

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

+ **W.P. (C.) No. 3207/2010**

% **Date of Decision: 12.05.2010**

NATIONAL WATER DEVELOPMENT AGENCY &
ANR.

.... PETITIONERS

Through Mr.Naresh Kaushik Choudhary,
Ms.Amita Kalkal Chaudhary and
Ms.Aditi Gupta, Advocates

Versus

T M SAMPATH

....RESPONDENT

Through Respondent in person

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 |

MOOL CHAND GARG, J.

*

1. This writ petition has been filed by the petitioners to assail the order dated 17.02.2010 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as "the Tribunal") in OA No. 1042/2008, whereby the Tribunal allowed the OA filed by the respondent.

2. Briefly stating, the facts of this case are that the disciplinary proceedings were initiated against the respondent and he was placed under suspension. The charge sheet was issued in the year 2002. In spite of his explanation, enquiry officer was appointed. Ultimately, he

had been served with a report dated 28.03.2007. Vide order dated 25.7.2007 the Disciplinary Authority had held that the respondent's pay was to be reduced by six stages for a period of three years from the date of issue of the order. He was not to earn increment during the period of reduction but on the expiry of the period, the reduction would not have had effect of postponing his future increment of pay. A corrigendum was also issued later on, which reads as under:-

“Last para of order No. 28/6/2002-Vig(Vol-V) 9978-81 dated 25th July 2007 may be substituted by the following.

It is, therefore, ordered that the pay of Shri T M Sampath, Administrative Officer, NWDA be Rs. 8825.00 in the time scale of pay of Rs. 8000-275-13500 for a period three years from 01.12.2007. It is further directed that Shri T.M. Sampath will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay”.

3. The respondent filed an appeal against the aforesaid order which was not considered for a considerable period. He had, therefore, filed OA No. 396/2008 which had been disposed of with the direction to the petitioners to decide the appeal within six weeks. It is only after a contempt petition was filed that the Appellate Authority came up with orders dated 10.05.2008. The relevant portion of the order dated 10.05.2008 is reproduced hereunder:-

“Now, therefore, the appellate authority, in exercise of the powers of Rule 27(2) of CCS (CCA) rules, reduce the major penalty imposed by the Disciplinary Authority vide Order No. 28/6/2002-Vig(Vol.V) dated 25.07.2007 followed by corrigendum dated 21.01.2008 to that a minor penalty of withholding of increments of pay for six years from the date of issue of this order with non-cumulative effect and

without adversely affecting his future increments of pay thereafter on Shri T.M. Sampath, Administrative Officer, NWDA and orders accordingly.”

4. Some of the observations made by the Tribunal which refers to the observations made by the Appellate Authority while reducing the penalty of the petitioner are reproduced hereunder for the sake of reference :-

2.The applicant had appeared in person and had invited our attention to the appellate authority’s order which according to him itself was sufficient to show the glaring inequity. His submissions has been practically agreed to by the appellate authority but nevertheless for no explainable reason the sting of the punishment has been permitted to remain the complaints. It is likely to spoil his career. The gist of the submissions is that when enquiry has been held in violation of fair play, and when the appellate authority found defects by itself, there was no option for the authority to give stamp of the approval of the proceedings by observing that a modification of the punishment order would have sub served justice. The defect in the enquiry proceedings went into the root of the matter thereby vitiating the proceedings and what should have been done, therefore, was to order in de novo enquiry if the authority felt that such course is required. Mr. Sampath, the applicant took us to the appellate authority’s order to show that the submission as has been made indeed were carved out by the observations of the appellate authority.

3.Annexure A-1 has extracted the article of charges which the applicant was expected to answer and explain. They are as herein below:

“Article – I: That the said Shri T.M. Sampath while functioning as Administrative Officer, NWDA, New Delhi though his letters dated 06.06.2002 and 24.06.2002 made false and baseless allegations with mala fide intention against his superior officers and colleagues of NWDA.

Article-II: That the said Shri T.M. Sampath, while functioning as Administrative Officer, NWDA, New Delhi made a threatening telephone call on 08.06.2002 at about

2130 Hours at the personal residential telephone No. 2241423 of Shri S.B. Suri, then Chief Engineer (HQ), NWDA, New Delhi and threatened to make complaint against him to the Secretary, Ministry of Water Resources and Central Vigilance Commission listing several allegations against Shri Suri.”

After referring to the contention raised in the appeal, the appellate authority had initially observed as following:

“The disciplinary authority accepted the inquiry officer findings and after considering the representation of Shri Sampath on the I.O.’s report imposed major penalty through a reasoned order. Inasmuch as no procedural infirmities nor there was any violation of the rules of natural justice. The penalty of the disciplinary authority needs no interference.

4.After giving such stamp of approval, appellate authority held as following:

“However on consideration of the grounds of appeal stated above, the following observations are made. In sub paragraphs (a) to (h) had held as following:

(a)That the denial of access to the Investigation Report of Shri K.P. Singh on the ground of ‘Public Interest’ without cogent and substantial reasons was not correct inasmuch as it was very relevant for him to defend his case thereby he was denied natural justice.

