

(2008) 04 DEL CK 0110
In the Delhi High Court
Case No : LPA 163 and 231 of 2007

Cement Corpn. of India Ltd.	Vs	APPELLANT
M.L. Aggarwal and Another		
Another Vs Cement Corporation of India Ltd.		RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Cement Corporation of India Ltd. Conduct, Discipline and Appeal Rules — Rule 27, 30, 41, 45, 7
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 323, 34

Citation : (2008) 149 DLT 291 : (2008) 102 DRJ 702 : (2008) 117 FLR 1126 : (2008) 3 LLJ 265 : (2009) 1 SLJ 238

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Reva Khetrapal, J

Bench : Division Bench

Advocate : Arun Birbal, in LPA 163/2007 and U.S. Chaudhary and Party in Person in L.P.A. 231/200, for the Appellant; U.S. Chaudhary and Party-in-Person in LPA 163/2007 and Arun Birbal in L.P.A. 231/2007, for the Respondent

Judgement

Mukundakam Sharma, C.J.—As both these appeals arise out of a common judgment and order dated 6th October, 2006 passed by the learned Single Judge in one writ petition being W.P.(C) No. 638/1989, Therefore, they were taken up together for consideration and are being disposed of by this common judgment and order.

2. A departmental proceeding was instituted against Sh. M.L. Aggarwal, the writ petitioner who, at the relevant time, was posted as the General Manager of Adilabad unit of respondent No. 1, Cement Corporation of India. Alleging misconduct on the part of the writ petitioner, a charge sheet was served on him which was dated 22nd August, 1986 with the following charges:

Article-I

Sh. M.L. Agarwal, while functioning as General Manager, CCI, Adilabad Cement

Factory, during December, 84 accepted an unsolicited offer of M/s Deep Auto & Allied Industries, Hyderabad, with the intention to cause undue favor to the firm in the matter of procurement of Buckets for Deep Bucket Conveyor. Total value of the purchase was over Rs. 1 lakh but neither the Open Tender Procedure nor the Limited Tender Procedure was followed/adopted. The purchase proposal was prepared on the day the party personally approached, was approved by him and order was placed on a 'Single Party' violating the provisions of the Purchase Policy of the Corporation.

Article-II

Sh. M.L. Agarwal also misused his position and interfered with the work of his subordinates by instructing them to process the matter as per his wishes in total disregard of the prescribed procedure of the Corporation.

Sh. M.L. Agarwal, by his above acts, exhibited lack of integrity and conduct, unbecoming of a Senior Executive of the Corporation, thereby violating Rule 7 read with Rule 27(x), (xviii) and (xxxi) of the CCI Conduct, Discipline & Appeal Rules."

3. The writ petitioner submitted his reply to the aforesaid charge sheet, which was found to be unsatisfactory by the Disciplinary Authority, who ordered for conduct of a regular inquiry against the writ petitioner. Sh. S.K. Roy was appointed as the Inquiring Authority, who incidentally was also the Inquiring Authority for the Central Vigilance Commission, Government of India. During inquiry, the Inquiry Officer examined the witnesses produced by the Corporation as also by the delinquent officer and also took notice of various documents on record. The Inquiry Officer also assessed the evidence and recorded detailed findings, to which reference shall be made at the time of our discussion at a later stage. The Inquiry Officer submitted a detailed inquiry report on 28th December, 1988. The aforesaid inquiry report was placed before the disciplinary authority and is also part of the record placed before us. On consideration of the entire record, as also the report of the Inquiry Officer, the disciplinary authority agreed with the inquiry report and passed an order dated 9th February, 1989 holding that both the Articles stand proved in the inquiry proceeding. Having regard to the findings of the inquiring authority, the disciplinary authority imposed the penalty of removal from service in view of cogent and sufficient reasons.

4. As against the aforesaid order, an appeal could have been filed by the writ petitioner for there is provision for filing an appeal under the disciplinary appeal rules called 'Cement Corporation of India Limited Conduct, Discipline and Appeal Rules'. The nature of penalties have been set out in Rule 30 thereof wherein it is provided that minor penalty would consist of censure, fine, withholding of increment or promotion whereas major penalties included suspension, reduction to a lower grade or post or a stage in a time scale, removal from service and dismissal from service. Rule 41 of the said Rules makes provision for filing an appeal against the order imposing penalties. As to who would be the appellate

authority is also provided under the provisions of the Rules itself and is mentioned in the Schedule. There is also a power of review prescribed under Rule 45 of the Rules. The said power is vested on the Board or the Chairman and Managing Director of the Corporation. It is, however, required to be mentioned at this stage that the writ petitioner neither filed any appeal nor any review application and bypassing the said provisions, filed a writ petition in this Court.

