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

% **Judgment reserved on: 11 May 2022**
Judgment pronounced on: 18 May 2022

\+ W.P.(C) 7741/2015 & CM APPLs. 15189/2015, 29403/2015, 4218/2021, 4628/2021, 23761/2021

N.D. TYAGI ..... Petitioner

Through: Mr. Ravi Gupta, Sr. Advocate with Mr. Ankur Chhibber, Mr.Nikunj Arora, Mr.Sachin Jain and Mr.Himansh Yadav, Advs.

versus

POWER FINANCE CORPORATION LTD. & ORS..... Respondents

Through: Mr. Chetan Sharma, ASG and Mr.A.S. Chandhiok, Sr. Advocate with Mr. R.K.Joshi, Mr. Ojusya Joshi, Mr. R.V. Prabhat, Mr. Taranjeet Singh Sawhney, Mr.Vinay Yadav, Mr.Amit Gupta, Mr. Rishav Dubey and Mr.Sahaj Garg, Advs. for R-1, 2 and 4.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. This writ petition has been preferred assailing a chargesheet dated 09 March 2015. In terms of the aforesaid chargesheet, the petitioner who was an Executive Director under the respondents was proposed to be proceeded against in disciplinary proceedings in accordance with the provisions made in Rules 28 and 30 of the **Power Finance Corporation Limited (Conduct**

Discipline and Appeal) Rules[1]. In the alternative, the petitioner has prayed for quashing of the orders dated 22 and 31 July 2015. The petitioner had questioned the authority of the Enquiry Officer to proceed further in the matter in light of a perceived bias and an asserted failure to conduct the enquiry in a fair and impartial manner. The Enquiry Officer who was appointed at the relevant time was one Mr. Geeta Ram. The petitioner had alleged that the manner in which the proceedings had been conducted by Mr. Geeta Ram clearly gave rise to an apprehension of bias and accordingly moved the respondents to change the Enquiry Officer. The aforesaid prayer as addressed has been rejected and turned down by the orders of 22 and 31 July 2015. By the time this petition was taken up for hearing, undisputedly Geeta Ram had ceased to be the Enquiry Officer and, on his passing away, a new Enquiry Officer had come to be appointed. As a consequence to the above, the alternative reliefs which are claimed have for all practical purposes rendered infructuous. That leaves the Court to principally consider the challenge which is raised to the chargesheet alone. For the purposes of disposal of the present writ petition, the following essential facts would merit being noticed.

2. The petitioner was employed as an Executive Director in the **Power Finance Corporation Limited**[2]. In 2008, PFCL is stated to have incorporated a wholly owned subsidiary called **Power Finance**

[1] Rules

[2] PFCL

Corporation Consulting Limited[3]. Upon the incorporation of the aforesaid subsidiary, the petitioner was transferred to the newly formed company as its Chief Executive Officer. The relevant extract of the order of 31 March 2008 is reproduced hereinbelow: -

> "**POWER FINANCE CORPORATION LIMITED**
>
> **(H.R.UNIT)**
>
> **No.2:02:161** **March 31, 2008**
>
> **OFFICE ORDER NO. 46/2008**
>
> **Sub.:** **Operationalisation of the subsidiary company for Consultancy Services**
>
> 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, 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. He is designated as Chief Executive Officer.
>
> This issues with the approval of the Competent Authority.
>
> (S. RAVINDRAN)
>
> Manager (HR)"

3. On 02 December 2013, the Assistant General Manager (HR) passed an order transferring the petitioner back to PFCL and posting him as the Executive Director (Facilitation Group). On 29 October 2014, a show cause notice came to be issued calling upon the petitioner to explain why

[3] PFCCL

disciplinary action be not initiated against him in light of various infractions which had come to be noticed connected with the administration of the affairs of PFCCL during the period when the petitioner was posted as its Chief Executive Officer. The allegation in the show cause notice was that the petitioner had permitted casual staff to travel on outstation tours without having gotten a transfer / local conveyance / daily allowance policy approved by the competent authority. It was additionally alleged that the petitioner had allowed expenditure and payment of travel related charges claimed by casual staff without having approved or put in place a codified policy with regard to their entitlement to such benefits. The show cause notice alleged that the aforesaid infractions amounted to the petitioner having acted in a manner prejudicial to the interest of the PFCCL. It was in the aforesaid backdrop that it was proposed that disciplinary action would be initiated.

