

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

+ W.P.(C) No.7613/2013

% 2nd December, 2013

SEEMA KOSHAL BHATNAGAR Petitioner
Through: Mr. Rajinder Nischal, Advocate.

Versus

TRIBAL CO-OPERATIVE MARKETING DEVELOPMENT
FEDERATION OF INDIA LIMITED ...Respondent
Through: Mr. B.P. Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner impugns the orders of the departmental authorities; of the disciplinary authority dated 29.5.2012 and the appellate authority dated 14.2.2013; imposing upon the petitioner the punishment of removal from services.

2. On account of misappropriation of money alleged against the petitioner and hence of corruption, chargesheet dated 9.8.2010 was issued to the petitioner. There were three charges against the petitioner. Charge

No.I pertained to petitioner by means of being co-signatory on 16 cheques withdrawing amounts totaling to Rs.1,50,500/- which were not accounted for in the records. Charge No.II pertained to not showing of the account books to the auditors, and which charge I need not go into detail because enquiry officer has not found this charge established against the petitioner. Charge No.III pertained to petitioner wrongly utilizing/misappropriating an amount of Rs.10,000/- in cash by withdrawing the same from the saving bank account in Syndicate Bank, Pusa Road Branch, New Delhi and then refunding the same only when demanded. An enquiry officer was appointed to enquire into the charges against the petitioner, and after conducting proceedings the enquiry officer gave his report dated 8.2.2012 holding charges I and III as proved against the petitioner. Disciplinary authority thereafter passed a detailed penalty order dated 29.5.2012 imposing the punishment of removal from services upon the petitioner. This order has been upheld by the appellate authority, again by a detailed speaking order, on 4.12.2013.

3. Before advertent to the arguments urged on behalf of the petitioner, it is necessary at this stage to set out the scope of a petition filed under Article 226 of the Constitution of India which challenges the orders passed by the departmental authorities. It is settled law that this Court

while exercising jurisdiction under Article 226 of the Constitution of India does not sit as an Appellate Court to re-apprise the findings of facts and conclusions of the departmental authorities. This Court can only interfere if the findings and conclusions of the departmental authorities are perverse or violative of the principles of natural justice or violative of the provisions of the rules of the organization/law. It may also be stated that a case before the departmental authorities is proved like in a civil case on preponderance of probabilities and the case has not to be proved beyond all reasonable doubt like in a criminal case. The aforesaid scope of hearing of a petition becomes further constricted when the charged official does not lead evidence and does not cross-examine the witnesses of the department. Also, if a person has courage of conviction and disputes the charges against him such person must step into the witness box and face the test of cross-examination failing which departmental authorities are justified in holding him guilty. The aforesaid aspects become relevant because in the facts of the present case petitioner did not cross-examine the witnesses of the management, did not lead evidence and therefore proceedings were closed. The enquiry report is thus in the nature of an *ex parte* judgment of a civil court.

4. At this stage, let me reproduce relevant paragraphs of the

report of the enquiry officer which shows delaying tactics on behalf of the petitioner. These relevant paras are paras 7 to 10 of the report and the same read as under:-

“(7) Sufficient opportunities were given to the CO to inspect the allowed documents and avail copies of the same from the Vigilance Department. The Charged Officer was given ample opportunity for inspection of the additional documents and supply of copies of the documents, but she has been adopting dilatory tactics to subvert the proceedings by not cooperating in the proceedings. Some of the instances are recorded as under:

i. As recorded in the first hearing held on 3.3.2011 CO was advised to inspect the documents by 21.3.2011. It is recorded in the 2nd hearing of the inquiry held on 25.3.2011 that the CO had not inspected the documents by 21.3.2011 as ordered in the first date of hearing. Therefore another opportunity was given to CO to be present on 18.4.2011. It is again recorded in the third hearing held on 18.5.2011 that CO has failed to inspect the documents so far and a last and final opportunity is given to appear in person on 31.5.2011. Again the inquiry officer vide his order dated 9.6.2011 allowed CO to inspect the listed documents available with him the DY Manager (Vig.) at HO, TRIFED. It is recorded in the Daily Order Sheet of the hearing held on 20.6.2011, signed by both the CO and her Defence Assistant that the listed documents have been inspected by CO. This proves that the CO has been given sufficient opportunity to inspect the documents.

