

HIGH COURT OF DELHI: NEW DELHI

+ Writ Petition (Civil) No. 7875/2003

Judgment reserved on: 21st August, 2009
% Judgment delivered on: 7th September, 2009

RANVIR SINGH Petitioner
Through: Petitioner in person.
Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. A.K. Bhardwaj with Ms.
Jagrati Singh, Advocates.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
2. Whether the judgment should be reported
in the Digest? Yes

A.K. PATHAK, J.

1. Petitioner has filed this writ petition under Article 226 of the Constitution of India, for quashing of the order dated 30th September, 2003, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal"), in O.A. No. 2003/2002. It has been further prayed that the order dated 26th June, 2001 as well as

charge memo dated 10th November, 1999 be quashed and Respondent be directed to pay all consequential benefits as well as the cost of litigation to the Petitioner.

2. Briefly stated, facts of the case are that the Petitioner was working as General Manager, Baroda Telecom District, at the relevant time. Subsequently he was promoted to the post of Chief General Manager, Telecom, Northern Telecom Projects Circle, New Delhi and retired on 31st January, 2002.

3. A departmental proceeding for major penalty was initiated against the Petitioner, while he was in service, on the following charges:-

“That the said Shri Ranvir Singh, while functioning as General Manager, Baroda Telecom District, during the period from 15.6.1989 to 21.7.1993 deliberately and with malafide intention, and in connivance with his subordinates, accepted the irregular recommendation of the Stores Purchase Committee which met on 26.2.1992, for purchase of GI pipes of 1.5 inches diameter Class “A” (light weight) on quotation basis, ignoring the tenders already received in response to Notice Inviting Tenders issued on 6.1.1992 and the valid DGS&D Rate Contract, and ordered the local purchase of 2700 metres of such pipes worth Rs. 1,83,240/- from M/s Ambica Pipe Syndicate,

Ahmedabad: and, further, ordered the local purchase of such pipes on three more occasions, on quotation basis from the same firm i.e. 2700 metres worth Rs. 1,83,240/- on 7.5.1992, 2404 metres worth Rs. 1,86,830/- on 9.10.1992, and 5460 metres worth Rs. 4,15,024/- on 8.1.1993, bypassing the tender procedure, overruling the advice of his Internal Financial Adviser, in excess of his delegated financial powers, and at rates far higher than the rates as per DGS&D Rate Contract, in gross violation inter-alia of Rule 2 in Appendix-8 (Part-I) to Rule 102(1) and Annexure to Chapter-8 of General Financial Rules, 1963. Rule 429 of P&T Manual Vol.II, and Rule 60 of P&T Financial Hand Book Vol. I. thereby causing a heavy loss of Rs.1,84,139/- to the Department and corresponding undue pecuniary advantage to the supplier.

Thus, by his above acts, the said Shri Ranvir Singh committed grave misconduct, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.”

4. After the retirement of Petitioner these proceedings continued under Rule 9 of the CCS (Pension) Rules, 1972. Petitioner participated in the enquiry. Enquiry Officer, after concluding the enquiry, submitted his report dated 26th June, 2001 wherein he held that charges were partly proved. It was proved that the Petitioner had accepted the irregular

recommendations of the Stores Purchase Committee dated 26th February, 1992 for purchase of G.I. pipes on quotation basis, ignoring the tenders already received and without taking into consideration the available DGS&D rates; it was further proved that the Petitioner made purchases on three more occasions, by bypassing the tender procedure and over-ruling the advice of the Internal Financial Adviser, in excess of his delegated financial powers, at a rate far higher than fixed by the DGS&D, causing loss of Rs.1,84,139/- to the exchequer and corresponding undue pecuniary advantage to the supplier. Enquiry Officer observed that the connivance of Petitioner with his subordinates was not proved.

5. Petitioner made a representation dated 22, October, 2001. Thereafter, President, in consultation with the Union Public Service Commission (for short referred to as UPSC), imposed penalty of 5% cut in the pension of Petitioner for a period of five years vide order dated 28th June, 2002.

