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

Judgment reserved on: 20.07.2022.

% Judgment delivered on: 02.08.2022.

\+ **LPA 373/2022 and C.M. No. 26371/2022**

N.D. TYAGI ..... Appellant

Through: Mr. Ankur Chhibber, Advocate.

versus

POWER FINANCE CORPORATION LTD. AND ORS ..... Respondent

Through: Mr. Chetan Sharma, ASG & Mr. A. S. Chandhiok, Sr. Advocate with Mr. R. K. Joshi, Mr. Ojasya Joshi, Mr. Amit Gupta, Mr. Rishav Dubey, Mr. Saurabh Tripathi, Mr. Sahaj Garg, Mr. R. K. Joshi, Mr. Tarranjit Singh, Mr. Jasmeet Kaur Ajimal, Advocates for respondent No. 1, 2 and 4.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA is arising out of judgement dated 11.05.2022 passed in W.P.(C) No. 7741/2015 in ***N.D. Tyagi VS. Power Finance Corporation Ltd. & Ors***.

2. The facts of the case reveal that the Appellant before this Court was employed as an Executive Director in the Services of Power Finance Corporation Limited (PFCL) on the post of Executive Director, and in the year 2008, Power Finance Corporation Consulting Limited (PFCCL) was incorporated as a wholly owned subsidiary of PFCL.

3. The Appellant was transferred temporarily on the existing terms and conditions of the service until further order to the Subsidiary Company PFCCL, and the order dated 31.03.2008 transferring the Appellant to the newly formed Subsidiary Company reads as follow:

> ***"POWER FINANCE CORPORATION LIMITED***
> ***(H.R.UNIT)***
>
> ***No.2:02:161***
> ***March 31, 2008***
>
> ***OFFICE ORDER NO. 46/2008***
>
> ***Sub.: <u>Operationalisation of the subsidiary company for Consultancy Services</u>***
>
> *Consequent upon the incorporation of a Wholly Owned Subsidiary of the Corporation, namely PFC Consulting Limited to promote, organize and carry on Consultancy Services in the related activities of PFC, <u>the services of Shri N.D. Tyagi, ED (CSG) stands transferred to the newly formed company on the existing terms and conditions till further orders with immediate effect</u>. He is designated as Chief Executive Officer.*
>
> *This issues with the approval of the Competent Authority.*
>
> *-sd-*
> *(S. RAVINDRAN)*
> *Manager (HR)"*

4. The undisputed facts further reveal that on 02.12.2013, the Assistant General Manager – HR, passed an order transferring the Appellant back to PFCL, and he was posted as Executive Director (Felicitation Group).

5. After the Petitioner was posted back to PFCL Company, a complaint was received by Central Vigilance Commission, and the same was forwarded to the Ministry of Power.

6. The Respondent No.1 (in the Writ Petition) sought information from Respondent No.4 as well as point wise reply in respect of the same complaint, and the Ministry of Power – after receiving the report from the Chief Vigilance Officer of Respondent No.4 (in the Writ Petition), opined that the Petitioner should be placed under suspension, and disciplinary proceedings be initiated against him, and, in those circumstances, respondent No.1 vide letter dated 08.02.2014 stated that in order to follow the principles of natural justice and fairplay, an enquiry is required to be done in the matter and disciplinary proceedings was initiated on 29.10.2014. Meaning thereby, there was an effective consultation between PFCL and PFCCL while initiating disciplinary proceedings against the Appellant/ Petitioner.

7. A Show Cause notice was issued by PFCL seeking explanation from the Petitioner as to why Disciplinary Proceedings should not be initiated against him in respect of the services rendered by him while he was serving Respondent No.4, and he did submit a detailed reply in the matter.

8. The competent Disciplinary Authority, after careful consideration of the response of the Appellant issued a chargesheet on 09.03.2015, and the

Appellant again submitted reply to the chargesheet on 08.04.2015. The Disciplinary Authority after careful consideration of the reply appointed an Enquiry Officer on 08.04.2015, and also appointed a Presiding Officer in the matter.

9. The enquiry proceedings continued upto 03.08.2015, and the Appellant being aggrieved by the chargesheet and the disciplinary proceedings preferred a Writ Petition before this Court i.e W.P.(C) No. 7741/2015, and this Court on 14.08.2015 has issued notice in the matter. The matter was then listed on 21.09.2015 and the Counsel appearing for Respondent No.1 gave an undertaking that the enquiry officer will not proceed with the enquiry till the next date. The matter was adjourned.

10. The stay/ undertaking in respect of the departmental enquiry – which was granted on 21.09.2015 continued till 18.05.2022 i.e. till the matter was decided by the Learned Single Judge, and the Learned Single Judge has dismissed the Writ Petition.

