
(2009) 11 DEL CK 0295
In the Delhi High Court
Case No : W.P (C) No. 6227 of 2007

LT. Governor and Others

APPELLANT

Vs

Shri C.L. Bavalia

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3

Citation : (2009) 11 DEL CK 0295

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Sanjoy Ghose, for the Respondent

Judgement

Vipin Sanghi, J.—The petitioners have challenged the order dated 23.04.2007 passed by the Central Administrative Tribunal, Principal Bench, Delhi (The Tribunal) in O.A. No. 1366/2006 whereby the aforesaid original application filed by the respondent was partly allowed. The order imposing penalty of compulsory retirement upon the respondent was set aside. The petitioners were directed to reinstate the respondent in service, however, with consequential benefits as per Fundamental Rules the petitioners were also given liberty to proceed further against the respondent from the stage of drawl of Inquiry report.

2. We may note a few relevant facts at this stage. In Civil Writ No. 245/1992 filed by one Sh. Ram Chander and Ors. (hereinafter referred to as "the said writ petitioners") against Delhi Administration and Anr. this Court on 14.08.2001 passed an order holding that in case the said writ petitioners are in possession of the land in dispute, the possession of the persons in cultivation at the spot should be recorded as per the provisions of the Delhi Land Reforms Act and the Rules framed thereunder. The said writ petitioners were granted liberty to approach the Revenue Authority for appropriate relief. It was directed that if they are found to be in actual possession of the land, the Revenue Authorities will take appropriate action to record their possession in revenue records. The said writ

petition was disposed off with the aforesaid direction.

3. Following the said direction the said writ petitioners filed an application on 03.09.2001 before the Tehsildar (Nazafgarh) requesting him to record their cultivatory possession in the revenue records. The respondent Sh. C.L. Bavalia then Tehsildar (Nazafgarh) placed the matter before the SDM/RA (Nazafgarh) along with his note dated 05.11.2001. The SDM/RA (Nazafgarh) then issued directions, that as per the decision of the High Court aforesaid, Khasra Girdawari be recorded after following the appropriate Rules "i.e. issuing P-5." It was further directed that objections from the Gaon Sabha be also called and be taken into account.

4. Respondent No. 2 then sent another note to the SDM/RA dated 16.11.2001 stating that allotment in favour of the said writ petitioners had been done under the 20 point program in the year 1984 through Pradhan, Gram Panchayat of village Jhuljhuli, but the same was not entered in the revenue record. His note further stated that the case filed by the said writ petitioners before the RA (Punjabi Bagh) had been rejected as being time barred. The Financial Commissioner had also rejected their pleas. He also noted that the said writ petitioners had then moved the High Court wherein a local commissioner was appointed to ascertain the physical possession of the parties in respect of the land in question and to verify that the parties were cultivating the land since the date of their allotment. The respondent further stated that the Halka Patwari (H/P) and Field Kanoongo (F/K) had also visited the site and found that the said writ petitioners were in physical and cultivatory possession of the land in question. The respondent suggested that there was no need for issuing P-5 etc. in such cases because physical possession had already been proved before the High Court. The respondent, therefore, recommended to the SDM/RA (Nazafgarh) for declaration of Assami/Bhoomidari status of the said writ petitioners.

5. The SDM/RA (Nazafgarh) did not grant approval to the suggestion of the respondent i.e. Tehsildar (Nazafgarh). Instead the SDM/RA (Nazafgarh) vide his note dated 19.11.2001 asked the respondent, the then Tehsildar (Nazafgarh) to comply with the High Court's order, which only pertained to the recording of possession of the said writ petitioners, if they were found to be in possession of the lands in question.

6. The respondent however, passed an order on 20.11.2001 requiring the Revenue staff to make an entry in O-4 Register meant for recording change in ownership rights of land for conferring legal rights on the said writ petitioners.

7. On account of the aforesaid conduct of the respondent, the petitioners issued a memorandum dated 05.12.2003 proposing to hold a departmental Inquiry under Rule 14 of the CCS (CCA) Rules 1965 against the respondent. The statement of Articles of Charge framed against the respondent reads as follows:

That the said Sh. C.L. Bawalia, Grade-I of DASS, while functioning as Tehsildar, (Nazafgarh) during the year 2001 committed gross misconduct in as much as he

allegedly connived with a private party and maliciously abused his official position as Tehsildar (Nazafgarh) in order to extend undue advantage to that party regarding possession of land in village Jhuljhuli belonging to Gram Sabha.

