
(2013) 04 DEL CK 0380
In the Delhi High Court
Case No : Writ Petition (C) 4126 of 2011

CAPART and Another

APPELLANT

Vs

B.R. Suman

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 04 DEL CK 0380

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.K. Rungta, with Mr. Prashant Singh, Ms. Pratiti Rungta and Ms. Rashmi Jajosia, for the Appellant; Asha Jain, for the Respondent

Judgement

Pradeep Nandrajog, J.—Notwithstanding that the matter reached the Central Administrative Tribunal when a writ petition filed by the respondent in this Court challenging the penalty of compulsory retirement imposed upon him came to be transferred to the Central Administrative Tribunal where it was registered as TA No. 1446/2009, vide impugned decision dated May 06, 2011, the Tribunal has not dealt with the evidence led before the Inquiry Officer. The penalty has been quashed holding that the charge sheet containing the charge and the statement of imputation accompanying the charge sheet were vague, indefinite and incomplete. Needless to state the underlying reasoning of the Tribunal is that such a charge sheet would cause an obvious prejudice. Secondly, the Tribunal has held that neither the charge sheet nor the statement of imputation accompanying the charge sheet make out any misdemeanour. On January 12, 1998 vide Memorandum No. 14-5/95 AED a charge sheet containing Articles of Charge, Statement of Imputation, List of Documents through which the charges were proposed to be proved, and the witnesses intended to be examined were served upon the respondent. The substance of the Article of Charge reads as under:-

SUBSTANCE OF ARTICLE OF CHARGE AGAINST SHRI B.R. SUMAN, ASSISTANT

DIRECTOR, CAPART

In 1993-94 while functioning as AD, Sh. Suman had dealt with a project of voluntary organization namely Gulab Singh Mahila and Bal Kalyan Sangh, Dist. Siwan (Bihar) for construction of 40 Hand-pumps in Gandey Block of Giridh Dist. The proposal was received in CAPART through Sr. Dir (Sh. Machhal) on 27.10.94, and it was processed, examined and approval of competent authority obtained on the same date. Sh. Suman had issued the sanction next day i.e. on 28/10/94. The RA, in his examination of the proposal had alluded to previous projects executed by the above VO and also a favourable report of a monitor on earlier sanctioned projects. Sh. Suman has not asked for any such previous reference for proper examination of the fresh proposal. Nor Sh. Suman had pointed out, in his note, an important factor that the VO was based in district Siwan though the project was for Giridh Distt., 300 kms away.

An important pre-requisite for release of CAPART financial assistance is a resolution of executive body of VO accepting terms and conditions of CAPART's sanction. This resolution was reportedly passed by the VO at 8 AM on 30/10/94, at Siwan and was personally handed over to CAPART's officers on the very next day i.e. 31/10/94. This is obviously improbable. Apparently the representation of the VO had already brought the resolution along with him on 27/10/94, on receipt of the acceptance resolution. The proposal for release of Rs. 4.8 Lakh was dealt with on the same day i.e. on 31/10/94, by RA (M.P. Singh) and AD (Suman). For certain reasons, the release of funds could not take place. Nevertheless, Shri Suman had exhibited undue haste in examination of the project and in that extent Shri Suman had contravened Sub-Rule 3(1)(I) of CCS(Conduct) Rules, 1964."

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLE OF CHARGE AGAINST SHRI B.R. SUMAN, ASSISTANT DIRECTOR, CAPART (HQ).

