

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

+ **W.P. (C.) No.8477/2009**

% **Date of Decision: 03.03.2010**

Union of India Petitioner
Through Mr.H.K.Gangwani, Advocate

Versus

Sh.G.P.Sewalia Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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 |

ANIL KUMAR, J.

*

The petitioner through Union of India through Secretary, Ministry of Home Affairs has challenged the order dated 27th August, 2008 passed in O.A No.2210/2006 titled as Sh.G.P.Sewalia v. Union of India and Ors by the Central Administrative Tribunal, Principal Bench allowing the original application of the respondent and setting aside the charge memo dated 23rd August, 1999 and order dated 22nd August,

2006 passed by the disciplinary authority imposing the penalty of reduction of pay by three stages for a period of one year without cumulative effect.

We have heard the learned counsel for the parties. The brief facts to comprehend the disputes are that the respondent was functioning as Chairman and Managing Director of Delhi Scheduled Castes Financial and Development Corporation Limited. The respondent was charged and tried departmentally on the allegation that he was not authorized to invest the surplus funds of DSCFDCL in schemes like PMS without guaranteeing a pre determined return and that he made a fluctuating investment for longer term (1 year) for a yield of 16.25% per annum, whereas the State Bank of India had offered a rate of 15.5% per annum and the fluctuating investment had resulted into lesser yield and thereby the respondent committed misconduct by exhibiting lack of devotion to duty and he acted in a manner unbecoming of a member of the service and he acted prejudicially to the interest of DSCFDCL and contravened Rule 3(1) of the All India Service (Conduct) Rules, 1968.

The respondent had contested the disciplinary proceedings initiated against him contending inter-alia that he had not overstepped his jurisdiction in making the investment in issue and even his predecessors too had made investment of one year with the Indian Bank

in the similar circumstances. The plea was also raised on behalf of respondent that the Board of Directors had been informed of the decision at the earliest and the Board of Directors not only accepted the same but ratified his decision. It was also pointed out that the investment offer was personally brought by the Chief General Manager, Syndicate Bank which was like any other investment earning schemes and the bank also had accepted funds from other Government organizations. The plea that the investment with the State Bank of India at the rate of 16% would have become 18.5% was alleged to be illogical and it was categorically contended that no prejudice has been caused to DSCFDCL on account of any action on the part of the respondent rather on account of his action and sound decision, the organization gained to the tune of Rs.88 lakhs.

The enquiry officer only gave the finding that the charged officer/respondent had exceeded his powers by investing in Syndicate Bank for a period of one year. The report of the enquiry was referred to Central Vigilance Commission which tendered its advice vide memorandum dated 22nd June, 2001, however, the disciplinary authority issued a disagreement memorandum dated 1st May, 2002 which was replied by the respondent contending inter-alia that the decision to transfer the funds to high yielding PMS deposit was taken by him considering the higher gains therein and following long established

precedents. The respondent also relied on Rule 18 (a) of the Delhi State Mineral Development Corporation Ltd. (Delegations of Financial Powers) Rules, which had been adopted by DSCFDCL which empowers the CMD to make one year investments in the interest of the Corporation and it was contended that the RBI circulars/guidelines on which the enquiry officer had relied were never intended to apply to CEOs of the State Government Corporation.

The disciplinary authority, however, imposed the punishment of reduction of pay by three stages for a period of one year without cumulative effect which was challenged before the Tribunal.

The Tribunal has noted that the decision of the respondent to invest in Syndicate Bank had been ratified by the Board of Directors and the Delhi Administration. It was also noticed and relied on that according to RBI guidelines, one year investments were not long term in nature and the note by State Bank of India was ambiguous and was beyond the scope of chargesheet. It was also considered that it was mathematically impossible to achieve a year end interest rate of 18.5% against the rate of 16% at the beginning of the year or even at the quarterly rest, interest would give a maximum yield at the rate of 17.2673% only.

The advice of CVC has also been considered which stipulated that it would not be correct to infer that the SBI's offer of 16% was decidedly better than the Syndicate Bank's offer of 16.25%. The respondent could not be blamed for the market fluctuations which had resulted in achieving of an interest yield of only 14% per annum. It was noticed that rather the respondent's action resulted in gain to the tune of 72 lakhs and the banking scam of early 90's was irrelevant as the investment decisions were taken in January-March and May, 1992. It was also considered that the bank scam was with regard to fabrication of security stamp which has no relevance to the charges leveled against the respondent.

The case had also been referred to UPSC on 27th April, 2004, however, the disciplinary authority had not agreed with the view of UPSC. The Central Administrative Tribunal, Principal Bench has held that though the charge of gross misconduct was that the respondent failed to maintain devotion to duty and acted prejudicially to the interest of the Corporation with an ulterior motive, however, the finding recorded by the disciplinary authority was never that he acceded his delegatory power of making deposits for periods less than a year and he did not carry the offer made by SBI to its logical conclusion by exhaustively examining the same on merits after seeking clarification from SBI and thus ignored the higher rate of interest offered by SBI.

The learned counsel for the petitioner has emphasized that the misconduct against the respondent had been established. However, perusal of the enquiry report and the order of the disciplinary authority reveals that the DA has not observed that the allegation against the respondent has been proved and the allegation establishes misconduct or failing to maintain absolute devotion to duty. The learned counsel Mr. Gangwani has not been able to dispute that there is a distinction between the misconduct and not performing the duties as efficiently as another person similarly situated could have performed. The learned counsel has also not been able to show as to how lack of efficiency in discharging the duties can be sustained against the respondent since the decision of the respondent was approved and ratified by the Board of Directors. In the circumstances, the findings of the Tribunal that the imputations against the respondent did not constitute misconduct cannot be faulted. The Tribunal has also relied on the decisions of the Supreme Court in *Union of India & Ors v. J. Ahmed*, (1979) 2 SCC 286 and *Inspector Prem Chand v. Government of NCT of Delhi & Ors*, (2007) 4 SCC 566 to contend that error of judgment or negligence simpliciter would not be misconduct. The learned counsel for the petitioner is unable to show anything to the contrary nor it has been established that there was even any error in judgment or negligence on the part of the respondent.

In any case even the disciplinary authority has held that the offer of 16% interest offered by SBI would have amounted to 18.5% is confusing and not having been accepted, it cannot be held that investment by the respondent with Syndicate Bank at 16.25% tantamount to misconduct on his part. The learned counsel for the petitioner has not been able to deny that the surplus funds had been invested in the similar manner as was done by the respondent in previous years and no action was taken against the other officials rather the prosecution witnesses SW1 and SW2 have admitted that the respondent was empowered to deposit the surplus with the Syndicate Bank at 16.25%. The Board of Directors also were intimated about the decision and which ratified the same without any reservation of any type against the respondent.

In the circumstances, the learned counsel for the petitioner is unable to make out any ground to interfere with the decision of the Tribunal dated 27th August, 2008 in O.A No.2210/2006 setting aside the penalty of reduction of pay by three stages for a period of one year without cumulative effect imposed on the respondent.

In the circumstances, this Court does not find any illegality or irregularity in the order of the Tribunal so as to entail interference in exercise of its power under Article 226 of the Constitution of India.

The writ petition is without any merit and it is, therefore, dismissed. All the applications are also disposed of and interim order dated 20th May, 2009 is vacated.

ANIL KUMAR, J.

March 03, 2010

'k'

MOOL CHAND GARG, J.