Thus the said Sh. C.L. Bawalia, Grade-I of DASS, failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant thereby contravening the provisions of Rule-3 of the CCS (conduct) Rules, 1964.

8. The statement of imputation of misconduct in support of Article of Charge narrated the aforesaid facts and concluded with the remark that the respondent had "failed to maintain absolute integrity and exhibited conduct in unbecoming of a Government servant thereby contravening the provisions of Rule 3 of the CCS (conduct) Rules, 1964". A departmental Inquiry followed. The Inquiry Officer made a detailed Inquiry Report after examining witnesses and considering the defence of the respondent. The finding returned by the Inquiry Officer is relevant and the same reads as follows:

It was imperative and rather a legal duty of the CO Sh. C.L. Bawalia, being then Tehsildar (Nazafgarh) and having sufficient experience i.e. Naib Tehsildar (Nazafgarh) for 1-1/2 years and Tehsildar (Nazafgarh) for about 2 years and 8 months, he must have known the procedure and the legal requirements and entries to be made in revenue records like O-4 register, P-4, P-5, P-5A etc. He himself has admitted in general examination that entries relating to only mutation orders issued by Tehsildar on account of sale, purchase, lease, mortgage, successor in undisputed cases and in addition, mutation orders issued by SDM/RA in disputed cases are made in O-4 register. The P.O. has stated in his brief that the cultivator possession are entered only in P-5 and P-5A forms and not in O-4 register and this statement of the P.O. has not been contested by the C.O. in his brief or otherwise, which means that whatever the PO has stated about entries to be made in P-5 and P-5A is correct. The C.O. in his brief, has simply tried to shift the blame on lower functionaries, forgetting his own orders dated 20.11.2001 for making entries in O-4 register. Thus, it is established that entries relating to cultivatory possession are not made in O-4 register, but in P-5 and P-5A forms. Thus it can be very easily inferred that C.O. has willfully committed irregularities in implementing the orders of the Hon'ble High Court. This amply exhibits irresponsibility and sheer disregard of the law and directions/observations of the higher authority i.e. SDM/RA and gross misconduct and malafides on the part of the C.O. Shri C.L. Bawalia.

Thus, the charge stands fully proved beyond any doubt.

9. The respondent, after receiving the Inquiry Report made a representation which was considered by the disciplinary authority. He accepted the report of the Inquiry Officer. By a detailed and speaking order the disciplinary authority held that the Article of charge framed against the respondent had been proved on the basis of documents placed on record and on preponderance of probability. He concluded that the respondent had failed to maintain absolute integrity and

exhibited conduct unbecoming of a Government servant and thereby contravened Rule 3 of the CCS (conduct) Rules 1964. After taking into account the repercussions of such conduct, the disciplinary authority held that the ends of justice would be met if the respondent is inflicted the penalty of compulsory retirement. Accordingly the said penalty was imposed upon the respondent.

10. The respondent then preferred a departmental appeal before the Lt. Governor. The Lt. Governor also passed a reasoned order dismissing the respondent's appeal and affirming the penalty imposed upon him.

11. The respondent then preferred the aforesaid original application which, as aforesaid, has been partially allowed by the Tribunal by its impugned order.

12. The reasoning of the Tribunal for passing the impugned order, inter alia, is that "whereas the charge against applicant in the imputation is to have connived with the party and recorded an entry in register O-4 with a view to extend undue benefit to the concerned party the EO in his report has not recorded a specific finding as to the connivance of applicant with the party or his extension of undue benefits. What has been established is willful commission of irregularities, which exhibit irresponsibility, amounting to gross misconduct.