During 1993-94, while functioning as Assistant Director in CAPART, Sh. Suman had dealt with a project file of a voluntary organization namely Gulab Singh Mahila and Bal Kalyan Sangh, district Siwan (Bihar) for construction of 40 hand pumps in Gandey block of Giridh district. The proposal was examined by Sh. M.P. Singh on 27/10/94, on which it was received from the project holder through Sr. Dir. (Sh. Machhal). Sh. M.P. Singh had recommended sanction of the project costing Rs. 7.16 lakhs. RAs note was endorsed by Sh. Suman on the same date i.e. 27/10/94, on which date it also received the approval of Sr. Dir. Machhal and the then Deputy Director General (Prasad). The sanction was issued by Sh. Suman on 28/10/94. The resolution accepting terms and conditions of sanction was furnished by the project holder on the 31/10/94, and the case was put up for release of Rs. 4.8 lakhs on 31/10/94 by Sh. Suman and it was approved by Sr. Dir. Machhal and DDG (P) on the same date. Sh. Suman had even signed he fair forwarding letter for release of funds. (for certain reasons the amount was not released to the VO). The facts of the case reveal that the project proposal

was received on 27/10/94, was examined, processed and approved all in one day i.e. on 27/10/94. The sanction letter was issued the next day on 28/10/94. Thus the entire project got approval in just three consecutive working days (29th and 30th October, 1994 being closed holidays). It appears that VO was just sitting in Delhi along with acceptance resolution. It is further noticed that VO has not provided relevant details of the project and even then the approval was accorded. Sh. Suman had also processed release of funds to the extent of Rs. 4.8 lakhs though for certain reasons the money was not released.

2. The RA (Shri M.P. Singh) had, in his explanation dated 27/10/94 alluded to certain earlier projects being implemented by the VO and a favorable report of a monitor on an earlier project of this VO. Shri Suman had not cared to ask for linking of any such project file. Another vital factor which was not highlighted by Shri Suman in his note was that the VO was based at Siwan while the project purported was proposed for Giridh, about 300 kms away.

3. In his explanation dated 31/7/95, Shri Suman had pointed out to verbal instructions of higher authorities to take up state water technology, mini mission projects in drought prone districts on priority basis. Hence he had recommended this project but this fact too had not been pointed out in his examination of the proposal on 27/10/94.

4. Shri Suman has also asserted that it is not difficult for a VO to go to Siwan and obtain the acceptance resolution within 2 days.

5. Shri Suman has also stated that the file though marked to him by Sr. Dir. On 28/10/94, was not actually seen by him. On scrutiny of papers it is observed that Shri Suman had signed the fare sanction letter and also signed the note sheet on 28/10/94. His plea that he had not seen the file on 28/10/94 is not correct.

6. Thus by his hasty and slipshod examination Shri Suman had exhibited lack of integrity and contravened Sub Rule 3(1) (I) of the CCS (Conduct) Rules, 1964.

2. Evidence was led at the inquiry. Witnesses were examined. The Inquiry Officer submitted a report indicting the respondent.

3. On analyzing the evidence the Inquiry Office came to the conclusion that the examination of the substantive issues involved in the project was conducted in a slipshod manner. The project involved release of huge funds to a private party and the examination was incomplete to the extent that while the cost projection originally worked out by the voluntary organization was for a sum of Rs. 13,29,500/- for 40 hand pumps @ Rs. 33,237.50 per unit, the subsequent recommendations made by the Research Assistant was for 30 hand pumps @ Rs. 23,000/- per pump without giving any reason for deduction in the unit cost; the same was opined to be prima facie arbitrary. He further noted that at said stage, the respondent was presented with a Note that was incomplete in several aspects as it did not disclose under what scheme the grant had been sought; whom it covered; who was eligible to receive it and for what purpose. He further noted

that at said stage due to lack of information the respondent was bound to scrutinize the Note properly but he did not do so. He overlooked the incompleteness of the Note. He ought to have put a note that additional information was warranted before placing the matter before the senior officers for approval. This casts, as per the report of the Inquiry Officer, a doubt on the genuineness of the examination conducted by the respondent. The Inquiry Officer noted that it emerged from the record that the project had been processed from the stage of its receipt to its approval by the competent authority in one stride in a single day on October 27, 1994, passing through four scrutiny levels: the Research Assistant, the Additional Director, the Senior Director and the Deputy Director General and the same clearly evidenced that the decision had been taken in a hasty manner. The Inquiry Officer also observed that the sanction letter was handed over to the Project Holder on October 28, 1994, but the time had not been recorded on the file. Record also showed that the organization submitted its acceptance resolution vide letter dated October 30, 1994 and the same was personally handed over to the Senior Director by the Project Holder on the next date i.e. on October 31, 1994. The Research Assistant processed this communication on October 31, 1994 itself and forwarded it to the respondent. The same travelled all the way up to the Deputy Director General who also approved it on the same day and thus, the element of haste was quite apparent. Furthermore, the quality of examination of the acceptance resolution also indicated an uncanny and inexplicable haste in processing the case. The inquiry officer held that on the basis of the evidence on record, the charge against the respondent stood proved.

