(2013) 04 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No. 8913 of 2003

Raghu Bir Singh @ Hari Singh Sahota — APPELLANT

Vs

Union of India and Another — RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2013) 2 GLT 1162

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : P.K. Tiwari and Mr. R.J. Das, for the Appellant; N. Bora, CGC, for the Respondent

Final Decision : Allowed

Judgement

Biplab Kumar Sharma, J.—Heard Mr. J.C. Bora, learned counsel led by Mr. P.K. Tiwari, learned counsel for the petitioner. I have also heard Mr. N. Bora, learned CGC. The challenge in this writ petition is the order dated 17.6.2003 (Annexure-P/6), by which, the penalty of reduction of pay by two stages for a period of two years with further stipulation that the petitioner would not be entitled to any increment during the said period and that such reduction would not affect his future increment was imposed.

2. The aforesaid penalty was imposed by disciplinary authority upon disagreement with the enquiry report submitted by the Enquiry Officer relating to the charges that were leveled against the petitioner, by which, the petitioner was exonerated from both the charge. For a ready reference the two charges that were leveled against the petitioner are quoted below:

ARTICLE-I

Shri R.S. H.S. Sahota, 2-1/C 7th Bn. (now Commandant-7th Bn. CRPF) while posted and functioning as Detachment Commander 7th Bn, CRPF Nagaon during July, 1994 committed a serious misconduct in his capacity as a Govt. servant in that he procured 2394 cubic meters of wood from Forest Department, Assam in a clandestine manner on the basis of a permit/transit pass No. 5052 dated 11.7.94 issued by forest department, Assam and produced a false/forged bill dated 10.11.94 of Rs. 8,892/- from M/s. Vicky Traders, a firm which had existed only on paper. Thus the said Shri R.S.H.S. Sahota failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That the said Shri R.S.H.S. Sahota while posted and functioning in the aforesaid Bn. And in the aforesaid capacity and during the aforesaid period committed a serious misconduct in his capacity as a Govt. servant in that by misusing the Govt. transport of 7th Bn. CRPF he transported a portion of the aforesaid 2394 cubic meters of wood from Assam to S.P. Thus the said Shri R.S.H.S. Sahota failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violation the provisions contained in rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.

3. The petitioner having denied the misconduct attributed to him, the disciplinary authority conducted an enquiry by appointing an Enquiry Officer, who on conclusion of the same submitted his report (Annexure-P/3). By the said report, it was held that none of the charges could be established against the petitioner. For a ready reference, the operative pat of the report is quoted below:

OPINION OF ENQUIRY OFFICER

I personally gone through the evidences deposed by the prosecution witnesses, defence witnesses, exhibits produced during the enquiry as well as brief submitted by the Presenting Officer and the Charged Officer, accordingly, facts emerged are as under:-

(i) Evidence furnished and advanced by the prosecution side regarding non-existence of Vicky Traders are not particular and conclusive. They have only contended that the Firm was not functioning during October, 1994. Prosecution side is silent over the functioning of the said firm prior to Oct/94. The certificate of Shri J.P. Agarwalla mentioned that the said firm was registered from 18.1.1994 and it had not paid tax w.e.f. 1.7.1998, ipso-facto implies that firm was functional on ground also and paid tax till 30.6.1994 and thereafter defaulted on payment of taxes. At the other hand, the defence side contested the charges strongly and with concrete evidence that the M/s. Vicky Traders was existing in between crucial date of 11.7.1994 to 11.10.94. In this regard, evidence given by Shri B.C. Roy, Supdt. of Taxation, Nagaon, Assam (DW-1), Shri A. Borgohain, APS, Supdt. of Police, B. IED, Assam and Shri Pradeep Kumar, IPA, the then Supdt. of Police, Nagaon (Assam) and now DIGP (Ops) CISF, Dte. Genl, is more than sufficient to conclude that the Vicky Firm was functioning at the material point of time and later closed after banning of Sales of Timber.