11. The facts of the case – as reflected from the record, reveal that the Petitioner was primarily aggrieved by denial of his request to change the Enquiry Officer, and the Petitioner himself wrote to the Disciplinary Authority on 20.07.2015 for change of Enquiry Officer, and also made a prayer that Central Vigilance Commission may be approached for nominating the Commissioner of departmental enquiry to conduct the enquiry. However, he immediately rushed to this Court challenging the chargesheet.

12. Another important aspect of the case is that the Enquiry Officer was also changed during the pendency of the Writ Petition before the Learned Single Judge.

13. The Petitioner before the Learned Single Judge also raised a ground that the misconduct, if any, relates to a period when the Petitioner was serving PFCCL on deputation, and PFCL was not having any authority or jurisdiction to institute a departmental enquiry, and to impose a penalty based upon the alleged acts of misconduct committed by the Petitioner while he was posted on PFCCL.

14. Learned Counsel for the Petitioner also placed reliance upon a judgement delivered in the case of ***B. L. Satyarthi Vs. State of M. P.,*** 2014 SCC OnLine MP 5735, and prayed for quashment of the chargement.

15. The Learned Single Judge has dismissed the Writ Petition after holding that the services of the Petitioner were temporarily transferred to PFCCL.

16. Paragraphs 20 to 31 of the order passed by the learned Single Judge reads as under:

> *"20. The Court then notes that both Mr. Chandiok as well as the learned ASG had raised the issue of a compendious Annual Report of PFCL and PFCCL as being liable to be read as evidence of the two corporations in a sense not being separate entities. The Court finds itself unable to sustain the submission as advanced along the aforesaid lines for the following reasons. A subsidiary, even if it be a wholly owned subsidiary, upon incorporation under statute is and has always been recognised to be a separate legal*

entity. The act of incorporation gives birth to a distinct legal entity and is so recognised in law. While there cannot possibly be a doubt with respect to this well settled legal proposition, the Court deems it appropriate to advert to the following pertinent observations as made by the Supreme Court in Vodafone International Holdings BV Vs. Union of India, (2012) 6 SCC 613

> *71. In the thirteenth century, Pope Innocent IV espoused the theory of the legal fiction by saying that corporate bodies could not be excommunicated because they only exist in abstract. This enunciation is the foundation of the separate entity principle.*
>
> *75. The common law jurisdictions do invariably impose taxation against a corporation based on the legal principle that the corporation is "a person" that is separate from its members. It is the decision of the House of Lords in Salomon v. Salomon and Co. Ltd. [1897 AC 22: (1895-99) All ER Rep 33 (HL)] that opened the door to the formation of a corporate group. If a "one man" corporation could be incorporated, then it would follow that one corporation could be a subsidiary of another. This legal principle is the basis of holding structures.*
>
> *101. A company is a separate legal persona and the fact that all its shares are owned by one person or by the parent company has nothing to do with its separate legal existence. If the owned company is wound up, the liquidator, and not its parent company, would get hold of the assets of the subsidiary. In none of the authorities have the assets of the subsidiary been held to be those of the parent unless it is acting as an agent. Thus, even though a subsidiary may normally comply with*

the request of a parent company it is not just a puppet of the parent company. The difference is between having power or having a persuasive position. Though it may be advantageous for parent and subsidiary companies to work as a group, each subsidiary will look to see whether there are separate commercial interests which should be guarded.

HOLDING COMPANY AND SUBSIDIARY COMPANY

254. THE COMPANIES ACT IN INDIA AND ALL OVER THE WORLD HAVE STATUTORILY RECOGNISED SUBSIDIARY COMPANY AS A SEPARATE LEGAL ENTITY. SECTION 2(47) OF THE COMPANIES ACT, 1956 DEFINES "SUBSIDIARY COMPANY" OR "SUBSIDIARY", A SUBSIDIARY COMPANY WITHIN THE MEANING OF SECTION 4 OF THE ACT. FOR THE PURPOSE OF THE COMPANIES ACT, A COMPANY SHALL BE SUBJECT TO THE PROVISIONS OF SUB-SECTION (3) OF SECTION 4, BE DEEMED TO BE SUBSIDIARY OF ANOTHER, SUBJECT TO CERTAIN CONDITIONS, WHICH INCLUDES HOLDING OF SHARE CAPITAL IN EXCESS OF 50% CONTROLLING THE COMPOSITION OF THE BOARD OF DIRECTORS AND GAINING STATUS OF A SUBSIDIARY WITH RESPECT TO THE THIRD COMPANY BY THE HOLDING COMPANY'S SUBSIDISATION OF THE THIRD COMPANY.