13. According to the Tribunal, the findings of the Enquiry Officer, at best, establish the charge of insubordination. The Tribunal notices that the Disciplinary Authority agreed with the findings of the Enquiry Officer and proceeded to inflict the punishment of compulsory retirement on the respondent. The Tribunal holds that the charge of insubordination is extraneous to the memorandum, and that the respondent has been deprived of a reasonable opportunity to defend this part of the charge. Therefore, the Tribunal holds, that the principles of natural justice have been violated and the respondent has been prejudiced. The Tribunal holds that extraneous factors went into consideration of the Disciplinary Authority while passing the penalty order, which has prejudiced the respondent.

14. However, the Tribunal also holds "that the punishment imposed upon the applicant is not on a specific charge but on a composite cumulative charge, which inter alia includes insubordination." The Tribunal observes that it is the bounden duty, as an obligation, of the Appellate Authority under Rule 27 CCS (CCA) Rules to have explored the possibility of procedural infirmity in the Inquiry and that this was not so done by the appellate authority.

15. The Tribunal holds that the allegation of connivance with the private party to extend undue benefit to them has not been established by the Inquiry Officer by recording a specific finding. The Disciplinary Authority and the Appellate Authority have, however, proceeded on the basis that the said charge stood established. This means that the Disciplinary Authority and the Appellate Authority have not concurred with the finding as recorded by the Inquiry Officer. It holds that despite the said disagreement, the respondent was not given an opportunity in this regard. Consequently, the respondent's rights as well as the principles of natural justice have been breached.

16. Ms. Avnish Ahlawat, learned Counsel for the petitioner, has assailed the impugned order passed by the Tribunal by submitting that the Tribunal proceeded on a fundamentally wrong premise that the aforesaid charge framed against the respondent has not been established in his report by the Enquiry Officer. She has taken us extensively through the record, including the memorandum framing the article of charge against the respondent, the imputation of misconduct, the Inquiry report, the order passed by the Disciplinary Authority, the appeal preferred by the respondent and the order passed by the Appellate Authority.

17. She submits that it was not the case of the respondent that the statement of imputation of misconduct in support of article of charge, even if established, did not make out the charge as framed against the respondent. Though the representation made by the respondent upon his being furnished with the Inquiry report has not been placed on record, from the order dated 26.05.2005 passed by the Disciplinary Authority she has shown to us the various grounds taken by the respondent in his defence before the Disciplinary Authority. She submits that the respondent had not rebutted the documents and the orders produced in the Inquiry. Instead, his defence was that he had directed his staff to make entries in O-4 register and never asked them to mention the said writ petitioners as asami bhumidhar. She submits that only at the appellate stage, for the first time, the respondent sought to urge that there was not an iota of evidence on record to establish the fact that he was acting in connivance with the private parties. She submits that even this plea was not correct, inasmuch as, the deliberate, willful, malafide and conscious conduct of the respondent in recording the entries in favour of the said writ petitioners in the O-4 register itself leads to the inference of his connivance with the said writ petitioners as there was no other reason for him to have blatantly defied the directions of the SDM/RA (Najafgarh), who repeatedly directed that after conducting an Inquiry and issuing notice to the Gaon Sabha the entries in P-5 form (khasra girdawari) be made as per the direction of the High Court. She submits that it is the deliberateness and willfulness of the said action, taken in defiance of the orders of his superior, and malafide abuse of his official position by the respondent to extend undue advantage to the private parties, which leads to the inference of the respondent having acted in connivance with the private party.

18. On the other hand, learned Counsel for the respondent has sought to support the decision of the Tribunal. He submits that the respondent had over 33 years of service and this was the only occasion in his long service tenure that the respondent had been chargesheeted. He submits that the fact that the respondent had twice referred the matter to the SDM/RA (Najafgarh) to seek his view shows that the respondent was acting bonafide. He submits that the respondent had reversed the entries made in O-4 register soon after making the said entries in the first place.

19. He further submits that the charge of the respondent conniving with the

private parties and maliciously abusing his official position as Tehsildar (Najafgarh) to extent undue advantage to any party could have been proved only by producing the private parties with whom the respondent had allegedly connived. No evidence of connivance has been produced by the petitioners in the Inquiry. Consequently, the charge of connivance was not established before the Inquiry Officer. He submits that no finding of connivance has been returned by the Enquiry Officer. He submits that the order compulsorily retiring the respondent had been passed by the Disciplinary Authority and upheld by the Appellate Authority on the assumption that the said charge of connivance stood duly proved, which was not the case.