6. Petitioner challenged the order dated 28th June, 2002 before the Tribunal by filing O.A. No. 2003/2002.

Contentions raised by the Petitioner before the Tribunal are as under :-

“(a) Respondents wilfully destroyed the evidence which would have conclusively gone against the evidence adduced on behalf of the prosecution.

(b) Documents which had not been supplied to applicant were taken into consideration to establish the article of charge against him in clear violation of the principles of natural justice.

(c) Copy of the preliminary enquiry report was neither supplied nor allowed to be inspected.

(d) While the charge memo was issued on 10.11.1999 the enquiry officer had already been appointed on 24.12.1998.

(e) Respondent No. 2 i.e. Secretary, Ministry of Communications, refused to give personal hearing to applicant at the time of submission of written statement in response to memorandum of charge. It is in violation of statutory rule.

(f) Applicant has been discriminated against in the matter of punishment inasmuch as in the disciplinary proceedings instituted against Shri D.C. Gupta, the then Deputy General Manager and V.K. Sainani, the then Divisional Engineer milder punishments were imposed on them and the proceedings against Smt. Sujata Ray, the then Internal Financial Adviser were dropped.”

7. Respondent refuted aforesaid contentions of the Petitioner. As per them no document was tampered with, nor any evidence was destroyed by the Respondent wilfully. It was further stated that full opportunity was afforded to the Petitioner to inspect the documents before submitting his reply to the memorandum of charge. It was not obligatory on the part of Respondent to afford personal hearing to the Petitioner before submitting his explanation to the memo of charge. All the documents relied by the Respondent were duly supplied to the Petitioner. Inspection of documents was also permitted. No such document which was not supplied to the Petitioner was taken into consideration. Mr. D.C. Gupta, Mr. V.K. Sajnani, Smt. Sujata Ray were not proceeded against along with the Petitioner in the same disciplinary proceedings. Separate evidence was led in their cases. The said officers were punished on merits of their respective cases, therefore, Petitioner was not discriminated against viz-a-viz said officers. Principles of natural justice were duly followed during the enquiry proceedings. Adequate evidence was led by the Respondent against the Petitioner to establish the

charges against him. It was further contended by the Respondent that the scope of judicial review was limited and Tribunal had no power to reappraise the evidence and take a different view.

8. Tribunal considered the rival contentions of the parties and vide impugned order dismissed the O.A.

9. Before us, Petitioner has reiterated most of the contentions raised by him before the Tribunal. Learned counsel for the Respondent has supported the findings of Tribunal for the reasons stated therein. We have also gone through the material placed on record.

10. As regards contention (a), Tribunal held that no cogent proof was furnished regarding the so called destruction or tampering of documents/correspondence. Plea set up by the Petitioner regarding destruction of document and/or tampering with the correspondence in the official file, was also not convincing. Tribunal held that no adverse inference could be drawn against the Respondent in these circumstances. As regard contention (b), Tribunal held that the documents, on which reliance was placed by the

Respondent, were duly supplied to the Petitioner. Plea of the Petitioner that DGS&D rate contract dated 14th June, 1991 was not supplied thereby causing prejudice to the Petitioner in setting up his defence, was not tenable as the letter dated 27th August, 1992 from DGS&D whereby the rate contract dated 14th June, 1991 awarded to M/s Tisco Limited was amended, was produced during the enquiry as Exhibit S4. After the rate contract was amended, the earlier DGS&D rate contract dated 14th June, 1991 had lost its relevance and its non production did not prejudice the case of Petitioner in any manner whatsoever. Tribunal returned a categorical finding that the remaining documents, relied upon by the department during the enquiry proceeding, were duly supplied to the Petitioner and he was, thus, not prejudiced in any manner.

