

* THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8765/2011

% Date of Decision: 16.12.2011

INDIA TOURISM DEVELOPMENT
CORPORATION LTD

..... Petitioner

Through: Mr. Sushant Kumar, Ms. Shikha
Singh, Advocates

versus

O.P.MALVIYA

..... Respondent

Through: None

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE (ORAL)

The petitioner, ITDC, by way of the present writ petition, has prayed for issuance of writ/order or direction in the nature of certiorari setting aside the orders dated 01.03.2011 and 27.05.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No.1151/2009. We may record at the outset that in the aforesaid T.A., the respondent herein had sought quashing of the charge-sheet, disciplinary inquiry held pursuant thereto as well as imposition of penalty of reduction to two stages lower in time scale of Rs.12000-375-16500 thereby reducing his basic pay to Rs.14250/-. The Tribunal has accepted the plea of the respondent and allowing the TA, set aside the said punishment. The controversy and dispute arose between the parties under the following circumstances:

WP(C) 8765/2011

Page 1 of 12

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2. The respondent herein was appointed as Dy. General Manager (Electrical and Mechanical) with the petitioner ITDC in June, 1984. At that time, one Mr. L.R. Pahwa was working as Vice Chairman, (Engineering Hotels) in the ITDC who has since retired. Mr. Pahwa initiated the move for installation of colour television sets in various hotels of ITDC in January, 1985. A committee comprising of Mr. Pahwa, VP(E-H); Mr. MSN Iyenger, VP(E-P); Mr.A. Bhandari, VP(ON); Mr. V. Natarajan, GM(F) was constituted in February, 1985 for examining the entire proposal for hiring TVs and installation of Master Antenna TV system (MATV) in ITDC Hotels and to submit their recommendation. On 17.12.1985, the committee proposed to purchase TVs through Material Management Division and invite tenders for installation alongwith maintenance and operation of MATV system in various ITDC hotels and further proposed to appoint a consultant. Notice inviting tender was finalized and tenders were invited on 6.5.1985 for work for installation, maintenance and operations of MATV in various hotels of ITDC in various zones of the country being hotels in North Zone, East Zone and South-West Zone. On 29.3.1989, an employee union functioning in ITDC named All India ITDC Employees Union made a complaint at Central Vigilance Commission alleging irregularities in the award of work relating to installation of MATV System. Upon receipt of the aforesaid complaint, the Director Central Vigilance Commission forwarded the complaint to the ITDC on 15.6.1989 for inquiry and report. Vigilance division found serious irregularities in the award of contract and recommended major penalty against Mr. Pahwa and Mr. O.P. Malviya, the respondent herein.

3. Investigation report was forwarded to the Central Vigilance Commission for advice which endorsed the proposal of ITDC to initiate major penalty against both the officers. Thereafter, Chairman-cum-Managing Director (CMD) of ITDC appointed a High Level Committee to give findings and recommendations. This committee gave its findings on 21.6.1991 to the effect that there did not appear any deliberate mala fide to deal with the case and recommended that the case may be reviewed as per the CVC procedure. To cut the long story short, suffice is to note that the CVC did not find sufficient ground to withdraw the proceedings against Mr. Pahwa or the respondent and the matter was ultimately considered by the Board of Directors which decided that regular departmental proceedings for major penalty be initiated against the persons. Pursuant thereto, charge-sheet dated 12.9.1994 was served upon the respondent. Separate charge-sheet dated 15.12.1994 was issued to Mr. Pahwa as well. The respondent as well as Mr. Pahwa submitted their replies to the charge-sheet served upon them. In the Board meeting held on 29.11.1995, a crucial development took place. The Board decided to drop the memorandum of charge-sheet dated 15.12.1994 against Sh. Pahwa after considering the vigilance report, etc. In so far as the respondent is concerned, vide orders dated 11.1.1996, Inquiry Officer was appointed who conducted the inquiry and submitted his report holding that article 1 and 3 in the charge-sheet were proved and articles 2 and 4 were held to be not proved. On the basis of this finding of the Inquiry Officer, impugned penalty of reduction to two stages lower in the time scale was imposed upon the respondent. Departmental appeal preferred by the respondent was also rejected on