5. The Learned Single Judge considered various pleas taken up by the writ petitioner and on consideration of the record found that the inquiry against the writ petitioner was conducted in accordance with the provisions of the Rules. It was also held that reasonable opportunity was given to the writ petitioner in respect of examination of the witnesses and also with regard to inspection of documents in the inquiry proceedings and, Therefore, it was held that the writ petitioner could not have any grievance regarding violation of the principles of natural justice in any manner. The learned Single Judge also held that the report of the Inquiry Officer was not perverse as he had considered all the relevant aspects and, thereafter, finding all the charges proved, returned a finding against the writ petitioner. The learned Single Judge further observed that it was not disputed before the court that strictly speaking, the rules of repeat orders did not allow purchases by one unit on the basis of purchases made by other units and to treat the same as repeat orders. It was also observed that the various documents placed on the writ record by the petitioner did not form part of the inquiry report and thus could not be considered while disposing of the writ petition. Having recorded the aforesaid observations and findings, it was concluded by the learned Single Judge that the report of the Inquiry Officer was not perverse and that the court cannot become an appellate authority and scrutinize the findings and come to a different finding altogether. It was, Therefore, held that the charges were proved, and, the only thing left to be considered was the question of quantum of punishment. While considering the said aspect, the learned Single Judge held that the petitioner was guilty of the misconduct and he had to be suitably punished for the same, but the nature of misconduct being more in the nature of violation of practice and procedure than in the nature of corruption, the extreme penalty of removal from service was shockingly disproportionate to the offence.

6. Having recorded thus, the learned Single Judge quashed the impugned order of punishment and directed the Disciplinary Authority to consider afresh the punishment to be imposed on the petitioner and pass a fresh order. It was also ordered that for the purpose of pay and allowances etc., the petitioner will be relegated to the same status as obtained immediately preceding the order of punishment subject, however, to the punishment eventually imposed.

7. Being aggrieved by the said judgment and order, the Corporation as also the writ petitioner filed appeals in this Court, on which notices were issued. In the appeal filed by the Corporation, an interim order was also passed on 2nd March, 2007 staying the operation of the impugned judgment and order. After notices

were served and the records were made available, the appeals were heard, during the course of which we heard the learned Counsel for the Corporation as also the respondent/writ petitioner, who appeared in person, and also his counsel.

8. So far as the Corporation is concerned, their appeal was restricted to the extent of quashing the order of punishment whereas the writ petitioner challenged the finding of the learned Single Judge to the extent that the misconduct alleged against the petitioner stood proved.

9. At the relevant time, the petitioner was working as the General Manager of the Cement Corporation of India, Adilabad Cement Factory. We have already extracted the contents of the charges framed against the petitioner. In the inquiry proceedings, the prosecution examined six witnesses whereas the writ petitioner, who was the delinquent officer, examined three witnesses. The basis of the entire inquiry proceeding is an order for supply of buckets placed on the directions of the writ petitioner. An offer was made by M/s. Deep Auto & Allied Industries on 9th December, 1984, which was handed over to the delinquent officer in his office by Sh. Tejinder Singh, proprietor of M/s. Deep Auto & Allied Industries on 11th December, 1984. It is, however, proved on record that the aforesaid offer was made without there being issuance of any Notice Inviting Tender (NIT) or any indent for supply of the said material by the user department. In the offer of the aforesaid firm, M/s. Deep Auto & Allied Industries, the delinquent officer has recorded 'SSPO for n.a. if there is any requirement?'. From the signature of the delinquent officer, namely, the writ petitioner, it is apparent that he had recorded the same on 11th December, 1984. The indent, as it appears, was also raised on 11th December, 1984 itself after receipt of the aforesaid offer. That also appears to be done on instructions from the delinquent officer. From the indent it is established that there were altogether 57 number of buckets available in the stock on 11th December, 1984, though Ex.S.12 revealed that the actual number of buckets available was 49 instead of 57. The record also proves that the total quantity of the said material issued from February, 1984 to July, 1985 was only 21. Despite the aforesaid facts, the indent was raised on 11th December, 1984 after receipt of the offer and also on the endorsement of the petitioner on the same. The purchase proposal was prepared on 10th December, 1984 (which should be 11th December, 1984 as per the deposition of the witnesses), which was cleared by the Deputy Manager (Mech.) and the Manager (M & S) and concurred by the Manager (Finance), and finally approved by the petitioner without raising any query. It is thus established from the records that the aforesaid formalities were completed by all the officers on 11th December, 1984, the day on which the aforesaid offer was received and when the aforesaid endorsement was made by the delinquent officer by putting his signature. The SSPO has also recorded on the front page that 'As desired repeat order on the basis of order placed by our Yerraguntla unit on them on 24/26.11.84 is proposed?'. The value of the proceeds is shown as Rs. 1,00,005/-.

