
(2009) 08 DEL CK 0003

In the Delhi High Court

Case No : Writ Petition (C.) No. 10818 of 2009

Puran Chand

APPELLANT

Vs

BSES Rajdhani Power Ltd.

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120B, 409, 467, 471

Citation : (2009) 08 DEL CK 0003

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Nagender Deswal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The petitioner in this writ petition is aggrieved by an industrial award dated 16.05.2009 passed by the Industrial Adjudicator by which his removal from service of the respondent has been found to be just and legal.

2. Heard.

3. The petitioner was appointed as a Mazdoor in Delhi Electrical Supply Undertaking and after he had worked for about 26 years in DESU, he was served with a charge-sheet vide Office Memorandum dated 09.03.1988. The article of charges framed against him are contained in document, Annexure P-5 at page 80 of the paper book which is extracted below:

Shri Pooran Chand while working as Mazdoor DESU in Zone702, R.K. Puram, New Delhi during the period 1981-82 but bogus signatures on dockets No. 983, 1370, 1658 and 1659 and draw the huge electrical material from Jangpura Store of DESU against the same illegally and unauthorisedly in the name of Sharan Kumar. This material was neither required nor reached the site for the purpose of maintenance and thus misappropriated the same. Thus Shri Pooran Chand

committed misconduct by failing to maintain absolute integrity and devotion to duty and thereby contravened the provisions of Rules 3(1)(i) & (ii) of the CCS (Conduct) Rules, 1964.

4. A domestic inquiry into the charges was held against the petitioner in which he was found guilty of the charges leveled against him. A criminal case vide RC No. 29/1985 was also registered against the petitioner u/s 120-B read with Section 409, 467 & 471 IPC but he was acquitted in the said criminal case vide judgment and order dated 26.09.1989 passed by Mr. Dinesh Dayal, then MM, New Delhi. The domestic inquiry against the petitioner was started in 1988 and was completed sometime in 1996. By the time inquiry against the petitioner was completed, he had already been acquitted in the criminal case. However, the disciplinary authority after considering the inquiry report and other relevant material decided to remove the petitioner from its service and accordingly the petitioner was removed from the service of the erstwhile DESU w.e.f. 03.04.1996. The petitioner aggrieved by his removal from service of erstwhile DESU filed a statutory appeal before the Appellate Authority but his appeal was rejected by the Appellate Authority vide its order dated 29.10.1997. After dismissal of his appeal by the Appellate Authority, the petitioner raised an industrial dispute with regard to his removal from the service of the respondent (erstwhile DESU) and the said dispute was referred by the appropriate Government for adjudication to the Labour Court. The Labour Court vide its order dated 06.05.2009 has decided the inquiry issue against the petitioner and in favour of the respondent. After deciding the inquiry issue vide order dated 06.05.2009 in favour of the management, the court below vide impugned award dated 16.05.2009 has confirmed the removal of the petitioner from the service of the respondent (erstwhile DESU). Mr. Nagender Deswal, learned Counsel appearing on behalf of the petitioner has relied upon a judgment of the Hon'ble Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, to contend that when a delinquent employee has been acquitted in a criminal case, it would be unfair to remove him from service on the basis of inquiry report. Mr. Deswal has placed reliance on para 34 of the judgment in Capt. M. Paul Anthony's case (Supra) and para 34 of the said judgment reads as under:

There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, the raid conducted at the appellant's residence and recovery of incriminating articles therefrom. The findings recorded by the Inquiry Office, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was

conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

5. I have given my anxious consideration to the above arguments advanced by learned Counsel appearing on behalf of the petitioner but I could not persuade myself to agree with him. The judgment of the Supreme Court in Capt. M. Paul Anthony's case is not applicable to the facts of the present case. In Capt. M. Paul Anthony's case, the departmental proceedings against the delinquent employee were ex parte and in that case, it was found that the management was not able to prove the raid and recovery held at the residence of the delinquent employee. This is not the case in the present case. It will be relevant to refer to the findings of the Industrial Adjudicator contained in its order dated 06.05.2009 on inquiry issue which is extracted below:

Now turning to evidence on record, the workman himself admitted in his cross-examination that it was correct that domestic enquiry was held against him in this matter and the name of enquiry officer was Sh. S.N. Jha; that he (workman) was informed about the first date of domestic enquiry by his Counsel Sh. M.L. Saini; that this domestic enquiry continued for 23 years; that Sh. M.L. Saini used to appear with him (workman) in the domestic enquiry as defence nominee; that Ex. MW1/1 proceedings bear his signatures at point A and the signatures of his Defence Assistant at point B; that it was correct that enquiry officer used to get the signatures at the end of the proceeding and he attended every date of enquiry proceedings; that all other proceeding sheets which are part of Ex. MW1/1 running into 225 pages bear his signatures as well as signature of his Defence Assistant at points "A" and "B" respectively; that he received memorandum dated 09.03.88 with articles of charges in his office and he replied the same through his AR; that it was correct that he (workman) preferred an appeal against the order of his termination which was rejected by General Manager; that it was correct that Ex. MW1/8 was the copy of rejection of his appeal; that he had appeared on each and every date of his proceedings before enquiry officer. In this way, it is crystal clear from the own admissions of the workman to the above effect coupled with other entire oral as well as documentary evidence on record that the domestic enquiry in this matter was conducted by the management against the workman fairly and properly in accordance with the principles of natural justice by giving all the reasonable and fair opportunities of being heard to the workman herein. Hence, the enquiry issue is decided against the workman and in favour of the management.

7. I am in complete agreement with the findings on the inquiry issue recorded by the Industrial Adjudicator. A perusal of the above extracted portion of the impugned order dated 06.05.2009 would show that the petitioner had contested

the inquiry proceedings thoroughly inasmuch as 225 pages of the inquiry proceedings were all signed by him. He had fully participated in the inquiry proceedings and therefore, it cannot be said that he could not defend himself in the inquiry proceedings. The charges against the petitioner were proved against him in the domestic inquiry held by the Inquiry Officer. Merely because he was acquitted in the criminal case cannot be a ground to say that the charges against him have not been proved. This Court exercising writ jurisdiction under Article 226 of the Constitution is not sitting in appeal over an award of the Industrial Adjudicator. The High Court exercising writ jurisdiction under Article 226 of the Constitution can interfere in the impugned award of the Industrial Adjudicator only in case the findings contained in the impugned award suffers from perversity.

8. On going through the record and after considering the submissions made by learned Counsel appearing on behalf of the petitioner, I do not find any perversity in the impugned award that may call for an interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution.

This writ petition, therefore, fails and is hereby dismissed in limine.