
(2019) 07 DEL CK 0463

In the Delhi High Court

Case No : Civil Writ Petition No. 8188 Of 2019, Civil Miscellaneous Application
No. 33934, 33935 Of 2019

Man Mohan Pandey And Ors.

APPELLANT

Vs

Bharat Electronics Limited And Ors

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Central Civil Services (Cca) Rules, 1965 — Rule 14(3)

Citation : (2019) 07 DEL CK 0463

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Tarkeshwar Nath, Mahavir Rawat, Rohit Prasad, Maninder Acharya,
Manish Paliwal, Vikas Kumar, Kritika Srivastava, Viplav Acharya, Ravinder
Agarwal, Girish Pandey, Vijay Joshi

Final Decision : Disposed Of

Judgement

1. Vide the present petition, the petitioners seek direction thereby quashing all the three chargesheets-cum-suspension orders dated 17.05.2019 issued against the petitioners. Consequently, revoke the suspension and reinstate the petitioners with all the due benefits in their respective offices as they were before the suspension or in alternatively transfer the enquiry to concerned Ministry or CVC of India or as this Court may deem fit.
2. Brief facts of the case are that the petitioner no.1 joined BEL and promoted upto the level of General Manager and presently working as General Manager (Product Support).
3. Petitioner no.2 joined the respondent no.1 as Accounts Officer and at present, he is the Senior Deputy General Manager.
4. Petitioner no.3 is presently working as Manager with respondent no.2.
5. On 18.07.2018, the petitioner no.1 was appointed by respondent no.2, as investigating authority to conduct a detailed investigation of the case, on the

basis of complaints received at Corporate Vigilance relating to underground constructions sites. He was given authority to form a core team at his level as per requirements and also to take the assistance of the technical committee which was already constituted for this project. He accordingly formed a team comprising of the petitioner nos.2 and 3 respectively.

6. On 17.09.2018, CVO, BEL himself reviewed along with Manager, Corporate Vigilance, the progress of the investigation and instructed Manager to extend all the help for expeditious investigation.

7. On 03.10.2018, the petitioner No. 1 submitted his Investigation report to CVO, BEL and petitioner No.2 made representations to CVO, BEL on 15.10.2018 seeking protection against anticipated victimization. On 29.03.2019, CVO, BEL submitted his report to the Management (Respondent No.1).

8. Immediately after the submission of the report by CVO on 29.03.2019, the first action which was taken against the petitioners is that the petitioner no 3 was slapped with the transfer order and that too outside the organisation on the same day.

9. On 02.04.2019, web portal namely 'Firstpost' published a news article under the heading 'Bharat Electronics in the dock for 'compromising' confidential IAF project favouring one vendor, BEL's internal inquiry report reveals.' Petitioners state that the said news article is not based on the report submitted on 03.10.2018 under the signature of petitioner no 1 which is clear from the said news article itself, which has not disclosed the source of the report.

10. Learned counsel appearing on behalf of the petitioner submits that mala fide is on the part of the respondent no.1 as when the petitioner no 3, who was transferred outside the organisation vide order dated 29.03.2019, was released on transfer posting to Ministry of Defence, Sena Bhawan-Export Promotion Cell DDP, for a period of three years which even otherwise, is not permissible outside the organisation.

11. Learned counsel further submits that second news article was published on 09.04.2019 on the same web portal under the heading 'BEL allegedly violated string of norms to award contracts to German, Finnish firms: ex-CMD, two retired defense officials under scanner'. Again, it is submitted that the news article is not based on the report submitted on 03.10.2018 under the signature of petitioner no.1 and the said respondent constituted a Committee to conduct a fact finding enquiry to enquire into the publication of the said articles published on the web-portal of 'Firstpost'.

12. It is not in dispute that the chargesheet has been issued. The Inquiry Officer has been appointed and the petitioner is facing departmental enquiry.

13. The present petition is filed on the ground that the chargesheet-cum-suspension orders are illegal and unsustainable also for the reason that the articles of charges, referred documents and list of witnesses on which the

reliance might have been made by the respondent no.1, were not supplied to the petitioners for their response thereon.

14. It is further submitted on behalf of the petitioners that the malafide and ulterior motive of the respondent no 1 is writ large from the fact that the petitioners were given only four days' time to offer their explanation and that too in absence of the essential requirements of the chargesheet as mentioned in the above ground.

15. The other ground which is most argued by learned counsel for the petitioner is that charge sheet is not issued by the competent authority, however, it has been issued by the functional director whereas CMD is the competent authority.

16. To strengthen his arguments, learned counsel for the petitioner has relied upon the case titled as Union of India vs. B.V. Gopinath: (2014)1 SCC 351. On perusal of the aforesaid judgment in para 52 of the same, it is recorded that "in our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore non est in the eye of the law. This plea of the respondent has been accepted by the CAT and also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS(CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. It is further observed that the term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge sheet". These proposed articles of charge would only be finalized upon approval by the disciplinary authority."

17. In the present case as submitted by learned counsel for the petitioner, in the office order No.HO/144/22 which deals with sub-delegation of powers in respondent no.1 BEL, clause 19(a) which is disciplinary action in respect of executives in accordance with disciplinary procedure laid down in the conduct, discipline and appeal rules. To this effect, powers are delegated to FD/GM/AGM/Sr.DGM/DGM/MANAGER/DM.

18. The chargesheet-cum-suspension order is issued by the functional director since he enjoys the delegated powers of CMD who is the competent authority.

19. As per Bharat Electronic Limited Conduct, Discipline And Appeal (CDA) Rules dated 10.04.2001 regarding major punishment, the disciplinary /punishing authority is the functional director upto level E-VIII. It is not in dispute the petitioners are above level E-VIII. Thus, the disciplinary authority under delegated powers is functional director and is rightly issued by the said authority.

20. Needless to state that if any of the documents are not provided which is required during the departmental proceedings, the respondents are directed to provide the same as and when asked by the petitioners.

21. It is made clear that, if all the documents are provided, the respondents may respond to the communication, if any, received from the petitioners side.

22. In view of above, since chargesheet has been issued, Inquiry Officer appointed and the petitioners are participating under the inquiry proceedings, therefore, I find no ground to interfere with at this stage.

23. The present writ petition is accordingly dismissed.

24. The pending applications also stand disposed of.