10. The aforesaid facts, Therefore, clearly establish and prove the following facts:

(a) That there was no indent for the supply of buckets by the user department up to 11.12.84.

(b) That there was no notice inviting or calling tender and no NIT was issued for supply of the said buckets.

(c) That on 11.12.84, the proprietor of a private firm namely M/s. Deep Auto and Allied Industries made an offer to the petitioner to sell these buckets in his office on 11.12.84 which appears to have been made unilaterally. In the said offer made, the petitioner made the endorsement under his signature on the same date i.e. 11th December, 1984.

(d) That the petitioner acted on that unsolicited offer.

(e) That the petitioner then verbally asked the concerned official of the appellant corporation i.e. the SSPO for raising the requirement for the product after receipt of the offer.

(f) That on the same date an indent was raised for the buckets after receipt of the offer even though 57 buckets were available.

(g) That the purchase proposal was prepared, got cleared and ultimately approved by the petitioner on that very day without raising any query as required in the purchase policy.

(h) That the value of the purchased goods as on 11.12.84 was Rs. 1,00,005/-.

(i) That the plea of the petitioner that it was a case of repeat order was not correct.

(j) That as per the prescribed procedure, the purchase could not have been made without raising notice inviting tender and without following the rules of purchase.

(k) That there was wrongful pecuniary loss to the Corporation and corresponding wrongful gain to the private firm.

11. That the writ petitioner tried to explain the aforesaid purchase without calling for tender on the ground that it was only a repeat order. However, on careful perusal of the records, the Inquiry Officer recorded that the same could not have been a repeat order. For becoming a repeat order three main ingredients have to be there i.e:

1) it can be placed only once.

2) It should not exceed the original quantity.

3) There should not be downward trend in prices from the date of placement of original order.

12. In para 16 of his report, the Inquiry Officer recorded the following facts:

16. In the instant case it is seen that there is no record/evidence to show:

(a) that the C.O did ensure that no other unit placed repeat order on the basis of order dated 24/26.11.84 of Yerraguntla unit at the time of placing the Adilabad order dated 11.12.84 (Ex.S.4) as required in terms of Para 6.2.2 of Ex.S.6.

(b) the C.O has not produced any record to show that before the placement of order (Ex.S.4) on 11.12.84 he (the C.O.) actually got the price trend checked up / verified that there was no downward trend in prices of the material question from 24.11.84 to 11.12.84 (the date of placement of the original order (Ex.S.2) as required in terms of Para 6.2.2. of Ex.S.6.

Therefore, it was held by him that the aforesaid order could not have been treated as ?repeat order? for the reasons stated therein.

13.The Inquiry Officer also found that the aforesaid buckets were purchased at a higher price than were paid as against the original order. The Inquiry Officer held that the delinquent officer had not produced any documentary evidence that before placing the order dated 11th December, 1984, he actually got the price index checked that there was no downward trend in prices of the material in question from 24.11.84 to 11.12.84 i.e. from the date of placement of the original order till the placement of the alleged repeat order, for which reason it was also held that the Adilabad order dated 11.12.84 cannot be treated as ? repeat order? of the Yerraguntla unit.

14. The Inquiry Officer has also commented upon the action of the delinquent officer in justifying the increase in the rate of Rs. 565/- per bucket with reference to the rate of Rs. 540/-. The reason for the aforesaid increase, as stated by him, was increase in the prices of iron and steel and the cost of living of the labour etc. The Inquiry Officer, Therefore, also held that it cannot be said to be a repeat order, for, the price of the bucket was increased in the order placed at the instance of the writ petitioner. The aforesaid evidence, which is found to be proved by the Inquiry officer, is based on the documentary evidence and statements of the witnesses. The disciplinary authority agreed with the aforesaid findings recorded by the Inquiry Officer. In case the disciplinary authority agrees with the findings given by the Inquiry officer, no detailed reasons are to be given or to be recorded by the disciplinary authority and such reasons are required to be recorded only when there is disagreement with the findings of the Inquiry Officer. We, however, may not go deep into the said issue as the said position is settled by the Supreme Court in a number of decisions.