(ii) The statement of the Charged Officer regarding donation of wood to

Barukulla is contradictory, never-the-less the prosecution side also failed to produce anything which may substantiate that the Charged Officer has breached the terms and condition of Transit Pass No. 5052 of 11.7.1994 issued by the Forest Department.

(iii) As regards Payments of Bills of M/s. Vicky Traders, the delay appears to be the mutual understanding between the firm and the buyer as no complaint of the firm has been produced by the prosecution side.

(iv) In view of discussion above, charges leveled against eh Charged Officer vide Article-I read with Annexure-I of the Charge Sheet, are not proved.

(v) Prosecution witnesses produced by the prosecution side to substantiate the charges leveled against the Charged Officer vide Article-II read with Annexure-II have ultimately tipped the same in favour of the charged officer rather than the prosecution side, as all the witnesses denied transportation of Timber by the Charged Officer, by unit Convoy. Therefore, Charge leveled against Shri R.S.H.S. Sahota, Comdt. Vide Article-II read with Annexure-II is also not proved.

4. After the aforesaid enquiry report, the disciplinary authority by its letter dated 10.10.2002 addressed to the petitioner conveyed its note of disagreement against the enquiry report. The relevant portion of the note of disagreement is quoted below:

A departmental enquiry was conducted against you by Shri H.B. Singh, Addl. DIGP, CRPF who was appointed as Inquiry Officer. The report of the Inquiry Officer is enclosed. The Inquiry Officer in his report has held bit Article-I and II of the charges as ''not proved''. The Disciplinary authority does not agree with the findings of the Inquiry Officer as there is sufficient evidence to hold both the charges as proved for the following reasons.

(i) The validity period of Transit Pass No. 37/5052 dated 11.7.94 for 2.394 cubic meters of unsawed wood was only upto 31.7.94 (P. Ex-2) but to the contrary the bill for purchase of said wooden logs dated 11.10.94 from M/s. Vicky Traders in the name of Mrs. G.K. Sahota (P. Ex-3) was obtained after expiry of the validity period of Transit Pass. It is also not clear how the pass was issued by Forest Department when the wood in question was not purchased on the date of issue of the pass. Thus it speak of manipulation of documents to cover up the deals.

(ii) The wooden logs were sawn by M/s. Bajaj Saw Mills on 11.7.94 vide their Challan No. 68 (D. Ex-3) i.e. prior to the purchase of the wooden logs. Further M/s. Bajaj Saw Mill in their challan had quoted Transit Pass No. 69/6940 dated 11.2.94 whereas the Forest Department has certified on the same challan that sawned timbers are covered by TP No. 37/5052 dated 11.7.94. Thus the challan of M/s. Bajaj Saw Mill itself speaks of manipulation/fabrication of the documents in the case.

(iii) Forest Range Office, Nagaon has issued Transit Pass No. 37/5052 dated 11.7.94 for collection of wooden logs from District Karbi Anglong which is at a considerable distance from Nagaon and for sawing the same from M/s. Bajaj Saw Mills, Nagaon. As per challan No. 68 dated 11.7.94 of M/s. Bajaj Saw Mill, these wooden logs have been sawned on 11.7.94 and the Forest Range Office, Nagaon has also certified on the challan of M/s. Bajaj Saw Mill on the same day that sawn timber covered by TP No. 37/5052 dated 11.7.94. Karbi Anglong district is at a considerable distance from Nagaon, hence it is not possible that after collecting a TP on 11.7.94 from Forest Range Office, Nagaon, collection of wood from Karbi Anglong and sawing the same at Nagaon on the same day and getting them certified from Forest Range Office, Nagaon on 11.7.94 itself that the sawned timber was covered by TP No. 37/5052 dated 11.7.94. Thus it clearly speaks of manipulation of documents for completion of paper formalities in the case.

