(2012) 05 DEL CK 0348

In the Delhi High Court

Case No : LPA. No. 340 of 2009

National Thermal Power Corporation Ltd. and Another APPELLANT

Vs

Parmeshwar Prasad RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Citation : (2012) 190 DLT 213 : (2012) 135 FLR 237

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : S.K. Taneja, Adv with Mr. Puneet Taneja and Mr. Amrit Anand, for the Appellant;

Judgement

Rajiv Sahai Endlaw, J.—This intra court appeal impugns the judgment dated 30th May, 2009 of the learned Single Judge allowing WP(C) No. 162/1996 preferred by the respondent and setting aside the orders dated 8th June, 1995 and 13th/16th October, 1995 of the Disciplinary Authority and Appellate Authority respectively of the appellant, of removal of the respondent from the service of the appellant and consequently directing the appellant to reinstate the respondent with all consequential benefits and continuity of service. Notice of the appeal was issued and order of the learned Single Judge stayed. We have heard the counsel for the parties, respondent in person also and also perused the written arguments filed by the parties. The respondent while working as the Senior Engineer/Deputy Manager (Contracts) in the corporate office of the appellant at New Delhi, was on 20th December, 1990 charged with having:-

(i) during the year 1987-88 entered into an arrangement, for monetary consideration, with M/s Modern Insulators Limited (MIL) for passing on official information in respect of tender packages for certain works of the appellant;

(ii) in furtherance of the same and to conceal his identity, brought his uncle Shri Ram Naresh Prasad, proprietor of M/s Global Construction Company and Shri S.K. Dua working as Deputy Superintendent (O&M) with the appellant, into the picture;

(iii) made Shri R.N. Prasad as proprietor of M/s Global Construction Company enter into an agreement with MIL whereunder MIL agreed to pay to Shri R.N. Prasad 2% of the ex-works price, under the guise of liaison work;

(iv) introduced Shri S.K. Dua to MIL as a representative of M/s Global Construction Company to pass on relevant information to MIL;

(v) after the award of works of the value of Rs. 1,47,61,500/- to MIL, made MIL pay Rs. 2,36,026/- in the bank account of M/s Global Construction Company;

(vi) thus exhibited dishonesty in connection with the business of the appellant, having become a party in acceptance of commission, acted in a manner prejudicial to the interest of the appellant, failed to maintain good discipline and behaviour and integrity and having behaved in a manner unbecoming of a public servant, all in violation of Rules 4(1)(iii) and 5(1) (5) and (20) of the Conduct, Discipline and Appeal Rules of the appellant.

2. The respondent submitted a reply dated 4th January 1991 to the aforesaid charge denying having entered into any agreement with MIL or having brought Shri R.N. Prasad and Shri S.K. Dua in the picture or having introduced Shri S.K. Dua to MIL as a representative of M/s. Global Construction Company or having passed on any information through the said Shri Dua to MIL. As far as the charge of the payments by MIL to M/s Global Construction Company was concerned, the respondent pleaded that since he was in no way connected with M/s Global Construction Company or its account, he was not in a position to confirm or deny the same. He also denied having acted in the manner as charged.

3. The Inquiry officer submitted a report dated 18th November, 1991 to the effect:

(i) MIL had participated in the tenders invited by the appellant;

(ii) the respondent had access to the files of the said tenders (in which MIL had interest) under consideration;

(iii) the charge of the involvement of the respondent in passing on official information to MIL for monetary consideration was proved;

(iv) the charge of the respondent having brought his uncle Shri R.N. Prasad and Shri S.K. Dua into picture for passing on information and receiving monetary consideration was also proved;

(v) the charge of the respondent having introduced Shri S.K. Dua to MIL was also proved;

(vi) payment by MIL of Rs. 2,36,026/- to M/s Global Construction Company/Mr. R.N. Prasad was proved;

All the aforesaid acts proved were also found to be in violation of the NTPC CDA

Rules aforesaid.

4. The Disciplinary Authority of the appellant, after giving opportunity to the respondent to represent against the report of the Inquiry Officer and after considering the reply/representation of the respondent thereto, vide order dated 8th June, 1995 (supra), concurred with the report; the Disciplinary Authority on the basis of the records of the inquiry also observed that the bank account of M/s Global Construction Company in which the payments were received from MIL was opened only on 28th June, 1998 i.e. after the award of tender/contract on 20th April, 1988 by the appellant to MIL and that the transactions in the said account were only to receive the payments from MIL and withdrawal thereof and none other; the Disciplinary Authority found the respondent to have become a party in acceptance of commission to the extent of Rs. 2,36,026/- and imposed the penalty aforesaid of removal from service.