257. The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in

law, the management of the business of the subsidiary also vests in its Board of Directors. In Bacha F. Guzdar v. CIT [AIR 1955 SC 74] , this Court held that shareholders' only right is to get dividend if and when the company declares it, to participate in the liquidation proceeds and to vote at the shareholders' meeting. Refer also to Carew and Co. Ltd. v. Union of India [(1975) 2 SCC 791] and Carrasco Investments Ltd. v. Directorate of Enforcement [(1994) 79 Comp Cas 631 (Del)] .

258. Holding company, of course, if the subsidiary is a WOS, may appoint or remove any Director if it so desires by a resolution in the general body meeting of the subsidiary. Holding companies and subsidiaries can be considered as single economic entity and consolidated balance sheet is the accounting relationship between the holding company and subsidiary company, which shows the status of the entire business enterprises. Shares of stock in the subsidiary company are held as assets on the books of the parent company and can be issued as collateral for additional debt financing. Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary is allowed decentralised management. Each subsidiary can reform its own management personnel and holding company may also provide expert, efficient and competent services for the benefit of the subsidiaries.

259. The US Supreme Court in United States v. Bestfoods [141 L Ed 2d 43 : 524 US 51 (1998)] explained that it is a general principle of corporate law and legal systems that a parent corporation is not liable for the acts of its

> *subsidiary, but the Court went on to explain that corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, if the corporal form is misused to accomplish certain wrongful purposes, when the parent company is directly a participant in the wrong complained of. Mere ownership, parental control, management, etc. of a subsidiary is not sufficient to pierce the status of their relationship and, to hold parent company liable. In Adams v. Cape Industries Plc. [1990 Ch 433 : (1990) 2 WLR 657 : (1991) 1 All ER 929 (CA)] , the Court of Appeal emphasised that it is appropriate to pierce the corporate veil where special circumstances exist indicating that it is mere facade concealing true facts.*

21. Insofar as the impact of the accounts of both the companies appearing in a common Annual Account statement is concerned, it becomes pertinent to note that the same was in accordance with the statutory mandate of the provisions contained in the erstwhile Companies Act, 1956. Nothing worthwhile can be read or deduced from the aforesaid fact except to hold that the disclosures with respect to the accounts and turnover of PFCCL was inserted in the Annual Report of PFCL in compliance with statutory provisions. Additionally, regard must also be had to the well recognised exceptions when the corporate veil of a corporate entity is liable to be pierced or lifted. This position was recognised and explained by our Court in Freewheels (P) Ltd. Vs. Dr. Veda Mittra1968 SCC OnLine Del. 139 as follows: -

> *"Mr. P.N. Lekhi and Mr. K.K. Jain, the learned counsels for the respondents, contended that if I tear as under the corporate veil of the subsidiary-company it will lead me to an inescapable conclusion that the subsidiary*

company is, in fact, not a separate entity but merely an agent or trustee of the holding company, so that the assets of the subsidiary company are really the assets of the holding company. The learned counsel contended that the development and growth of corporations and the necessity of striking a balance between the theory of indoor management by the corporations and the public gaze and control in the corporate sector had led the courts to tear the veil woven by Salomon v. Salomon and Co., (1897) A.C. 22 and the present day tendency of the courts is to peep deeper into the matter to find out whether or not the subsidiary company is, in fact a separate legal entity. It is true that Salomon's case has, in certain spheres of commercial enterprise suffered a demise at the hands of Legislature and the Companies Act has made various provisions qualifing the rule that each company constitutes a separate legal entity. The most striking examples of such qualifications lie in the provisions relating to accounts, which provisions have been designed primarily to give better information of the accounts and financial position of the group as a whole to the creditors, shareholders and the public. The learned Single Judge has dealt with those provisions, and it is not necessary to very much elaborate on the same. Section 212 inter alia requires each holding company attach to its balance sheet a copy of the balance-sheet and profit and loss accounts of the subsidiary company, copies of the reports of the subsidiary company Board of Directors and Auditors, and a statement of the holding company's interest in the subsidiary company. The said provision enjoins the holding company to disclose diverse other informations

