

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

+ **W.P. (C.) No. 1274/2010**

% **Date of Decision: 03.03.2010**

Dr. M.B. PAHARI PETITIONER
Through Mr. N. Safaya, Advocate

Versus

UNION OF INDIA & ANR. RESPONDENTS
Through Dr.Sarabjit Sharma, Mr. Pratap, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. The petitioner was working as Deputy Director General (DDG), Doordarshan Kendra, New Delhi. He is aggrieved by the order passed by the respondents holding him guilty with respect to the memorandum of charges served upon him on the last date of his retirement and imposing a penalty of 50% cut in of monthly pension for a period of five years.

2. The charges which were levied against the petitioner were as under:

Article I

That Shri M.B. Pahari while working as Director,
Delhi Doordarshan Kendra and later on as Deputy

Director General, Doordarshan Kendra, Delhi during the period 1996-99, approved the proposal namely, 'Duniya Rang Rangili on 03.09.1996 in which M/s. Creative Eye Ltd., were involved, without preview by the preview committee.

That during the aforesaid period and while functioning in the aforesaid office, the said Shri M.B. Pahari allowed M/s. Creative Eye Ltd., to market in-house programme Chitrahar without calling for bids.

By his above acts, Shri M.B. Pahari, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant thereby violating Rules 3 (1) (i), 3 (1)(ii) and 3 (1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri M.B. Pahari obtained air tickets involving a total amount of Rs.1,57,866/- on six different occasions from M/s. Creative Eye Ltd. for himself, his family and relatives, as a consideration for the favours shown to the said firm. Shri Pahari thus himself accepted and permitted the members of his family to accept free transport facility from the said company having official dealings with him.

By his above act, Shri M.B. Pahari, failed to maintain absolute integrity, devotion to duty, acted in a manner unbecoming of a Government servant and accepted gift in the form of free transport from a firm and made financial transaction with the said firm with whom he had official dealings thereby violating Rules 3 (1) (i), 3 (1)(ii), 3 (1)(iii), 13(1) (Rule 18 (2) of Central Civil Services (Conduct) Rules, 1964.

3. Both the charges were proved before the enquiry officer. The disciplinary authority also agreed with the report of the enquiry officer. The appeal filed by the petitioner was also dismissed. The order of

punishment dated 30.08.2004 ultimately culminated in the order of the President dated 17.09.2008 imposing a penalty as aforesaid which has been assailed before the Central Administrative Tribunal but the petitioner was not successful in it inasmuch as the Tribunal has dismissed the Original Application filed by the petitioner being O.A. No. 33/2009 vide order dated 08.12.2009.

4. The petitioner has raised the following contentions before this Court which were also raised by him before the Tribunal, i.e.

- (i) The petitioner was wrongly proceeded against ex parte by order dated 25.10.2005, which deprived the petitioner of his right to defend himself by cross-examining the witnesses examined on that date.
- (ii) In spite of requests by the petitioner two crucial documents were not given to him, as a result of which the petitioner could not defend himself adequately.
- (iii) The incident for which the inquiry was held was more than four years old when the petitioner retired and under the rules inquiry in such charges could not be held after retirement.
- (iv) The inquiry under Rule 9 of the CCS (Pension) Rules, 1972 could not have been held without the prior approval of the President.

5. However, the Tribunal after dealing with the contentions passed the following order:

12. His plea about the inquiry officer wrongly proceeding ex-parte against him is manifestly unconvincing. The timing of the posting of the letter

communicating the change of address is a gimmick, which the inquiry officer has convincingly met in his report as meant only to derail the inquiry. The applicant later filed his detailed brief of defence. He did not ask for recall of witnesses for cross examination. He cannot now raise this point. We also do not see much merit in the argument that non-availability of the documents, adverted to above, prejudiced his case. First, he had the photocopies of the documents. Second, one of the documents, i.e., the closure report could have been procured by him also, if it was so crucial to his defence. The applicant has also not demonstrated how the absence of legible copies of the air tickets, on which members of his family travelled, has prejudiced his case, especially when the fact of travelling by the members of his family is not in dispute. The inquiry officer has also held these to be extraneous to the case.

13. The argument that inquiry into matters four year prior to retirement is prohibited under the rules is not applicable as the inquiry was continuing before the retirement of the petitioner. It is permitted to continue the inquiry as per the Rule 9 (2) (a) of the CCS (Pension) Rules, 1972. We also agree with the respondent's contention that there is no provision in the CCS (Pension) Rules, 1972 that permission of the President is necessary for continuing the departmental proceedings after retirement.

6. The Tribunal has dealt with all the submissions made on behalf of the petitioner with reference to the replies filed by the respondents. Having gone through the submissions made before us and the order of the Tribunal, we find that the Tribunal has rightly rejected the case of the petitioner after taking into consideration the record which was produced before the Tribunal.

