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

+ **LPA 60/2019 & CM APPL.4366/2019**

NATIONAL THERMAL POWER CORPORATION LTD..... Appellant

Through: Ms.Maninder Acharya, ASG with
Mr.Sanjay Ghose, Mr.Sahil Sood,
Mr.Harshul Choudhary & Mr.Viplav
Acharya, Advocates.

versus

F S CHAUHAN & ORS

..... Respondents

Through: Mr.Anil Soni, CGSC with
Mr.Abhinav Tyagi, Advocate for
R2/UOI.

**CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA**

**ORDER
30.01.2019**

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Dr. S. Muralidhar, J.:-

1. This appeal by the National Thermal Power Corporation Ltd. (NTPC) is directed against the judgment dated 11th December 2018 passed by the learned Single Judge disposing of WP(C) 4673 of 2002 filed by Respondent No.1.

2. The background facts are that Respondent No.1 joined NTPC in 1979. While working at the Badarpur Thermal Power Station he was transferred and asked to report to one Mr. G.P.Singh who was the then General

Manager of the National capital of power project at Dadri on 10th July 1995. Mr. G. P. Singh in turn directed Respondent No.1 to report to one Mr. Brij Kishore, Senior Manager (EMG) and nominated Respondent No.1 as the coordinator for resettlement and rehabilitation (R&R) of the project affected persons (PAPs) of a nearby village Muthiani.

3. According to Respondent No.1, despite his giving a written complaint dated 18th November 1995 to Mr. G.P. Singh regarding the misdeeds of Mr. Brij Kishore, Mr.G.P.Singh continued to subject him to the control of Mr. Brij Kishore. According to Respondent No.1, on 2nd December 1996 while he was at the Scope Complex Lodhi Road, New Delhi for getting his arms licence renewed, he was shocked to know that Mr. Brij Kishore had alleged that he had been assaulted by Respondent No.1 at Dadri and that Mr. G.P. Singh had passed an order suspending him.

4. A preliminary enquiry was ordered on 3rd December 1996. On 14th December 1996 Respondent No.1 was served with the order suspending him from service. Respondent No.1 then filed WP (C) 4785 of 1996 in this Court challenging the suspension order dated 14th December 1996 and seeking a direction to the NTPC to decide his representation dated 16th September 1996.

5. According to Respondent No.1 after NTPC received a copy of the said writ petition, he was served with the memorandum of charge dated 17th December 1996 on 24th December 1996. Respondent No.1 then questioned the said memorandum of charge in the said WP(C) 4785 of 1996.

6. On 9th January 1997 this Court passed an order staying the enquiry proceedings and directed the CMD, NTPC to decide the Petitioner's representation by a reasoned order. On 3rd April 1997 this Court passed an order noting that against the order of suspension, an appeal laid to the Board of Director/CMD. Accordingly the Board of Directors were directed to decide the Petitioner's appeal against suspension by a reasoned order. The enquiry proceedings were stayed till such time.

7. The Board of Directors passed a resolution on 2nd July 1997 holding that they were not the appellate authority in respect of the suspension order but nevertheless transferred the Respondent No.1 to Patna. WP (C) 2971 of 1997 filed by the Respondent No.1 challenging his transfer order was dismissed by the Court and NTPC was directed to complete the disciplinary proceedings against Respondent No.1 on or before 31st December 1999. When the enquiry did not get completed before that date, Respondent No.1 filed Contempt Petition No.42 of 2000. Respondent No.1 also challenged the order dismissing WP (C) 2971 of 1997 before a Division Bench of this Court by filing LPA No.287 of 1999 in that appeal the Division Bench stayed the transfer of the Respondent No.1 from Dadri to Patna.

8. On 14th October 1999 NTPC served on the Respondent No.1 a notice asking to show cause why his services should not be terminated since he did not move on transfer from Dadri to Patna. WP (C) 6713 of 1999 was filed by the Petitioner in which this Court passed an order on 4th November 1999 staying the operation of the show cause notice dated 14th October 1999.

9. On 30th October 1999 the Enquiry Officer (EO) passed an ex parte order closing the enquiry. Respondent No.1 then filed WP (C) 829 of 2010 in this Court. By an order dated 17th November 1999 this Court set aside the order dated 30th October 1999 of the EO leaving it open to Respondent No.1 to urge all his contentions before the EO and further that the enquiry should be conducted in accordance with the earlier orders dated 6th July 1997 and the rules of NTPC for conduct of enquiries.

10. The enquiry proceedings took place between 12th and 23rd December 1999. In the said writ petition the Respondent No.1 filed an application for directions to the NTPC to provide TA/DA assistance inspection of documents sufficient opportunity for cross-examining management witnesses (MWs) etc. On 2nd June 2000 counsel for NTPC stated that the enquiry is complete in the last week of April 2000 and the report of enquiry had been submitted to the Disciplinary Authority (DA) on 20th May 2000.