5. With the aforesaid note of disagreement, the disciplinary authority by its said communication dated 10.10.2002 observed that both the charges stood proved in the enquiry. Responding to the said note of disagreement, the petitioner by Annexure P/5 representation dated 25.10.2002 contradicted the same. Be it stated here that the enquiry was initiated on the basis of an anonymous complaint. Referring to the CVC guidelines, it was contended by the petitioner that on the basis of such anonymous complaint, no enquiry could have been held. As regards the merits of the note of disagreement, it was contended by the petitioner that all the documents referred to as manipulated documents were genuine having been issued by the Forest Department, Sales Tax Officer, Civil Police and the particular firm etc. It was also contended that in case of any doubt regarding validity of the transit pass, the forest officials could have been contacted to get the correct picture. It was also contended that the grounds reflected in the note of disagreement were beyond the purview of the charges.

6. On receipt of the aforesaid representation made by the petitioner, the disciplinary authority by its Annexure-P/6 impugned order dated 17.6.2003 imposed the aforesaid penalty of reduction of pay by two stages from Rs. 17,900/- to 17,100/- in the pay scale of Rs. 14,300-18,300/- for a period of two years with effect from 25.6.2003 with the stipulation that during the said period he would not be entitled to any increment. Being aggrieved, the petitioner filed the instant writ petition.

7. Learned counsel for the petitioner referring to the grounds urged in the writ petition submits that the disciplinary authority could not have disagreed with the findings recorded by the Enquiry Officer on the basis of the observations made in the note of disagreement, which were totally extraneous to the grounds assigned towards leveling the charges against the petitioner. He submits that in case of any doubt, it was incumbent on the part of the disciplinary authority to communicate with the Forest Department instead of leveling the vague and indefinite charges of procurement of small quantity of timber in a clandestine manner. He further submits that the authenticity of the permit/transit pass in question having not been questioned, the disciplinary authority could not have

held that the bill for the amount of Rs. 8,892/- from M/s. Vickey Traders was false. Referring to the depositions made by the witnesses, he also submits that none of the said witnesses having stated that the official vehicle was made use of in transporting the small quantity of wood, the disciplinary authority could not have disagreed with the findings of the Enquiry Officer and that too on the basis of extraneous materials without affording an opportunity of being heard to the petitioner on those materials.

8. Mr. N. Bora, learned CGC, on the other hand, submits that the petitioner being a senior officer of the disciplined force ought not to have taken recourse to the kind of transaction as reflected in both the charges. He submits that in the preliminary enquiry, the charges leveled against the petitioner having been established, there was nothing wrong in placing reliance on the said enquiry during the regular enquiry conducted by the disciplinary authority by engaging an Enquiry Officer. He also submits that the disciplinary authority being not bound to accept the report of the Enquiry Officer having furnished the note of disagreement and the petitioner having failed to rebut the same, it is not for the Writ Court to sit on appeal over such finding so as to arrive at another finding.

9. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also perused the entire materials on record. As to what were the charges against the petitioner has been noted above. The defence of the petitioner was complete denial as a consequence of which the disciplinary authority appointed the Enquiry Officer to enquire into the charges. On conclusion of the enquiry, the Enquiry Officer submitted his Annexure-P/3 report, which was based on elaborate and detailed discussion of entire evidences on record. In the enquiry, the disciplinary authority examined 7 witnesses as against 4 by the petitioner. None of the witnesses attributed any misconduct to the petitioner in respect of both the charges. On perusal of their depositions, it appears that even the prosecution witnesses did not attribute any misconduct on the part of the petitioner relatable to the aforesaid two charges.

10. PW-6, in his deposition categorically stated that no shawn timber packed in gunny cloth was loaded in the unit vehicle as part of the luggage of the petitioner. PW-8, in his deposition stated about his visit along with the charged officer to Vicky Traders which according to the chares against the petitioner was non-existent. PW-1, in his deposition stated that as per the records of the Forest Department timber was to be drawn from clearing agents M/s. Bajaj Saw Mills and M/s. Vicky Traders registered with the Sales Tax Department. He also confirmed issuance of cash memo by M/s. Bajaj Saw Mill.