4. Upon consideration of the reply as submitted by the petitioner to the aforesaid show cause notice, a chargesheet came to be subsequently issued. On commencement of proceedings, the petitioner as noted above raised a challenge to the authority of the Enquiry Officer and consequently sought a change of that officer. On the record is a letter written by the petitioner on 20 July 2015 and in paragraph 4 whereof the petitioner stated thus: -

> "4. A plain reading of the Daily Order Sheets (DOSs) issued by Mr. Geeta Ram, from time to time (copies enclosed for ready reference), clearly bring out the proven bias of Mr. Geeta Ram and, therefore, he does not command my confidence, also because of his uncalled for utterances during the hearings. In these circumstances, 1 request for

change of the Inquiry Officer, Mr. Geeta Ram, on grounds of bias, and inept handling. I have no qualms to face the inquiry, provided the trial is free and fair. I, therefore, request you Sir, that the Central Vigilance Commission (CVC) may be approached for nominating a Commissioner of Departmental Inquiries (CDl) to conduct the Inquiry."

5. Consequent to the respondents refusing the prayer for change of the Enquiry Officer in terms of the impugned orders of 22 and 31 July 2015, the instant writ petition came to be instituted before this Court. When the matter was initially entertained, the Court on 29 September 2015 passed the following order: -

"The counter affidavit has been filed by the respondent nos. 1, 2 and 4. Learned senior counsel for the petitioner seeks some time for filing rejoinder. Rejoinder be filed within two (2) weeks with advance copy to counsel for the respondents.

The respondent no.3 is served by speed post, however, ordinary process has not been received back. None has appeared on behalf of the respondent no.3. Since ordinary process has not been received back as such dasti notice be taken by the petitioner for service of respondent no.3, returnable on 10.12.2015.

Mr. Ravi Sikri, learned Senior Advocate for the petitioner states that on the last date of hearing, Mr A.S. Chandhiok, Sr. Advocate has appeared for respondent nos.l, 2 and 4 and stated that he will inform the Enquiry Officer not to proceed with the enquiry proceedings till the next date of hearing. Letter to this effect was sent to Enquiry Officer. Same be continued till the next date of hearing.

Counsel for the respondent nos. 1,2 and 4 submits that the petitioner is going to retire on 30.11.2015. It is fairly conceded by Learned Sr. Adv. for the petitioner that even if that is so, since the inquiry has already been started it has to reach its logical end.

As such, renotify on 10.12.2015."

6. It appears that the statement made on behalf of the respondents and recorded by the Court in the order aforenoted, has continued till date and thus the enquiry proceedings have not moved forward as a consequence thereof. On notice being issued on the writ petition, respondents Nos. 1 and 4 have filed their counter affidavits. The writ petition was thereafter and with the consent of parties taken up for final hearing.

7. Mr. Gupta, learned Senior Counsel appearing in support of the writ petition, conceded that insofar as the alternative prayers are concerned, they would no longer survive in light of the subsequent events and the Enquiry Officer having changed during the pendency of the present writ petition. The chargesheet was assailed by Mr. Gupta principally on the following grounds. Drawing the attention of the Court to the contents of the chargesheet, it was argued that undisputedly the charges pertain to a period when the petitioner was serving in PFCCL on deputation. Mr. Gupta submits that bearing in mind the provisions made in Rules 36 and 37, no authority or jurisdiction would vest in PFCL to try the petitioner or to impose penalties for alleged acts of misconduct committed while the petitioner was posted at PFCCL. Learned Senior Counsel submitted that undisputedly no proceedings for the alleged infractions were ever initiated or undertaken by PFCCL. Mr. Gupta has addressed the aforesaid submissions based on the provisions contained in Rules 36.1, 37.1 and 37.2 which are extracted hereinbelow: -

"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."

