
(2019) 10 DEL CK 0096

In the Delhi High Court

Case No : Review Petition No. 360 Of 2019, Civil Miscellaneous Application No. 39523 Of 2019 In Civil Writ Petition No. 8188 Of 2019

Man Mohan Pandey And Ors

APPELLANT

Vs

Bharat Electronics Limited And Ors

RESPONDENT

Date of Decision : 10-10-2019

Acts Referred:

Conduct Discipline And Appeal Rules, 2001 — Rule 5(a)

Citation : (2019) 10 DEL CK 0096

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Tarkeshwar Nath, B.K. Pandey, Maninder Acharya, Manish Paliwal, Vikas Kumar, Viplav Acharya, B.V. Ramaiyya, Vijay Joshi, Kirtiman Singh, Rohan Anand, Waize Ali Noor

Final Decision : Allowed

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner seeks direction thereby to recall the order dated 31.07.2019 passed by this Court in WP(C) No.8188/2019.

2. At the outset, it is pointed out that in Para 19 of order dated 31.07.2019, it is recorded that the petitioners are above level E-VIII; however, which is factually incorrect.

3. It is clarified that the petitioner No. 1 is the only officer who comes under the category of level E-VIII whose Disciplinary Authority is CMD. The other two petitioners are below level E-VIII. The grade of the Petitioner no 2 is of level E-VI A and Petitioner no 3 falls under the category of level E-V. Their Disciplinary Authority is the Functional Director.

4. Further clarified that in Para 19 of the order that the Disciplinary Authority under the delegated powers is the Functional Director also suffers from error which is clear from the Office Order No.HO/144/22 read with CDA-Rules dated

10.04.2001.

5. Learned counsel for the petitioner submits that the said office order which relates to sub-delegation of powers would show that in fact the powers delegated under CDA-Rules amended from time to time/notification of sub delegation of power (SDOP) are unchanged and same as on date contained in CDA-Rules 2001. The said Rules read with office order dated 10.1.2019 is very clear that the Disciplinary/Punishing Authority for an officer upto Grade E-VII is Functional Director. Chairman and Managing Director is the Disciplinary/Punishing Authority for an officer of Grade E- VIII & IX only. CMD has not sub delegated his power for the officers of Grade E-VIII & IX any further. He has sub delegated his powers of being Disciplinary/Punishing Authority for officers upto Grade E-VII to the Functional Director. In other words, the position of CDA Rules 2001 read with sub delegation of powers dated 10.1.2019 is very clear that CMD is the Disciplinary/Punishing Authority in case of petitioner no. 1 and that the Functional Director is the Disciplinary/Punishing Authority in case of petitioner nos. 2 and 3. The said order 10.01.2019 is very clear that the sub-delegated powers will be exercised only by the Executives entrusted with the responsibilities for the concerned work/ assignment.

6. Learned counsel for the petitioners further submits that the issuance of Charge- sheets cum suspension orders by Director (Marketing) in the case of petitioner no. 1 and by GM in case of petitioner no. 2 and AGM in the case of the petitioner no 3 is illegal and unsustainable, which is evident from the table at Page 10 of the Review Petition.

7. On the other hand, learned Additional Solicitor General submits that the officers competent to award the minor punishments cannot initiate the proceedings for major penalties. However, it is submitted that the CDA Rules bearing Office Order No. HO/772/019 dated 10.04.2011 do not require the Disciplinary authority to issue a charge sheet for Major Punishment as mentioned in Rule 5(a). The said Rules only provide for the imposition of punishments and therefore, the same cannot be made applicable for initiation of the Disciplinary proceedings.

8. Learned Additional Solicitor General further submits that BEL has defined the Disciplinary Authority based on the punishments. Though the Disciplinary Authority is referred in the context of the punishment in BEL CDA Rules, the approval for initiation of the Disciplinary proceedings, issuance of charge sheet etc. is based on the formal approval by the Disciplinary Authority as defined in CDA Rules. The punishment will be later on the basis of misconduct and the punishing authorities have been mentioned in the CDA Rules. Once the charge sheet is approved by the Disciplinary Authority, the charge sheet is served by the respective Department /Division/Unit Head or an officer who is at least one level above to the charge-sheeted executive. Such an officer just initiates the enquiry and does not impose the punishment. The imposition of punishment is a separate issue which is decided later by the competent authority within the organisation.

9. To strengthen her arguments on the above issued, learned Additional Solicitor General relied on the decision of the Hon'ble Apex Court in case of Inspector General of Police vs. Thavasiappa, (1996) 2 SCC 145, whereby it is held that a charge sheet need not be issued by the appointing authority and any authority who is the controlling authority can initiate departmental proceedings by issuing a charge sheet. The Hon'ble Court further observed that the charge sheet need not to be issued by the authority empowered to impose the proposed penalty.

10. Learned Additional Solicitor General has further relied on P.V. Srinivasa Sastry & Ors. vs. Comptroller and Auditor General & Ors. (1993) 1 SCC 419, whereby in the context of Article 311(1), it was held that in absence of a rule any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not hold the officer concerned with any evil consequences.

11. Learned Additional Solicitor General submits that Bharat Electronics Limited is a Public Sector Undertaking and it is incorporated under the Companies Act and therefore, the employees do not enjoy the protections as available to the government servants.