15. Since the charges were found to be proved, Therefore, a case of misconduct was made out against the petitioner. The learned Single Judge was justified in holding that the writ court cannot sit as an Appellate Court and it has no power to come to a different finding altogether. The learned Single Judge was also justified in holding that the inquiry report cannot be said to be perverse. There was enough material on the record, as is indicated hereinabove, which proved and established the misconduct on the part of the writ petitioner. He was working as General Manager at the relevant time and was occupying a very high position

in the hierarchy. When such a responsible officer himself violates the rules and the regulations as also the usual practice and procedure for procurement of goods, without there being any NIT, there cannot be any other finding than the finding that the petitioner is guilty of misconduct. In our considered opinion, the guilt and the misconduct of the petitioner stood proved on the basis of the evidence on record, which are explicitly dealt with by the Inquiry Officer. We, Therefore, find no reason to interfere with the findings recorded by the learned Single Judge that the charges leveled against the petitioner stood proved and that there was misconduct on his part.

16. We are, Therefore, now left with the issue as to whether the punishment imposed upon the petitioner was disproportionate to the misconduct alleged and whether the said punishment could be said to be shockingly disproportionate to the misconduct alleged. The charges are proved and the principle and scope of judicial review and test of quantum of punishment is well settled by now by various decisions of the Supreme Court. In this connection, we may refer to a decision of the Supreme Court in *Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain*, . The said case decided by the Supreme Court pertained to a bank officer, who was found to have misappropriated some amount of the bank. In that context it was held that the bank officer is required to exercise higher standards of honesty and integrity, for he deals with the money of the depositors and the customers and, Therefore, it should be his duty to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. It was also held that the court would not go into the correctness of the choice made by the administrator and the court should not substitute its decision for that of the administrator. It was held that the scope of judicial review is limited to the deficiency in decision-making process and not the decision, and that the court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the court, in the sense that it is in defiance of logic or moral standards.

17. We may also refer to the decision of the Supreme Court in the case of *Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari*, wherein in paragraph 15 and 16 the Supreme Court has observed as follows:

15. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

16. To put it differently unless the punishment imposed by the disciplinary

authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

18. We are not oblivious of the fact that the legal parameters of judicial review have undergone a change and the Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality. [See. *Indian Airlines Ltd. Vs. Prabha D. Kanan*, ; *State of U.P. Vs. Sheo Shanker Lal Srivastava and Others*, and *M.P. Gangadharan and Another Vs. State of Kerala and Others*, ; *Shankar Dass Vs. Union of India (UOI) and Another*, and *Ranjit Thakur Vs. Union of India (UOI) and Others*, . We are also equally cognizant of the fact that it is now well settled principle of law that the High Court or the Tribunal in exercise of its power of judicial review could not normally interfere with the quantum of punishment. The doctrine of proportionality can be invoked only under certain situations and the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to the conscience of the Court.

In a recent decision rendered by the Hon'ble Supreme Court in the case of *State of M.P. and Others Vs. Hazarilal*, the Supreme Court in a case where the respondent was working as a Peon in a middle school and was held to be guilty of assaulting another man u/s 323 read with Section 34 of the Indian Penal Code and sentenced to undergo one month's simple imprisonment, which was on appeal, reduced to a fine of Rs. 500/- only, the Supreme Court refused to interfere with the order of the State Administrative Tribunal and held that the punishment of removal from service was grossly excessive as the respondent was inductive of an offence only u/s 323 IPC which did not involve any moral turpitude. The writ petition filed there against was dismissed by the High Court. Dismissing the appeal and rejecting the contention raised on behalf of the appellants that the High Court had committed manifest error insofar as it had failed to take into consideration that neither the Tribunal nor the High Court could have interfered with the quantum of punishment, the Supreme Court held as follows:

5. The case in hand appears to be a gross one. This Court is unable to appreciate the attitude on the part of the appellant herein which ex facie appears to be wholly unreasonable. Respondent had not committed any misconduct within the meaning of the provisions of the Service Rules. He was involved in a matter for causing simple injury to another person. He was not even sent to prison. Only a sum of Rs. 500/- was imposed upon him as fine.

