

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

Date of Decision: 08.12.2014

% **W.P.(C) 6906/2013 & CM APPL. 14955/2013**

UNION OF INDIA

..... Petitioner

Through: Mr. A.K. Gautam, Advocate.

versus

JAGMOHAN SAHNI

..... Respondent

Through: Mr. Ramalingam, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. The present Writ Petition has been preferred by the Petitioner - Union of India under Article 226 of the Constitution of India to assail the order dated 19.09.2012 passed in O.A. No. 1784/2011 by Central Administrative Tribunal, Principal Bench, Delhi (CAT/ Tribunal), whereby the Tribunal allowed the application of the respondent-applicant and set aside the Inquiry Officer's report dated 31.10.2007, as well as the order of the disciplinary authority dated 19.04.2010 imposing the penalty of 5% cut in pension for a period of one year. The Tribunal directed the petitioner to refund the entire pension recovered from the respondent along with 9% interest within a period of two months. It further directed that the respondent will also be entitled for payment of full pay and allowances for the period from

27.12.2000 till the date of dismissal i.e. 08.04.2003, and to treat the intervening period as spent on duty for all purposes. The petitioner was directed to hold a review DPC to consider the applicant for grant of notional promotion and, if he is found 'fit', he was directed to be given notional promotion from the due date.

2. The respondent was issued a Charge Memorandum dated 23.05.1995 for initiation of disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [CCS (CCA) Rules] in respect of indents raised by Machinery & Spares (M&S) B&C group during March 1990 to July 1990, when he was functioning as Director(ate) Logistics Support (Machinery & Spares) [DLS (M&S Group B&C)]. He denied the aforesaid charges vide letter dated 05.07.1995.

3. A Departmental Inquiry was ordered vide order dated 07.05.1996, which was held. On the basis of the inquiry report, the respondent was dismissed from service w.e.f 27.12.2000. The review petition filed by the respondent was also rejected.

4. Aggrieved by the aforesaid order, respondent filed O.A. No. 3140/2001, which was allowed vide order dated 08.04.2003, and the Tribunal quashed the order of dismissal and further directed that the inquiry officer may proceed in accordance with law from the stage of grant of inspection of documents.

5. Consequently, the respondent was reinstated w.e.f. 08.04.2003 and disciplinary proceedings were ordered to be continued from the stage of inspection of documents vide order dated 27.08.2003. The respondent was

granted pay and allowances from the date of judgment i.e. 08.04.2003 onwards. The respondent was aggrieved by the aforesaid act of the petitioner and filed O.A. No. 2591/2004 seeking pay and allowances for the period intervening between dismissal and reinstatement. The Tribunal vide order dated 22.02.2006 dismissed the application as being premature, and directed the petitioners to finalise the pending proceedings and decide about the aspect of regularization of pay and allowances from 27.12.2000 to 08.04.2003 (i.e. date of dismissal, to date of reinstatement), preferably within a period of 6 months.

6. On 31.07.2004, the respondent superannuated from his services.

7. The respondent was issued notice dated 31.03.2006 for hearing in the revived inquiry for 12.04.2006. Thereafter, the respondent submitted his written brief on 17.04.2007. On 31.10.2007, the inquiry officer submitted the inquiry report, wherein the 1st charge was partially proved, the 2nd, 4th and 5th charges stood proved, whereas the 3rd charge was not proved against the respondent. The Central Vigilance Commission (CVC) was consulted and vide OM dated 26.05.2008, it advised imposition of penalty of suitable cut in pension on the respondent.

8. The disciplinary authority supplied a copy of the inquiry report to the respondent vide letter dated 23.06.2008. The respondent represented against the aforesaid inquiry report on 21.07.2008. Thereafter, the disciplinary authority passed the impugned order dated 19.04.2010 imposing upon him the penalty of 5% cut per month from his pension for a period of one year.

As aforesaid, the same stands quashed by the Tribunal by the impugned order.

9. The Tribunal was of the opinion that as not even a single witness was produced to prove the documents relied upon against the respondent, the procedure adopted by the Inquiry Officer was inconsistent with the principles of natural justice and thus, the order of the Disciplinary Authority cannot be sustained. The reasoning adopted by the Tribunal is as follows:

“14. In a departmental inquiry, the evidence adduced by the Presenting Officer or even the Prosecution Witnesses cannot be considered as an ultimate truth. The principles of natural justice demand that the applicant is given an opportunity to cross examination those witnesses and it is only after assessment of the statements of the prosecution witnesses and their statements on cross examination, the Inquiry Officer can come to a conclusion whether a charge has been proved or not. In the absence of the prosecution witnesses and proving the listed documents during the inquiry by them, by no stretch of imagination it can be held that the charges have been proved against the applicant. In such a situation, it can only be said that no evidence has been adduced against the delinquent official and if the report of the Inquiry Officer is against him, it has to be declared as one without any evidence and consequently a perverse. The order of the disciplinary authority based on the said report is also against the principles of natural justice and it cannot be sustained.”

