(2017) 03 DEL CK 0226

In the Delhi High Court

Case No : 9160 of 2015

MAHANAGAR TELEPHONE NIGAM LIMITED, & ANR. APPELLANT

Vs

SALIM ANSARI RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Constitution of India, Article 20(2) - Protection in respect of conviction for offences

Citation : (2017) 03 DEL CK 0226

Hon'ble Judges : Sanjiv Khanna, Chander Shekhar

Bench : DIVISION BENCH

Advocate : Saket Sikri, Vaibhav Kalra, Shanker Raju, Nilansh Gaur

Judgement

1. Salim Ansari, the respondent before us, was charge sheeted vide memorandum dated 14th June, 2005 on the following articles of charge:-

"That the said Shri Ansari SDE while working as COCXI(N) staff no. (GO-101519) under G.M. (Dev.), MTNL, New Delhi during the period 2001-02, 2002-03, 2003-04 and 2004-05 has committed an act of gross misconduct and misbehaviour in as much as he has not maintained the proper records in respect of received telephone poles were not from different stores of Area SDEs and entries of most of the telephone poles not made in the stockregisters (Annex. ''A'') and bungled the poles in connivance of staff members and contractors. Approx. 1956 telephone poles have been bungled and causing heavy loss to MTNL i.e. Rs.25,03,680 (Annex. ''B''). He is responsible for the loss of Rs.14,57,920 out of Rs.25,03,680 caused to MTNL due to his gross negligence, malafide intention and misappropriation of 1139 poles on his part alone (Annex. ''B'').

By the aforesaid act, the said Shri Saleem Ansari, SDE failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Company employee in violation of Rule 4 (1) (i), (ii) and (iii) of MTNL Conduct, Discipline and Appeal Rules, 1998."

2. Enquiry proceedings were held and the Disciplinary Authority by order dated 3rd February, 2007 imposed penalty of reduction to a lower scale by three stages in the time scale of pay for a period of three years with cumulative effect and directed recovery of Rs.4,45,634/-, equal to 50% of the loss suffered by the employer-Mahanagar Telephone Nigam Limited (MTNL), the petitioner before us. The aforesaid amount was calculated at depreciated value of the received poles. The petitioner had filed an appeal against the said penalty, which was dismissed by the Appellate Authority vide order dated 7 th April, 2008.

3. The respondent was issued the second charge sheet dated 15th June, 2007 on the following articles of charge:-

"Statement of Article of Charge

That the said Shri Saleem Ansari, SDE, while working as COC-XI (N) staff No. GO-101519 under GM (Dev.), MTNL, New Delhi during the period 2001-05 has committed an act of gross misconduct and misbehaviour in a manner as much as he has not followed due procedure and not taken proper care to maintain the correct records in respect of DP posts/poles (recovered) which were received from different stores of SDEs as entries of and bungled the poles in connivance with the staff members and contractors. The bungled poles are 3297 and the loss caused to MTNL due to bungling is Rs.42,20,160/- (As per Annexure ''B'' enclosed).

The said Sh. Saleem Ansari, is responsible for the loss amounting to Rs.18,45,760/- out of Rs.42,20,160/- caused to MTNL, due to his gross negligence, malafide intention and misappropriation of 1442 poles on his part alone viz. on proportionate basis (Annexure A-1 read with Annexure-''B'').

By the aforesaid act, the said Sh. Saleem Ansari, SDE (GO-101519) has filed (sic) to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Company Employee in violation of Rule 4(1)(ii) & (iii) of MTNL, Conduct, Discipline and Appeal Rules, 1998."

4. The Enquiry Officer was appointed and held proceedings and vide his report dated 8th January, 2010 held that the aforesaid articles of charge stand proved. A copy of the enquiry report was furnished, to which the respondent submitted his representation. The Disciplinary Authority vide order dated 7th July, 2011 imposed punishment of removal from service on the respondent with immediate effect.