20. He further submits that all that the Tribunal had directed is the reinstatement of the respondent after setting aside the order imposing penalty of compulsory retirement. Moreover, the petitioners have been given the liberty to proceed further against the respondent from the stage of drawl of the Inquiry report and, insofar as consequential benefits are concerned, the same have to be worked out in terms of the Fundamental Rules. He submits that this Court, therefore, should not interfere with the impugned order in its writ jurisdiction.

21. Having heard learned Counsels for the parties and perused the record carefully, we are of the view that the impugned order is contrary to record and cannot be sustained. The fundamental premise, on which the Tribunal has proceeded to pass the impugned order is that the Enquiry Officer did not return a finding of the respondent having connived with the private party and of the respondent having maliciously abused his official position as Tehsildar (Nazafgarh) in order to extend undue advantage to the private party. This finding of the Tribunal, in our view, is patently incorrect. Pertinently, the charge framed against the respondent was founded upon documents and record, about which there was hardly any dispute. The respondent admitted that he had issued directions to the revenue staff to make entries in favour of the said writ petitioners in O-4 register. The said direction had been issued by the respondent without even issuing notice to the Gaon Sabha. Moreover, the said directions have been issued in proceedings initiated on the application of the private party only to seek the recording of their possession in the P-5 form, and despite the repeated orders of the SDM/RA (Najafgarh) requiring the respondent to act in terms of the order of the High Court which, as we have already noticed, only dealt with the aspect of recording of possession in the P-5 Form (Kharsra Girdawari) and not recording of title in the O-4 register.

22. The Enquiry Officer also returned a finding that the respondent has sufficient experience as Naib Tehsildar (Najafgarh) for one and half years and thereafter, as Tehsildar (Najafgarh) for about 2 years and 8 months. He also held that the respondent would have been aware of the procedural and legal requirements with regard to the making of entries in revenue records like O-4 register, P-4, P-5 and P-5A etc. The respondent also admitted during his general examinations that entries relating to only mutation orders issued by Tehsildar on account of sale,

purchase, lease, mortgage, successor in undisputed cases and in addition, mutation orders issued by SDM/RA in disputed cases are made in the O-4 register. The respondent also did not dispute the stated position that cultivatory possession is entered in the forms P-5 and P-5A and not in the O-4 register. He also returned a finding that the respondent sought to shift the blame on the lower functionaries forgetting that he had himself passed orders on 20.11.2001 for making entries in the O-4 register in favour of the said writ petitioners. The Inquiry Officer returned a categorical finding that the respondent "willfully committed irregularities in implementing the orders of the Hon?ble High Court". He concluded that this amply exhibits irresponsibility and sheer disregard of the law and directions/observations of the higher authority i.e. SDM/RA and "gross misconduct and malafides" on the part of the respondent. He concluded by observing that "Thus, the charge stands fully proved beyond any doubt".

23. In our view, it was not necessary for the Inquiry Officer to again detail the contents of the article of charge i.e. with regard to the connivance of the respondent with the private party and the malicious abuse of his official position as Tehsildar (Najafgarh) by him to extend undue advantage to the private party. The Inquiry Officer was conscious of what the article of charge was, as he had set it out on the first page of the Inquiry Report itself. Therefore, it was sufficient for the Enquiry Officer to observe that "the charge stands fully proved beyond any doubt".

24. We agree with the submission of Ms. Ahlawat that to prove the charge of connivance with the private party and the malicious abuse of his official position by the respondent to extend undue advantage to the private party, it was not essential that the petitioners should have produced the beneficiary private parties during the course of inquiry. Obviously, a party who is a beneficiary of collusion and connivance with a revenue officer cannot be expected to come and admit, in the course of the inquiry, the fact of his collusion and connivance, and make a statement contrary to his own interests. Even if he comes to the inquiry, and denies the charge of connivance it has no meaning. Such collusion and connivance is writ large in the facts of this case, inasmuch as, the Enquiry Officer has found the conduct of the respondent to be deliberate, willful, malicious, contrary to the rules and procedures, of which he was aware, in disregard of the law and the directions/observations of the SDM/RA. The factum of collusion is, therefore, clearly inferred from the findings recorded by the Inquiry Officer and that is why he has held that the charge has been fully proved beyond any doubt. It has to be kept in mind and this aspect appears to have escaped the Tribunals consideration, that the standard of proof in a departmental enquiry is preponderance of probabilities, and not the strict standard of proof as required in a criminal trial. By application of the said standard of proof, the inescapable conclusion reached is that the charge of connivance of the respondent with the private party, and of his having extended an undue advantage to the private party stands completely established. The connivance of the respondent is also writ large from the motivation exhibited by him in blatantly, willfully and

