

(2016) 02 AHC CK 0141
In the Allahabad High Court
Case No : Service Bench No. 985 of 2015

Bharat Sanchar Nigam Ltd.

APPELLANT

Vs

Central Administrative Tribunal Moti Mahal Lko. and Others

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Citation : (2016) 02 AHC CK 0141

Hon'ble Judges : S.S. Chauhan and Ritu Raj Awasthi, JJ.

Bench : Division Bench

Advocate : Madan Mohan Pandey and Gyanendra Singh Sikarwar, for the Appellant; R.C. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Chauhan, J.—1. This writ petition has been filed challenging the order dated 10.04.2015 passed by the Central Administrative Tribunal, Lucknow, by means of which, the original application filed by the respondent No. 2 has been allowed.

2. The facts, in short, are that a charge sheet dated 27.10.2004 was filed against the respondent No. 2 on 26.10.2006 and an enquiry officer was appointed to enquire into the matter. The enquiry officer submitted the enquiry report on 19.6.2008 exonerating the respondent No. 2 as the charges against him was not found proved. The disciplinary authority by letter dated 11.06.2009 issued a disagreement note/show cause to the respondent No. 2, who submitted his representation on 06.07.2009. When no decision was taken on the said representation, the respondent No. 2 filed Original Application No. 9/2010, which was ultimately dismissed on 13.05.2011. After dismissal of the said original application, Writ Petition No. 1479 (SB) of 2011 was filed before this Court and this Court disposed of the same on 16.8.2011, giving liberty to the respondent No. 2 to make an additional representation, if he so intends, within a week. It was also provided that all such pleas, which have been raised in the writ petition, if are raised in reply to the show cause notice, the same be considered and decided by the disciplinary authority by a speaking order and the appropriate

final order be passed, within a maximum period of eight weeks from the date of receipt of a certified copy of the order, after taking necessary steps, as may be required under law. The Court has further given liberty to respondent No. 2 to challenge the order, so passed, if it goes against him, in accordance with law in appropriate forum.

3. The respondent No. 2 thereafter filed an additional representation on 22.8.2011, on which, A.K. Purwar, Chief GMT UP (East) Circle, Lucknow, being the competent Disciplinary Authority in exercise of powers conferred under BSNL CDA Rules 2006, has ordered to impose penalty of 5% reduction in the full pension otherwise permissible for a period of one year with immediate effect and full pension shall be restored on completion of the period of one year on Shri S.C. Saxena, DE (Retd.). This order was passed on 09.04.2012.

4. The respondent No. 2 thereafter filed an Original Application No. 430/2012, which was disposed of with the direction to file an appeal before the appellate authority. The respondent No. 2 filed an appeal against the order dated 09.04.2012, which was dismissed vide order dated 28.03.2013.

5. Submission of learned counsel for the petitioners is that the charges against the respondent No. 2 were in regard to financial bungling and, therefore, the punishment order, which was passed by the disciplinary authority was in accordance with law and reduction of 5% pension cannot be faulted in any manner. He also submits that without floating tender, the respondent No. 2 has accepted the PCO Sign Boards in Etawah SSA, which were on a higher value side. Certain audit objections were raised, on the basis of which, proceedings were initiated against the respondent No. 2.

6. Learned counsel for the petitioners further submits that the rates on which supply was accepted by respondent No. 2 could not be justified and because of the fact that the tendering process was given a go-bye by respondent No. 2, the punishment imposed is in accordance with law.

7. Learned counsel for the petitioners has placed reliance upon the following cases:

"(1) Union of India and others v. Upendra Singh , (1994) 3 SCC 357;

(2) Union of India v. Parma Nanda , (1989) 2 SCC 177."

8. Learned counsel for respondent No. 2, on the other hand, has submitted that there was tendering in various SSAs and respondent No. 2 adopted the rates below the purchase of Sign Boards for Faizabad SSA on the basis of tender. There was approval of the competent authority and after approval of the competent authority, the said purchases were made and there was no loss to the Government. Learned counsel submits that the only irregularity, which was committed was that the tender process was not adopted by respondent No. 2 and the rates were also kept on the lower side while accepting the supply of PCO Sign Boards.

9. Learned counsel for the respondent No. 2, in support of his submission, has placed reliance upon the following cases:

"(1) Bhiwani Central Cooperative Bank Limited, Haryana v. Registrar, Cooperative Societies, Haryana and Another , (2010) 15 SCC 517;

(2) Shyam Kant Tiwari v. State of Madhya Pradesh and others, , 1986 (II) LLJ, 404 MP;

(3) Arun Kumar Alva v. The Vijaya Bank, , 2006 (III) LLJ 385 Kant;

(4) Balbir Chand Vs. Food Corporation of India Ltd. and others, , 1997 SCC (L&S) 808;

(5) R.K. Sharma v. Union of India and others, , 114 (2004) DLT 556;

(6) Yoginath D. Bagde v. State of Maharashtra and another, , 1999 SCC (L&S) 1385; and

(7) Shekhar Ghosh v. Union of India and another, , (2007) 1 SCC (L&S) 247."

