(2011) 03 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application No. 13567 of 2004

Kishore Rao D, IAS — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:
All India Services (Discipline and Appeal) Rules, 1969 — Rule 8

Citation : (2011) 03 GUJ CK 0084

Hon'ble Judges : V.M. Sahai, J;G.B.Shah, J

Bench : Division Bench

Advocate : Mukul Sinha, for the Appellant; Mrugen K. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard Mr. Mukul Sinha, leaned counsel for the Petitioner and Mr. Mrugen Vaishnav, learned Counsel appearing for the Respondents.

2. The Petitioner worked as Deputy Chairman, Vishakhapattanam Port Trust (For Short "VPT")during the period from 15th May, 1991 to 7th May, 1993. For a brief period from 15th My, 1992 to 5th November, 1992, he was incharge Chairman of VPT and was exercising all the powers of Chairman as per Major Ports Act, 1963. A charge-sheet was given to him on 6th January, 2000 and he was asked to submit his reply within 10 days and in case the Petitioner did not submit the written statement before the specified period, then, necessary orders would be passed under Rule 8 of AIS(D and A) Rules, 1969. It is necessary to extract Article of charge-sheet framed against the Petitioner which reads as under:

"Shri D. Kishore Rao, IAS, worked as Deputy Chairman, Visakhapatnam Port Trust, Visakhapatnam during the period 15.5.1991 to 7.5.1993. For a brief period from 15.5.92 to 5.11.92, he was incharge Chairman, Visakhapatnam Port Trust and was exercising all the powers of the Chairman as per the Major Ports Act, 1963. Shri D. Kishore Rao, IAS while functioning in the above said capacities during the above mentioned period.

(I) He, without valid reasons, dispensed with the services of Shri Lakshmipathi, the then Chief Engineer of the project of construction of EQ-7 berth and made Shri M.A.R. Ansari, the then Dy. Chief Engineer of the Project.

(II) Though sanction dated 14.2.1992 of the Government of India required the VPT to obtain it''s prior sanction of any revised cost estimate without for the increase to take place actually, yet it was not done

(III) With his knowledge only M/s. Navayuga Engineering Company was associated in the discussion with Prof.P.S. Rao and VPT official about the alternative designs/improvements/quantities. This enable it to know the exact requirement of the VPT and quote the lowest. The other parties were deprived of such opportunity.

(IV) He misled the trustees of VPT that Prof.P.S. Rao recommended M/s. Navayuga Engineering Co. only whereas it was not a fact and thus made them to accept the offer M/s. NEC and place orders on it.

(V) Under his instruction and permission the Secretary of Visakhapatnam Port Trust deleted the clause "Subject to sanction from Government of India" and issued the revised letter of intent dated 2.11.1992 on M/s. Navayuga Engineering Company.

(VI) He did not ensure that his instructions to held discussions with M/s. AFCONS and M/s. NEC were followed. Instead, he simply accepted the proposal of the Senior Tender Committee to hold discussion with M/s. NEC only and thus along with Shri M.A.R. Ansari, Dy. Chief Engineer, VPT and Shri Ramchandra Reddy, VPT had shown undue favours to M/s. Mavayuga Engineering Co. Ltd. , Vishakkapatnam to the extent of Rs. 1.32 crores in the matter of award of work related to construction of EQ-7 birth on 20.11.1992 at a cost of Rs. 12.09 crores as per details mentioned in the imputation of misconduct.

By the above mentioned acts, Shri D. Kishore Rao failed to maintain absolute integrity and exhibited conduct unbecoming of public servant and thereby violated Rule No. 3(1) of AIS (Conduct) Rules, 1968.