8. In light of the provisions made in the Rules aforenoted, Mr. Gupta submits that PFCCL which was the *"Borrowing Authority"* alone would have had the authority and jurisdiction to commence disciplinary proceedings in respect of the alleged misdemeanors. It was submitted that a bare perusal of Rule 37.1 would establish that the Borrowing Authority is conferred all powers of the appointing authority for the purposes of placing an employee under suspension in contemplation of disciplinary proceedings as also to initiate such proceedings if circumstances so warrant. According to Mr. Gupta, any action that could have possibly been taken or initiated in respect of the alleged acts of misconduct pertaining to the period when the petitioner had remained on deputation in PFCCL, could have thus been initiated by that entity alone.

9. Mr. Gupta then submits that the entire material on the basis of which disciplinary action has been initiated would be in the possession of PFCCL. Learned Senior Counsel submitted that the decision to initiate disciplinary action would necessarily stem from the competent authority in PFCCL being satisfied on a consideration of the material and evidence gathered that such action is warranted. According to Mr. Gupta, in the absence of any such decision having been arrived at by the competent authority in PFCCL, the impugned chargesheet and all proceedings initiated pursuant thereto must be held to be wholly without jurisdiction, arbitrary and illegal. Mr.

Gupta, in this connection has also referred to Rule 30.2 to submit that the formation of opinion of an imperative to enquire into an imputation of misconduct is a pre-condition for initiation of disciplinary proceedings under the Rules. According to Mr. Gupta, since no opinion was ever formed in this respect by the competent authority in PFCCL, the action as initiated against the petitioner is liable to be quashed. For the purposes of evaluating the merits of the aforenoted contention, Rule 30.2 is extracted hereinbelow: -

> "30.2 Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into, or appoint any officer of the Corporation or any other public servant or retired public servant (hereinafter called the Inquiring Authority) to inquire into the truth thereof."

10. Mr. Gupta submits that the issues raised in the present writ have been conclusively decided by the Madhya Pradesh High Court in **B.L. Satyarthi Vs. State of M.P.**[4] Taking the Court in some detail through the decision rendered by the Division Bench of the Madhya Pradesh High Court, Mr. Gupta submitted that Rule 20 of the Madhya Pradesh Civil Services (CCA) Rules, 1966 is *pari materia* with the provisions of Rule 37.1. He drew the attention of the Court to the following principles as were laid down in **B.L. Satyarthi: -**

> "10. The moot question is as to whether the procedure contemplated under Rule 20 as reproduced hereinabove is applicable only when the employee continues on deputation or can be invoked even after the period

[4] 2014 SCC OnLine MP 5735

of deputation is over or the employee is repatriated back to his parent department.

11. In the case of *Shiv Prasad Pandey* (supra) the employee was working in the Police Department and while so serving he was deployed to work on deputation with the Border Security Force. While working in the Border Security Force because of certain offence committed by him, he was put to trial in accordance to the Border Security Force's Act much after he was repatriated back to the Police Department. It was held by the Supreme Court that on his repatriation to the Police services, he ceases to be an officer of the Border Security Force from the date of his repatriation and therefore, he cannot be subjected to taking any action under the Border Security Force's Act. However, in the present case the Rules are different, and the action was taken after the repatriation from the Corporation.

12. Rule 20 of Madhya Pradesh Civil Services (CCA) Rules, 1966 as applicable to the State of Madhya Pradesh and reproduced hereinabove gives power to the borrowing department to take disciplinary action against a Government servant who is on deputation and the powers to the appointing authority and the Disciplinary Authority are conferred on the borrowing department. The Rule contemplates that the borrowing department shall have the powers of the Appointing Authority for the purpose of placing the government servant under suspension and for taking disciplinary action against him but the proviso contemplates that the action taken has to be forthwith communicated to the parent Department. When power is given to any authority to suspend a Government servant or initiate disciplinary action against him an assumption has to be drawn that the power can be exercised so long as the relationship of master and servant, employer and employee subsists or the contract of employment is in existence. Once the relationship of master and servant or employer and employee or the contract of service itself comes to an end, the question would be as to how disciplinary action or power to suspend can be exercised by an authority with whom the contract of employment of the employee concerned is no more in existence. Rule 20 therefore, has to be interpreted by holding that the power conferred under Rule 20 to the borrowing department or authority to suspend a Government servant or to take a disciplinary action against him can be exercised only if the relationship of master and servant or the contract of employment between the borrowing department and the deputationist employee subsists. When an employee who is a government servant and holds a lien in a Government department is sent on