10. Learned counsel for the petitioner submits that since the documents produced were the instructions/ guidelines issued by the Government, there was no need to be prove the same through a witness. The said evidence could have been taken on record and considered by the Inquiry Officer as cogent evidence without the same being formally tendered or led in

evidence. He submits that it could not be said to be a case of ‘no evidence’. He further submits that no prejudice had been caused to the respondent.

11. Learned counsel for the petitioner submits that the Tribunal erred in setting aside the order of the Disciplinary Authority, which was passed after due consideration of the Inquiry Report, advice of the CVC, and entire material on record, including the instructions on the subject.

12. On the other hand, learned counsel for the respondent submits that although various documents were relied upon in the article of charges, however, there was no prosecution witness produced to prove the same. While the Article of Charges and list of documents relied upon were supplied to the respondent, no list of witnesses was provided to the respondent. The contention of the respondent is that as there were no witnesses to prove the documents produced and relied upon against the respondent, the charges cannot stand ‘proved’. As per the procedure prescribed for conduct of departmental proceedings, the respondent should have been provided with a list of witnesses, and the witnesses should have been examined to tender and prove the documents and/or lead oral evidence and, thereafter, an opportunity should have been provided to him to cross-examine the witnesses. Further, he placed reliance on the Order of the Tribunal and submitted that this Court should not interfere with the same in judicial review.

13. The short question that arises before this Court for consideration is: whether, in the facts of this case, non-examination of the witnesses in the

departmental inquiry was against principles of natural justice, and consequently, vitiated the inquiry.

14. The Articles of charge nos. I, II, IV & V read as follows:

“Article No. I

That the said Shri JM Sahni, while functioning as DDLS (M&S) Group B&C (Group dealing with Western Origin Ships and Indigenous ships except Aircraft carriers Tankers and SSK Submarines) during the period March 90 to July 90 violated the laid down procedures contained in Govt. of India MoD letter No. F.7(67y73-DS dated 23 March 76 in that he recommended procurement of spares exclusive to Indian Navy worth Rs. 13 crores by raising large number of SD indents through DGS&D/DSD(B) as against procurement through IPC NHQ.

The above act on the part of shri JM Sahni amounts to gross irregularity/negligence in discharge of official duties with dishonest motive.

Article No. II

That the said Shri JM Sahni, while functioning as DDLS (M&S) Group B&C during March 90 to July 90 violated the established norms of recommending non approved and non capacity assessed firms of Metropolitan Group of Industries as the likely source of supply in the indents on PAC basis while he was aware that items indented were of foreign origin and no one else than the original supplier could have been indicated as the source of supply in the indents on PAC basis. He also failed to obtain quotes from foreign PAC firms before recommending the approval of expenditure on the basis of budgetary quotes received from firms of Metropolitan Group of Industries, who were not the approved suppliers.

The above act on the part of Shri JM Sahni, amounts to gross irregularity/negligence in discharge of official duties with dishonest motive.

Article No. IV

That the said Shri JM Sahni, while functioning as DDLS (M&S) Group B&C in Naval Headquarters, wrongly advised procurement of exclusive items i.e. Soot Blowers valued Rs.70,51,200/- through DGS&D on the plea that indents beyond Rs. 50 lakhs could not be referred to IPC, when the officer was aware that IPC can handle indents valued up to Rs. 1.5 Crores in terms of Govt of India, Ministry of Defence letter No. F.7(67)173-DS dated 23 March 76.

The above act on the part of Shri JM Sahni, amounts to lack of devotion to duty and is unbecoming of a Government Servant.

Article No. V

That the said Shri JM Sahni, while functioning as DDLS (M&S) Group B&C, failed to ensure AHSP clearance in respect of specifications and drawings, before raising indents this being one of the essential requirement of established indenting procedures.

The above act on the part of Shri JM Sahni amounts to gross irregularity/negligence in the discharge of official duties as provisioning DDLS with dishonest motive.”

15. We may first notice the reply of the respondent to the Inquiry Report dated 21.08.2008, in which the respondent stated that the findings of the Inquiry Officer pertaining to the articles of charges had not been supported by any evidence, and further the evidence brought on record by him has also been ignored. The respondent states as below:

“3. The IO has mentioned the word “evidence” several times but has not referred to any specific evidence relevant to his finding. He has based his findings on the documents which are not on record but referred by the PO to fill in the gaps. This

reflects the bias of IO in favour of prosecution. Even the preponderance of probability needs reasonable amount of evidence against an individual. The IO has simply stated that “charge is proved” but has not linked the evidence, if any, that points even remotely to my guilt.