4

22.1.2001. Challenging all these orders, the respondent preferred Civil Writ Petition under Article 226 of the Constitution of India before this Court, being WP(C) 3024/2001. On 30.3.2009, Rule DB was issued in the writ petition. While this writ petition was still pending, on conferment of jurisdiction on the Central Administrative Tribunal, this writ petition was transferred to the said Tribunal which has allowed the T.A. No.1151/2009 vide impugned orders dated 1.3.2011. Learned Tribunal has allowed this T.A. quashing the penalty orders. The petitioner even filed review petition which has also been dismissed on 5.7.2011. Assailing these orders of the Tribunal, present writ petition is filed.

4. We would like to point out at this stage that the governing factor which heavily weighed with the Tribunal was that identical charge-sheet was issued to Mr. Pahwa levelling same allegations in respect of purchase of colour Televisions. The said purchase was made by committee which comprised of Mr. Pahwa and the respondent, amongst others. Mr. Pahwa was even senior to the respondent. Explanation of both the officers was that entire exercise undertaken by the committee in purchase of the television sets was bona fide and even if there was some irregularity in the procedure, the same was pardonable as there were no mala fides attached whereas the explanation of Mr. Pahwa was accepted by the Board resulting in dropping of the proceedings against him. The respondent was proceeded against without any justification when defence of both the persons in respect to same charge was identical. The Tribunal has compared the charges levelled against both the officers. The Tribunal has also reproduced the relevant portion of the minutes of

the Board meeting giving reasons for dropping the charges against Mr. Pahwa and has concluded that the case of the respondent was no different and if the defence of Mr. Pahwa was found to be genuine and bona fide, there was no reason for taking different view in the case of the respondent. Assailing the aforesaid rationale given by the Tribunal, argument of learned counsel for the petitioner is that the findings of disciplinary authorities cannot be challenged unless the decision is, inter alia, violative of principles of natural justice, ex-facie perverse, bias and there is error apparent on the face of record. Merely because the conclusion arrived at by two separate disciplinary authorities are different while examining charges of similar nature, the same cannot be interfered with by the court or any Tribunal. It is stated that decisions in the case of the respondent and Mr. Pahwa were taken only after examining the documents and evidence before the disciplinary authorities and hence, same cannot be interfered with. He submitted that it is settled proposition of law that every case is to be examined on its own fact. In the case in hand, separate charge-sheets were filed against Mr. Pahwa and the respondent and further separate inquiry officer was appointed to conduct inquiry upon the charge-sheet and separate inquiry report was being filed on the basis of which Mr. Pahwa was exonerated and the respondent was found guilty. It is submitted that the disciplinary authorities arrived at different conclusions on the basis of different reports filed by the inquiry officer and merely because similar charges have been framed against two individual does not tantamount to meeting similar treatment to both. It is argued that separate disciplinary authorities were constituted in the matter so that the decisions were

6

independent and fair without their being any influence from any quarter. Submission is that the disciplinary authorities after examining the nitty-gritty of the matter and the evidence on record arrived at the conclusion whereby Mr. Pahwa was exonerated whereas the punishment order dated 14.2.2000 was passed against the respondent.

5. The aforesaid argument taken in abstract may appear to be convincing but when noted in the context of the facts appearing in the present case, its hollowness is clearly exposed.

6. Learned counsel for the petitioner argues that there were two separate charge-sheets, one served upon the respondent and other upon Mr. Pahwa. However, what he forgets is that against both these persons, charges levelled were identical. Obviously, when two officers are proceeded with separately, they have to be served with two different charge-sheets. At the same time, charges were common. It would be of interest to take note of the view of the Board while exonerating Mr. Pahwa. This is what the Board stated in the case of Mr. Pahwa:

“Article-I Regarding arbitrary appointment of M/s Consultants International – Taking into account the fact that in 1985, the MATV system was entirely a new concept and not many consultants were available in the country to render advice on the system, the Board decided to drop the charge.

Article-II Relating to preparation of estimate for the equipment – While the equipment was estimated to cost Rs.9.78 lakhs, the work was actually awarded at a cost of Rs.7.34 lakhs. The Board felt that one could understand the charge if the actual price was much higher than the estimated cost but not vice

versa. In the instant case, the actual rates were lower against the original estimate.

