
(2005) 01 JH CK 0001
In the Jharkhand High Court
Case No : I.P.A No. 816 of 2004

Mithilesh Kumar Singh

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Citation : (2005) 1 JCR 487

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;M.Y. Eqbal, J

Bench : Division Bench

Advocate : Bikash Singh and A.K. Sahani, for the Appellant; J.P. Gupta, Senior Standing Counsel C.G. and Nidhi Jaiswal, J.C. to Sr. S.C.C.G., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This appeal has been preferred by the appellant against the judgment and order dated 2nd December, 2004 passed by the learned Single Judge in W.P.(S) No. 5996 of 2004, whereby and whereunder, the writ petition preferred by the appellant with prayer to quash the departmental proceeding, has been dismissed.

2. The brief fact of the case is that the appellant while posted as Technical Secretary to the Director (Technical) at Singrauli, he was served with a show cause notice bearing No. NCL/Vig/INV/8-03/830 dated 24th November, 2003 whereby he was asked to show cause to the alleged irregularities as were set out in the said show cause notice. The appellant having received the show cause, replied to each and every irregularities and illegalities as were pointed out in different sub-clauses of clause (iv) of the show cause notice. One of the pleas taken was that he had no role to play in the matter of "a tender", which gave rise to the irregularities as were alleged.

3. It appears that the competent authority being not satisfied, issued a departmental proceeding vide Memorandum No. NCL/Vig/RDA-MKG/8-03/616 dated 18th September, 2004. Eight articles of charges were framed against him

and the statement of computation of misconduct in support of articles of charge framed against the appellant was also forwarded. The appellant challenged the same before the learned Single Judge in W.P.(S) No. 5996 of 2004 mainly on the following grounds :

- (a) The charges are absolutely vague;
- (b) The facts mentioned in the charge sheet do not constitute any misconduct, and
- (c) The departmental proceeding is belated having initiated after five years from the date of incident;

AND, therefore, the initiation of departmental against him was bad.

4. The learned Single Judge while notice one or other judgments, as referred by the counsel for the appellant, rejected the submissions and held the proceeding initiated well within time and that the High Court cannot go into the correctness or truth of the charges at the stage of initiation of departmental proceeding.

5. Before this Court, the counsel for the appellant took similar plea. He referred to the show cause reply of appellant dated 24th December, 2003, wherein the following pleas were taken by the appellant :

In reply to para 4(i) it is submitted that the decision to go in for limited tender was taken at the level of CMD and Director (Technical) on proposal made by the CGM, highlighting the urgency of the work. Since the work had to be done prior to the onset of monsoon, it appears that the CGM was compelled to go in for limited tender and the CMD and Director (Technical), understanding the urgency of the work, agreed for the same. The allegation against the undersigned is accordingly without any basis and has no legs to stand on.

In reply to para 4(iii) it is submitted that the undersigned was never involved in calculation of the justified rate either for the work A or for item No. 1 of work B. In fact, the file relating to preparation of justified rate of work A never even came to the undersigned and hence the undersigned was not even aware about the said rate. As far as the justified rate of item No. 1 of work B, is concerned, the same was not prepared by the undersigned.

Since the undersigned was not aware of the justified rate of work A, the undersigned is not in a position to comment as to how the rate for item No. 1 of work B was different, if at all.

In reply to para 4(v) it is submitted that the allegation made in the para about opening of the tender prior to the formal constitution of the Tender Committee, it is submitted that neither I was involved in the opening of the tender nor was the undersigned a member of the Tender Committee and accordingly the undersigned is not in a position to comment as to how, and under whose authorization some executives other than the Tender Committee members opened the tender prior to the constitution of the Tender Committee. The

undersigned was also not involved in the issue of urgency certificate and hence the undersigned is not in a position to comment on the same as well.

