
(2013) 01 DEL CK 0358
In the Delhi High Court
Case No : LPA 489 of 2009

Azad Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0358

Hon'ble Judges : V.K. Jain, J;D. Murugesan, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Ravi Sikri and Mr. Vaibhav Kalra, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant/petitioner, who was employed with respondent No. 2 National Research Development Corporation was charge sheeted on the allegations that on 11th February, 1988, he threatened and abused, in a drunken state, the Deputy Chief Engineer of the respondent Corporation thereby contravening Rule 22 and Rule 3(iii) CCS (Conduct) Rules which are applicable to the employees of the respondent. During the course of inquiry, a telegram was sent to the appellant/petitioner informing him that he was required to appear before him on 8th October, 1992. The case of the appellant is that the said telegram was received by him on 8th October, 1992 and when he went to the premises of the respondent on that day, he was not allowed to enter the office. Three witnesses were examined on that day in the absence of the appellant. Thereafter, evidence in his defence was led by the appellant who produced as many as 5 witnesses. The Inquiry Officer, vide his report dated 10th February, 1992 held the charges against the appellant to be proved. Vide order dated 28.1.1993, penalty of dismissal from service was imposed upon the appellant. Being aggrieved, he filed appeal to the Board of Directors of the respondent Corporation. The appeal was dismissed vide order dated 30th August, 1993. The penalty awarded to him was challenged by the appellant by way of WP(C) No 2250/1994 which came to be

dismissed vide order dated 4th August, 2009. The learned counsel for the appellant submitted that since the appellant was not permitted to enter the premises of the respondent on 8th October, 1992, the witnesses were examined in his absence and were not recalled for cross examination by him, there was clear violation of the principles of natural justice. It was next submitted by the learned counsel for the appellant that having been appointed at the instance of the complainant, the Inquiry Officer was biased against the appellant and therefore the findings rendered by him came to be tainted with bias.

2. It is an admitted position that the appellant received the telegram dated 7th October, 1992 though he claims to have received the same only on 8th October, 1992. PW-1 to PW-3 were examined on 8th October, 1992 in the absence of the appellant. The record does not indicate that any application was submitted by the appellant to the Inquiry Officer seeking recall of those witnesses for the purpose of cross-examination by him. Relying upon the proceedings recorded by the Inquiry Officer on 21st October, 1992, it was contended by the learned counsel for the appellant that an oral request was made by the appellant to the Inquiry Officer to recall the witnesses who were examined in his absence on 8th October, 1992 but the request was declined. The relevant extract from the proceedings dated 21st October, 1992 reads as under:-

The CO has requested that he could not attend the office on 08.10.192 because he was not permitted to enter the office premises. And that he received the telegram on 08.10.92 according to him. As per Ex. D-1, the telegram is dated 7.10.92, the post office stamps shows the same date. The CO also did not contract the reception office for entry for attending the inquiry. Due notice of inquiry was given to CO well in advance. In the circumstances, I cannot reverse the process already completed.

In our opinion, the above referred proceedings do not indicate that a request was made by the appellant to the Inquiry Officer to recall the witnesses for the purpose of cross-examination by him. It appears to us that the appellant had objected to the witnesses being examined in his absence on 8th October, 1992 and it was this objection of the appellant which was rejected by the Inquiry Officer by saying that he could not reverse the process already completed. Had the petitioner made an oral request for recall of the witnesses examined on 8th October, 1992 and such a request been rejected by the Inquiry Officer without expressly stating so in the order sheet dated 21st October, 1992, nothing prevented him from submitting an application placing this fact on record and making a written request seeking recall of those witnesses.

Admittedly, the appellant examined as many as 5 defence witnesses, 3 of whom were examined on 21st October, 1992. The fact that 3 defence witnesses were examined on 21st October, 1992 clearly indicates that on the said date, the appellant had come prepared for leading his evidence and that is why he had brought the witnesses with him. Had that not been the position, the defence witnesses would not have been present on 21st October, 1992 which was the

next date in the inquiry after 8th October, 1992. We are, therefore, satisfied that the appellant did not make any request to the Inquiry Officer to recall the witnesses examined in his absence on 8th October, 1992. Since the appellant made no request to recall the witnesses examined on 8th October, 1992, and thereby did not avail the remedy that was available to him, we cannot accept his contention claiming denial of natural justice.

With reference to her contention that the Inquiry Officer was biased, the learned counsel for the appellant drew our attention to the communication dated 07.05.1992 issued by the Managing Director of respondent No. 2, whereby Shri D.B. Khanna, retired Deputy Director, ISDM was appointed as Inquiry Officer. She also drew our attention to an earlier order dated 12.08.1988, whereby an inquiry panel of two persons, namely, Shri R.P. Sharma, Deputy Manager and Shri Chander Mohan, Production Officer, was appointed as the Inquiry Officer. The letter dated 07.05.1992 had reference to some telephonic conversation which Shri D.B. Khanna had with the complainant. However, there is no material on record to indicate what was the conversation between the Inquiry Officer and the complainant, which finds reference in the said letter. Admittedly, no representation was made by the appellant to the Disciplinary Authority to change the Inquiry Officer on the ground that he had been in conversation with the complainant. Admittedly, no request was made by the appellant to the Inquiry Officer to recuse himself on the ground that he had been in conversation with the complainant, though he had submitted, in his communication dated 30.07.1992, to the Inquiry Officer that his appointment was in contravention of the rules, since a retired person from outside could not be appointed as Inquiry Authority. No rule prohibiting appointment of a retired officer as Inquiry Officer has been pointed out by the learned counsel for the appellant. A perusal of the impugned order dated 04.08.2009 would show that no plea alleging bias on the part of the Inquiry Officer was taken before the learned Single Judge at the time of hearing of the writ petition. It appears to us from a perusal of the communication dated 30.07.1992 sent by the appellant to the Inquiry Officer that the previous Inquiry Officer had stopped holding inquiry proceedings in the year 1989 and that was the reason for appointment of Mr. D.B. Khanna as the new Inquiry Officer. In these circumstances, we are unable to accept the contention that the Inquiry Officer was a biased person.

No other submission was made before us during the course of arguments. We, therefore, find no merit in the appeal and the same is hereby dismissed.