**(2015) 01 CAL CK 0056**

**In the Calcutta High Court**

**Case No :** Writ Petition 27294 (W) of 2014

Partha Sarathi Dhar APPELLANT

Vs

Kotkata Metropolitan Development Authority and Others RESPONDENT

**Date of Decision :** 15-01-2015

**Acts Referred:**

**Citation :** (2015) 1 CALLT 585

**Hon'ble Judges :** Sanjib Banerjee, J

**Bench :** Single Bench

**Advocate :** Soumya Majumdar, Mainak Ganguly and Victor Chatterjee, for the Appellant; Satyajit Talukdar, Advocates for the Respondent

**Final Decision :** Allowed

# Judgement

Sanjib Banerjee, J.

1. The only mitigating factor in this matter is the lukewarm defence put up at the hearing by the Kolkata Metropolitan Development Authority and its officers to the charges of mala fides and hostile discrimination levelled by the petitioner. The petitioner is an Assistant Engineer in KMDA. The petitioner was the first named among several petitioners who challenged an arbitrary action by the employer in giving ad hoc promotions to officers who were junior to those petitioners on the eve of their deputation to certain other units or organizations. Such challenge was upheld by this court and the entire process has to be reworked causing immense inconvenience to the respondents upon the order having attained finality in the Supreme Court. Blue-eyed boys of the persons who matter in KMDA have not been able to reap the benefits of the undeserving promotions thrust on them. A backlash was bound to follow.

2. During the pendency of the proceedings challenging the illegal promotions, leave was obtained by KMDA from the appellate court to permit ad hoc promotions to enable assistant engineers to officiate as executive engineers. Several candidates were considered but the petitioner was excluded. After all,

the petitioner''s name appeared in the cause-list as the first named petitioner and that caused considerable discomfort to the superior officers. A further petition has been filed by this petitioner complaining of a promotion due to him after 37 years of unblemished service being denied to the petitioner who is on the verge of retirement. The excuse proffered by the respondents is that the necessary clearance has not been received from the vigilance cell. The petitioner''s service records were required to travel to the vigilance cell because of possible adverse remarks therein, though it is an undisputed position that no adverse remark made against the petitioner in his annual confidential reports or other records have ever been furnished to the petitioner.

3. There is a categorical assertion in the petition that upon the petitioner complaining of the petitioner''s promotion being arbitrarily and illegally blocked or delayed being received in court, some observations were made from the Bench on or about May 8, 2014. Shortly thereafter, the petitioner received a memorandum dated May 6, 2014 from the Chief Executive Officer forwarding the articles of charge and the statement of imputation of misconduct in respect of the articles. The articles need to be seen in their entirety for the grievance of the petitioner and the conduct of seemingly responsible officers of KMDA to be seen in proper perspective:

Article of Charge - I

"That the said Shri Partha Sarathi Dhar, while functioning as a Technical Assistant(Civil), BI and LIG Sector (renamed as BSUP Sector), now posted as Assistant Engineer at Calcutta Division, W.S. Sector, Kolkata Metropolitan Development Authority, Unnayan Bhavan, Kolkata - 700091 availed loan amounting to Rs. 4,50,000/- from the Syndicate Bank, Salt Lake Branch in connection with the attempt to purchase a flat at 11 A, Dharmatala Road, Kasba, Kolkata - 700042, on 17-02-2005.

After paying a portion of loan amount Shri Dhar stopped payment of EMIs. As per the bank statement the loan amount along with interest stands Rs. 10.6 lakh as on 31.07.2012.

Shri Dhar did not take any permission from the competent authority prior to avail loan from bank, in Dharmatala Road, Kasba, Kolkata -42.

Thus it transpires that Shri Dhar misappropriated the entire money by deceitful manner, which prima-facie shows lack of integrity and is, therefore, improper and most unbecoming of a public servant.

Action may be initiated against Shri Dhar for the above misconduct.

Article of Charge - II

That the said Shri Partha Sarathi Dhar, while functioning as a Technical Assistant (Civil), BI and LIG Sector (renamed as BSUP Sector), now posted as Assistant Engineer at Calcutta Division, W.S. Sector, Kolkata Metropolitan Development

 

Authority, Unnayan Bhavan, Kolkata-700091 did not take any permission from the competent authority prior to availing a loan from the Syndicate Bank. Though officially cautioned by the Deputy Secretary, Establishment Wing, KMDA vide memo No. 888 dated 14.05.2005 advising Sri Dhar to cooperate with the bank and clear the balance, he neither cleared the loan nor executed the deed of conveyance, which is also derogatory to the prestige of the KMDA.