with its balance sheet. Sub-Section (5) of the section 212 deals with a situation where the financial year of a subsidiary company does not coincide with the financial year of the holding company and requires the disclosure of information regarding changes in holding company's interest in the subsidiary company between the end of the financial year of the subsidiary and the end of the holding company's financial year, and details of any material changes which may have occurred between the end of the financial year of the subsidiary and the end of the holding company's financial year in respect of the subsidiary's fixed assets, its investments, the moneys lent by it, and the moneys borrowed by it. Towards the same end are directed the provisions of section 214. Section 31 deprives a director of the holding company of his rights to compensation for loss of office if he has been guilty of fraud etc. in the conduct of the affairs of the subsidiary company. Similarly, company may by a special resolution remove its managing agent from office for gross negligence in or for gross mismanagement of the affairs of the subsidiary company (Section 338). These provisions inter alia indicate the leaning of the Legislature to treat all companies within a group as part of the same entity as against the arbitrary unit-wise distinction of each company. To that extent, it will not be incorrect to say, as suggested by the learned counsel for the respondents, that the Legislature has itself rent the veil of protection thrown round corporations by the house of Lords in Salomon's case. There are, however, limitations to rending the veil, and the Court will not do so except for specific purposes and

when compelled by the clear words of the statute. The Law Reports abound with decisions showing the tendency of the different Courts to tear the veil in varying circumstances. For instance, in Apthorpe v. Peter Schoenhofen Brewing Co., (1889) 4 T.C. 41 the finding of fact arrived at by the Commissioners that the property ostensibly in the name of the New York Company was, in fact, that of the English Company liable to English income-tax on the ground that the business was being carried on partly in London was upheld. Again, in some cases the Courts have come to the conclusion that the subsidiary company was merely an agent of the holding company. It may not be possible to put in a strait jacket of judicial definition as to when the subsidiary Company can really be treated as a branch, or an agent, or a trustee of the holding company. Each case must necessarily turn on its own facts. Circumstances, such as, the profits of the subsidiary company being treated as those of the parent company, the control and conduct of business of the subsidiary company resting completely in the nominees of the holding company, and the brain behind the trade of the subsidiary company being really the holding company, may indicate that in fact the subsidiary company is only a branch of the holding company. Basically, however, the fundamental concept must always to kept in view that each company is a distinct legal entity. Again the purpose for which the veil has to be rent must be kept in view, and the doctrine of the tearing of the veil cannot be blindly extended to each and every purpose. It is unnecessary to elaborate on this aspect any more, as here the

parent company holds only a nominal majority in the share capital of the subsidiary, which holding is 52 per cent. With that meagre majority alone I am not prepared to hold, even if it were possible to do so for such a purpose, that the subsidiary company has lost its indentity as a separate legal entity. Mr. Lekhi went to the extent of saying that not only for this purpose but in all cases a subsidiary company must be treated as an asset of the holding company. This contention is beyond the reach of sustained argument. I am, in the circumstances, of the opinion that the subsidiary company has neither lost its identity nor merged itself into a group consisting of the parent company and the subsidiary company. If Mr. Lekhi's argument were to be accepted then each subsidiary company will, crack not only under the pressure of its own uncongenial shareholders, which may invariably exist in every company, but also of the pressure of the shareholders and creditors of the holding company."

22. In any case, this Court finds no justification to hold against the petitioner on the aforesaid score since the validity of the disciplinary proceedings must firstly be answered in the backdrop of the Rules which apply. The submission of PFCCL being a mere agent of PFCL based on common published accounts, a joint seniority list, a common Provident Fund structure would be factors which may have been of relevance if the Court were to find that the disciplinary proceedings cannot be sustained on the anvil of Rule 37.1. However, the Court finds that the challenge to the disciplinary proceedings as urged on the basis of the Rules which apply, is liable to be negatived for reasons which stand recorded hereinafter

23. Rule 37.1 deals with a situation where an employee lent by PFCL to PFCCL may be found to have committed acts of misconduct and thus warranting disciplinary proceedings being initiated. The aforesaid Rule on its plain reading would apply to the trial of allegations of misconduct committed by an officer or employee of PFCL while he is still serving under PFCCL, the Borrowing Authority. In order to meet such an exigency Rule 37.1 prescribes that the Borrowing Authority shall have the powers of the Appointing Authority for the purposes of placing such an employee under suspension and for conducting disciplinary proceedings. Rule 37.2(a) then proceeds to mandate that if the Borrowing Authority comes to the conclusion that a minor penalty is liable to be imposed, it may after consultation with the Lending Authority make such orders as circumstances may warrant. Significantly Rule 37.2(b), on the other hand, prescribes that if the Borrowing Authority were to form the opinion that the misconduct would warrant the imposition of a major penalty, it would transmit the relevant proceedings of the enquiry to the Lending Authority leaving it open to it to take such action as may be deemed necessary. The Explanation to Rule 37.2(b) provides that upon receipt of the records of enquiry which may have been undertaken, the Disciplinary Authority may proceed to pass such further orders as may be justified in the facts and circumstances of the case. It further leaves it open to the Disciplinary Authority of the lending entity to independently conduct an enquiry as contemplated under Rules 30, 31 and 32. A holistic reading of Rules 37.1 and 37.2 would establish that the Borrowing Authority has been conferred the jurisdiction to proceed departmentally against an officer or employee whose services are lent to it and exercise the very same powers which may otherwise be available to the Disciplinary Authority subject only to the caveat that if in those proceedings it comes to conclude that a major penalty is liable to be imposed, it would be obliged to transmit the entire proceedings of enquiry to the Disciplinary Authority of the lending institution for taking