ii. In the hearing held on 20.6.2011, CO was advised to submit list of witnesses and documents if any on her behalf. The lists so submitted by CO were considered by the Inquiring Authority in the hearing held on 30.6.2011 and admissible documents were allowed to be produced by the Department.

iii. In the first hearing itself CO was advised to submit the details of the Defence Assistant. The Defence Assistant engaged by the CO attended the hearing on 31.5.2011, but walked out of the inquiry proceedings alongwith the CO on difference of opinion with the IO. Another DA was nominated by the CO was accepted by the Inquiry Officer and started attending the hearing proceedings from the 6th hearing onwards held on 20.6.2011.

iv.CO inspected the prosecution documents, as recorded in the Daily Order Sheet for the hearing held on 20.6.2011.

v. Inspite of repeated instructions from the IO, CO failed to inspect the documents till 20th June 2011, whereas the preliminary hearing held on 3.3.2011 itself, CO was advised to inspect the documents by 21.3.2011. The CO did not attend the hearings held on 25.3.2011, 18.5.2011 and left the inquiry in between on 31.5.2011. Again she did not attend the hearing held on 3.6.2011.

vi.The inquiry proceedings was held in abeyance when the representation submitted the CO alleging bias against the Inquiry Officer was under consideration till the appeal was finalized by the Appellate Authority. The proceedings were resumed only after the appeal was rejected by the Appellate Authority.

vii. Copies of the statement of witnesses were made available to the CO during the hearings held.

viii. In the hearing held on 13.7.2011 next date of hearing was fixed for 21& 22.7.2011 for cross-examination of the witnesses at Sl No.1 to 7 of the Charge Sheet, whose examination-in-chief has already been conducted. But the CO did not attend the hearing on 21.7.2011. Instead a fax was sent to Vigilance Section stating that the Defence Assistant of CO is not available on the said date on account of wedding of his nephew on 27.7.2011.

(8) A deluge of letter on one issue or another and on issues which had already been settled or of no sequence or repeated again and again was seen from the very beginning. Tremendous time and resource were channelized for this from the side of CO which were putting major hindrance in the inquiry proceedings. At the same time, some inquiry dates were simply saw the missing of CO and DA under one pretext or the other.

Reading between the lines by CO had become a trend. For example when she was severely sick and the Inquiry Officer sympathetically considered and allowed a sufficient time to the CO on her request for recovery from the ailment, a reference is being sent by her saying that it was the need of departmental officer which forced them to allow the time rather than the ailment of the CO. What was the need of saying all these when CO herself requested for time and time was gracefully given (& how it is relevant to the enquiry process).

Dates of hearing were fixed with due consultation but CO and DA were just not ready to attend, this could have been possible

soon after the recovery from illness and prior to other unfortunate incidents happened. It is a clear case of non cooperation by CO in the inquiry proceedings. As IO, I found it from the very beginning to the end and would like to record with anguish and strong conviction.

If CO had time to write long long letters so frequently, she must have time to be present physically with DA or authorize him to be present in her absence at the venue of inquiry. Sadly this had not been done.

(9) 12 witnesses deposed in the Departmental Proceedings against the CO. Copies of the Daily proceedings along with statements of the witnesses were always prepared on the spot within next half an hour and each time made available to the CO.

(10) CO vide her letter dated 16.6.2011 had requested for producing 16 original cheques for her inspection. Shri Gur Prasad Alagh, official of Syndicate Bank, Pusa Complex, Beej Bhawan Branch, concerned with the case was specially called and he came alongwith all the 16 original cheques on the request of DM (Vig). All the 16 cheques in original were shown to the CO and DA in the presence of PO and IO. Original cheques had been thoroughly seen and checked by CO, DA, PO and also by the IO in person and no discrepancy over writing, tampering and inconsistency of any sort was found. This has been recorded in the proceedings of the sixth hearing of the inquiry proceedings held on 20.6.2011. Incidentally, both the above proceedings were attended by CO and her DA.”
(underlining is mine)