7. To appreciate the reasoning given by the Tribunal on various issues which were raised before us, it would be appropriate to take note of some of the observations made in the order of the Tribunal, i.e.:

“The learned counsel for the Respondents has drawn our attention to the observation of the inquiry officer in paragraph 6 of the inquiry report, which is reproduced below:

6.1 At the outset it needs to be said that the inquiry against the CO was completed with due observance of procedure and with sufficient opportunity granted to him for putting up his defence. Right from the beginning, however, there was an attempt on COs part to somehow delay or thwart the inquiry proceedings on flimsy grounds.

Paragraph 6.4 of the report deals with ex parte proceedings. The paragraph is quoted below:

6.4 On ex-parte proceedings:

6.4.1 The reasons for holding hearings on an ex-parte basis are clear from the foregoing paras. It does appear at this stage, in fact, that CO was himself conspiring to cause hearings on an ex-parte basis notwithstanding the best efforts of the prosecution and the undersigned to secure his participation : ostensibly, so that he could cry wolf at a later stage and accuse all concerned of bias. The Inquiry Report, nevertheless, has not been finalized on an ex-parte basis as sufficient opportunity was granted to the CO and availed by him to submit his own written defence after going through the witnessesdepositions, recorded proceedings and POs Brief.

6.4.2 The Tribunal also took note of the OM bearing No. 15/DK/21 dated 16-12-2005 which was addressed by the enquiry officer to in-charge officer and wherein it was mentioned:

“The circumstances under which the Regular Hearings took place on an ex parte basis have already been explained in the earlier correspondence now resting with you. However, your request seeking extension of deadline till 26-12-05 for submission of Defence Brief has already been granted and copies of the inquiry proceedings and depositions are now in your possession towards this end.

2. Regarding your said intimation of the 2nd change of address, this was never received by the undersigned or by the PO as reported by him. The movement particulars of your said letter dated 14-10-05 as cited by you show, nevertheless, that your said letter was sent from the Sarojini Nagar HPO as

late as 21-10-05 (Friday). Such letters are received in the Central Diary of the Commission and not directly by the addressee as per the established procedure. In any case, your Regular Hearing duly commenced on the very next working day i.e. 24-10-05 (Monday) by which time your said letter could not have come up for consideration.

3. Your frequent change of residential address without timely intimation, the surrendering/disconnection of your earlier MTNL phone and your inability to make a simple phone call at the undersigned's given phone number in this regard, have all contributed to non-communication of the developments in your case prior to conclusion of your inquiry.

4. Intriguingly, even one of your defence witnesses, Dr. Geeta Baxi who duly turned up for the hearings on 24th and 25th October, 05 stated in writing (copy enclosed) that she had no prior knowledge of her figuring as DW in COs case and also that she did not have any clue about COs whereabouts.

5. As to your suggestion that your defence assistant could have been informed of the developments in your case, you have once again failed to mention either his postal address or any contact phone number in your letter dated 14-02-05 addressed to the undersigned (copy enclosed).

6. All this gives the clear impression that there was a marked reluctance on your part to participate in the inquiry proceedings.

The enquiry officer has submitted in his report that the frequent change of address was a ploy adopted by the petitioner to derail the inquiry. The petitioner got his telephone disconnected and changed his place of residence, intimation whereof was deliberately given so late as to ensure that it would not reach the inquiry officer on the date fixed for inquiry. The petitioner could have informed the Respondent telephonically about the change of address. The petitioner should have been familiar with the procedure in Government's offices, where dak is received only in Central Registry and then distributed to the officers concerned. No postal communication is delivered directly to the officers, contends the learned counsel. Advertence has also been made to the relevant portion of the order sheet dated 25.10.2005, by which ex parte proceedings were started against the petitioner. The relevant portions of the order sheet, as pointed out by the learned counsel for the petitioner is quoted below:

Regular hearing in this case was scheduled to commence on 24-10-05. Smt. Geeta Baxi, COs defence witness duly turned up. On being asked about COs attendance, she informed that CO had not contacted her at any stage and, but for the direct summons received from the undersigned, she was not even aware that she was a defence witness in this case. As she expressed her helplessness to contact the CO, she was spared for the day at this stage with the understanding that her services could be required the following day.

2. Hearing was also adjourned for the day (24-10-05) with a view to afford CO a final chance to participate in the proceedings the next day. PO was informed accordingly, asking him to be present at 10.30 AM of 25-10-05 alongwith his witnesses for due commencement of the inquiry, if necessary, on an ex-parte basis.

3. CO failed to turn up for the inquiry on 25-10-05 as well. His non-cooperation in the inquiry process and evasive attitude right from the stage of receipt of defence documents has already been highlighted by the PO vide managements (VO) letter No.C-14011/4/2004-Vig. dated 13-5-05 and taken due note of by the undersigned vide OM dated 18-10-05 circulated to all concerned.