5. The respondent preferred the departmental appeal which was dismissed vide order dated 13th/16th October, 1995(supra).

6. At this stage it may also be stated that Shri S.K. Dua, also working with the appellant, was also on 20th December, 1990 i.e., at the same time as the respondent, charged with having under arrangement aforesaid with the respondent, impersonated himself as "Sunil", a representative of M/s. Global Construction Company to MIL for passing on official information from the respondent to MIL and which resulted in the award of tender/contract dated 20th April, 1988 of the value of Rs. 1,47,61,500/- to MIL. Inquiry was held against him also by the same Inquiry Officer who submitted a report dated 18th November, 1991 qua Shri S.K. Dua also, i.e., at the same time as the report qua the respondent. The Inquiry Officer found the charge to have been proved against the said Shri S.K. Dua also. However, the Disciplinary Authority of the appellant vide order dated 7th/8th June, 1995 gave "benefit of doubt" to Shri S.K. Dua and held the charge to have been not proved against him.

7. The learned Single Judge in the judgment impugned before us, though fully conscious of the scope of the powers of judicial review and of the same being not intended to acquire the proportions of an appeal, nevertheless quashed the order of removal from the service of the respondent for the reason of:-

(i) the appellant on the basis of the same material having exonerated Shri S.K. Dua and which is recorded by the learned Single Judge as the " main plank" of the arguments of the respondent;

(ii) that once Shri S.K. Dua was exonerated it meant that he had not acted as a representative of M/s Global Construction Company qua MIL. It was held that thus the conclusion of the respondent having passed on information to MIL could not have been reached and the link in the chain of events to implicate the respondent also got weakened;

(iii) that though it stood proved that (a) the respondent had access to the relevant files and documents concerned with the tender and was also liaisoning with the tender committee members in his official capacity; (b) that the tender was ultimately awarded to MIL and MIL had engaged the services of Global Construction Company of which Shri R.N. Prasad was the proprietor; (c) a sum of Rs. 2,36,026/- was paid by MIL to the account of Shri R.N. Prasad, but all this still did not prove the complicity of the respondent or abuse of official position for dishonest purpose by the respondent;

(iv) that the findings of the Inquiry Officer were based on conjectures and inferences; the material witnesses i.e., Shri R.N. Prasad and Shri P.K. Rastogi of MIL whose statements were earlier recorded by the Vigilance Officer of the appellant (and which showed involvement of the respondent) and who were vital links to prove the complicity of the respondent were not produced before the Inquiry Officer; that thus the case of the respondent was in no way different from that against Shri S.K. Dua who was exonerated;

(v) that the findings of the Inquiry Officer were perverse and irrational;

(vi) that the Disciplinary Authority did not appreciate the perversity in the findings;

(vii) that the Appellate Authority did not give any reason for its order and failed to discharge its legal obligations in blindly upholding the order of the Disciplinary Authority.

8. The aforesaid would show that even the learned Single Judge has found the following to have been proved :

(A) that the respondent had full access to the information pertaining to the tender in which MIL had bid;

(B) that the said tender was awarded to MIL;

(C) Mr. R.N. Prasad uncle of the respondent was the proprietor of M/s Global Construction Company;

(D) MIL had paid commission of Rs. 2,36,026/- to M/s Global Construction Company/Mr. R.N. Prasad.

The respondent and his counsel before us also have not controverted the aforesaid findings.

9. Though elaborate arguments on various aspects have been addressed but what we have wondered is whether the aforesaid admitted position alone is not sufficient to justify the punishment meted out to the respondent. In our opinion it is. Though the learned Single Judge has, also, observed that it did not stand proved that the respondent was in a position to influence the award of the tender to MIL but in our opinion the same is wholly irrelevant. The rules/laws as to award of tenders are more or less settled. The bids are normally in public domain and it is virtually impossible to not award the contract/tender to the bidder most

favourable to the contract awarding party. However access to information in the domain of the contract awarding party can definitely entitle a bidder to structure its bid in a manner so as to become most favourable and acceptance of which would then become a foregone conclusion. The charge, de hors of legalese, against the respondent, employed with the appellant, was of corruption i.e. of having helped MIL, for consideration in procuring the tender from the appellant. Evidence/proof of transactions of corruption is rarely direct. Those indulging in corruption take all possible precaution to cover their tracks and not to leave any trace thereof. The transactions of corruption are always shrouded in secrecy and have to be invariably inferred.