11. We do not find any reason to take a different view than what the Tribunal has taken. Documents on which reliance was placed by the Respondent were duly supplied to the Petitioner. Non availability of DGS&D rate contract dated 14th June, 1991 would not be fatal in any manner whatsoever in the facts of this case. This rate contract was

duly amended vide letter dated 27th August, 1992 from DGS&D and same was available on record as Exhibit S4. Copy of this document was supplied to the Petitioner. All other documents on which reliance was placed by the Respondent were also supplied. Thus, Tribunal was right in holding that non supply of rate contract dated 14th June, 1991 did not prejudice the defence of the Petitioner in any manner whatsoever. So far as the contention of the Petitioner, that the documents were tampered with as the file containing certain letters, which would have been helpful to the Petitioner in setting up his defence, had gone missing, in our view, has no force. Petitioner has failed to point out any document on record which appears to have been tampered with by the Respondent. No interpolation can be pointed out in any of the documents. Petitioner had failed to demonstrate before the Tribunal, so also before us, that the Respondent had wilfully misplaced the files containing certain documents, which allegedly would have been useful for setting up the defence by the Petitioner. Relevant files were available at the time when Petitioner was allowed inspection of the record. All the documents were seen by the

Petitioner before submitting his written reply to the memo of charge. All the documents on which reliance was placed by the Respondent in support of the Memorandum of charge had been supplied to the Petitioner. Simply because some of the documents, as demanded by the Petitioner, subsequent to inspection were found missing, by itself would not be sufficient to draw an adverse inference against the Respondent. We are of the view that Tribunal was right in holding that the Petitioner's contention, regarding tampering of the correspondence and other material in the official file was not convincing. Tribunal was also right in concluding that no document, which was not supplied to the Petitioner, was taken into consideration to establish the charges.

12. As regards contention (c), Tribunal held that the preliminary investigation report was not made use of in the enquiry by the Respondent, therefore, its non supply did not adversely affect the outcome of the disciplinary proceeding. As per the Tribunal no prejudice was caused to the Petitioner on account of non supply of preliminary enquiry report. Petitioner has contended that the preliminary enquiry report was basis of charges framed against him,

thus, its non supply had caused serious prejudice to him. Preliminary enquiry report was made the foundation of charges framed against the Petitioner. Accordingly, it was required to be supplied to the Petitioner. Non supply of preliminary enquiry report vitiates the whole departmental proceeding. Reliance has been placed on ***Pepsu Road Transport Corporation vs. Shavinder Singh*** reported in ***2000(2) SLR 729***, ***R. Sambamurthy vs. Chief General Manager (A.P.)***, reported in ***2001 (1) SLR 257*** and ***State of Utter Pradesh vs. Mohd. Sharif*** reported in ***(1982) 2 SCC 376***. As against this learned counsel for the Respondent has contended that the preliminary enquiry report was neither relied upon by the department during the enquiry proceeding nor at the time of awarding the punishment. Thus, no prejudice was caused to the Petitioner, on account of non supply of preliminary enquiry report. Respondent was required to supply preliminary enquiry report only if they had placed reliance thereon. Mere non supply of preliminary enquiry report would not vitiate the disciplinary proceeding more so, when Petitioner had failed to disclose as to in what manner he was prejudiced on account of non

supply of this report. In nutshell, case of the Respondent is that since no reliance was placed on this report same was not required to be supplied. Reliance has been placed on ***Krishna Chandra Tandon vs. Union of India*** reported in ***1974(2) SLR 178, Haryana Financial Corporation & Anr. Vs. Kailash Chandra Ahuja*** reported in ***2009(1) All India Services Law Journal 37*** and ***State of U.P. vs. Harindra Arora & Anr.***, reported in ***JT 2001 (Suppl. 1) SC 70.***