further action in terms of the Explanation noticed above. If on a culmination of the proceedings as drawn, the competent authority finds that a minor penalty is liable to be imposed, it stands sufficiently empowered in terms of Rule 37.2(a) to proceed to do so subject to the caveat that the same would have to be made with due consultation with the Lending Authority.

24. As this Court construes Rule 37.1, it is evident that the competent authority in PFCCL would have been entitled to exercise all powers as otherwise inhering in the Disciplinary Authority of the petitioner during the period while he was still serving in the said organisation. Those rules introduce a legal fiction in terms of which the competent authority of the borrowing entity stands conferred with all powers that are otherwise vested in the appointing authority of the lending entity. However Rules 37.1 and 37.2 cannot possibly be read as conferring a power or authority on PFCCL to proceed against the petitioner even after his services stood repatriated to PFCL. The Court also finds itself unable to sustain the submission of Mr. Gupta who had contended that no proceedings at all could have been drawn by PFCL in the absence of any proceedings having been initiated while he was still serving in PFCCL. This Court is of the firm opinion that an act of misconduct is always open to be tried by the Disciplinary Authority in accordance with the Rules which would apply. The Court finds itself unable to either countenance or accept the submission that since PFCCL had failed to try the petitioner for the alleged acts of misconduct, that power would cease to exist once the petitioner reverted to PFCL. An act of misconduct would be open to be tried by a Disciplinary Authority notwithstanding the reversion of the petitioner to PFCL. Regard must be had to the fact that the reversion of the petitioner to PFCL cannot possibly be construed as either effacing the allegation of the commission of misconduct nor can it possibly be interpreted as denuding the Disciplinary Authority to try the allegations of misconduct in accordance with the Rules.

25. Regard must also be had to the fact that the services of the petitioner were only temporarily lent to PFCCL. He continued to hold a lien in the cadre of officers of PFCL. A deputation of an officer or his temporary placement in a related entity does not sever all relations of master and servant that exists between the principal employer and that officer or employee. The services of the petitioner were temporarily assigned to PFCCL. The order in terms of which the petitioner was posted in PFCCL cannot possibly be construed or interpreted to embody a termination of his lien on the permanent post that he held in PFCL. In fact, it was not even the case of the petitioner that he had acquired a permanent lien on the post of Chief Executive Officer in PFCCL. The petitioner also did not question his repatriation to PFCL. The concept of lien and the impact of deputation was succinctly explained by the Supreme Court in State of Rajasthan Vs. S.N. Tiwari (2009) 4 SCC 700 in the following terms:-

> *"16. It is not the case of the State that the respondent employee was made permanent as a homoeopathic doctor in ESI Corporation. The respondent employee did not acquire any lien in ESI Corporation. The question of termination of lien does not arise since the respondent employee did not acquire a lien on a permanent post outside the cadre on which he is borne.*
>
> *17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent*

post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.

18. This Court in Ramlal Khurana v. State of Punjab [(1989) 4 SCC 99 : 1989 SCC (L&S) 644 : (1984) 11 ATC 841] observed that: (SCC p. 102, para 8) "8. ... Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed."

19. The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of lien in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed. (See Triveni Shankar Saxena v. State of U.P. [1992 Supp (1) SCC 524 : 1992 SCC (L&S) 440 : (1992) 19 ATC 931])

20. The High Court upon appreciation of the material available on record found that lien of the respondent employee always continued in the Department of Economics and Statistics. His urgent temporary appointment as homoeopathic doctor vide order dated 3-12-1980 was not a substantive appointment for any definite period. The mere fact that the respondent employee continued to work for a long period itself would not result in loss of lien in the parent Department of Economics and Statistics. That even after the respondent employee joined as homoeopathic doctor in ESI Corporation in 1980 the parent department

treated the respondent employee as belonging to its own cadre. We find no infirmity in the order passed by the High Court."