deputation to Foreign Department or a Corporation, then during the period of deputation a temporary contract of service is brought into force between the borrowing department and the employee concerned and so long as its contract of employment subsists the borrowing department can invoke the provision of Rule 20 but once the employee is repatriated back to the foreign department then the contract of employment temporarily created during the period of deputation ceases and if that be the position, then the borrowing department does not have any authority to take action against the employee concerned. Apart from the above a perusal of Rule 20(2) and the proviso to Rule 20(2)(i) and (iii) also clarifies the position. After the departmental proceeding initiated by the Borrowing Department is completed and the finding of enquiry is recorded, in the light of the finding if the Borrowing Department wants to impose any of the penalties specified in clause (i) to (iv) of Rule 10, then after consultation with the lending department the punishment can be imposed. However, the proviso to Rule 20(2)(i) indicates that if there is any difference of opinion between the Borrowing Department and lending department that the service of the employee has to be replaced at the disposal of the lending department. This clearly shows that action under these Rules can be taken only when the employee is on deputation not otherwise as the stipulation in proviso to Rule 20(2)(i) speaks about replacement of the employee to the lending department. Similarly in Rule 20(2)(i) and proviso thereto also it is clearly provided that if the punishment to be imposed is a major punishment as provided in Rule 10(v) to (ix), then the employee has to be replaced to the lending department and it is only the lending department which can take action. The stipulation in this part of the rule for replacement of the employee to the parent department clearly indicates the intention of the rule maker. In case Rule 20 was applicable to a employee who is already repatriated to the parent (lending) department then the provision for replacement of the employee to the lending department as contained in both the provisos to Rule 20(2)(i)(iii) would not provide for replace the service of the government employee to the lending department. This in our considered view would be the interpretation which can be given to the powers that may be exercised by the borrowing department under Rule 20.

13. We are fortified in our aforesaid reasoning and the aforesaid finding if we take note of a decision and Circular of the Government of India in the Ministry of Human Affairs in the matter of taking disciplinary action under the provisions of Rule 20 of the Central Services (Classification, Control and Appeal) Rules, 1965. Rule 20 of the Central Services

(Classification, Control and Appeal) Rules, 1965 is pari materia and identical to the provisions of Rule 20 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and while clarifying the powers available to the borrowing department for taking action against an employee lent to the service of Central Government by any other State Government or local authority, the Central Government has clarified the position in the Circular being File No. : 7/9/62: Ests. (A) and it is stipulated in the said Circular that Rule 20 is not applicable for the purpose of instituting departmental proceedings on a State Government servant whose services were borrowed by the Central Government has since been replaced or been repatriated back to the State Government. The Circular contemplates that in such cases, the concerned Ministry or department of the Central Government, where the employee was on deputation may complete the preliminary enquiry as may be considered necessary and thereafter forward the relevant records to the State Government for instituting departmental proceedings and for taking further action. That is the procedure contemplated by the Central Government for taking action under Rule 20 of the Central Services (Classification, Control and Appeal) Rules, 1965 and if the aforesaid procedure contemplated by the Central Government is evaluated in the light of principles discussed by us herein above, we find that this is the only interpretation that can be given to the provisions of Rule 20 of M.P. Civil Services (CCA) Rules, 1966.

14. Somewhat similar situation was considered by the Madras High Court also in the case of *K. Kanagasabapathy* v. *City Supply Officer, Civil*, (1978) 1 MLJ 184. In that case also the disciplinary proceedings were initiated by the borrowing department after the employee was repatriated to the parent department and it was held by the Madras High Court in the aforesaid case that after the employee had left the borrowing department and had gone back to the parent department, officers of the borrowing department had no jurisdiction to take any disciplinary proceeding against him. It is held that the power is made available to the borrowing department only so long as the concerned officer is serving in the said department but not after he had gone back to the parent department.

15. Keeping in view the aforesaid principle also, we find that the action taken by the Madhya Pradesh Rajya Van Vikas Nigam for initiating departmental enquiry in the matter is unsustainable once the employee namely the appellant herein was repatriated back to the parent department."

