IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18076 of 2003
Reserved on: 06.01.2016
Date of decision: 20.01.2016

Er. Nath Ram Garg ....Petitioner(s)

Versus

State of Punjab and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.D. Bawa, Advocate,
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J.

The petitioner, by filing the amended writ petition, challenges the charge sheet dated 04.05.1999 (Annexure P-2), vide which, he was charged on three accounts while holding the post of Superintending Engineer regarding misuse of powers and causing loss of ₹28.70 lacs to the Government by remitting the compensation with mala fide intention and for excess payment of ₹6,26,186/- to the contractor in connivance with Balbir Singh, the Executive Enginner.

The challenge has also been raised to the inquiry report which came in the meantime came during the pendency of the writ petition on 03.08.2004 (Annexure P-19) which has adversely commented upon the conduct of the petitioner and also the final order dated 28.05.2009/01.06.2009 (Annexure P-22) vide which, respondent no. 2 imposed a cut of 25% on the pension of the petitioner since he had retired in the meantime on 30.11.1998.

A perusal of the paper book would go on to show that the petitioner had been charge sheeted for the following allegations:-

"Charge No. 1: Negligence of Superintending Engineer and misuse of powers.

-do- 2: Responsible for huge loss of Rs. 28.70 to Govt. by remitting the compensation with mala fide intention in connivance.

-do- 3: Responsible for excess payment of Rs.6,26,186/- in connivance with Sh. Balbir Singh, Executive Engineer and Varindra Const. Co., Bagha Purana."

The record would go on to show that work had been allotted to the contractor on 29.11.1991 pertaining to the NH15 Baja Khana to Bathinda kilometers 258.33 to 285.05 and the time limit was of 18 months which was expiring on 26.05.1993. The time limit was thereafter extended upto 30.06.1994 and 30.06.1995. Due to the inability of the contractor to complete the contract as per the time schedule, the XEN had imposed a penalty of ₹28.70 lacs on 11.07.1995. The same was appealed against by the said Contractor and there was a stay also by the Executive Engineer on 13.09.1995. The said stay continued and thereafter, at the time of the completion of the work, vide order dated 25.04.1997 (Annexure P-24), the compensation of ₹28.70 lacs was reduced to NIL by the petitioner. The contractor was directed to remove the shortcomings within a period of 15 days and further directions were issued to the XEN to finalize the bill and only withhold ₹20,000/- from the security deposit and three months' time was extended as a deemed date of completion of the work. The relevant portion of the order reads thus:-

"The compensation levied by the XEN is reduced

> *to nil. The contractor may remove the short comings in the work within a period of 15 days. Thereafter, the XEN shall proceed to finalize the bill of the contractor. XEN may withhold an amount of Rs.20,000/- from the security deposit of the contractor and further action in release of the security be taken in terms of the agreement after a period of three months from 24.4.97 which is being deemed as date of completion of work."*

It is in pursuance of this outright benefit granted to the contractor that the petitioner was charge sheeted. The inquiry officer has found in his report that thereafter also, the Contractor had not completed the remaining work and work order No. 20 of 1997 had to be issued as per voucher no. 58 dated 18.09.1997. It has, thus, been concluded that the petitioner had benefitted the contractor in an illegal manner and caused loss to the Government. It has been further found by the inquiry officer that the petitioner had kept the application of the contractor pending from 05.02.1996 which was concerned with the penalty imposed by the Executive Engineer till the very end when he reduced the demand to NIL. In view of his order, the Executive Engineer had to ignore the rules and instructions and had made the balance payment of ₹6.26 lacs within a period of 4-1/2 days without obtaining requisite certificates from the SDE and, therefore, the loss of the said amount was also caused and benefit was given to the contractor.

There was no application made by the contractor for extension of time or any request of the Executive Engineer and the matter before him for extending the period mentioned in the agreement and to fix the deemed date as completed on 27.04.1997 was a misuse of power. The work was allotted in 1991-92 and had thus only been allegedly completed in 1997 and therefore, the charge was found to be proved of serious nature and the contractor had got undue benefit. It is further not disputed that the XEN also namely Balbir Singh was acted against vide order dated 22.01.2000 (Annexure P-20) and there was stoppage of two annual increments with cumulative effect. Thus, from the above discussion, it is apparent that the petitioner has exceeded his jurisdiction while performing his duties and acted in a very arbitrary manner while waiving compensation which had been imposed by the Executive Engineer and thus benefitted the contractor by closing the contract in a hasty manner.

Counsel for the petitioner could not point out that there was any breach of statutory rules or that he was not associated with the inquiry report and that the principles of natural justice were violated. An effort has been made to argue that the charge was never got sanctioned from the competent authority and that rule 28 of the Conduct of Rules was applicable and, therefore, reliance has been placed upon the judgment of the Apex Court in ***Union of India vs. B.V. Gopinath, JT 2013 (12) SC 392.***

The said argument is without any basis. In the said judgment, specific rules were adverted to by the Apex Court that only the Finance Minister could draw up the charge sheet of the officers who were the Deputy Commissioners of Income Tax and in the absence of the charge sheet not having been prepared by the competent authorities, the charges were quashed. There is no such specific rule which has been pointed out in the present case and, therefore, the said judgment is not applicable.

Similarly, reliance upon the judgment in ***Vishwanath Sood vs. Union of India and another, AIR 1989 SC 952*** is also without any basis. The judgment pertains to the Arbitration Act and refers to the award which was passed and the contractor was held liable to pay and is not related to the issue in question which, in the present case, pertains to misconduct during the service tenure while granting undue benefits to the contractor which have been found duly proved.

It is settled principle that this Court is not sitting as a Court of appeal and is only to examine whether the departmental proceedings were without any jurisdiction and did not suffer from any such illegality whereby, the whole process was vitiated and the employee was prejudiced in such a manner that the proceedings had to be set aside.

The Apex Court in ***'Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant' 2001 (1) SCC 182*** while examining the issue of disciplinary action taken on the departmental side held that examining the adequacy and inadequacy of evidence is not permitted and only if there is a finding that shocks the judicial conscience of the Court, the Court would interfere. The principles of natural justice having been complied with and the procedure prescribed having been followed, the Court should not interfere in the punishment imposed.

Similarly in '***Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and others' Vs. 2012 (5) SCR 994***, the scope of departmental proceedings was discussed and it was held as under:-

> *"12. It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations*

> *prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. (See: Shashikant S. Patil & Anr. (supra)).”*

Similarly, the Apex Court in ***'West Bengal State Electricity Board and others Vs. Hari Bhakta Ghosh' 2015 (1) RSJ 745*** has held that the strict rules of evidence are not required to be followed by the Enquiry Officer and the High Court cannot substitute the findings of the Enquiry Officer by way of its subjective opinion.

In such circumstances, there is no scope for interference and the writ petition stand dismissed.

20.01.2016 (G.S. SANDHAWALIA)
shivani JUDGE