(Emphasis Supplied)

16. The respondent in his reply goes on to deal with each Article of Charge which was held to be ‘proved’ against him by the Inquiry Officer and was agreed to by the Disciplinary Authority. In this regard, the relevant portion of the reply, where the respondent has pointed out that the evidence in respect of each of the charges has not been considered by the Inquiry Officer, is as follows:

“Article I

4.2 Your Excellency, the IO is wrong in claiming (Para 5.1 of his findings) that there was oral hearing in my case since no witness was ever examined and I was not called during the hearings of Shri RP Kalra or Shri Dhiraj Singh, co-accused in these common proceedings.

...

IO has considered an extraneous factor of rates at which the DGS&D purchased the items, put forward by PO, in spite of my pointing out that rate is a purchase function and I was assigned provisioning [Para 101 (a) of my brief] and had no powers to decide the rates besides the fact pointed by me with evidence vide Para 123 of my brief that all purchase agencies may err while deciding rates. No evidence has been brought on the record where I have even recommended rate of any item.

4.3 IO’s finding in Para 5.3 that alleged letter is applicable in instant case is wrong. He has claimed it to be based on analysis of the record on evidence but has not specified as to which

evidence on record indicates that alleged letter is applicable in the instant case, and how?

Article II

5.3 The IO has stated in his findings vide Para 6.3 that perusal of evidence on record shows that CO has not only failed to call PAC from foreign manufacturers but has failed to take into account the PACs already available. As usual IO has not specified that which evidence on record supports his claim.

5.8 ...No evidence has been produced to indicate as to what was the established norm, which was violated by me and which of MGI firm was recommended by me as likely source on PAC basis. However the evidence in record [Exhibit D-3(a)-D-3(y)] shows that I recommended only the PAC firms as Make.

Article IV

6.3 Sir, in his next statement he has said that “provisions of MoD letters dated 23.03.76, 26.12.88 and 13.03.90 indicating financial powers of various authorities are very clear ...”. His findings are based on documents not on ‘the record viz letters dated 26.12.88 & 13.03.90. The PO had ample opportunity to bring these on record if he considered these vital for his case.

...

Moreover, it is observed that there is no mention of alleged letter in letter dated 19.03.90, which specified Rs. 150 lakhs as financial powers of highest level TPC of Navy. Hence, the charge that IPC can handle indents up to Rs. 1.5 crores in terms of letter of 23.03.76 instead of letter of 19.03.90, is wrong.

6.5 ...This finding, absolving me of this article of charge IV has already been accepted by the Disciplinary Authority in the year 2000.

Article V

7.1 ...Once again he has failed to specify the evidence on record referred in his ibid finding.

7.3 ...This finding, absolving me of this article of charge V(sic)has already been accepted by the Disciplinary Authority in the year 2000.”

17. It is, thus, apparent from the reply of the respondent that he had raised his concern pertaining to the fact that – either no evidence was brought on record to support the findings on the charges, or the letter(s)/documents relied upon to prove the charges were not applicable to the case of the respondent. In spite of the respondent raising the issue that the findings returned by the Inquiry Officer were not based on evidence, and that no witnesses were examined by the Inquiry Officer, the Disciplinary Authority imposed a 5% cut in his pension.

18. It is a settled legal position that a finding of fact recorded in disciplinary inquiry cannot be interfered with by the Courts/Tribunals, unless such a finding is based on ‘no evidence’, or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding. (See ***Coimbatore District Central Coop. Bank v. Employees Association***, (2007) 4 SCC 669). A Departmental Inquiry, being a quasi judicial proceeding, has to be conducted in accordance with the Principles of Natural Justice. Therefore, one of the grounds on which the Court can interfere with the order of the Disciplinary Authority, is where its finding is based on ‘no evidence’.

19. Coming to the impugned Order, the Tribunal has observed that it is an admitted position that no witnesses were produced to prove the materials which were relied upon in the departmental inquiry report. Further, the Tribunal has placed reliance on ***Roop Singh Negi v. Punjab National Bank***, (2009) 2 SCC 570 and ***Hardwari Lal vs. State of U.P.***, (1999) 8 SCC 582 to hold that the documentary evidence must be proved by the competent witnesses. The following extract from ***Roop Singh Negi*** (supra) may be referred to:

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

...

23. ...A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known,

however high may be, can under no circumstances be held to be a substitute for legal proof.”

20. Although the standard of proof and the procedure in a departmental inquiry is different and far less formal than that in criminal proceedings, it is nevertheless a quasi judicial proceeding which has serious consequences for the delinquent, if found guilty, and the principles of natural justice necessarily should be followed to sustain such an inquiry. The witnesses have not been examined by the department, and consequently, there was no opportunity available to the respondent to cross-examine or challenge the witnesses and the case of the department. In the light of the facts and circumstances herein, this Court is satisfied that a proper inquiry was not held by the petitioners. The same stands vitiated.

21. Consequently, this Court is of the opinion that the present petition lacks merit. It is, accordingly, dismissed.

VIPIN SANGHI, J

S. RAVINDRA BHAT, J

DECEMBER 08, 2014