11. Mr. Chandhiok, learned Senior Counsel who appeared on behalf of PFCCL, while controverting the aforenoted submissions argued that the writ petition is clearly premature since all that is challenged at this stage is a chargesheet. Mr. Chandhiok submits that in the absence of any jurisdictional challenge to the authority of the respondents to proceed against the petitioner departmentally, the writ petition itself would not be maintainable and is liable to be dismissed. According to learned Senior counsel, the posting of the petitioner in PFCCL was merely a transfer. Mr. Chandhiok submits that although PFCCL was incorporated as a wholly owned subsidiary, disciplinary and administrative control over officers and employees of PFCL whose services had been lent continued to remain with the respondent No.1. He refers to the fact that a perusal of the Annual Reports and Accounts of PFCL would show that the income and turnover of PFCCL was published in a compendious form establishing and indicating that the respondent No.4 was merely a constituent of respondent No.1. Mr. Chandhiok invited the attention of the Court to the original order of transfer of the petitioner to submit that it clearly evidences that the services of the petitioner had merely been lent on transfer to PFCCL. It is further pointed out that the documents which have been placed on the record by the respondents would establish that no independent control, administrative or otherwise, was exercised by PFCCL over employees of PFCL. This, according to him, is evident from the fact that the PFCL maintained a common seniority list in respect of all employees working in PFCL and PFCCL. Mr. Chandhiok further pointed out that common promotion orders

used to be issued for employees of PFCL and PFCCL and that too by the competent authority of the first respondent. It was submitted that the petitioner himself in his letter of 20 July 2015 admitted that the Chairman and Managing Director of PFCL was the competent Disciplinary Authority. According to Mr. Chandhiok, once the jurisdiction of the Chairman and Managing Director of PFCL to act as the Disciplinary Authority was conceded, it was clearly not open to the petitioner to question the chargesheet or the disciplinary proceedings initiated. Mr. Chandhiok referring to the aforesaid letter further submitted that a reading of paragraph 4 of the said communication itself indicates that all that the petitioner had questioned was the alleged inept handling of disciplinary proceedings by Mr. Geeta Ram and the failure of the said Enquiry Officer to conduct proceedings in a fair and unbiased manner. Mr. Chandhiok lays stress on the own admission of the petitioner who had asserted in that communication itself that subject to the Enquiry Officer being changed, he would otherwise have no objection to face the enquiry provided it was conducted in a free and fair manner.

12. The learned ASG, while reiterating the submissions noted above, has contended that once the petitioner had in unequivocal terms recognised the authority of the Managing Director of PFCL to initiate proceedings, the challenge to the chargesheet is liable to be negatived on that score alone. The learned ASG submitted that as is evident from the own letters submitted by the petitioner before the respondents, the solitary objection

which was taken was with respect to the lack of impartiality as exhibited by Mr. Geeta Ram, the then Enquiry Officer. Learned ASG laid emphasis on the letter of the petitioner dated 20 July 2015 to submit that he himself had in clear and unequivocal terms stated that he would have no *"qualms to face the enquiry"* provided it was conducted in a free and fair manner. It was submitted that the petitioner had prior to the filing of the present writ petition not raised any objection with respect to the authority of PFCL to initiate enquiry proceedings. In the aforesaid background, learned ASG would submit that the instant writ petition is clearly a misconceived foray and is liable to be dismissed.

13. Proceeding further, learned ASG would submit that a challenge to a chargesheet can only be countenanced if it be based on a jurisdictional question raised and relating to the competence of the Disciplinary Authority to initiate proceedings or on grounds that no enquiry could be initiated under the Rules that may apply. Taking the Court through the material placed on the record, learned ASG submits that the petitioner had not raised any objection either with respect to the jurisdiction of the Disciplinary Authority or to the initiation of proceedings under the relevant Rules. It was submitted that the enquiry proceedings which had been validly initiated have come to be stalled in light of the interim order which operates on this writ petition and which position has continued for over seven years even though the solitary grievance which was raised by the petitioner, namely the conduct of proceedings by Mr. Geeta Ram, had itself ceased to exist long

back. Learned ASG further reiterated the submission that in terms of the administrative arrangement which stood put in place, the employees of PFCL were merely lent and transferred to PFCCL.

