
(2004) 05 DEL CK 0085
In the Delhi High Court
Case No : WP (C) 6132 of 2001

Mr. R.S. Saini

APPELLANT

Vs

Bureau of Indian Standards

RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Citation : (2004) 112 DLT 164 : (2004) 75 DRJ 430 : (2004) 3 SLJ 507

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Kailash Vasudev, A.P.Dhamija and Prateek Kumar, for the Appellant;
Priya Hingorani, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Petitioner prays that the charge-sheet served upon him under memorandum dated 27.6.2000 be quashed. The statement of articles of charge against the petitioner which have been served under the impugned memorandum read as under:-

Article I

That the said Shri R.S.Saini, while functioning as Deputy Librarian at BIS-Central Laboratory, Sahibabad, has produced and exhibited the document marked "Investigation dated 11-08-1998" in his amended writ petition no: 4692 of 1998 filed in the Hon"ble High Court of Delhi on 30 Nov 1998, for which Shri R.S.Saini was not authorised to have access and to keep in his personal custody for personal purposes. Keeping such document by Sh.R.S.Saini, which was obtained fraudulently, in his possession, without permission, amounts to unauthorised communication of information by him within the meaning of Rule 11 of CCS(Conduct) Rules, 1964.

By this act as above said, Shri R.S.Saini has not only failed to maintain absolute integrity but has also behaved in a manner unbecoming of an employee of the Bureau, thereby violating Rule 3 (1) (i) and (iii) of the CCS (Conduct) Rules,

1964.

Article II

That the said Shri R.S.Saini, while functioning as Deputy Librarian at bids Regional Office, Chennai quoted and annexed in his rejoinder to writ petition no: 4692 of 1998 before the Hon"ble High Court of Delhi on 18 Feb 2000, the documents including marked as confidential, a copy each of the Action Notes of Sexual Harassment Committee dated 03 June 1999 and proceedings of the Meeting of Sexual Harassment Committee dated 03 August 1999, obtained by him fraudulently, which Shri Saini is not expected to have seen or to have retained. Retention of such documents by Shri R.S.Saini involves contravention of Rule 11 of the Government Servants Conduct Rules.

2. The back-drop of the facts is that the petitioner was working as a Deputy Librarian under the respondent and was posted at New Delhi. Two other persons Shri Dhan Singh, Senior Attendant and Shri Madan, Deputy Librarian were his colleagues. On 8.5.1998, 5 lady officers of the Delhi office alleged sexual harassment by the petitioner and said Shri Dhan Singh and Shri Madan. Petitioner was transferred to the office of the respondent at Sahibabad.

3. On 6.7.1998 the respondent appointed Shri Arya the Director (SG) as an investigating officer to investigate the complaint made by the ladies. By and under the said order it was directed that Smt. Prakash and Smt. M.J.Kaur would assist Shri Arya. On 11 8.1998 Shri Arya submitted the report.

4. Copy of the proceedings and the report were not furnished to the petitioner. On 23.9.1998, based on the findings of the investigating report, respondent issued a memo to the petitioner proposing to impose the penalty of Censure. On 9.3.2000 penalty of censure was imposed on the petitioner. In the meanwhile, on 31.8.1998 petitioner was transferred to Chennai. Petitioner claims that the transfer was punitive.

5. Petitioner challenged the transfer order by filing writ petition in this court. Same was registered as WP(C) No. 4682/1998. In the said writ petition, petitioner made a grievance that neither was he supplied any document nor was he submitted the enquiry report and yet a punitive order of transfer was passed. In the counter affidavit filed to the writ petition the respondent took the stand that the transfer was to defuse the volatile situation in the office.

6. Petitioner amended the writ petition and filed a rejoinder. To substantiate his plea that the transfer was punitive, petitioner annexed with the amended petition a copy of the report dated 11.8.1998 submitted by Shri Arya. He also relied upon the action notes of the Sexual Harassment Committee dated 3.6.1999 and proceedings of the meeting of the Sexual Harassment Committee dated 3.8.1999 in the rejoinder affidavit.

7. As noted from the statement of Articles of Charge against the petitioner, the petitioner has been issued the charge-sheet as according to the respondent

petitioner was not authorised to have access and custody of the investigation report, action notes and proceedings of the meeting of the Sexual Harassment Committee.