5. On appeal, the Appellate Authority modified the penalty of removal from service to that of compulsory retirement from service with effect from the date of issuance of the original penalty order.

6. The respondent, who had accepted the punishment in the first charge sheet, filed OA No. 683/2012 challenging the order of compulsory retirement passed in the second charge sheet, which has been allowed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) by the impugned order dated

15th July, 2015 on two grounds. The petitioners had indulged in splitting of charges and principle of double jeopardy would apply. Issue of the second charge memorandum and initiation of the disciplinary proceedings was, therefore, contrary to law. Secondly, the respondent was discriminated and subjected to disproportionate punishment for other officers similarly chargesheeted and guilty have been awarded lesser punishments.

7. We have heard learned counsel for the petitioners and the counsel for the respondent and are inclined to accept the present writ petition for reasons noted below.

8. This is not a case of criminal prosecution and, therefore, Article 20(2) of the Constitution has no application. Rule of double jeopardy is violated when a person tried for the same charge for which he has been tried earlier and has been convicted. In Union of India and Another versus Purushottam, (2015) 3 SCC 779, the Supreme Court examined the case law on the subject of double jeopardy and referred to three facets; (i) autrefois acquit; (ii) autrefois convict and (iii) protection against multiple punishments. It has been held that the principle of double jeopardy does not preclude subsequent criminal prosecution when the earlier proceedings are civil and not criminal and conversely also the same principle would apply unless there is an express rule to the contrary. Departmental proceedings or disciplinary proceedings being civil in nature, even if punitive, would not be outlawed by Article 20(2) of the Constitution.

9. In the present case, the Memorandum of charge in the two proceedings were separate and distinct. The first departmental proceedings initiated vide memorandum dated 14th June, 2005 was for not maintaining proper records with respect to 1139 telephone poles and failure to maintain entries in the stock register. The acts of negligence and misconduct, it was alleged, had resulted in bungling of poles, with connivance of the staff with the contractors. It is important to refer to the statement of imputation of misconduct with regard to the first charge sheet, which reads as under:-

"That the said Shri Saleem Ansari SDE while working as COC-XI(N) staff No. GO-101519 under GM (Dev.) MTNL, New Delhi during the period 2001-02, 2002-03, 2003-04 and 2004-05 has committed an act of gross misconduct and misbehaviour in as much as he has not maintained the proper records in respect of received telephone poles from different stores of area SDEs and most of the telephone poles not entered in the stock registers as indicated in Annexure-''A'' attached.

All the requisition slips prepared by him for taking poles from different stores of Area SDEs and in turn issued slips of Area SDEs were checked by Shri Saleem Ansari SDE on 24.03.2005 when his statement was recorded.

It has been confirmed that the requisition slips were given by him mainly to Shri Balvinder Singh PM and Shri Azad Singh CS. Shri Ansari has received directly 470 poles under his signatures from different stores of Area SDEs and 669 on fake signatures of different officials and on attested signature of B.P. Gupta contractor (Annexure ''A'' read with Annex. ''B'').

Shri Saleem Ansari has not disclosed the names of the contractors who received the pleas(sic) on site. He has confirmed that there is no entry of all the poles shown in Annex. ''A'' in the stock registers.

It is further observed that Shri Saleem Ansari has prepared the requisition slips and received the poles from different stores without consent of his DE (CCN-V),

namely Shri Y. Sharma. Mr. Ansari sent his one requisition slip dated 17.12.03 of 100 poles for DEs counter signature and the same counter signed and confirmed by Shri Y. Sharma DE (CCN-V) on 24.3.05.

It is further observed that the stores received against requisition slips prepared by Shri Ansari are recovered (old) complete/without sockets and soleplate telephone poles but entries of the same has been made as Tube A4, B-8, C-8 and socket C (components of the pole) in the stock registers of COC-XI (N) unit. Thus, he has neither checked the entries of slips in stock registers nor he instructed his store-in-charge, namely, Shri Ranbir Singh PM (PM-924) how to make correct entries in respect of received poles.