14. Learned ASG then submitted that the aforesaid transfer of employees could not be termed or viewed as a deputation. He also referred to the undisputed fact that a common seniority list used to be maintained for all employees working in PFCL and PFCCL. The lack of any dichotomy between the two entities was also sought to be underlined on the basis of a common Employees Provident Fund which was maintained by PFCL itself. Learned ASG further urged that the concept of deputation involves three-way consent, namely, of the authority lending the services of their employees, the borrowing authority as well as the consent of the employee concerned. To buttress his submission, he pressed into aid the following principles as enunciated by the Supreme Court in **Umapati Choudhry Vs. State of Bihar**[5]:-

> **"8.** Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were

[5] (1999) 4 SCC 659

fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant, the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. The learned Single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned Single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the Single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance with the directions made in the judgment of the learned Single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits."

15. Proceeding along these lines he also placed reliance on the following pertinent observations as made by the Supreme Court in **State of Punjab Vs. Inder Singh**[6]:-

18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is

[6] (1997) 8 SCC 372

> transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.

16. Turning then to the relevant Rules which had been pressed into aid, it was submitted that a reading of Rule 37.1 would clearly establish that it would only operate as long as an officer or employee of PFCL was posted and working in PFCCL. Learned ASG submits that the moment the petitioner came to be repatriated and stood transferred back to PFCL, it was the Disciplinary Authority of PFCL who alone could be recognised as having the power to proceed against the petitioner departmentally. Mr. Sharma submits that Rule 37.1 cannot possibly be read as empowering the Borrowing Authority to institute disciplinary proceedings against an officer or employee even after his repatriation to the Lending Authority.

17. The learned ASG submitted that the decision in **B.L. Satyarthi** far from lending credence to the submissions advanced on behalf of the petitioner, is an authority which is liable to be read in favour of the stand taken by the respondents here. The learned ASG submitted that **B.L. Satyarthi** had in fact held against the Corporation, there which had taken disciplinary measures even after the deputation of the appellant before that Court had come to an end, would have no jurisdiction to initiate disciplinary action. In view of the above, it was contended that the said

decision in fact reinforces the submissions addressed on behalf of the respondents in the present petition.

18. Having heard learned counsels for parties, the Court at the outset notes that undisputedly Mr. Geeta Ram against whom allegations of bias and unfair conduct was laid, is no longer the Enquiry Officer. Viewed in that background it is evident that the alternative reliefs which are sought need no longer be considered or evaluated. That only leaves the Court to consider the submissions addressed on the anvil of Rule 37.1 and to examine whether the petitioner is correct when he contends that proceedings in respect of alleged acts of misdemeanour committed while he was posted in PFCCL cannot be validly tried by the competent authority in PFCL. However before proceeding to do so, it would be apposite to deal with some of the additional submissions which have been raised by the respondents.

19. In the considered view of this Court, the respondents have rightly contended that ordinarily a writ petition challenging a chargesheet would not be liable to be entertained unless there be a jurisdictional challenge to the initiation or continuance of disciplinary proceedings. Both Mr. Chandiok as well as the learned ASG have vehemently urged that the only objection which was raised when the writ petition was preferred was with respect to the competence of the then Enquiry Officer. It was submitted that the petitioner had himself submitted that he would have no *"qualms"* to participate in the enquiry so long as the Enquiry Officer was replaced.

However and notwithstanding the above, since Mr. Gupta has raised two fundamental questions pertaining to the validity of the enquiry proceedings and respective counsels have been heard at great length on the same, it would appear to be expedient to answer the questions raised on merits rather than relegating the petitioner to raise those issues either before the respondents or the Enquiry Officer. The Court also bears in mind the long pendency of the writ petition on the board of this Court and therefore the imperative to finally lend a quietus to the controversy which is raised. The issue is thus answered accordingly.

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**[7]:-

[7] (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 Mittra**[8] 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

[8] 1968 SCC OnLine Del. 139

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**[9] 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*

[9] (2009) 4 SCC 700

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**[10] 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

[10] (1978) 1 MLJ 184

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.

YASHWANT VARMA, J.

MAY 18, 2022
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