In reply to para 4 (vi) it is submitted that two of the Tender Committee members were same while awarding the work A and work B and accordingly they were aware of the rate recommended and approved for the said works. The undersigned is not in a position to comment as to why, while approving the rate for item No. 1 of work B, the Tender Committee compared the rate with the Gorbandha Nalla at Bina Project and not work A of Dudhichua Project. Since two of the Tender Committee members were common, it is presumed that they must have having justification to compare the work with the Gorbandha Nalla at Bina Project instead of the work A of Dudhichua Project. However, the undersigned is not in position to comment on the same. Moreover, since the undersigned was not a member of Tender Committee nor associated with the same, it was not the duty of the undersigned to play any role in the deliberations of the Tender Committee. The allegations accordingly in the para is also unjustified and have to be rightly rejected.

6. The learned Single Judge has noticed that the irregularities alleged to have been committed in the year 1997-98 and the show cause notice was issued to the appellant in the year 2003 i.e. after about five years, as such the proceeding cannot be quashed on the ground of delay. I uphold such finding, as it cannot be alleged that the proceeding was initiated after long unexplained delay.

7. I have gone through the charge sheet. In the interest of appellant, it is not desirable to record my finding on merit in regard to one or other charge nor it is desirable to hold that the charges are specific, as it is always open for the appellant to take all such pleas before the inquiry officer and, thereafter, before the disciplinary authority. From plain reading of the charges, one can find out whether it is vague or specific. For proper appreciation, I am quoting hereunder one of the charges, as contained in Article 5:

That Shri M.K. Singh, while functioning as Superintending Engineer (Civil), NCL HQ., and associated with the Tender Cell of Civil Engineering Department of NCL Hqrs in the year 1997 did not ensure that reasonable working rate for the work "Diversion of Garland Drain at Western Flank at Dudhichua Project was prepared before opening the price bids for the said work violating the provisions of para 4.17 and 4.18 of the Civil Engineering Manual 1995 of Coal India Limited. Thus, the said Shri M.K. Singh contravened Rules 4.1(i), 4.1(11), 4.1(iv) & 4.2 of Conduct Discipline & Appeal Rules, 1978 of Coal India Limited which constitute misconduct under 5.1, 5.5, 5.9 and 5.26 of the said Rules by which the services of Shri M.K. Singh are governed.

8. It is not the case of the appellant that he was not posted in the office where irregularities alleged to have been committed in the matter of order of tender. It is also not the case of the appellant that he was not posted in the said office during the period 1997-98 i.e., the period of alleged occurrence.

9. In the case of Union of India (UOI) and Others Vs. Upendra Singh, the Supreme Court held that in the case of charges framed in a disciplinary enquiry, the Tribunal or Court can interfere only if on the charges framed (read with computation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At the initial stage, the Tribunal or Court has no jurisdiction to go into the correctness or truth of the charges. The Tribunal or Court cannot take over the functions of the disciplinary authority. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. Even after conclusion of disciplinary proceeding, if the matter comes to the Court or Tribunal, they have no jurisdiction to look into the truth of the charges or the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

On plain reading of the charges, for example, Article No. 5, as quoted above it cannot be stated that no misconduct or other irregularity has been alleged. It is not the case of the appellant that the charges framed are contrary to any law. Therefore, I find that no case has been made out to interfere with the departmental proceeding.

10. So far as the case of Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, is concerned, that was a case in which a departmental proceeding was initiated against the delinquent while he was working as Collector/ Commissioner, Central Excise. He passed an order as a quasi-judicial authority. In one of such quasi-judicial order, error of law was committed for which a departmental proceeding was initiated. In the said case, no allegation was made that the quasi-judicial order was passed for some extraneous consideration or extraneous consideration influenced to pass such quasi-judicial order. Since nothing of this sort was alleged and mere error of law was detected, the Supreme Court held that error of law cannot constitute any misconduct. In the said case, as it was sought to be interfered with a quasi-judicial order wherein error of law was alleged to have been committed, the Supreme Court held that it was not a case for initiation of any departmental proceeding against the said officer. The charge of misconduct against him was not proper and thereby quashed the departmental proceeding.

11. The case of the appellant, at hand, being different, as it is based on the facts, as mentioned in the articles of charges, which if found proved will constitute misconduct, I find no case has been made out to interfere with the departmental proceeding or the order passed by the learned Single Judge.

12. There being no merit, the appeal is dismissed.

M.Y. Eqbal, J.

13. I agree.