(b)That the IO has held the charge against Shri Sampath as proved on the basis of circumstantial evidence and the oral evidence of Shri Suri and therefore, it cannot be viewed as having been established beyond doubt. The act of threatening Shri Suri that the appellant would complain before the authorities about the irregularities by Shri Suri cannot constitute a sustainable ground for imposing major penalty.

(C)That as submitted in the appeal, the appellate had been vindicated by Shri K.P. Singh preliminary inquiry report as some of the allegations made by the appellant against the officers of NWDA were found to be true, while other allegations were false.

(d)That one of the allegation made by the appellant was regarding irregularities in Proficiency Test and evaluation of Test Papers which have been found true to some extent by Shri K.P. Singh in his report.

(e)That the allegation made by the appellant that Shri Suri did not pay for the STD calls made by him earlier and made the payment only later has been found true by Shri K.P. Singh in his report though the report did not find it correct that Shri Suri made the payment after the allegations were made by the appellant.

(f)That the allegation that Shri Suri received honorarium from other sources without prior approval of the Competent Authority has been found correct.

(g)That some irregularities have been observed in the proficiency test and the evaluation of Test Papers by Shri K.P. Singh in his report and to that extent the allegation by Shri Sampath is partially correct, though his initial allegation of manipulation of answer sheets was not found correct.

(h)That Shri Sood recorded adverse remarks in the ACR of the appellant was correct though it was for 2002-03 and not for 2001-02 as alleged by the appellant.”

The unmistakable conclusion was that this proceedings had resulted in miscarriage of justice. It was further held that the charges held proved against Shri T.M. Sampath would appear to be not as such serious to prescribe a major penalty. We are rather surprised to note that the appellate authority after entertaining such a finding specifically that there was violation of principles of natural justice and miscarriage of justice nonetheless justified it by observing that the conduct did not warrant a major penalty. Applicant is justified in contending that when the enquiry findings itself are vitiated both by procedural irregularities and in content, it could not have been held as sufficient for imposition of a penalty. It offends fair play.

5. Thus, the observations made by the appellate authority quoted above itself points out various deficiencies while holding the enquiry against the petitioner. There are number of infirmities in the procedure

followed which prevailed upon the appellate authority to convert major penalty into the minor penalty.

6. It was in these circumstances, the Tribunal passed the following order:-

6. We quash the impugned orders and the applicant is to be refixed in his position vis-à-vis the order, with utmost promptitude. Mr. Sinha had submitted that in case, the Tribunal was inclined to set aside the penalty advise, liberty may be granted to the respondents to proceed with the matter afresh. But we do not think taking notice of the charges, and totality of the circumstances, including the observations of the appellate authority, such liberty requires to be reserved. It may only lead to unnecessary expense of Governments', valuable funds and time. The applicant had attempted to show that officers in high position were misusing powers, and he was being victimized, since he had courage to call spade a spade.

7. OA is allowed. Respondents are directed to issue consequential orders, taking notice of the directions as given above. We make no order as to costs.

7. The only submission made on behalf of the petitioners before us is that the Tribunal erred in law in passing the impugned judgment by ignoring the settled legal proposition that the charges may be either partly or fully proved. The Hon'ble Tribunal erred in presuming that all allegations ought to be proved for the purpose of imposing penalty. It is also submitted that all the allegations need not be proved beyond doubt for the purpose of punishing the charged officer in Departmental Proceedings. It is not a necessary corollary that if some charges are disproved all other charges shall also stand disproved. Thus, the Tribunal miserably erred in presuming/ assuming that all allegations

stood disproved on account of certain other disproved allegations and observing that the report of the Enquiry Officer was inseparable.

8. It is further submitted that in the present case the charges were partially proved, which has been unambiguously held and accepted both by the Disciplinary and Appellate Authorities, thereby raising preponderance of probabilities, which is enough in establishing the guilt of the respondent and consequently justifying imposition of penalty on him.

9. Having gone through the orders passed by the Appellate Authority and the Tribunal, we are satisfied that in this case the acceptance of the enquiry report by the petitioners was not justified inasmuch as the enquiry was held in violation of natural justice and fair play. Also, there was denial of access to the enquiry report of Shri K.P. Singh and the charges were proved only on the basis of circumstantial evidence and the oral evidence. Moreover, the appellate authority itself observed on the basis of the enquiry report that some allegations were true and some were false. Further, some officers were bent upon harassing the respondent. In these circumstances, we are of the view that there is no illegality or irregularity in the order of the Tribunal which would entail any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.

CM No.6425/2010 (Stay)

In view of the orders passed above, this application has become infructuous and the same is accordingly disposed of.

MOOL CHAND GARG, J.

MAY 12, 2010

'dc'

ANIL KUMAR, J.