5. It may also be stated that all the original 16 cheques were duly brought before the enquiry officer and the petitioner admitted her signatures on the said cheques. There was no issue with respect to any manipulation or over-writing etc raised on behalf of the petitioner with respect to the signatures on cheques. Some of the relevant paras of the report of the enquiry officer with respect to main charge No.I against the petitioner and the conclusions of the enquiry officer with respect thereto

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read as under:-

“The statement of imputation of misconduct or misbehavior in support of Article of Charge-I framed against Smt. Seema K Bhatnagar, DGM (U/s) TRIFED’s Warehouse Pusa Road, New Delhi as under:

The special Audit report dated 22.2.2010 of M/s Aditya & Associates, Chartered Accountant, who were entrusted the job of undertaking special audit of operation of TRIFED’s Warehouse, Pusa Road, vide Order No.TFD/HO/FIN/2009/2414 dated 30.12.2009 for the period from 1/4/2008 to 30/9/2009, mentioned about the following financial irregularities and lapses committed by the officials of Warehouse Unit while withdrawing the money from TRIFED’s Saving Bank A/c No.91212010022518 with Syndicate Bank Pusa Road Branch, New Delhi through cheques jointly signed as one of the signatories by the CO.

S N	Date of withdrawal	Particulars	Amount as per Pass Book	Amount as per Cash Book	Amount as per Bank Statement	Cheque No.	Irregularities pointed out by Auditors
1	28.7.2009	Cash withdrawal	8000	-	-	536340	Not entered in cash & bank book
2	16.6.2009	-do-	8000	-	-	536327	Not entered in cash & bank book
3	28.5.2009	-do-	8000	5000	5000	267989	Less amount shown in the cash book
4	9.2.2009	-do-	20000	-	20000	267965	Not entered in cash & bank book
5	2.2.2009	-do-	8000	-	8000	267966	Not entered in cash & bank book
6	21.1.2009	-do-	7000	-	7000	267960	Not entered in cash & bank book
7	6.1.2009	-do-	5000	-	5000	267955	Not entered in cash & bank book
8	19.12.08	-do-	5000	-	-	267952	Not entered

.							in cash & bank book
9	28.11.08	-do-	20000	2000	20000	267935	Not entered in cash & bank book
10	6.11.08	-do-	20000	-	20000	267932	Not entered in cash & bank book
11	23.10.08	-do-	5000	-	5000	267926	Not entered in cash & bank book
12	16.10.08	-do-	10000	-	10000	267927	Not entered in cash & bank book
13	6.10.08	-do-	6000	7000	6000	267923	More amount shown in cash book
14	26.9.08	-do-	7000	-	-	267919	Not entered in cash & bank book
15	19.9.08	-do-	12000	2000	12000	267915	Less amount shown in cash book
16	16.9.08	-do-	5000	5000	7000	267914	Not entered in cash & bank book
				Total	1,50,000/-		

During the preliminary investigation it has been found that out of total 16 transactions of cash withdrawals in four transactions the amounts have been withdrawn more than ceiling/permissible limit in violation of powers/authorization given by the competent authority vide authorization letter no.TFD/HO/FIN/CMS/BD/Godown/07 dated 3.6.2008. All cheques were issued in favour of self in contravention to the provisions prescribed in TRIFED's Accounts Manual, 1996. In most of the cases, no vouchers were prepared. Further neither the purpose of withdrawal was mentioned anywhere in accounts records and nor supporting documents were generated and attached thereto. No bank reconciliation was got done with the accounts books. The above alleged acts and lapses were in violation of the provisions of TRIFED's Accounts Manual, 1996. During the investigation no

records and documents were made available to the investigating officer to justify the withdrawal of total amount of Rs.1,50,500/- through 15(fifteen) nos. of cheques purportedly towards official expenses at TRIFED's Warehouse Unit. Therefore, this amount of Rs.1,50,500/- remains unaccounted for, which is in gross violation of provisions of TRIFED's Accounts Manual, 1996. Such misdemeanors of Smt. Seema K Bhatnagar, amounts to embezzlement/misappropriation of TRIFED's funds (public exchequer) and misuse of official powers for personal gains.