4. Keeping in view the fact that the inquiry proceedings were now 10 months old as against the stipulated norm of 6 months and the fact that CO had failed to avail of the due opportunities given him to participate in the proceedings, the undersigned decided at this stage to proceed on an ex-parte basis. The defence witness, Smt. Geeta Baxi who was present for the second consecutive day was spared at this stage after she had made her submissions in writing.

It is further argued by the learned counsel that the petitioner never made a representation about recalling the witnesses for the prosecution to allow him to cross-examine them.

10. As regards non-availability of documents, the Tribunal has taken note of the enquiry report where it is pointed out that the petitioner has, himself accepted receiving photocopies of all the 12 documents asked for by him. In his letter dated 14.02.2005 addressed to the inquiry officer, the petitioner has confirmed the receipt of photocopies of 12 documents in the above mentioned letter, which is placed at Annex A-7. (This document is available at page 91-92 of the paper book). Initially there were 10

documents in the list of documents and the petitioner asked for two more documents. It is further argued that the petitioner could himself have procured the copy of the CBIs closure report, if he thought it would help him in his defence. It is further contended that the inquiry officer found the documents to be largely extraneous to the departmental proceedings.

The inquiry officers observations in this regard are reproduced below:

6.2.1 At the very beginning, CO made an ill-conceived attempt to derail the proceedings by misinterpreting a ruling of the Honble Supreme Court and insisting through his communication dated 18-4-2005 that the IO was bound to allow all defence documents demanded by him. In response, the undersigned recorded the following speaking orders in his daily order sheet dated 21-4-05 while accommodating his request for additional defence documents for the most part:

CO may recall that although his stated requirement of defence documents was unwieldy large for the purposes of a departmental inquiry, a majority of the documents asked for were allowed initially (7 out of 12). Reasons for not allowing the remaining five documents were also duly recorded and conveyed to all concerned including the CO.

2. On the desirability of entertaining COs request for supply of defence documents, the Vigilance Manual (Central Vigilance Commission) has this to say:

On receipt of such request the Inquiry Officer may, for reasons to be recorded by him in writing, refuse to requisition such of the documents as are, in his opinion, not relevant to the case. However, with regard to those documents, about the relevance of which he is satisfied, the Inquiry Officer will forward the request of the Govt. servant to the authority.. (para 3.3, chapter-XI of CVC Vigilance Manual, Vol.I). These instructions have essentially evolved out of several rulings of the Apex Court on the subject.

3. In order to allay any apprehensions of CO in this regard, however misplaced, the matter has, nonetheless, been reviewed once again. Taking a liberal view of the COs perceived requirement, an additional 3 defence documents (Sl.No. 1, 2 & 4) are allowed, thus bringing the final tally of allowed defence documents to 10 out of the 12 demanded. The remaining 2 documents as asked for (Sl. No. 3 &

10) are found to be either too vague or largely extraneous to the departmental case: these remain disallowed for that reason.

8. An argument was also raised before us that taking into consideration the copy of reply filed by the petitioner to the charge-sheet required the enquiry officer to have adjourned the matter at least for three days as per the memorandum of procedure. He has drawn our attention to a copy placed on record which is available at page 357. However a perusal of this document goes to show that the procedure which has been sought to be adopted for the purpose of adjournment is in relation to some new evidence which is taken into consideration by the enquiry officer. The copy of the reply filed by the respondents in no way can be taken as a new document.

9. As far as the argument of the petitioner that inquiry has to be initiated only after permission of the President for the period prior to four years before retirement, it is sufficient to observe that such procedure has to be adopted only in a case where the inquiry were to be initiated after the retirement of an employee which is not the case in hand. The inquiry in the case of the petitioner was initiated on 31.08.2004, when the Memorandum of Charge was served on him. The petitioner retired on that date. Thus the Memorandum of Charge was communicated to him before his retirement, in which case there is no requirement to seek permission of the President. It has also been strongly denied that there is any requirement under the rules to seek the President's approval under Rule 9 of the CCS (Pension) Rules for

continuing the inquiry after the relevant retirement. Perusal of Rule 9 of the CCS (Pension) Rules shows that there is no requirement of the President's approval to continue with an enquiry which stands initiated before the retirement of the delinquent official.

10. Thus, we find that each and every argument addressed by the learned counsel for the petitioner before us has been dealt with by the enquiry officer in detail. The disciplinary authority and the appellate authority have not found anything wrong with the report. The Tribunal as stated above has also discussed each and every aspect and has given cogent reasons for not accepting the contentions of the petitioner. We have also given patient hearing to the learned counsel for the petitioner while hearing the matter. Nothing has been brought to our notice which may point out any infirmity in the order passed by the Tribunal. Even otherwise, we also do not find any infirmity in the order of the Tribunal. Accordingly, there is no reason for us to interfere with the order of the Tribunal while exercising our jurisdiction under Article 226 of the Constitution of India in this case. For the foregoing reasons we dismiss the writ petition with no orders as to costs.

MOOL CHAND GARG, J.

MARCH 03, 2010

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ANIL KUMAR, J.