8. Article of Charge I lists the charge against the petitioner that keeping the investigation report dated 11.8.1998 which was obtained fraudulently amounts to unauthorised communication of information by him within the meaning of Rule 11 of CCS (Conduct) Rules, 1964. Article of Charge II lists the charge that obtaining and retaining of the action notes dated 3.6.1999 and proceedings dated 3.8.1999 contravenes Rule 11 of the Government Servants Conduct Rules.

9. Parties agree that reference to Rule 11 of the Government Servants Conduct Rules in Article II of the charge is in fact a reference to Rule 11 of CCS (Conduct) Rules, 1964.

10. During the pendency of the writ petition, enquiry pursuant to the charge-sheet has been completed, in that, enquiry officer has submitted his report. The same has been filed in court. Petitioner has filed an additional affidavit explaining the source from where the petitioner obtained the investigation report, action notes and minutes of the meeting.

11. However, during arguments it was clarified to the counsel that jurisdiction of this court was limited. As held by the Supreme Court in the decision reported as 1994 (2) AISLJ 77 U.O.I. Vs. Upendra Singh. In the case of charges framed in a disciplinary enquiry the court can interfere only if on the charges framed (read with imputation 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 on tarry to any law. This court would have no jurisdiction to go into the correctness or truth of the charge as that is the function of the disciplinary authority. Indeed, truth or otherwise of the charge is a matter for the disciplinary authority to go into. Post decision by the disciplinary authority, courts would have jurisdiction as available under judicial review.

12. Violation of Rule 11 of the CCS (Conduct) Rules, 1964 is alleged. The rule reads as under :-

Unauthorised communication of information:- No government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any

13. To sustain a charge under Rule 11, the charge must bring out that the document which is the subject matter of the charge is an official document. The second limb of the charge must bring out that the person concerned has communicated the document or information there from to a person to whom he is not authorised to communicated such document or information. Both limbs must be established to sustain the charge u/s 11 of the CCS (Conduct) Rules, 1964.

14. This court is not dealing with the defense as to how the petitioner came into possession of the 3 documents in question. This court is concerned whether the charges can be framed against the petitioner on the allegations noted.

15. Petitioner obtained the said 3 documents and filed them along with his amended petition and rejoinder affidavit in WP(C) NO. 4692/1998. I have called for the file of WP(C) NO.4692/1998. When the petitioner filed the rejoinder affidavit and annexed thereto the offending documents, the respondent did not raise any objection either invoking Section 123 or Section 124 of the Evidence Act. Respondent did not call upon this court to remove the said documents. No privilege whatsoever or confidentiality was claimed by the respondent. I have taken note of the said fact because this shows the importance which the respondent attached to the 3 documents.

16. The ingredients of a charge u/s 11 of the CCS (Conduct) Rules, 1964 is the communication of an official document to another government servant or any other person to whom the government servant is not authorised to communicate such document or information.

17. Assuming that the 3 documents were official documents, would there communication to a court of law by and under a rejoinder affidavit be stated to be communication to another government servant or communication to any other person?

18. Judges of the High Court are not government servants. Communication of an official record in a court proceeding to a High Court Judge would not be communication to a government servant. Would it be communication to any other person.

19. In the quest for justice, every party is entitled to bring to the notice of the court any evidence which the party feels to be relevant. In the decision reported as Magraj Patodia Vs. R.K. Birla and Others, in para 20, the Supreme Court observed :-

"But the fact that a document was procured by improper or even illegal means will not be a bar to its admissibility if it is relevant and its genuineness proved."

20. In the decision reported as : 1987CriLJ1888 , Pushpa Devi M.Jatia Vs. M.M.Wadhavan, in para 20 the Supreme Court observed:-

"If evidence is relevant the court is not concerned with the method by which it was obtained."

21. Referring to a document and annexing the same in a pleadings before a court of law, in my opinion would not amount to an unauthorised communication to any other person. In the facts of the present case while determining this aspect of the matter, this court cannot ignore that when the petitioner annexed the 3 documents along with his pleadings in WP(C) No.4692/1998 no claim of privilege or confidentiality u/s 123 or 124 of the Evidence Act was raised.

22. The writ petition succeeds. The impugned charge-sheet issued under cover of memorandum dated 27.6.2000 is quashed. No costs.