All the above 16 (sixteen) cheques in question, through which the withdrawal were made were signed by Smt. Seema K Bhatnagar as first/prime signatory, the details of each cheques has been given as under:

(1) Cheque No.267915 dated 17.9.2008 of Syndicate Bank, Pusa Road Complex in the name of "Self" for Rs.12,000/- cash withdrawal:

The above cheque is issued in favour of "Self" which is in contravention of the provisions contained in the TRIFED Accounts Manual, 1996. As per the prescribed provisions, original supporting documents including approvals of the Competent Authority must be attached with the voucher. But in the instant case, no supporting documents are found attached with the voucher. As per the authorization and powers given to Smt. Seema K Bhatnagar by the competent authority vide authorization letter No.TFD/HO/FIN/CMS/BD/Godown/07 dated 3.6.2008, a ceiling of Rs.10,000 for cash withdrawal is fixed. But in this case amount withdrawn is more than the ceiling limits. Thus, it has been done in gross violation of the authorization given by the competent authority. No record is available to show the purpose of withdrawal of the amount and utilization/adjustment of the amount withdrawal from the bank which shows the withdrawal of the amount is an unauthorized withdrawal of Rs.12000/-. Further, cheque issue register and approval file were found missing.

From the above facts, it is clear that Smt. Seema K. Bhatnagar who was first/prime signatory had connived with Sr. Accountant Shri R.K. Jindal, and embezzled the above amount of Rs.12000/- by abusing her official position for her personal gains and her above act is fraudulent conduct to gain unlawful monetary benefits.

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CONCLUSION

Cheques do not lie. It is evident in this case the cheques have irrefutable signatures of the CO as prime signatory which CO can never deny, rather confirmed herself on 20.6.2011 during sixth hearing of the inquiry proceedings.

From the above documentary evidence, examination of each and oral evidence corroborated the charge stands proved beyond doubt.'

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CONCLUSION

As such, Article of Charge-I & III are proved. Article-II, however is not proved due to its ambiguous nature and it having no standing in isolation.

I am constrained to add that the Charged Officer has been extremely non-cooperative. Very keen to derail the inquiry, the CO was most of the time highly disrespectful even to the extent of cursing to IO & PO in the midst of the proceedings of the inquiry. Highly interested in delaying the proceedings, the Charged Officer Smt Seema K Bhatnagar was playing hide and seek with already fixed dates of hearing- many a times with her full agreement, every time giving absolutely lengthy representation just a day prior or the day of hearing simply to distract the issue. She had ample time and resources to write reams of papers, but never to say anything on the issue or Article of Charges. Even on last hearing on 22.12.2011 despite having PO's report in front of the undersigned, having consideration to the situation, to give opportunity to defence and in the interest of justice she was allowed to cross-examine all the witnesses in a single day on 23.12.2011 from 10.00 a.m. to 5.00 a.m., so as to complete the process on day to day basis in a single sitting (as I was never certain of her next appearance. Also most of the witnesses were from Delhi Office of TRIFED only). However, the CO refused to do so. The proceedings of the 18th hearing held on 22.12.2011 as attended and signed by CO and DA could be seen in this context.

Surprisingly, she has been attending the hearing at her sweet will- some times present some times absent, but every time long explanations and representations addressed to IO, MD and so on. She was present in the last hearing on 22.12.2011 after a gap of several hearings which she skipped alongwith DA on various pretexts. It may be seen from the Daily Order Sheets which have been prepared then and there after every hearing and copies invariably handed

over/provided to CO and DA. Therefore, the allegation of CO to call it “ex-parte” proceedings is false and without any substance. In fact, it is just an excuse to shy away from the facts and could be called an obstrich behavior on the part of CO.

Ultimately, as a matter of astonishment to me when CO was asked to give her brief by 11th January 2011 as brought out at para-10 of Daily Order Sheet prepared soon after the proceedings of the 18th hearing of inquiry proceedings on 22.12.2011 with full agreement of CO Smt Bhatnagar and Shri R K Sharma, DA as they were present and signed the Daily Order Sheet, instead of a brief on the case, what CO has provided is another volumness representation of 20 pages added with 8 page enclosures on 11th January 2011. Some times I did wonder whether I was inquiring the matter or CO was inquiring on IO. Not a single page, or a sentence or a word has been putforth by the CO in her defence in any of her series of representations, each one of that has been responded with fullest justifications and reasons.”