4. The Director General accepted the findings of the inquiry officer and proposed to impose the penalty of withholding of two increments with cumulative effect. The case was then referred to the Central Vigilance Commission which opined that a suitable major penalty be imposed. Subsequently, the case of the respondent was considered at the 29th meeting of the Executive Committee of CAPART, held on March 24, 2000, wherein the committee felt that his continuance in service would not be in public interest and accordingly imposed the penalty of compulsory retirement upon the respondent.

5. Aggrieved, the respondent filed WP(C) No. 927/2012 before this Court which was transferred to the Central Administrative Tribunal since a notification was issued requiring service disputes of employees and CAPART to be decided by the Central Administrative Tribunal, where the writ petition was registered as TA No. 1446/2009.

6. Without considering the report of the Inquiry Officer, the Tribunal has held that the charges were vague and indefinite. The Tribunal opined that it was not the charge that the evaluation of the proposal was improper, perfunctory, superficial, mechanical or slipshod. The Tribunal held that the charge-sheet did not allege a nexus between the charged officer and the voluntary organization. The charge-sheet did not cast a doubt on the integrity of the respondent nor the capability of

the voluntary organization.

7. Aggrieved, the respondent before the Tribunal i.e. CAPART has filed the instant writ petition.

8. Whereas learned senior counsel for the petitioner would urge that the charge-sheet was neither vague nor indefinite. Learned senior counsel urged that the charge-sheet has to be read in conjunction with the statement of imputations of the misconduct. Read co-jointly, counsel urged that the charge specifically brought out against the respondent was of : (i) Presenting an incomplete note; (ii) Receiving the sanction proposal on October 27, 1994, a slipshod approach was adopted post haste with a proposal to sanction submitted the very next day i.e. October 28, 1994; (iii) Respondent did not ask for previous reference pertaining to evaluations of fresh proposals; (iv) Petitioner never pointed out an important factor that the voluntary organization was stationed 300 km away from the place where the work had to be executed; sanction letter was handed over to the Project Holder the same day i.e. October 28, 1994 and since a resolution was required from the Project Holder accepting the sanction, a resolution under cover of a letter dated October 30, 1994 was received on October 31, 1994, which was obviously improbable. Though the reason of the improbability has not been stated, but it apparently is that it was near impossible for anybody to take the letter accepting the offer to Siwan and return by October 31, 1994 armed with a resolution.

9. It is settled law that at domestic inquiries the level of probability to sustain an indictment or to establish the same is with reference to a probability which a man with reasonable prudence can infer. Any evidence which is indicating towards a guilt is sufficient evidence as long as it is relevant. Those who indulge in corruption do not do so openly and brazenly. Corrupt acts are always sugar-coated.

10. It may be true that a quick pace to deal with a file would not be indicative of any covert intent, but where the quick pace is accompanied by a slipshod evaluation; no reference made to past instances and relevant facts which need to be considered by the superior authorities are not highlighted, it would be a case of more than what meets the eye.

11. Looked at from aforesaid service jurisprudence it is apparent that the charge-sheet brings out definite features of the charge, which we have noted herein above, and surely it cannot be said that the charge-sheet is vague or indeterminate. That the department could lay no hands to allege illegal gratification received would not mean that the charge cannot stand. Surely, if a government servant acts with impropriety to cause a benefit to somebody, even if the act is gratuitous, would attract a disciplinary inquiry. Corruption and bribery, except for when a trap is laid is difficult to be established.

