling, need to be dealt with firmly and expeditiously and need to be given exemplary punishment to serve as an eye opener to other corrupt officer/officials.

(vii) the past experience shows that a long drawn process of departmental enquiry sometime takes years together and in the meanwhile such delinquent and corrupt officer/officials manage their way to escape punishment.

Out of the above reasons mentioned in the impugned order those contained in (i), (ii) and (iii) simply constitute and eloborate the misconduct on the part of the petitioner, the reasons given in (iv), (vi) and (vii) in my view are altogether extraneous and not at all germane to clause (ii) of Regulation 13 of the Regulations. It is for the respondent to set its own house in order. Merely because the departmental enquiries ordered by it against delinquent officials get delayed would not be a ground to dispense with the procedure of affording reasonable opportunity provided by Regulations 8 to 12. The respondent should appoint such person as enquiry officers who are known for their honesty and efficiency. When this is so done the enquiries can be expedited and the delinquent and corrupt officers cannot "manage their way to escape punishment." The determination that such corrupt delinquent officials need to be dealt firmly and expeditiously and awarded exemplary punishment, is no doubt praise-worthy but this, by no stretch of imagination, can be a factor which can weigh with the punishing authority to do away with the prescribed procedure for holding enquiry against the delinquent officials. Ours is a democratic set up. Every *quasi*-judicial orders which visit civil consequences on a citizen has to comply with the rules of natural justice. The resolve to eradicate corruption and malpractice is landable and unexceptionable. This should be one of the guiding principles for an Administrator but expediency cannot override the rule of law.

(10) Thus we are left with ground No. (v) only. Two towers had collapsed. One had been re-erected by the petitioner as alleged but the evidence regarding the other fallen tower is available. It can be determined by a technical examination and proper analysis of the components of the fallen towers whether or not had it been erected in accordance with the specification and design, whether the material used was sub-standard; whether proper engineering methods were not adopted in the course of its erection and proper completion. The re-erection of the other fallen tower 'surreptitiously" would by itself form a ground of misconduct. The respondent can produce evidence regarding its re-erection and obviation of the traces of the evidence of the fallen tower by the petitioner and these factors might weigh with the enquiring authority. The mere fact that the evidence would not be direct but circumstantial and might fail to convince the enquiring authority, ought not to be a reason to do away with the procedure of enquiry. It is thus not a factor germane to clause (ii) of Regulation 13. Cases are not uncommon where the senior Engineer and those working under him are jointly charged with the misconduct of carrying out sub-standard work but it cannot be said that since they happen to be material witnesses against each other and are likely not to depose against each other, the disciplinary authority is unable to "hock in" all of them. There are always other men at work subordinate to them as also the officers superior to them who inspect the work from time to time. They can be produced as witnesses against the delinquent officials.

(11) In *Union of India and another* v. *Tulsiram Patel*, (1), 1985, the final Court has held that a disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an enquiry or because the departmental case against the Government servant is weak and must fail. The finality given to the decision of the Disciplinary Authority by Article 311 (3), is not binding upon the Court so far as its power of judicial review is concerned and in such a case the Court will strike down the order dispensing with the enquiry as also the order imposing penalty. The Court will interfere on grounds well established in law for exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given

(1) 1985 (2) S.L.R. 576.

by clause (3) or Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the enquiry is not binding upon the Court. The court will also examine the charge of *mala fides*, if any made in the writ petition. In examining the relevancy of the reasons, the Court will consider the situation, which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the enquiry. If the Court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated.

(12) In all fairness to the respondent's counsel, it may be pointed out that he tried to place reliance on some observations in *Satyavir Singh and others* vs. *Union of India and others*, (2), to content that the non-availability of witnesses on a reasonable difficulties in producing them before the enquiring authority to establish the charge against the delinquent officials is a relevant ground to be taken into consideration by the disciplinary authority while reaching at its satisfaction under clause (ii) of Regulation 13. I am not convinced with this argument. The facts in *Satyavir Singh's case* (supra) were altogether different. There the employees had become violent. They tried to over owe and intimidate their officers. Police and para-military forces were called in to control the situation. It was felt that since the members of the staff had indulged in violence, none of there was likely to depose, to the situation which they had created and the resultant misconduct. The witnesses from the police and para-military forces may depose but their deposition might be considered weak peace of evidence when the mater comes up before the Court. In the present case the unengineering construction of the towers, non-conformity with the specification, use of sub-standard material and corrupt practices indulged in by the delinquent officer/officials responsible for construction of towers have to be enquired into. As already pointed out by me above, evidence to prove these allegations of misconduct can very well be adduced by the respondent. Its apprehension that the enquiry may be long drawn is no ground to dispense with the procedure provided by the Regulations for enquiry.

(13) In view of the above discussion, I allow these petitions, quash the impugned orders dated 24th February, 1985 removing the

(2) A.I.R. 1986 S.C. 555.

petitioners from service. They are entitled to reinstatement in service. The respondents shall pay the salary and give all other benefits to which the petitioners are entitled on treating them in service all along. The respondents shall also pay interest to them on the arrears of salary which have become due, at the rate of 12 per cent per annum. The respondents shall comply with this direction within two months. The petitioners in each of these petitions are entitled to its costs which are assessed Rs. 5,000.

(14) It is made clear that the respondent shall be within its rights to take disciplinary proceedings against the petitioners on the charges based on the allegations of misconduct as contained in the impugned order by following the procedure laid down under Regulations 8 to 12 of the Regulations.

R. N. R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

DES RAJ BANSAL (deceased),—*Appellants.*

versus

STATE OF HARYANA and another,—*Respondents.*

Letters Patent Appeal No. 179 *of* 1987.

September 1, 1988.

Punjab Pre-emption Act (*I* of 1913)—*as amended by Punjab Act No.* 1 *of* 1944—*Ss.* 8(2) *and* 21-*A*—*Sale of house*—*Tenant's suit for pre-emption based on customary right*—*During pendency of suit tenant's right of pre-emption divested by notification under Section* 8(2) *with retrospective effect*—*Effect of notification on pre-emption suit*—*Whether causes loss of right to pre-empt*—*Suit whether liable to be dismissed*—*Retrospective operation*—*Whether permissible.*

Held, that by addition of Section 21-A of the Punjab Pre-emption Act, 1913 the Legislature clearly intended not to recognise the voluntary improvement in the status of the vendee after institution of the suit save where such improvement has resulted from inheritance or succession. (Para 7).