6. I note that the facts of illegal withdrawal by 16 cheques are more or less similar and therefore I have reproduced observations of the report as regards only one cheque. In my opinion, not only the petitioner has been rightly held guilty of illegally withdrawing amount by means of as many as 16 cheques in cash, simultaneously the dishonesty is proved from the fact that no vouchers of the transactions were prepared and also there were no supporting documents of approval of the competent authority. In fact, rules of the respondent do not permit issuing of self-cheques and in spite of which the petitioner signed as many as 16 times for 16 self-cheques. It may be noted that the disciplinary authority has passed a detailed penalty order and has concluded that prime objective of the

organization such as the respondent is to support the tribal community across the country and wherein absolute integrity, honesty and devotion to duty are a few pre-requisites for an employee and therefore corruption cannot be kept under the carpet and be brushed aside by allowing defence of technical nature.

7. Before me, on behalf of the petitioner, it is firstly argued that provision of CCS (CCA) Rule 14(18) has been violated because after the evidence of the department was complete petitioner ought to have been examined by the enquiry officer with respect to those issues which were against the petitioner. I may note that many witnesses deposed in the enquiry proceedings and many documents were filed and proved by the department and all of which have been considered by the enquiry officer for giving his report but what are the specific issues of prejudice to the petitioner is not pleaded at all in the writ petition. The argument with respect to non-compliance of a facet of the principles of natural justice is an argument coupled with the fact that the person who alleges violation of facet of principles of natural justice must show consequent prejudice to him. Also, it is necessary that the issue of prejudice must be raised at the correct stage and not subsequently for taking technical benefit.

It has been held by the Supreme Court in the case of *State*

Bank of Patiala and Ors. Vs. S.K. Sharma (1996) 3 SCC 364 that whenever there is allegation of violation of principles of natural justice there are two types of cases. One is a case where principles of natural justice are not followed at all i.e not holding of the enquiry or not issuing of a show cause notice. In such cases, no further issue of prejudice arises and proceedings are to be necessarily held as violative of principles of natural justice. The second type of cases are those cases where principles of natural justice are followed but there is violation of facet of the principles of natural justice such as non supply of a document etc. In these later type of cases, Supreme Court has said that it is necessary for the charged official to show how he is prejudiced on account of violation of one facet of principles of natural justice. When the ratio of the case of ***State Bank of Patiala (supra)*** is applied to the facts of the present case, it is seen that except making general averments in the writ petition and so too in the challenge before the departmental authorities, no specific prejudice is alleged by the petitioner. Obviously, no specific act of prejudice would have been pleaded because the objection was only a technical objection (not having any substance) to get the orders of the departmental authorities set aside. I may also state that lack of bonafides on behalf of the petitioner is clear from the fact that if petitioner was really prejudiced, then, this

objection should have been taken at the correct stage i.e before the enquiry officer gave his report and not thereafter for setting aside the report of the enquiry officer. Nothing prevented the petitioner from raising objection of prejudice with respect to his non-examination as per Rule 14(18), however before the enquiry officer no such objection was raised. Therefore, for all the aforesaid reasons I reject the argument urged on behalf of the petitioner of non-compliance of Rule 14(18) and consequently for setting aside the report of the enquiry officer on this ground.

8. The next argument which is urged is that petitioner has not been allowed to lead his evidence and proceedings were wrongly closed. When the counsel for the petitioner was asked to show the order passed by the enquiry officer by which the petitioner was shown to have prayed for leading evidence but in spite of the same the right of the petitioner to lead evidence was closed, no such order could be pointed out to me on behalf of the petitioner. In fact, a reading of the report shows that petitioner was caught in her own web of lies and corruption, and was actually endeavouring to unnecessarily delay and drag the departmental proceedings.

9. In view of the above, I do not find that any case is made out for the petitioner to successfully challenge the orders passed by the

departmental authorities. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.

DECEMBER 02, 2013
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VALMIKI J. MEHTA, J.