10. We fail to see as to how the Inquiry Officer, Disciplinary Authority and/or the Appellate Authority, in inferring corruption from the aforesaid admitted facts, can be said to be in error or as to how their conclusions can be said to be perverse. The very fact that the successful tenderer i.e. MIL at the contemporaneous time of award of tender had paid unexplained consideration to the uncle of the respondent was/is sufficient to infer the same. It was for the respondent to dislodge the said inference and which has not been done. The respondent chose, neither to step in the witness box during the inquiry proceedings nor to produce his said uncle. The respondent did not even offer any explanation for the payments by MIL to his uncle. It was for the respondent to, on being so charged, explain the coincidence as to how the successful tenderer and for what, came to make payments to his uncle. The same could have been done by explaining that his uncle was engaged in the business of rendering such services or had been engaged by MIL for his professional acumen or by otherwise explaining the transaction; no efforts even towards the same were/are made.

11. It was also not the case of the respondent that his uncle was inimical towards him. The respondent did not offer any other explanation also for being not able to produce his uncle as his own witness. We fail to see as to what wrong the Inquiry Officer, the Disciplinary Authority and the Appellate Authority committed in drawing adverse inference therefrom.

12. It is also not as if the Inquiry Officer did not make any efforts for securing the presence of the uncle of the respondent. The record shows repeated efforts made for the same. However, the notices sent to the uncle were returned undelivered. What else can it mean but that the respondent was afraid that if his uncle appeared he may support the charge.

13. We are unable to agree with the reasoning of the learned Single Judge of the appellant having failed to establish the charge for the reasoning of non production of the uncle of the respondent and Mr. P.K. Rastogi of MIL. The facts as established res ipsa loquitur of dishonesty of the respondent. The respondent failed to rebut the same without even explaining any cause for his such failure.

14. As far as the aspect of the Disciplinary Authority having exonerated Mr. S.K. Dua and which aspect not only formed the "main plank" of the argument of the

respondent before the learned Single Judge but which also swayed the opinion of the learned Single Judge, is concerned, we not only find any case of discrimination to have made out but even otherwise are of the opinion that even if a delinquent employee is let off/exonerated wrongly, the same cannot be the reason for quashing the punishment meted out to the other employee if charge against him is found to have been established. The law does not recognize the concept of negative equality (see Union of India (UOI) and Others Vs. M.K. Sarkar,). However, we may not delve in detail of the said proposition inasmuch as we find that the learned Single Judge though held a case of discrimination to have been made out but without analyzing that the charge against the respondent was entirely different from the charge against Mr. S.K. Dua, even though both arose out of the same transaction. Mr. S.K. Dua was charged only with being a conduit for passing of official information of the appellant, from the respondent to Mr. P.K. Rastogi of MIL. Thus Mr. Dua was but a puppet in the transaction, of the creation of the respondent. While against the respondent it stood proved that he had access to the information and the successful tenderer i.e. MIL had for no explicable reason paid monies to the uncle of the respondent, there was no such thing against Mr. Dua. The charge against Mr. Dua was based on the statement of Mr. Rastogi of MIL to the Vigilance Officer to the effect that the respondent had introduced the said Mr. Dua to Mr. Rastogi of MIL as "Mr. Sunil" and had acted as a conduit between the respondent and MIL. Neither the respondent appeared as a witness in the inquiry to confirm the same nor could the presence of Mr. Rastogi be procured. There were no other circumstances, as against the respondent, of any gratification having been paid to or for the benefit of Mr. S.K. Dua. In these circumstances, the exoneration of Mr. Dua did not dilute in any manner whatsoever the circumstantial evidence against the respondent. The payment of money by MIL to the uncle of the respondent, in the absence of any explanation, has to be presumed to be illegal gratification for the benefit of the respondent.

15. Though courts have in certain circumstances, upon finding the high and mighty being let off/exonerated presumably owing to the influence exercised by them, also set aside the punishment to the junior/menial officials but the position is converse. Mr. Dua who has been exonerated was a junior and not a superior of the respondent. It is also not the case that Mr. Dua has been exonerated for any extraneous reasons. In these circumstances his exoneration cannot entitle the respondent to any leniency. It is the settled principle in law that the Indian Evidence Act and the other Rules and Practices including of onus, as applied in the Courts do not apply to disciplinary/departmental proceedings. Once the said rule and the rule of common sense is applied, from the admitted facts and from the failure of the respondent to offer any explanation therefor, no perversity can be found in the findings/decisions of the Inquiry Officer, Disciplinary Authority and Appellate Authority.