Since no malafide could be attributed, the Board decide to drop the charge.

Article-III Pertaining to awarding the work beyond the delegation of power as the NIT was for operation and maintenance for 5 years. The Board considered the plea of Sh. LR Pahwa that even though the rates had been firmed up for five years, the 'contract for installation and maintenance was awarded for one year and the contract was to be renewed every year by the individual hotels. On perusal of the relevant records, the Board concluded that there was some force in what Sh LR Pahwa was pleading. Further, considering the fact that the contract was finally ratified by the Contract Committee, no case against Sh LR Pahwa could be made out on that account and hence the Board decided to drop the charge.

Article IV – The lowest offer of M/s Minny Enterprises at Rs.46.10 lakhs was ignored and the work was awarded at Rs.75.08 lakhs after repeated negotiations with all the three parties.

(i) On perusal of the records of the case, the Board found that there did not appear any malafide in initiating negotiation with all the parties. It was earlier a committee's decision to bifurcate the contract zonewise; Sh LR Pahwa only carried out the decision of the committee further in negotiating with all the parties in the particular zone. Further, as indicated by Sh LR Pahwa, the offer by the party was incomplete & the consultant had also made the observation that the party had not indicated the type of equipment, etc., so ITDC should consider the

8

award of work through further negotiation/clarification from acceptance parties. Further during negotiation all parties were informed about the minimum requirement of qualified engineers & technicians for each hotel. (ii) The manpower for proper maintenance in each hotel was worked out by the consultant based on which the parties revised their offers to bring them technically at par. However, it is observed that even when the offer of M/s Minny Enterprises, was the lowest and also fulfilled ITDC's requirement, the negotiations were not held with the lowest bidder only. Negotiations were held with three parties and the total value of work was awarded at a cost of Rs.75.08 lakhs against the lowest offer of Rs.46.10 lakhs of M/s Minny Enterprises.

The Board felt that considering the fact that the contract was subsequently ratified by the Contract Committee, which was competent to take decision, no malafide could be imputed in initiating the negotiations. The Board considered that while there appear to be some procedural lapses, no malafide has been established against Sh LR Pahwa.

Article V – Relating to the rejection of M/s Shyam Communication in north zone on technical ground but considering them in other zones. The Board felt that no prejudice appears to be involved in rejecting M/s Shyam Communication after giving them an opportunity to revise their tender. They were considered in other zones as their offers were as per the prescribed tender documents. The Board, therefore, decided to drop the charge.”

The following decision was taken:

“11. After taking into account all aspects of the

9

matter, the comprehensive report of senior officers submitted in June, 1992, the fact that MATV was a comparatively new system and the collective decision of various concerned officers flowed out of management decision, without there being any apparent malafide on their part, the Board came to the tentative conclusion that the charges against Sh LR Pahwa may be dropped. However, he may be issued a cautionary letter for procedural lapses in regard to Article IV of the charge and for casting personal aspersions against officers of the Finance Division."

7. We fail to understand how the same act in respect of Mr. Pahwa is treated as not an act of misconduct and his explanation is accepted and it becomes misconduct when it comes to the respondent. We get a feeling that because Mr. Pahwa was a senior officer, in his case the Board took the decision objectively but when it came to the respondent, same treatment was not accorded to him.

8. It is not in dispute that identical charges were levelled against the respondent and one Mr. Pahwa. It is also not in dispute that matter proceeded on the basis that the decisions were taken jointly by these two officers and others and because of the same, it was the collective responsibility of the two officers. We also find from the records that before initiating the departmental inquiry against the respondent and Mr. Pahwa, legal advice in the matter was obtained from the legal advisor of the ITDC who tendered the following opinion:

"The detailed perusal of the original files and documents make it abundantly clear that all decisions with regard to the appointment of consultant as well

as Award of the contract have been taken collectively and were concurred by competent authority and almost at all stages they were seen/approved by senior officers of different divisions. Legally, in such matters, the responsibility of all decisions is joint and collective and any individual cannot be held liable for violation of rules/procedures. If the action is initiated against any individual/individuals, it may not be sustainable, the proposed action in the present case is as per ITDC conduct, discipline and Appeal Rules and as such does not involve interpretation of any law. However, it is admitted principle of law that in all disciplinary matters, the competent Disciplinary Authority has to apply its own mind and take its own decisions. If the disciplinary authority is guided/influenced by any outside authority, then the action can be legally challenged which may not stand the scrutiny of judicial principle and may be set aside if taken to the court of law.”