Action may be initiated against Shri Dhar for such misconduct.

Article of Chare - III

That the said Shri Partha Sarathi Dhar, now posted as North Western Division, W.S. Sector, Kolkata Metropolitan Development Authority, Unnayan Bhavan, Kolkata - 700091 submitted a petition directly to the Chairman, KMDA 8s Hon Tale MIC to the Government of West Bengal, UD 8s MA Department in connection with promotion to the officiating post of Executive Engineer which is also in gross violation of KMDA Regulation.

Action may be initiated against Shri Dhar for such misconduct."

4. The petitioner questions the legality of the charge-sheet and insists that the same is liable to be quashed-without a second glance, inter alia, inasmuch as nothing alleged therein constitutes misconduct within the meaning of the relevant provisions referred to in the statement of imputation of misconduct. In addition, the petitioner has narrated, inter alia, at paragraphs 3 to 9 of the petition and thereafter, the circumstances leading up to the issuance of the charge-sheet and the reasons why the respondent officers may not be favourably disposed towards the petitioner.

5. In the context of the charges levelled against the petitioner, the applicable provisions must also be seen as they have been referred to in the statement appended to the memorandum dated May 6, 2014. Clauses (1) and (2) of Regulation 115 have been cited in respect of the first charge; Regulation 99 has been referred to in respect of the second charge; and, Regulation 119 has been mentioned in connection with the third charge. The relevant provisions are as follows:

"115. Movable, immovable and valuable property -

(1) No employee shall either himself or in the name of any other person acquire or attempt to acquire any interest in any movable or immovable property disposed of at a public sale under the orders of the Authority or any authority sub-ordinate to it.

(2) No employee shall except with the previous knowledge of the appointing authority acquire or dispose of any immovable property of the value of more than Rs. 1,000/- by lease, mortgage, purchase, sale, gift or otherwise, in his own name or in the name of any member of his family.

(3) ....

 

99. General-Every employee shall, at all times, maintain a very high standard of integrity, impartiality and devotion to duty. No employee shall behave in a manner which is improper and unbecoming of an employee and derogatory to the prestige of the Authority."

"119. Submission of petitions -No employee shall submit any petition direct to the Authority otherwise than through his immediate departmental superior, nor shall send copies of such petitions to any outside authority, that is to say, any authority which is not directly connected with the consideration thereof.

Note:- An employee wishing to press a claim or seeking redress of a grievance in any matter connected with the service rights or conditions shall address his immediate official superior or such other authority at the lowest level as is -competent to deal with the matter. An appeal or representation to a higher authority must not be made unless the appropriate authority has already rejected the claim, refused relief or unduly delayed the disposal of the case.

When such appeal or representation is made, it shall be submitted through the proper channel, though an advance copy of the same may be sent direct."

6. It is not every day that a case of mala fides is brought to court with sufficient material in support of the charge. But it may not be necessary to consider such aspect of the petitioner''s challenge to the charge-sheet since it does not appear that the charge-sheet has any legs to stand on the basis of the provisions cited in support of the several articles of charge.

7. It is evident from the admitted documents, copies whereof have been appended to the petition, that the concerned bank from which the petitioner had obtained a loan had complained to KMDA in 2005 that the petitioner had not paid the amount due to the bank. An explanation of some kind may have been sought from the petitioner and it is evident that the petitioner wrote a letter in the year 2013 explaining the dispute between the petitioner and the bank and referring to the pendency of proceedings in connection therewith before the appropriate Debts Recovery Tribunal. More importantly, the perceived irregular servicing of the loan was brought to the employer''s notice in the year 2005 and the petitioner was promoted to his present post in the year 2008 notwithstanding the letter being issued by the bank. At the time of the petitioner''s previous promotion, the KMDA did not consider the bank''s letter of 2005 to be a relevant consideration in assessing the petitioner''s candidature for the promotion.

8. However, between 2008 and 2014, a colossal upheaval took place in KMDA following the successful campaign in court by the petitioner and others against the illegal orders of promotion and the adverse observations invited from court upon the petitioner''s complaint that bias and prejudice were at play in the petitioner being denied the next promotion.

9. The charges as framed do not constitute any misconduct within the meaning of the cited provisions of the regulations governing the services of the petitioner.