10. We have heard learned counsel for the parties and perused the record.

11. The Tribunal while considering the case of respondent No. 2 came to the conclusion that this was the third round of litigation before the Tribunal where the issue has come up before the Tribunal in respect of reasons of disagreement while issuing show cause notice. The Tribunal while considering the aforesaid issue came to the conclusion that the reasons of disagreement, which has been indicated, also contains a decision, which stated that "Hence the charge is proved to this extent".

12. The Tribunal has relied upon a decision of the apex court in the case of Yoginath D. Bagde Vs. State of Maharashtra and another, , 1999 SCC (L&S) 1385, and basing its reasoning on the aforesaid case, came to the conclusion that notice itself was vitiated in the eyes of law. The Tribunal in Para-5 of the judgment observed as under:

"5. This is the third round of litigation before this Tribunal itself wherein the applicant from the very outset is questioning the disagreement note/show cause notice which was served upon him on not agreeing with the findings of the enquiry officer by the disciplinary authority. The applicant from the very beginning is raising the legal question that whether the disagreement note should contain a decision or not? As per rule, disagreement note is only to provide a tentative reasoning why the disciplinary authority is not agreeing with the findings of the enquiry officer's finding but not to disclose whether any change or punishment is in the mind of the disciplinary authority or not. It is very much clear from the disagreement note that by writing a line "Hence the charge is proved to this extent", the disciplinary authority has undoubtedly disclosed his mind. A show cause notice in the form of disagreement note has been issued but he has already reached the conclusion that the charge is proved

which shows that the disciplinary authority without going into the facts and circumstances of the case and without getting the reply from the applicant and without considering his reply, already reached to the conclusion that charge is proved. The disciplinary authority should have waited for the reply given by the applicant and if not found satisfactory, he would have passed an order by proving the charges. In the case of *Yoginath D. Bagde Vs. State of Maharashtra* and another reported in , 1999 Supreme Court Cases (L&S) 1385, the Hon''ble Apex Court has held that "Show cause notice issued in the present case to appellant with regard to proposed punishment, held, did not meet requirement of the law because final decision to disagree with the Enquiry Officer had already been taken before issuing show cause notice. The Hon''ble Apex Court has held that opportunity of hearing has to be given to the charged employee before reversing findings of the enquiry officer. Requirement of affording opportunity of hearing is a consequential right to be heard. Disciplinary authority before forming its final opinion, has to convey to charged employee its tentative reasons for disagreeing with the findings of enquiry officer." Here, we find in this case the disciplinary authority has failed to record the tentative reasons but reached the conclusion that charge is proved. Hence, giving opportunity to the applicant to reply or showing cause is rendered futile or just to make up the procedure. Hence in obvious reasons violates the principle of natural justice. The decision of the disciplinary authority was forgoing conclusion as the post decisional hearing cannot be called for as the disciplinary authority had already make up his mind while giving an opportunity of filing reply."

13. The Tribunal also found that since there was common cause, then why a common proceeding has not been initiated by the petitioners, ignoring Rule 18 of CCS (CCA) Rules, if there is a common cause of action and in order to avoid multiplicity of proceedings and to decide the alleged misconduct by a common proceeding.

14. No doubt, there was other persons also, who were responsible for purchasing the PCO Sign Boards apart from respondent No. 2, but instead of drawing a common proceeding, the petitioners preferred to initiate disciplinary proceedings individually. A specific plea was taken by the respondent No. 2 in this regard before the Tribunal and the Tribunal after relying upon the judgment in the case of *Balbir Chand (supra)* came to the conclusion that joint proceedings ought to have been held. The aforesaid defect was accepted by the Tribunal and a finding has been recorded by the Tribunal for quashing the proceedings.

15. The Tribunal also found that the respondent No. 2 had retired on 31.12.2007 and the enquiry report was submitted on 19.06.2008, completely exonerating the respondent No. 2.

16. In view of the liberty given by the High Court for making an additional representation, the said representation was considered with total non-application of mind, by the disciplinary authority and the points raised in the additional representation were not considered at all. The respondent No. 2 was exonerated

from all the charges and the question of grave misconduct and negligence has to be considered in the light of the aforesaid facts. The enquiry officer found that the approval has been sought from the higher authority and that the appellate authority has not given any reason and has proceeded to dismiss the appeal by a non-speaking order, so the order was also vitiated.

17. The case laws relied upon by the learned counsel for the petitioners have been rendered in different context, but so far the reliance placed by the learned counsel for the respondent No. 2 upon the aforesaid cases is concerned, we find that the disciplinary authority had proceeded on the recommendation made by the enquiry officer, wherein it was said that the charge stood proved. Apart from it, in the cases of Balbir Chand (supra) and R.K. Sharma (supra), common cause of action exists and more than one persons are involved.

18. In view of Rule 18 of CCS (CCA) Rules, the judgment rendered in these circumstances cannot be said to be arbitrary or illegal and it requires no interference by this Court.

19. The writ petition is devoid of merit. It is accordingly dismissed.