26. The submission of Mr. Gupta with respect to the competence and jurisdiction to hold a disciplinary enquiry essentially rested on the decision of the Madhya Pradesh High Court in B.L. Satyarthi. However, in the considered view of the Court quite far from supporting the case of the petitioner, that decision in fact would buttress and lend support to the conclusions recorded hereinabove. It becomes pertinent to note that in B.L. Satyarthi, the petitioner who was an employee of the Forest Department had been sent on deputation to the Madhya Pradesh Rajya Van Vikas Nigam, an autonomous corporation. He continued on deputation in the Nigam upto 6 November 1989 whereafter he was repatriated to the Forest Department. The Nigam issued a charge sheet against the petitioner there after he had been reverted to the Forest Department. It was the validity of the aforesaid action of the Corporation that led to the litigation. The Madhya Pradesh High Court while examining the challenge had taken into consideration the provisions made in Rule 20 of the Madhya Pradesh Civil Services (CCA) Rules, 1966 which are in pari materia with Rule 37.1. Upon a consideration of the submissions which were addressed, the High Court concluded that when an employee who holds a lien in a Government Department is sent on deputation to either another Department or an autonomous corporation, a temporary contract of service comes into being between the borrowing department and the employee concerned. The Court noted that as long as the said contract of employment subsists, the borrowing department could invoke the provisions of Rule 20 and initiate disciplinary proceedings. However, and significantly the Court in B.L. Satyarthi further observed that once the employee is repatriated back to the lending department, the contract of employment temporarily created during the period of deputation ceases and in that situation the borrowing department would have

no authority to take action against the employee concerned. It also took note of the decision of the Madras High Court in K. Kanagasabapathy v. City Supply Officer, Civil(1978) 1 MLJ 184 which had also clearly held that a borrowing department would have no authority to initiate disciplinary proceedings once the employee stood repatriated. It accordingly allowed the appeal and while quashing the punishment order which had been imposed by the Nigam, accorded liberty to transmit the proceedings of enquiry to the Forest Department for taking further action if warranted. B.L. Satyarthi thus cannot possibly be read as an authority which may have laid down a principle supporting the contentions advanced by Mr. Gupta. In fact, it holds to the contrary and is in consonance with the conclusions reached by this Court. The Court is thus of the firm opinion that once the petitioner stood repatriated to PFCL, no action could have possibly been initiated by PFCCL for alleged acts of misconduct committed while the petitioner was serving in that organization. In fact once the petitioner stood repatriated to his original cadre, it was the Disciplinary Authority of PFCL alone which could have initiated departmental proceedings against him.

27. Mr. Gupta had further submitted that in the absence of any requisite satisfaction having been recorded or reached by the competent authority of PFCCL, no proceedings could have been initiated by the respondents. It was also argued that the entire chargesheet rests on material and evidence which would be with PFCCL. In view of the above, it was contended that the initiation of disciplinary proceedings suffers from a jurisdictional error.

28. The Court finds itself unable to either countenance or accept this contention for the following reasons. As has been found in the preceding paragraphs of this judgment, the competent authority in PFCCL could have exercised jurisdiction in this regard only while the petitioner was serving in that organization. Rules 37.1 and 37.2 put in place and introduce an impermanent legal fiction which

would be deemed to operate only during the tenure of service rendered by the officer in the borrowing entity. However, and as has been held hereinabove, once that temporary period of service comes to an end and the officer reverts to his parent cadre, the authority in the borrowing department ceases to have jurisdiction or authority to proceed against the concerned employee. Upon repatriation, it is the competent authority in the parent body who alone would have the requisite jurisdiction to form an opinion whether the officer or employee is liable to be proceeded against departmentally. That discretion and authority of the competent authority cannot possibly be held to be dependent upon the formation of opinion by an authority of the borrowing department, corporation or company. As was noticed hereinbefore, the petitioner did not lose or surrender his lien in PFCL. His placement in PFCCL was merely a temporary transfer and placement. Once he came back to the parent organization, the authority which had been temporarily conferred upon the borrowing entity in terms of the legal fiction contained in Rule 37.1 ceased to operate. It was thus the Disciplinary Authority of PFCL alone who could have taken a decision whether the petitioner was liable to be proceeded with departmentally for trial of charges of misconduct.