deliberately violating the law, the procedures and the orders of his superior and granting undue advantage to the said writ petitioners. There could be no other explanation (the explanation of the said conduct being bona fide having been rejected), for the conduct of the respondent. Pertinently, the charge against the respondent was not of corruption and merely of connivance of the respondent with the private party. The fact that the private party derived undue advantage needs no elaboration and is evident from the fact that entry was made in favour of the private party in O-4 register as an "Assami", which would vest title in the land in the private party.

25. In our view, the Tribunal has not correctly appreciated the content of the findings recorded by the Inquiry Officer, and merely because while recording his findings the Inquiry Officer did not use the words "connivance with a private party", the Tribunal has proceeded on the assumption that no such finding has been recorded.

26. As we have noticed above, the Tribunal appears to be contradicting itself. On the one hand, it holds that the respondent has not been granted an opportunity to meet the charge of insubordination, (which, according to the Tribunal, has been established by the Enquiry Officer and is different from the charge of connivance with a private party) while on the other hand in the same paragraph (para 19 of the impugned order) the Tribunal holds that the charge against the respondent is a "composite cumulative charge which, inter alia, includes insubordination."

27. We are of the view that the impugned order cannot be sustained as it proceeds on a wholly fallacious basis that the finding recorded by the Enquiry Officer did not amount to a finding of respondent's connivance with a private party to maliciously abuse his authority to extend undue advantage to the private party. We, therefore, do not agree with the finding of the Tribunal that the Disciplinary Authority disagreed with the findings of the Enquiry Officer, or took into account extraneous or alien considerations. The Enquiry Officer, in his report does not say that only a part of the charge had been proved against the respondent. He does not say that the charge of respondent's connivance with the private party, so as to extend undue advantage to them has not been proved. On the contrary, he says that the charge stands established "fully", beyond any doubt.

28. Pertinently, the respondent did not seek to contend, during the course of inquiry, that the statement of imputation of misconduct made in support of the charge, even if established, would not establish the charge of connivance with the private party against the respondent. The respondent was aware of the list of documents by which the article of charge was sought to be sustained and the list of witnesses by whom the article of charge was proposed to be sustained by the petitioners. No document of any private party was listed in the list of Documents, and none of the private party, who were alleged to have connived with the respondent and were beneficiaries of his conduct, was listed as a witness by the

prosecution. Therefore, the objection sought to be raised by the respondent could well have been raised at the earliest stage, even before the start of the enquiry. As the same was raised at a highly belated stage in his appeal for the first time, in any event, the same could not have been sustained. Had the said objection been taken in a timely manner before the Enquiry Officer, the petitioners could have obviated the said hyper technical objection, which even otherwise has no merit, at that stage itself. Pertinently, when the aforesaid objection was raised by the respondent in his appeal, the same was dealt with by the appellate authority by holding that the same "does not hold water considering that the appellant blatantly disobeyed the orders of the SDM/RA and exceeded his powers as Tehsildar while issuing directions for making an entry in O-4 register".

29. We also find no merit in the submission of learned Counsel for the respondent that this Court should not interfere with the impugned order as the petitioners have been permitted to proceed against the respondent after reinstating him in service and also because the consequential benefits are to be paid only as per the Fundamental Rules. Looking to the conduct of the respondent, we are of the view that by imposing the penalty of compulsory retirement after the respondent had rendered over 33 years of service, the petitioners have taken a lenient view and have practically let off the respondent.

30. For the aforesaid reasons, we set aside the impugned order passed by the Tribunal in O.A. No. 1366/2006 on 23.04.2007 and restore the order of compulsory retirement from the service passed against the respondent.

31. Parties are left to bear their own costs.