11. The Respondent No.1 then filed CM No.5492 of 2000 in WP (C) 4785 of 1996 for a restraint order against NTPC from taking action on the enquiry report and for setting aside the said report. The Court passed fresh directions on 15th November 2000 in LPA No.287 of 1999 requiring the enquiry to be completed within a period of 12 weeks from 15th December 2000. Respondent No.1 was held entitled to TA/DA as per rules. NTPC was directed to furnish a copy of the preliminary report to Respondent No.1. The earlier report of the EO and the findings arrived at by him were to be treated as cancelled and not acted upon. The other writ petitions filed by Respondent No.1 were also disposed of.

12. It is averred in the writ petition by the Petitioner further as under:

“The Enquiry Officer decided the sequences and minimum time of cross-examination of the management witnesses on December 15, 2000 as three witnesses for five days, but on the other hand did not conduct any proceedings from December 16, 2000 to January 28, 2001 and from January 31, 2001 to February 18, 2001 and then suddenly changed the sequence on February 20, 2001 and declared that the cross-examination of any management witness would not be allowed to exceed four hours on the pretext of the paucity of time left for completion of the enquiry and fixed a date for production of defence witnesses on March 5, 2001 even before completion of cross-examination of the management witnesses.”

13. It is pointed out that this Court had extended the time for completing the enquiry by a further period of one month. The enquiry proceedings were treated as closed on 29th March 2001. On 13th April 2001 the enquiry report was given against which the Petitioner made a representation which was rejected by NTPC on 1st January 2002. This laid to a dismissal order being passed on 21st June 2002. The memorandum of charge, the suspension order, the enquiry report and the dismissal order were all challenged by Respondent No.1 by filing WP(C) 4673 of 2002 in this Court.

14. In the impugned judgment the learned Single Judge has come to the following conclusions:

(i) The plea of Respondent No.1 that the proceedings against him were prejudiced was not sustainable.

(ii) Even the plea that the order of suspension, memo of charge and the order of appointing the EO were illegal, was also no substance.

(iii) On a perusal of the examination of the MWs between 9th July 1998 and 10th July 1998 the learned Single Judge noted that a Division Bench, in LPA 287 of 1999, had already been given 12 weeks time from 15th December 2000 for the enquiry to be completed i.e. on or before 4th March 2001. There were 9 MWs sought to be examined.

(iv) It was then noted by the learned Single Judge that by a letter dated 20th February 2001 addressed to the EO, the schedule of appearances of the MWs were set down between 19th and 23rd February 2001. In other words, cross-examination of all the MWs had to be completed within 5 days. It is further noted by the learned Single Judge as under:

“It was also stated by the petitioner that he was willing to proceed with the cross examination of Brij Kishore, provided an assurance was given that he would be allowed to complete the cross examination of Brij Kishore before calling the next witness and without imposing restriction of time. In his reply to the letter of Presenting Officer, the petitioner stated that the Enquiry Officer threatened him that the cross examination of Brij Kishore will be declared as closed at 6.00 pm on the same day, even though the same was not completed, which according to the petitioner shall amount to denial of sufficient opportunity of cross examination. It is noted from the proceedings that the cross examination could not take place till 12:15 hrs when the Enquiry Officer decided that the cross examination of Brij Kishore be closed. Thereafter, the enquiry was fixed at 2.30 pm on the same day for the cross examination of Dr. R.K. Sharma.”

(v) It was noted by Respondent No.1 in the minutes of the proceedings on 20th February 2001 as under:

“the contents of the DOS, are incorrect. The cross examination

of Brij Kishore is very essential for the defence of the Charged Officer. The Charged Officer is prepared and willing to cross examine Sh. Brij Kishore if the Charged Officer is allowed to continue and complete.”

15. The learned Single Judge found there was no response from the EO to the effect that the above request of Respondent No.1 was ‘unreasonable’. It was further observed by the learned Single Judge as under:

“The Enquiry Officer should have permitted the cross examination without time restriction. It may so happen that the petitioner could have completed the cross examination on the same day itself. Unfortunately, the Enquiry Officer closed the cross examination of Brij Kishore at 12:15 hrs itself or at least in the forenoon session and directed further proceedings shall be held at 2.30 pm for cross examination of Dr. R.K. Sharma-MW 3. The closing of cross examination at 12.15 pm suggest that Enquiry Officer, has not kept his own words that the cross examination of Brij Kishore shall be completed within the day which surely means at least by evening. The cross examination of Brij Kishore was very important as he was the complainant,, who alleged that the petitioner had assaulted him and in fact on his testimony, the charge against the petitioner had been proved.”

16. The learned Single Judge while dealing with the proceedings before the EO noted as under:

“On February 21, 2001, the petitioner submitted three letters to the Enquiry Officer. In one letter, the petitioner has stated that on December 15, 2000, it was decided by the Enquiry Officer to have examined all three witnesses in five days, to which the Charged Officer extended his full cooperation and prepared himself to complete the cross examination at the rate of three witnesses in five days. But on February 20, 2001, it was stated by the Enquiry Officer that the cross examination of MW 2 Brij Kishore shall be terminated by evening on that day. That apart, time for cross examination of ten witnesses was reduced to five

days, even though 60 working days were given by the Court and the petitioner requested that he be allowed to cross examine MW1 before other witnesses are cross examined.”