13. We have considered the rival contentions of both the parties on this point and do not find any force in the contention of the Petitioner. Preliminary enquiry report was not a relied upon document. If that is so then its non supply would not violate the principles of natural justice. There is no such rule that said report had to be supplied to the delinquent even when no reliance was placed on the same by the department. In Krishna Chand case (supra) Supreme Court has held that inter communication between the officers preliminary to the holding of enquiry, to find prima facie grounds for holding disciplinary enquiry, need not be supplied to the delinquent officer if not relied upon by

the Enquiry Officer. In Kailash Chandra Ahuja's case (supra), Supreme Court has held that non supply of report of the Enquiry Officer to the delinquent would not ipso facto result in proceedings being declared null and void and order of punishment non est and ineffective. Delinquent has to plead and prove that non supply of such a report had caused prejudice and resulted in miscarriage of justice. In this case Petitioner has failed to make out a case in his favour that he was prejudiced on account of non supply of preliminary enquiry report or that it has resulted in miscarriage of justice. We are of the view that Tribunal rightly held that Respondent had not committed any illegality or irregularity in not supplying the report of the preliminary enquiry to the Petitioner.

14. Contention (d) has not been pressed by the Petitioner before us during the course of argument.

15. As regards contention (e), Tribunal held that personal hearing at the stage of submission of written reply was not provided for in the statutory rules. The rules provide for oral enquiry which in the case of Petitioner was conducted by the Enquiry Officer wherein opportunity was given to the

Petitioner to defend himself. It was not mandatory for the Secretary, Ministry of Communications, to give personal hearing to the Petitioner after he submitted his representation against the charge memo. Before us, Petitioner has failed to point out any rule mandating personal hearing to a delinquent at the time of submission of written representation in response to charge memo and before a decision is taken by the Disciplinary Authority to the effect as to whether enquiry is required to be conducted or not.

16. Petitioner has next contended that in the charge memo dated 10th November, 1999 it was specifically mentioned that Petitioner may submit within 10 days, on receipt of memo, a written statement of his defence and also to state whether he desires to be heard in person. Petitioner submitted his written representation and also demanded personal hearing, thus it was incumbent upon the Secretary, Ministry of Communication to have afforded personal hearing to him. As per the Petitioner, Secretary also did not take into account the written representation of the Petitioner before taking a decision that an oral enquiry is to be

proceeded with. Petitioner has then contended that no reasonable opportunity was afforded to him to explain that on his submitting a detailed written representation to the charge memo, no further departmental proceedings were needed to be proceeded with, and the same ought to have been dropped. Reliance has been placed on ***Martin Burn Ltd. vs. The Corporation of Calcutta***, reported in ***AIR 1966 SC 529***. In our view, this judgement is in different context and is not applicable to the facts of the present case. In the instant case Petitioner had failed to point out any statutory rule mandating a personal hearing at the preliminary stage of the department taking a decision as to whether oral enquiry is to be proceeded with pursuant to issuance of charge memo. We are of the view that Tribunal has taken a right view by saying that personal hearing, at the stage of submission of written reply to the charge memo, was not necessary as it was not provided under any statutory rule.

17. As regard contention (f), Tribunal held that separate departmental proceedings were initiated against the Petitioner, Mr. D.C. Gupta, Mr. V.K. Sajnani and Smt.

Sujata Ray. Each case was dealt with according to its own merits. Decision was taken to drop the proceedings against Smt. Sujata Ray while giving warning to remain careful in future. So far as Mr. D.C. Gupta and Mr. V.K. Sajnani are concerned, suitable punishment was awarded to them depending upon the outcome of their respective proceedings. Petitioner cannot claim discrimination in the matter of punishment. Petitioner contended that Mr.D.C. Gupta, Mr. V.K. Sajnani and Smt. Sujata Ray were members of the 'Purchase Committee'. They had made recommendations with regard to purchase of GI pipes. Petitioner being G.M. had accepted said recommendations. Misconduct of the Petitioner was not graver than said officers. In spite of this they were awarded lesser punishment than the Petitioner. Mr. D.C. Gupta and Mr. V.K. Sajnani were given punishment of stoppage of two increments; whereas Smt. Sujata Ray was let off only with a warning. As against this, Petitioner was awarded severe punishment of 5% cut in his pension for a period of five years. Thus, Petitioner was discriminated vis-a-vis other officers, who were similarly situated. The action of the Respondent was thus, violative of