16. The senior counsel for the appellant and the respondent appearing in person have in their arguments spent considerable time on -

(i) whether the Inquiry Officer, Disciplinary authority and the Appellate Authority in reaching the conclusion reached by them have relied on the statements of the uncle of the respondent and of Mr. Rastogi of MIL to the Vigilance officer;

(ii) whether M/s Global Construction Company which was the sole proprietary of the uncle of the respondent was also proved to at the relevant time having an office at the official residence of the respondent;

(iii) whether cash payments to the respondent from his uncle were proved.

but we do not feel the need to render any findings thereon inasmuch as we, on the basis of the admitted position aforesaid have reached the conclusion of the findings of the inquiry Authority, Disciplinary Authority and the Appellate Authority being not liable to be interfered with in exercise of power of the judicial review.

17. We may also notice that the appellant alongwith the appeal has also filed a copy of the Transfer Petition (Criminal) filed by Mr. Rastogi aforesaid in the Apex Court for transfer of a criminal case filed by MIL against him in the Court of the Chief Judicial Magistrate, Abu Road, Rajasthan to Delhi and in which the said Mr. Rastogi has inter alia stated that he, at the instance of the owner Mr. C.M. Jain of MIL was interacting with the respondent and that the respondent though a full time employee of the appellant was looking after the affairs of the M/s. Global Construction Company and had for consideration helped MIL in procuring the tender from the appellant. The respondent has argued that the said document as well as some other documents including the copies of the notices sent by Inquiry Authority to Mr. P.K. Rastogi and to the uncle of the respondent were not part of the writ record. However, in view of what is recorded hereinabove, we do not deem it necessary to deal with the said documents.

18. The senior counsel for the appellant has also filed before us following judgments -

(i) State of Haryana Vs. Rattan Singh 1977 SCC (L&S) 298 on the proposition that departmental inquiries are not bound by strict rules of evidence.

(ii) Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, on the rule of interference in findings of domestic inquiry and on the permissibility of strong presumption therein.

(iii) Sub-Divisional Officer, Konch Vs. Maharaj Singh, where the practice of re-appreciating the entire evidence and going into the question of burden and onus of proof while exercising power of judicial review qua departmental inquiries was deprecated.

(iv) Shri J.D. Jain Vs. The Management of State Bank of India (1982) 1 LLJ 54 on the applicability of the principle of hearsay in domestic inquiries.

(v) Orissa Mining Corporation and another Vs. Ananda Chandra Prusty, laying down that the burden of proof depends upon the nature of explanation and the nature of charges.

19. The respondent appearing in person has also filed before us copies of the following judgments:

(i) Judgment dated 12th August, 2011 of this Court in WP(C) 4941/2000 titled George N.S. Vs. Commissioner of Police which is not found applicable.

(ii) Roop Singh Negi Vs. Punjab National Bank and Others, which the respondent contends applies on all fours but we disagree.

(iii) Sawai Singh Vs. State of Rajasthan, on the aspect of vagueness of the charge.

(iv) Judgment dated 28th May, 2009 of the Apex Court in Civil Appeal No. 4174/2003 titled Union of India Vs. Gyan Chand Chattar laying down that a charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences.

(v) Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, on the duty of the departmental authorities to given reasons.

(vi) Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra Sarmah, where the punishment was set aside for the reason of only one person being made scapegoat for collective decisions in which others also collectively participated.

(vii) Mathura Prasad Vs. Union of India (UOI) and Others, which is not found applicable

(viii) Judgment dated 8th July, 2008 of this Court in WP(C) No. 5096/1994 titled Smt. Sunita Rani Vs. Union of India which is also not found applicable.

(ix) Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, on the departmental Appellate Authority being required to give reasons.

(x) Director (Marketing) Indian Oil Corpn. Ltd. and Another Vs. Santosh Kumar, again on the Departmental Appellate Authority being required to given reasons.

(xi) Sher Bahadur Vs. Union of India (UOI) and Others, on the requirement of evidence to link the charged officer with the alleged misconduct.

(xii) Kuldeep Singh Vs. The Commissioner of Police and Others, holding a finding without stating reasons therefor to be perverse.

(xiii) Ministry of Finance and Another Vs. S.B. Ramesh, on the standard of proof in departmental inquiries.

(xiv) Ram Chander Vs. Union of India (UOI) and Others, on the requirement to given reasons.

(xv) Central Bank of India Ltd. Vs. Prakash Chand Jain, , but it is relating to proceedings under ID Act.

20. We, notwithstanding our aforesaid conclusion have listed the submissions made and the judgments cited only for the personal satisfaction of the respondent who has conducted most of the proceedings on his own. Else we do not find the same to be coming in the way of the conclusion aforesaid reached by us. The appeal thus succeeds. The Judgment dated 30th May, 2009 of the learned Single Judge is set aside; resultantly the writ petition filed by the respondent impugning the punishment of removal from service of the appellant meted out to him is dismissed. We refrain from imposing any costs.