It seems from all facts, records ad (sic, and) circumstances the poles are bungled and misappropriated in connivance with Shri Saleem Ansari SDE along with Shri Balvinder Singh PM and Shri Azad Singh CS and by the contractors and consequently MTNL has suffered a heavy loss, the details of which are given in Annexure ''B''.

Total loss caused by alone to MTNL is Rs.14,57,920/- due to directly receipt of 470 poles and on fake signature slips 669 poles. Total poles are thus equal to 470+669=1139. In the last of his statement Shri Saleem Ansari SDE has accepted his mistake and agreed for any suitable action.

By the aforesaid act, the said Shri Saleem Ansari SDE has failed to maintain absolute intergrity, devotion to duty and acted in a manner unbecoming of a Company Employee in violation of Rule 4(1)(i), (ii) and (iii) of MTNL Conduct, Discipline and Appeal Rules, 1998."

10. The said imputation refers to requisition slips prepared by the respondent for taking poles from different stores of Area Sub-Divisional Engineer and issuing requisition slips for the same to Area Sub-Divisional Engineer, which were to be checked by the respondent. The aforesaid charge sheet was specific to approximately 1956 telephone poles. On the basis of administrative lapses, false signatures etc. adverse inference was drawn, to hold that the respondent was involved. The punishment order in the first charge sheet has attained finality. It is not under challenge.

11. The second charge sheet, on the other hand, as per imputation of conduct and misbehaviour was on the following foundation:-

"That the said Shri Saleen(sic) Ansari SDE while working as COC-XI (N) under GM (Dev.) MTNL, New Delhi during the period 2001-05 has committed an act of gross misconduct and misbehaviour in a manner as much as he has not followed due procedure and not taken proper care to maintain the correct records in respect of DP posts/poles (recovered) received from different stores of Area SDEs and most of the poles were not entered in the stock registers of COC-XI(N) unit (As per Annexure-I enclosed).

That the said Sh. Saleem Ansari has not paid "due care and proper attention" before, during and after the receipt of poles as the poles were received on his requisition slips either under his own signatures or on fake signatures of Sh. Balvinder Singh, P/M, Shri Azad Singh. C/S Sh. Ramesh Chandra, RM and Sh. Pancham Singh Rawat, PM (PM-1132) without issue on authority letters authorising the officials for collecting the poles for COC-XI(N) unit. The requisition slips of taking poles from Area SDEs have been authenticated by Sh. Saleem Ansari, SDE and the slips were given by him mainly to Sh. Balvinder Singh, PM and Sh. Azad Singh, C/S in majority case, whereas Sh. Ranbir Singh, PM (Store in charge of COC-XI(N) unit should have been deputed with authority letter for collecting the poles from different area SDEs.

That the said Sh. Saleem Ansari has received the poles from stores without consent of Sh. Y. Sharma, DE (CCN) in charge as Mr. Y. Sharma, DE has denied his signatures on the slips and the said Sh. Saleem Ansari has confirmed that there is no entry of the poles in majority cases, as per Annexure A-1 in the stock register of COC-XI (N) unit (As per details in Annexure A-1 enclosed)

That the said Sh. Saleem Ansari has not got his slips cancelled in cases when the poles were not taken/received for COC-XI (N) unit, nor he instructed Sh. Ranbir Singh, PM store-in-charge how to make correct entries in respect of received poles/DP posts because the entries were make as Tube A-4, B-8, C-8 and socket "C" etc. (Components of the poles) and not as a complete pole viz. no transparency observed by the said Sh. Saleem Ansari.