17. The learned Single Judge also noted that:

“the stand of the petitioner with regard to the fact that four hours are not sufficient and that he would not commence with the cross unless an assurance was given to him that he would be allowed to complete it, is unreasonable. He should have started the cross examination and if he had not completed it, he could have asked for more time to finish it, as I find from the proceedings, the DWs were examined / cross examined beyond midnight. Having said that, closing of the cross examination of Brij Kishore, that too in the forenoon session only on the ground that the petitioner had not started his cross examination, is not proper and in fact had proved fatal to the petitioner as the charge against the petitioner was established against him only on the oral testimony of Brij Kishore.”

18. The reasons why the learned Single Judge concluded that there was a violation of the principles of natural justice were noted under:

“68. It may be pertinent to note that the entire case against the petitioner was premised on the allegation of assault on Mr. Brij Kishore, and the proceedings were set in motion only following his own letter of complaint dated December 2, 1996. As noted above, the case against the Charged Official was proved only on the basis of Mr. Brij Kishore's examination-in-chief. In facts of the present case, especially when said letter of complaint was not even exhibited during the subject enquiry proceedings, the opportunity to cross-examine the complainant was of utmost value to the Charged Official's defence. That being denied, in a most arbitrary manner, proved to be a most unfair injury to the Charged Official's case.”

19. The learned Single Judge found that the delay in concluding the enquiry

proceedings could not be attributed to the Respondent No.1 after the order dated 15th November 2000 of this Court. The EO was not justified in closing the cross-examination on the purported ground that the enquiry proceedings were getting delayed.

20. This Court has heard the submissions of Ms. Maninder Acharya, learned Additional Solicitor General of India appearing for the Appellant NTPC. The Court was taken through a detailed list of dates in order to show that Respondent No.1 had numerous opportunities for cross-examination and did not avail of them.

21. The learned Single Judge rightly observed that after the order dated 15th November 2000 of this Court, it could not be said that Respondent No.1 contributed to the delay in the conclusion of the enquiry. Indeed, the key MW was Mr. Brij Kishore and it was essential to give Respondent No.1 sufficient time to cross-examine him. A very detailed analysis of the evidence on record has been undertaken by the learned Single Judge and clear and cogent reasons have been given for the conclusion that sufficient opportunity was not given to respondent No.1 to cross-examine Mr. Brij Kishore. Considering that Mr. Kishore's evidence formed the main basis for determining the guilt of respondent No.1, this failure led to the violation of the principles of natural justice resulting in prejudice to Respondent No.1 and which proved fatal to the enquiry. To quote the learned Single Judge:

“73. The aforesaid judgments clearly delineate the scope of judicial review. It is also a settled position of law, as noted from the above, what is a fair opportunity depends upon the facts and circumstances of each case. Surely, where such an opportunity

has been given, the proceedings are not open to be attacked on the ground that enquiry was not conducted in accordance with the procedures followed in Courts. But in the case in hand, as I have already concluded that there was a denial of opportunity to the petitioner to defend himself in the enquiry as he was denied the opportunity of cross examining the main witness and consequently, the proceedings stand vitiated. It necessarily follows that the enquiry report dated April 13, 2001, and the order of dismissal dated June 21, 2002 are set aside.”

22. The above conclusion of the learned Single Judge is consistent with the record of the case and the applicable law and calls for no interference.

23. At this juncture it should also be noted that the relief of reinstatement was in fact not given by the learned Single Judge. It was observed as under:

“74. The question now remains what relief the petitioner would be entitled to. I am conscious of the fact that the subject proceedings have been vitiated on a very technical ground. Normally, in such circumstances, the matter should be remanded back to the Authorities to proceed in the enquiry from the stage where the infirmity has occurred but the enquiry report is of the year 2001 and the order of dismissal is of the year 2002. Sixteen years have elapsed thereafter and the fact remains that the petitioner who has appeared in person, has enrolled himself as an Advocate and may have attained the age of superannuation as well. It would be too; late in the day to remand the matter back to the respondents to proceed with the enquiry from the position where the infirmity has occurred. In the fitness of things, this Court is of the view, the petitioner shall not be entitled to any consequential benefits in the nature of back wages from the date of order of dismissal till the date he has attained the age of superannuation or has enrolled himself as an Advocate. The period of suspension shall also be treated as such but shall be entitled to all retiral benefits either on the date of superannuation or on the date when he ceases to be employee on his being enrolled as an Advocate if he has

enrolled before he had actually attained the age of superannuation. The retiral benefits shall be paid within a period of two months from the date of this order. If the same are released beyond a period of two months, interest@9% shall accrue to the petitioner. The writ petition is disposed of. No costs.”

24. The learned Single Judge thus balanced the equities and granted the only possible relief that could have been granted considering the facts and circumstances and in particular, long passage of time. The Court is informed that Respondent No. 1 has been paid the retiral benefits.

25. The appeal is accordingly dismissed. The pending application is disposed of.

CM APPLs.4367-4368/2019 (exemption)

26. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 30, 2019

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