9. Once the charge-sheet was based on collective decisions which were part of misconduct and the Board accepted the explanation of Mr. Pahwa and dropped the charges against him admitting that the alleged acts cannot be treated as misconduct, there was no reason to punish the respondent for the same charge. We are of the opinion that the Tribunal has rightly and justifiably given the following analysis of the entire gamut of controversy:

“9. However, the averments of the Applicant in the OA that he alone could not have been punished for the decision taken collectively in the matter has considerable merit especially in view of the fact that Shri LR Pahwa, the then VP, was exonerated of the identical charges on the same ground. The Applicant has made this averment in paragraph 18 of the OA and the reply of the Respondents is that it is a matter

of record. The Respondents have not denied that Shri LR Pahwa was exonerated only on the ground that the decision was taken collectively by all the members of the committee. It would, therefore, in our considered opinion, be most unjust, arbitrary and in violation of the principles of natural justice to punish the Applicant for the charges of which the other charged officer has been exonerated. This is especially so because the Applicant has raised this issue in his representation against the Memorandum of Charge. The Applicant had, inter alia, raised the issue that not one person could be considered responsible for the decision taken collectively and that the charge sheet had been issued nine years after the incident. While the Board of Directors took into account the delay in case of Shri LR Pahwa, it was not taken into account in the case of the Applicant. In the case of the former, the Board of Directors had observed that:

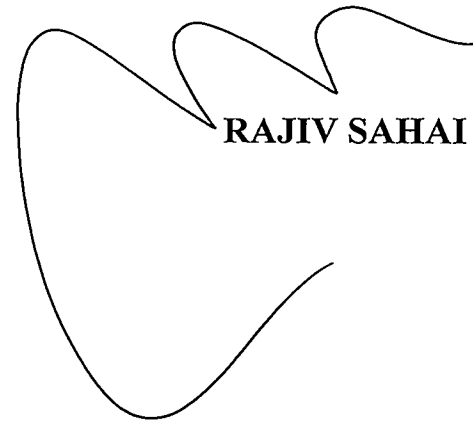
“8.The Board took into consideration the sources of allegation, the time it has already taken for processing the case, the nature and type of work involved and the IInd comprehensive report of Senior Officials of ITDC.”

The argument that the decisions alleged to be illegal and irregular had been taken collectively and hence an individual could not be punished for those, was also accepted in case of Shri LR Pahwa. No such consideration was given to the Applicant, though he had raised this point repeatedly in his representation against the Memorandum of Charge. In reply to the paragraphs 15 to 18 of the OA, in which this ground has been taken up, the Respondents have merely stated that it is a matter of record.

10. The action of the Respondents in punishing the Applicant cannot be sustained. It would be an act of hostile discrimination in as much as the other officer accused of the identical charges had been exonerated on the ground that the decisions, which were the subject matter of the charges, had been taken collectively. As adverted above, the same advice was given by the LA also that the Applicant could not be held individually responsible for a collective decision. Regardless of that the Memorandum of Charge was issued against him. However, Shri LR Pahwa was allowed to go scot-free on the same reasoning. In OA number 204/2008, **Sh.Parmatma Rai v. Union of India and Others**, decided on 10.02.2011 this Tribunal had held that an order of punishment would not be sustainable if another officer facing identical charges, in the same matter, was exonerated.”

10. We are, therefore, of the opinion that the Tribunal rightly set aside the penalty order passed against the respondent herein. We, thus, do not find any merit in this writ petition which is dismissed with costs quantified at Rs.10,000/-. Costs shall be deposited with the Delhi High Court Legal Services Committee.


ACTING CHIEF JUSTICE


RAJIV SAHAI ENDLAW, J

DECEMBER 16, 2011
pk