That the said Sh. Saleem Ansari, bunged away 3297 recovered DP posts/poles and misappropriated in connivance with Sh. Balvinder Singh, PM, Sh. Azad Singh, CS and contractors and consequently, MTNL has suffered a heave (sic) loss, the details of which are given in Annexure-B read with Annexure A-I. Total loss caused to MTNL by him alone is Rs.18,45,760/- due to directly receipt of 85 poles and on fake signatures on receipts (Slips) of 1357 poles.

By the aforesaid act, the said Sh. Saleem Ansari SDE (GO-101519) has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of Company employees in violation of Rule 4 (I) (i), (ii) and (iii) of MTNL, Conduct, Discipline and Appeal Rules, 1998."

12. The statement of imputations was different. It may be pertinent to mention here that the second charge sheet was issued after letter dated 12th April, 2005 from one Suresh Pal Chaudhary was received in the office of the petitioner-MTNL

in May 2005. Pursuant to the information furnished, internal investigation was conducted. On the basis of the said investigation, it was prima facie established that MTNL officer/officials in connivance with the contractors had bungled 6198 poles thereby causing a loss of Rs.79,43,440/- to the MTNL. These facts were ascertained subsequent to the issuance of the first charge sheet. The Vigilance Officer vide report dated 2nd March, 2006, on examination of evidence, had recommended initiation of major/minor penalty along with recoveries from 33 officers mentioned in the report. On the basis of vigilance report, comments of the Disciplinary Authority were sought. The Director (HR)''s comments were also obtained. Thereafter, penalty proceedings were initiated vide order dated 12th June, 2006 and the respondent was served with the second charge sheet on 15th June, 2007.

13. The facts narrated above would reflect and show that the second charge sheet could not have been issued when the first charge sheet was issued. The first charge sheet was dated 14th June, 2005. Till this date, preliminary investigation in the allegations in the complaint had not been completed. It was unknown whether or not the allegations in the complaint were correct or incorrect. It would not have been fair for the petitioner to include a charge or allegations with regard to bungling of 3297 poles

without proper verification and satisfaction that the allegations were correct.

14. Learned counsel for the respondent has submitted that as per the noting dated 2nd March, 2006, the Vigilance Department had issued charge sheets against several officers alongwith directions for recovery of money for the loss caused. It was indicated that the case was under inquiry. The assertion is incorrect. The said noting relates to 1956 poles which had been bungled. This noting is not with regard to the bungling of 3297 poles, which became the subject matter of the second charge-sheet. This noting does not support the case of the respondent that there was deliberate or concerted attempt to split the charges and to cause prejudice.

15. It is obvious and accepted that the respondent had contested the second charge sheet. The petitioners were able to establish and prove the said charge. The punishment of removal from service imposed by the Disciplinary Authority modified to that of compulsory retirement. Evidence led in the two cases was entirely separate and distinct. It can be said that the two memorandums related to bungling of poles, but the changes were different and distinct in the sense that proof of the first charge, would not establish the second charge. Evidence and material led in both the memorandums were independent. Even if there was a criminal case, the plea of double jeopardy or splitting of charge could not have been raised by the respondent for two separate charges could have been framed under the Code of Criminal Procedure, 1973.

16. On the question of disproportionate punishment or discrimination, we have to only observe that the charge of this nature if proved is serious and mandates and

requires stern action and punishment. The law does not recognise negative equality. Punishment of compulsory retirement imposed

by the Appellate Authority is not unjust and unconscionable for the Court or the Tribunal to interfere.

17. In view of the aforesaid discussion, the present writ petition is allowed, and the impugned order dated 15th July, 2015 passed by the Tribunal allowing OA No. 683/2012 is set aside. OA No. 683/2013 is to be treated as dismissed. We affirm the order of punishment of removal from service passed by the Appellate Authority.

18. At this stage, counsel for the respondent submits that the respondent has not received his retirement or pensionary dues. Counsel for the petitioner has assured that if this is correct, steps would be immediately taken and payments, if any, which have to be made in terms of the order of compulsory retirement, would be made to the respondent within a period of four weeks from the date a copy of this order is received by them. No costs.