12. We wish that the Tribunal had spent some time to read the report of the Inquiry Officer to appreciate what finally emerged pursuant to the charge-sheet.

13. Since learned counsel for the respondent had cited certain decisions we proceed to note the same as under:-

(i) State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.,

Through LR's;

(ii) Sawai Singh Vs. State of Rajasthan,

(iii) Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, and

(iv) Veerappa Pillai Vs. Raman and Raman Ltd. and Others,

14. The decisions rendered in Mohd. Sharif's case (supra) and Sawai Singh's case (supra), merely reiterate the already well established principle of law that the charged officer must be given a fair opportunity to defend himself and in order to effectuate the same the Articles of Charge must clearly state the material facts pertaining to the acts of misdemeanor, and failure to comply with the same would result in the violation of the principles of natural justice.

15. In Narinder Mohan's case (supra), the Supreme Court held that the High Court while exercising its writ jurisdiction, needs to examine as to whether evidence adduced before the enquiry officer is in nexus with the charge which could subsequently establish guilt or innocence of the employee. An Enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

16. In Veerappa Pillai's case (supra), the Supreme Court observed that writ jurisdiction under Article 226 of the Constitution was intended to enable the High Courts to issue writs in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it or in violation of natural justice or refuse to exercise jurisdiction vested in them or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice and that the high courts were not to convert themselves into a court of appeal to examine the correctness of the impugned decision.

17. Thus, the said decisions are of no use to us; indeed no decision on the subject would be of any use for the reason whether a charge sheet is vague or incomplete would be a matter pertaining to each individual charge sheet; of course such cases may be exceptional where there are more than one co-delinquent and identically worded charge sheets are issued to them. Obviously, a favourable decision obtained by anyone of them that the charge sheet is vague can be cited as a precedent by the other.

18. In para 9 above we have extrapolated the specific averments in the charge sheet which were highlighted by learned senior counsel for the petitioner and the same would evidence that the charge sheet is not vague. The charge sheet does not simply highlight an undue haste. It highlights that in the backdrop of the undue haste the misdemeanour is of accepting an incomplete proposal submitted

by the immediately junior officer i.e. the Research Assistant; it highlights that without making an endeavour to refer to a past precedent, the file was moved forward for approval without indicating to the superior authority the incompleteness in the proposal. It highlighted that the superior authority was not informed that the proposer had its headquarters 300 kms away from where the work was to be executed. The charge sheet also brought out that the allegation was of acting in concert with the voluntary organization whose representatives came pre-armed with a letter enclosing therewith a resolution of the voluntary organization to accept the terms of the grant; and certainly we would highlight that if this was so the same would be good evidence of a pre-plan. Ignoring our observation, which is inferential, we highlight that the charge sheet lists the misdemeanour of acting in concert in that a pre-armed resolution being available with the representative of the voluntary organization.

19. We speak no further with respect to the evidence led before the Inquiry Officer for the reason we find that while challenging the penalty the respondent has attacked the report of the Inquiry Officer and hence the penalty, and since the learned Tribunal has not dealt with said aspect of the matter, TA No. 1446/2009 has to be restored for fresh adjudication by the Tribunal on the remainder issues, save and except the challenge to the charge sheet on the plea that it is vague and indeterminate.

20. The petition stands disposed of setting aside the impugned decision dated May 06, 2011. TA No. 1446/2009 is restored for fresh adjudication before the Central Administrative Tribunal in terms of para 20 above. A closing word. While dealing with the impugned decision, we have made a reference to the reasoning contained in the report of the Inquiry Officer, only to bring home the point to understand the nature of the indictment as per the charge sheet and this reference by us would not be treated as an expression on the merits of the report of the Inquiry Officer. Our observations on the report of the Inquiry Officer were limited to a reflection on the contents of the charge sheet, to understand the same and no more. Thus, at the remanded stage the Tribunal would decide the matter uninfluenced by any observations made by us with respect to the report of the Inquiry Officer.