29. Regard must also be had to the fact that an act of misconduct stands attached to the officer or employee personally. The fact that the alleged misdemeanor was committed while the petitioner was serving on deputation does not detract from the commission of misconduct. An act of alleged misconduct is a fact which would remain and survive to be tried notwithstanding the deputation having come to an end. Merely because the period of deputation may have come to an end, it would not divest the Disciplinary Authority of PFCL from initiating an enquiry. If the submission of Mr. Gupta were to be accepted, it would amount to laying down a principle that misconduct when committed during deputation cannot be enquired into once the same comes to an end. The Court finds itself unable to

accord a legal imprimatur to the aforenoted submission bearing in mind the serious repercussions that would ensue if the same were accepted. This since it would essentially mean that the right of an employer to enquire into an act of alleged misconduct would stand lost forever merely because the authority in the borrowing department had failed to initiate action. The Court finds itself unable to interpret Rules 37.1 and 37.2 as providing for or envisaging such a consequence. The Court fails to discern a legal principle which may support this contention. In any case and in light of the interpretation accorded to the relevant Rules, the Court finds that PFCL did retain the right to proceed against the petitioner.

30. The submission that the enquiry proceedings are liable to be interdicted since the relevant records are available with PFCCL is also wholly without merit and untenable. The enquiry proceedings would continue based on the material which has been gathered and is in the possession of the respondents. The evidence on which the charges are sought to be established have been duly set out in the chargesheet. Ultimately, the onus to prove the charges levelled lies upon the respondents. If there be absence of evidence, they would be unable to prove the charge. However, whether sufficient material or evidence exists to support the charges levelled, is a question which must be left for the Enquiry Officer to consider. There exists no justification for the Court to go into this question at this stage especially when that aspect is yet to be considered by the Enquiry Officer.

31. Accordingly, and for all the aforesaid reasons, the writ petition fails and shall stand dismissed."

17. This Court has carefully gone through the order passed by the learned Single Judge, and the facts of the case reveal that the petitioner projected a case that he was on deputation and after his repatriation to the parent department, by no stretch of imagination; the proceedings against him could have been initiated by PFCL (Parent Organization) for any event which took place while he was on deputation to PFCCL.

18. The conduct and discipline rules as contained under Rules 36.1, 37.1 and 37.2 are reproduced as under:

> *"36.1 Where an order of suspension is made or disciplinary proceedings are initiated against an employee, who is on deputation to the Corporation from the Central or State Government or another Public Undertaking or a local authority etc., the authority lending his services (hereinafter referred to as the "Lending Authority") shall forthwith be informed of the circumstances leading to the order of his/her suspension, or the commencement of the disciplinary proceedings as the case may be.*
>
> *37.1 Where the services of an employee are lent to the Government or any authority subordinate thereto or to any other Public Undertaking etc., (hereinafter referred to as the "Borrowing Authority") the Borrowing Authority shall have the powers of the Appointing Authority for the purpose of placing such an employee under suspension and of the Disciplinary Authority for the purpose of conducting disciplinary proceedings against him; Provided that the Borrowing Authority shall forthwith inform Power Finance Corporation Limited (hereinafter referred to as the "Lending Authority") of the circumstances leading to the order of suspension of an employee or the commencement of the disciplinary proceedings, as the case may be.*
>
> *37.2 In the light of the findings of the Inquiring Authority against the employee:- a) If the Borrowing Authority is of the*

opinion that any of the minor penalties specified in Rule 28.1 should be imposed on the employee, if any, after consultation with the Corporation, it make such orders in the case as it deems necessary: Provided that in the event of a difference of opinion between the Borrowing Authority and the Lending Authority, the services of the employee shall be replaced at the disposal of the Corporation. b) If the Borrowing Authority is of the opinion that any of the major penalties specified in Rule 28.2 should be imposed on the employee, it shall replace his/her services at the disposal of the Corporation and transmit to it the proceedings of the inquiry for such action as deemed necessary

EXPLANATION

The Disciplinary Authority may make an order under this clause on the record of inquiry transmitted to it by the Borrowing Authority of by holding such further inquiry as it may deem necessary, as far as may be, in accordance with Rules 30, 31 or 32."

19. Learned counsel for the petitioner has vehemently argued before this Court that only PFCCL which was the borrowing authority was having jurisdiction to conduct disciplinary proceedings in respect of the alleged misconduct and by no stretch of imagination, a charge sheet could have been issued by the parent organisation.

20. This Court has carefully gone through the entire record of the case and the same reveals that the charge sheet has been issued in the present case after effective consultation between PFCL and PFCCL that too at the instance of the Central Vigilance Commission. Therefore, the learned Single Judge was justified in holding that as the writ petitioner was an employee of PFCL, he was temporarily posted to PFCCL, the charge sheet

was rightly issued by competent disciplinary authority even though the misconduct was committed by him while serving PFCCL.

21. The statutory provisions quoted above makes it very clear that they relates to a period during which an employee is on deputation and would operate only during the tenure of service rendered by an employee in the borrowing entity. Once the employee is sent back to his parent department, it is the competent disciplinary authority of the parent organisation which can issue a charge sheet against the misconduct even though it has taken place in the borrowing department.