12. In case of Tekraj Vasandi Alias K. L. Basandhi vs. Union of India & Ors. (1988) 1 SCC 236, the Hon'ble Supreme Court had held that the only prohibition, if any, is the inability to pass a final order in the departmental proceeding. However, the charge sheet can be issued by the officer lower than the disciplinary authority but higher than the charged officer. The dismissal or removal of the officer or even the enquiry could be done at his instance. It was also held that the only right guaranteed to a civil servant under that provision is that he should not be dismissed or removed by an authority subordinate to that by which he was appointed. It was further held by the Supreme Court that it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority as there is nothing under the rules which would induce the Court to read in the rules such a requirement. It is thus established from the ratio in Transport Commissioner vs. A. Radha Krishna Moorthy, (1995) 1 SCC 332 of the aforesaid decision that initiation and conducting an enquiry could be done by an authority other than the authority competent to impose the penalty. Therefore, unless a statutory rule specifically requires that such proceeding is to be initiated and conducted only by a disciplinary authority, the same could be so done even by a subordinate authority. Thus, learned Additional Solicitor General argued that there is no merit in the present petition and the same deserves to be dismissed.

13. On perusal of Charge Sheet-Cum-Suspension order dated 17.05.2019, it is specifically mentioned that Sri M.M. Pandey, Staff No. 205757, GM (Product Support/CO) was appointed as Investigation Officer by CVO vide letter dated 18.07.2018 to conduct a detailed Investigation into the alleged irregularities reported in the execution of civil construction works in the IACCS project being executed by NCS SBU of GAD Unit. It is further stated that he submitted his

report dated 03.10.2018 to CVO which was received in CVO's office on 08.10.2018. Thus, it is established that the Charge Sheet-Cum-Suspension Order was issued in pursuance to CVO letter dated 18.07.2018 to conduct a detailed investigation into the alleged irregularities.

14. Learned counsel for petitioner has relied upon Vigilance Manual and in Para 7.3.1 regarding framing of Charge Sheet and in Para 7.3.2, it is specifically mentioned that the charge sheet comprises the memorandum, informing the concerned employee about initiation of proceedings against him and giving him an opportunity to admit or deny the charge(s) within a period not exceeding 15 days. The memorandum is to be signed by the disciplinary authority himself.

15. As argued by learned counsel for the petitioner that since the disciplinary proceedings initiated against the petitioners are in pursuance of letter dated 18.07.2018 issued by the CVO, therefore, Vigilance Manual is applicable in the case of the petitioner.

16. On the other hand, learned Additional Solicitor General has argued that in the present case, the departmental proceedings are not initiated pursuant to vigilance departmental inquiry, therefore, the Vigilance Manual is not applicable in the present case.

17. It is not in dispute that in case of A. Radha Krishna (Supra), it is held that unless a specific rule so requires that such proceedings are to be initiated or conducted only by a disciplinary authority, the same could be done so even by the subordinate authority.

18. In the present case, the charge sheet is issued without specifically mentioning therein whether a charge-sheet is issued for major punishment or the minor punishment. The aforesaid judgment would be applicable only in case where there is no specific rules or guidelines to this effect. However, in the present case, as per Para 7.3.2. of Vigilance Manual of BEL, the charge-sheet comprising the memorandum, informing the concerned employee about the initiation of proceedings shall be signed by the disciplinary authority himself.

19. In the present case, admittedly, petitioner No. 1 is E-VIII level employee and undisputedly, the disciplinary authority for the same is CMD, whereas the charge-sheet is issued by Functional Director (Marketing), who is not disciplinary authority.

20. Regarding the charge sheet issued against the other petitioners, the said charge-sheet was also issued to the petitioner No. 2 by the G.M. Radar, whereas the disciplinary authority is the Director. To petitioner no. 3, the charge-sheet has been issued by the AGM, whereas disciplinary authority is the Functional Director.

21. As per the charge sheet-cum-suspension order, the said order is issued in pursuance of the letter issued by the CVO as mentioned above. Therefore, it cannot be said that disciplinary proceedings initiated against petitioners are not a vigilance case.

22. Be that as it may, as stated by learned Additional Solicitor General that the Ministry of Defence has seized with the matter and instructed the respondents not to proceed further. Accordingly, the departmental proceedings against the petitioners is kept in abeyance till further instructions from the said Ministry.

23. It is pertinent to mention here that if the charge sheet is accepted and at the end, the disciplinary authority is of the view that major penalty is to be issued, in that eventuality, the authority under the statutes is not competent to issue the major penalty. Thus, while issuing further proceedings against the petitioners, if any, it shall be specifically mentioned that the charge-sheet is issued against the petitioners for minor or major penalty.

24. Admittedly, since the suspension order has not been extended further beyond the statutory period of 90 days, in view of the decision in *Ajay Kumar Choudhary vs. Union of India & Anr.*, (2015) 7 Supreme Court Cases 291, suspension is illegal thereafter. In the case in hand, it is not in dispute that more than 90 days of the suspension have been elapsed. Accordingly, the respondents are directed to reinstate the petitioners forthwith. The period of suspension shall be treated as per the rules.

25. In view of above discussion and legal position, since the disciplinary authority concerned for the petitioners have not initiated departmental proceedings, therefore in my considered view, the order dated 17.05.2019 is illegal and accordingly set aside. However, liberty is granted to the respondents to initiate proceedings as per the statutes and the Vigilance Manual, if so advised, against the petitioners. Accordingly, the order dated 31.07.2019 passed in W.P.(C) 8188/2019 is hereby recalled.

26. The petition is accordingly allowed. Pending application also stands disposed of.