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8. An authority which is conferred with a statutory discretionary power is bound

to take into consideration all the attending facts and circumstances of the case before imposing an order of punishment. While exercising such power, the disciplinary authority must act reasonably and fairly. Respondent occupied the lower rank of the cadre. He was merely a contingency peon. Continuation of his service in the department would not bring a bad name to the State. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence.

19. The question whether in the facts and circumstances of the present case, we would be justified in interfering and applying the doctrine of proportionality and whether in the exercise of power of judicial review under Article 226/227 of the Constitution, we could substitute our own judgment for the judgment of the disciplinary authority, we think not. The doctrine of proportionality has to be applied in appropriate cases as depth of judicial review will depend entirely upon the facts and circumstances of a particular case. Thus, for instance, punishment of removal from service imposed on a Constable for having betrayed public trust by aiding the criminals and helping them to jump bail, could not be held to be wholly disproportionate and calling for invocation of doctrine of proportionality. [See *The Commissioner of Police and Others Vs. Syed Hussain*,]. At the same time, it cannot be lost sight of that a Govt. servant who is convicted for parking his scooter in a no parking area should be dismissed from service [see *Shankar Das v. UOI*]. Right to impose the penalty carries with it a duty and , Therefore, the disciplinary authority entrusted with the power to punish must act with extreme care and circumspection. Extreme penalty of removal or dismissal from service ought appropriately to be handed out only if the offence committed carries with the offending public servant is unceremoniously thrown out of service. On the other hand, if the offence is a mere lapse or fault on the part of the govt. servant, the punishing authority must, in all justice, impose a penalty proportionate to the offence committed. In any event, quantum of punishment is best decided by the disciplinary authority or the Administrative Tribunal concerned.

20. In the present case though we are of the view that there was monetary loss to the Corporation but the same was neither intentional nor it resulted in some monetary benefit to the appellant. Whatever monetary loss was caused to the Corporation, was only of a meagre amount, which too was caused due to some procedural fault on the part of the appellant, and also no element of corruption was alleged. The learned Single Judge dealt with the the issue of quantum of punishment and has given her reasons for holding the punishment to be disproportionate and shocking to the conscience of the Court. The reasons recoded by her are as follows:

13. Finally I come to the question of punishment. The petitioner has been removed from service. It is explained by Mr. Raj Birbal, Senior Advocate appearing for the respondent that this punishment is lesser than the punishment of dismissal inasmuch as the dismissal entails the consequences of debarring the

employee from future employment. So far as the present petitioner is concerned, the two punishment of removal and dismissal are almost the same since the petitioner at this stage is not looking for a new job. The fact disclosed in the inquiry showed that the petitioner violated certain rules. The possibility of violation was caused on account of misinterpretation of rules cannot be ruled out. It is true that the petitioner accepted the unsolicited proposal and obtained an indent on the same very day and placed the order on that very day. However, there is no allegation or any proof that the petitioner obtained any undue advantage out of this deal or that the petitioner caused any pecuniary loss to the respondent. The bucket in question was not perishable products and, Therefore, could be held in store for a long period. The respondent do not allege that the bucket purchased by the petitioner went waste.

14. The petitioner is guilty of misconduct and has to be suitably punished for the misconduct. However the nature of misconduct is more in the nature of violation of practice and procedure than in the nature of corruption. In view of what is stated in the foregoing paragraphs, it appears that the extreme penalty of removal from service is shockingly disproportionate to the offence. The punishment can be reconsidered by the Disciplinary Authority.

21. The aforesaid reasons reflect an angle which is required to be considered by the Disciplinary Authority. It is not clear from the order of the Disciplinary Authority as to whether the aforesaid relevant materials and factors were considered while imposing the punishment of removal on the writ petitioner. We, Therefore, remit back the matter to the Disciplinary Authority for reconsideration of the issue of quantum of punishment to be imposed on the writ petitioner by taking notice of all relevant factors and taking all the angles into consideration, including those mentioned by the learned Single Judge. We also make it clear that we do not intend to express any opinion ourselves on the merits of the issue of quantum of punishment in any manner, except for leaving it to the best judgment of the Disciplinary Authority, who, we are confident, would take all materials including the nature of misconduct into consideration for passing a fresh order of punishment in accordance with law. The Disciplinary Authority shall pass an order within four weeks from the date of receipt of a copy of this order. We also hold that if the writ petitioner is still aggrieved, he will have the liberty to file an appeal in accordance with law. We modify the order of the learned Single Judge to the aforesaid extent only.

22. The appeals stand disposed of accordingly.