22. In the present case, the charges levelled against the petitioner reads as under:

> *"STATE OF ARTICLE OF CHARGES FRAMED AGAINST SHRI N.D. TYAGI, EXECUTIVE DIRECTOR, EMPLOYEE NUMBER 106*
>
> *Article-I*
>
> *That the said Shri N.D. Tyagi while functioning as CEO, PFCCL was responsible for formulation of policy, with the approval of Competent Authority, relating to Travel/ Hotel/ Local Conveyance and Daily Allowance entitlements of casual staff (in case need arises to send casual staff on outstation tours for official work related to PFCCL). Shri N.D. Tyagi has failed to put in place the policy duly approved by the Competent Authority relating to Travel/ Hotel/ Local Conveyance and Daily Allowance entitlements of casual staff before permitting them to travel on out station tours.*
>
> *Shri N.D. Tyagi, while functioning as CEO, PFCCL permitted casual staff to travel on outstation toufs without having*

Competent Authority approved policy on Travel/ Hotel/ Local Conveyance/ and Daily Allowance entitlements of casual staff

Article-II

That while functioning in the aforesaid office, the said Shri N.D. Tyagi, while functioning as CEO, PFCCL allowed expenditure and payment of Travel/ Hotel/ Local Conveyance etc. in respect of casual staff without having approved policy in place with regard to their entitlements. This action on his part has resulted in enhanced financial outgo which could have been avoided."

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTTCLE OF CHARGES FRAMED AGAINST SRI N.D. TYAGI, EXECUTIVE DIRECTOR, EMP.NO. 106.

The above actions on the part of Shri N.D.Tyagi tantamount to misconduct and the Disciplinary Authority have decided to charge him under the PFC Conduct, Discipline & Appeal Rules (PFC CDA Rules) for misconduct as contained in the following Article of Charges:

Article -I

Shri N.D.Tyagi, as CEO, PFCCL was responsible for the smooth functioning of the Company including framing of policies (if required adoption of policies from the parent company PFC) relating to personnel matters.

PFCCL entered into Contract Agreement with M/s Sybex Computer Systems Pvt. Ltd. for providing staff on contract basis to PFCCL as required from time to time. In the Contract. Agreement dated 19th October 2012 signed between PFCCL and M/s Sybex Computer Systems Pvt. Ltd. there was no provision for regulation of payment of Travel tickets, Hotel accommodation charges, Local Conveyance Charges, Daily Allowance etc., in case any staff deployed by M/s Sybex Computers Pvt. Ltd. is required to undertake outstation journeys for PFCCL related work.

Shri N.D.Tyagi, while functioning as CEO, PFCCL permitted casual staff to travel on outstation tours without having Competent Authority approved policy on Travel/ Hotel/ Local Conveyance/ and Daily Allowance entitlements of casual staff.

The above action on the part of Shri N.D.Tyagi tantamount to misconduct. He is therefore charged under Clause No. 5.5 & 5.9 of PFC CDA Rules which reads as under:

Clause 5.5 "Acting in a manner prejudicial to the interest of the Corporation."

Clause No. 5.9 "Neglect of work or negligence in the performance of duty including malingering or slowing down of work."

Article -II

That while functioning in the aforesaid office, the said Shri N.D.Tyagi, while functioning as CEO, PFCCL allowed expenditure and payment of Travel/ Hotel/ Local Conveyance etc. in respect of casual staff without having approved policy in place with regard to their entitlements. This action on his part has resulted in enhanced financial outgo which could have been avoided.

The above action on the part of Shri N.D.Tyagi tantamount to misconduct. He is therefore charged under Clause No. 5.5 of PFC CDA Rules which reads as under:

Clause 5.5 "Acting in a manner prejudicial to the interest of the Corporation.

23. The aforesaid charges make it very clear that the charges are not vague/ absurd charges and it is the employer who has to establish charges based upon the evidence.

24. The present case is a case where the validity of the charge sheet is under question. The Apex Court in the case of ***Union of India and Another***

v. Kunisetty Satyanarayana, (2006) 12 SCC 28, in paragraphs 13,14,15 and 16 has held as under:

> *"**13.** It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.*
>
> ***14.** The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*
>
> ***15.** Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.*
>
> ***16.** No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."*

25. Therefore, as the charges are not vague, the charge sheet has been issued by the competent disciplinary authority, the question of interference by this Court, at this stage, does not arise. Resultantly, this Court does not find any reason to interfere with the order passed by the learned Single Judge. The appeal is accordingly dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

AUGUST 02, 2022
aks/ N.Khanna