This charge-sheet alongwith articles of charge sheet was served on the Petitioner on 16th February, 2000 by the State Government. On the Petitioner''s request, the documents required by him in support of the charge-sheet were furnished to him by the Respondents. The Petitioner was again granted time to submit his written statement of defence, but the Petitioner did not submit the written statement of defence in reply to the charge-sheet in spite of repeated reminders issued to him. Shri Lachhman Singh was the inquiry officer and one Shri S.D. Sharma was the presenting officer. On 14th February, 2000, the Inquiry Officer fixed dates 16.4.2001, 4.5.2001 and 27.7.2001 for inspection of documents by the Petitioner, but the Petitioner did not attend any of the hearing before the Inquiry Officer though he was informed all the dates fixed for inquiry proceedings. When 27th July, 2001 was fixed, the Government of India by its letter dated 16th July, 2001 requested the State Government to inform the Petitioner about the date fixed for preliminary hearing to the Petitioner and the State Government by its letter dated 27th January, 2001 informed the Petitioner about the date fixed for preliminary inquiry on 22nd July, 2001. In spite of the information of dates for inquiry, the Petitioner did not appear before inquiry officer. Therefore, the inquiry officer proceeded to hold the inquiry and submitted his report on 28th November, 2003. The inquiry officer submitted his report to the disciplinary authority. The Petitioner filed O.A. No. 69 of 2004 before Central Administrative Tribunal, Ahmedabad bench. The Tribunal considered the claim of the Petitioner and dismissed the O.A. by granting liberty to the Petitioner to challenge the report of the inquiry officer in appropriate forum, subject to limitation and other legal pleas. It was further directed that if the inquiry officer''s report has not been given to the Petitioner, the same be given to him within a fortnight and the disciplinary authority was directed to take action preferably within two months thereafter. In case, the Petitioner does not file any reply, the disciplinary authority was to pass orders. The Petitioner challenged the order passed by the Tribunal before this Court by means of instant Special Civil Application No. 13567 of 2004.

3. Mr. Mukul Sinha, learned Counsel for the Petitioner has heavily place reliance on the decisions of the Apex Court in .V. Mahadevan v. MDT.N. Housing Board (2005) 6 SCC 636 ; State of Andhra Pradesh Vs. N. Radhakishan, ; State of M.P. v. Bani Singh (1990)(Supp) SCC 783; M.V. Bijlani Vs. Union of India (UOI) and Others, . On the strength of these decisions of the Apex Court, learned Counsel for the Petitioner has challenged the charge-sheet on the ground that the charge-sheet was issued in the year 2000 with regard to the charges of 1992. According to the learned Counsel for the Petitioner, delay of 8 years is fatal and the charge-sheet deserves to be quashed.

4. On the other hand, learned Counsel for the Respondents has urged that CBI has registered case No. 1 of 1997 in the month of January, 1997 for misuse of office as Incharge Chairman, Vishakapattanam Port Trust and submitted its report against the Petitioner in September, 1997. The Ministry of Surface Transport recommended initiation of major penalty against the Petitioner on the basis of recommendation made by the CBI and made a formal proposal to the Department of Personnel and Training, Government of India, New Delhi in September, 1999. Thereafter, the decision was taken to initiate departmental proceedings against the Petitioner and charge-sheet was issued to the Petitioner on 6th January, 2000.

5. From the facts stated above, we are of the opinion that the Tribunal was right in coming to the conclusion that there was no inordinate delay in issuing the charge-sheet as after the inquiry report was submitted by CBI, necessary action was taken by the Respondent though it took some time. Further, from the order of the Tribunal, we find that the Tribunal has permitted the Petitioner to

challenge the inquiry report in appropriate forum and delay in filing the charge-sheet was not inordinate delay and case of the Petitioner would not be covered by the principles laid down by the Apex Court in the decisions cited by the learned Counsel for the Petitioner.

6. Mr. Mukul Sinha, learned Counsel for the Petitioner has urged that CBI in its report has exonerated him. Be that as it may. We are of the considered opinion that there was a delay from 1992 to 1996 in issuing the charge-sheet, but after the report of the CBI, the Ministry of Surface Transport did send the proposal to the Department of Personnel and Training, Government of India, New Delhi for taking disciplinary action against the Petitioner. Thereafter, charge-sheet was issued to the Petitioner on 6th January, 2000. We are of the opinion that delay was not inordinate delay which would render issuance of charge-sheet illegal. The Petitioner did not challenge the charge-sheet immediately after receipt of it. After the report was submitted by the inquiry officer the Petitioner has challenged the charge-sheet.

7. For the aforesaid reasons, we do not find any merit in this petition. The petition fails and is accordingly dismissed. Rule is discharged. Interim relief, if any, stands vacated.