Articles 14 and 16 of the Constitution. Reliance has been placed on ***Sengara Singh vs. State of Punjab*** reported in ***1983 (3) SLR (SC) 685*** and ***State of U.P. & Ors. vs. Raj Pal Singh*** reported in ***2001(4) SLR (SC) 637***. As against this, learned counsel for the Respondent has contended that in the disciplinary proceedings concept of co-accused does not exist. Merely because some of the delinquents are let off with lesser punishment would not mean that other delinquent cannot be awarded grave punishment. In the disciplinary proceedings imposition of major penalty to one of the delinquents even when some of the delinquents, are let off with minor penalty, would not constitute discrimination. It has been further contended that misconduct of the Petitioner is graver than other officers. Purchase Committee was constituted by the Petitioner himself. He was G.M. It was his duty to satisfy himself before accepting the recommendation of the Purchase Committee, that such a recommendation was in consonance with rules applicable regarding purchase of a particular item. In nutshell, it has been contended that merely because Mr. D.C. Gupta, Mr. V.K. Sajnani and Smt. Sujata

Ray were awarded lesser punishment than the Petitioner by itself would not amount to discrimination. Reliance has been placed on ***Balbir Chand vs. The Food Corporation of India Ltd. & Ors.*** reported in ***1997(1) All India Services Law Journal III page 156*** and ***Om Kumar & Others vs. Union of India*** reported in ***2001 (1) S.C. Services Law Judgments 125.***

18. We have considered the rival contentions of both parties and we do not find any force in the contentions of the Petitioner. Separate departmental proceedings were initiated against all the above referred officers and punishment was awarded depending upon the material available on record in their respective proceedings. Petitioner cannot claim that he should also be awarded the same punishment which was awarded to some members of the Purchase Committee. The cases on which reliance has been placed by the Petitioner are in different facts and are distinguishable. In Sengara Singh's case (supra) 1100 members of the police force were dismissed from the service and criminal prosecution was launched against them for participating in an agitation. Later on criminal cases were

withdrawn against 1000 policemen and they were also reinstated. About 100 policemen were left out. In these facts, Supreme Court held that there was nothing to show that the left out 100 policemen were guilty of more serious misconduct compared to those who were reinstated. Similarly, in Raj Pal's case (supra), delinquent employee along with his four other colleagues had given beatings to one of their colleague. In these facts, it was held that all of them were guilty of the same offending act and should have been given same punishment. However, in the instant case Petitioner being head of department was accountable for making purchases dehors the rules. Purchase Committee was for his assistance. It was open for him to reject or accept the recommendation. We are also of the view that Petitioner cannot claim parity on the point of punishment. Accordingly, we reject this contention of the Petitioner.

19. Petitioner has lastly contended that he was not given fair opportunity to defend himself as also before awarding punishment. He was not given proper opportunity to explain his conduct before imposing the penalty. Reliance has been placed on ***State of Punjab vs. Iqbal Singh*** reported in ***AIR***

1976 SC 667 and **State of Punjab vs. K.R. Erry** reported in **AIR 1973 SC 834**. We do not find any force in this contention of the Petitioner either. We are satisfied that full opportunity was given to the Petitioner to defend himself. He was given opportunity to submit his written representation. During enquiry, the Enquiry Officer afforded full opportunity to the Petitioner to defend his case. After evidence was closed, Enquiry Officer also recorded statement of the Petitioner wherein incriminating material against him was put to him and his answers were solicited. At every stage proper opportunity was given to the Petitioner to defend himself and no grievance can be made by the Petitioner at this stage in this regard.

20. In the light of the above discussion, we do not find any merit in this writ petition and same is dismissed.

A.K. PATHAK, J

MADAN B. LOKUR, J

SEPTEMBER 07, 2009

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