 

The first charge speaks of the petitioner not taking "any permission from the competent authority prior to avail loan from bank, in connection with his attempt to purchase a flat..." The vicious disposition of the employer or its concerned official towards the petitioner is reflected from the last paragraph of the first charge: all that preceded the last paragraph cannot support the obnoxious conclusion that is drawn therein.

10. Apropos the first charge, Regulation 115(1) has no manner of application since whatever the petitioner did was not in respect of any public sale conducted by the KMDA. Regulation 115(2) requires an employee to acquire or dispose of any immovable property value in excess of Rs. 1000/- with the previous knowledge of the appointing authority. The transactions covered by the provision are lease, mortgage, purchase, sale and gift though there is also the residuary "otherwise" that figures therein. The penultimate paragraph of the first charge is carefully worded since it is evident that the petitioner had not acquired or disposed of the property. The words used are "attempt to purchase".

11. Since it is evident that Regulation 115(2) does not require any prior promotion, but only requires a prior intimation and it is also the admitted position on the basis of the memorandum of May 6, 2014 that the petitioner has not purchased the relevant immovable property yet, there is no basis to the charge nor does the charge make out any misconduct within the meaning of either limb of Regulation 115 cited in support thereof.

12. The second charge pertains to the same transaction. If the KMDA sets such high standards for its officers as reflected from the second charge levelled against the petitioner, the respondent officials impleaded herein would be in considerable difficulty. If the non-payment of the claim of a bank on an employee is a ground for finding such conduct unbecoming of a KMDA employee, though appropriate proceedings in such regard are pending before the Debts Recovery Tribunal, the issuance of a baseless charge-sheet actuated by malice and for extraneous considerations should invite sterner charges being levelled against the respondent officers. There is no basis to the second charge or the allegation of general misconduct upon an employee failing to meet the claim of a bank which is pending adjudication before the appropriate forum.

13. The final count of charge is even more curious. The petitioner felt that the petitioner was not getting justice or his due reward from the immediate superiors responsible for his promotion and a representation was made to, inter alia, the Chairman and other high officials of KMDA. It is evident from the copy of the letter dated August 22, 2012 that the immediate superior of the petitioner appended his signature to the letter when it may have been placed before him by the petitioner for approval to forward the same to the addressees thereof. It is also of some significance that the letter was dated August 22, 2012.

14. Even without touching upon the ground of mala fides that is robustly canvassed on behalf of the petitioner, it is evident that the charge-sheet is liable

 

to be quashed as it, ex facie, does not reveal any ground of misconduct.

15. In the circumstances in which the petitioner claims to have been victimised by KMDA, it was necessary to address the issue of mala fides in greater detail than has been perfunctorily attempted in the affidavit filed by the third respondent on behalf of all the respondents. The uncomfortable details that appear in the petition have been glossed over with bare denials. The only saving grace is that in course of the final hearing, a less vituperative stand was taken against the petitioner than is evident from the chargesheet and the contemporaneous treatment of the petitioner by his superior officers at KMDA.

16. For a charge-sheet to be quashed and disciplinary proceedings to be stultified at the threshold, high tests have to be met. One of the tests is that the matters complained of would not amount to misconduct. Even if nothing is detracted from the charges as levelled or the statement of imputation of misconduct accompanying the charge-sheet, the petitioner meets the high test in this case of the charges not revealing any ground of misconduct for the vexatious disciplinary proceedings to be continued against the petitioner.

17. The tentative view taken at the ad interim stage cannot be dislodged by anything in the affidavit-in-opposition or the submission of the respondents.

18. The memorandum of May 6, 2014, including the chargesheet forming a part thereof, stand set aside and quashed. The conduct of the officers responsible for initiating the mala fide disciplinary proceedings against the petitioner ought to be appropriately dealt with. However, it is for the employer to take an ultimate decision in such regard. For their acts and conduct as noticed above, the respondent Nos. 2, 3 and 4 will personally pay Rs. 10,000/- each as costs to the petitioner. In addition, KMDA will pay costs assessed at Rs. 50,000/- to the petitioner which the petitioner will immediately deposit in a separate account with the Syndicate Bank in connection with the loan obtained from the bank by the petitioner.

19. The petitioner is given liberty to bring this order to the notice of the Chairman, KMDA for the Chairman take appropriate action to ensure that the morale of the employees is not shattered by the acts of its senior officers that have been noticed herein. W.P. 27294(W) of 2014 is allowed as above.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

 