11. DW-1 in his deposition stated about existence of M/s. Vicky Traders, a registered dealer under the Central Sales Tax Act, 1956 bearing registration No. NNG 1546. As per his deposition, the firm was functioning during 11.7.94 to 11.10.94. He also certified that the particular bill was genuine. Be it stated here that DW-1 is the Superintendent of Taxes. DW-2 is the Superintendent of Police, Assam, who in his deposition proved that the timber was purchased from M/s.

Vicky Traders, Rupahi, Nagaon. Significantly, in his deposition, stated about the information derived regarding existence of the firm M/s. Vicky during the relevant period and that no bills were manipulated by the charged officer i.e. the petitioner. Similarly, DW-3 also in his deposition stated about existence of M/s. Vicky Traders in record of Assam State Tax Office and Hoibargaon Police Station. Another IPS Officer (DW-4) stated in his deposition that the charged officer i.e. the petitioner had purchased wood in the name of his wife and that the same was confirmed by the owner of M/s. Bajaj Saw Mill and that payment was also made. This witness in his deposition, also categorically stated about existence of M/s. Vicky Traders when the purchase was made.

12. On the basis of the aforesaid evidences, the Enquiry Officer in his report recorded the above quoted finding exonerating the petitioner from both the charges.

13. Disagreeing with the enquiry report, the disciplinary authority by its Annexure-P/4 communication dated 10.10.2002 asked the petitioner to respond to the note of disagreement as contained in the said letter. The note of disagreement has been quoted above. On a bare perusal of the same, it is seen that such note of disagreement is on the basis of the some additional grounds, which were never made known to the petitioner during the course of enquiry. In the note of disagreement, the disciplinary authority also questioned the action on the part of the Forest Department, without, however, getting any clarification from the said department and associating its officials in the departmental proceeding. In the note of disagreement, the disciplinary authority has also recorded variation in the certification of the Forest Department, without, however, associating it in any manner. If any clarification was required, it was incumbent on the part of the disciplinary authority to obtain the same from the Forest Department. It could have also associated its officials in the enquiry proceeding.

14. It is in the above context, the petitioner has specifically urged in the writ petition that as to whether the manner of purchase was clandestine, could only be explained adequately and appropriately by the Forest Department of Assam. It has also been contended that clandestine purchase of timber was possible only with connivance of the forest officials, but they were never asked to furnish any explanation. It has rightly been contended by the petitioner that as to whether the documents, on the strength of which the purchase was made, were valid or not or as to whether the same were forged was an issue which could only be decided by the authority which purportedly issued the documents.

15. The Enquiry Officer in his report has rightly held that the disciplinary authority was silent over functioning of the particular firm prior to October, 1994 and that it had not paid tax only with effect from 1.7.1998. If this aspect of the matter is taken into consideration then it is implied that the firm was functional during the relevant period. As per the evidence it had paid tax, but later on defaulted. It was in such circumstances, the Enquiry Officer was inclined to hold

that M/s. Vicky Traders was in existence during the crucial period i.e. from 11.7.1994 to 11.10.1994. In this connection, the Enquiry Officer has also referred to the evidence of DW-1, the Superintendent of Taxes etc.

16. Responding to the note of disagreement, the petitioner in his detailed and elaborate response (Annexure-P/5) pointed out as to how such note of disagreement was not sustainable. Having regard to the fact that the Enquiry Officer had exonerated the petitioner from both the charges and the petitioner had responded to the note of disagreement with material particulars and reasons, it was incumbent on the part of the disciplinary authority to pass a reasoned order dealing with the charges, evidence on record, note of disagreement and finally the detailed representation of the petitioner against the note of disagreement. However, on perusal of the impugned order dated 17.6.2003, no deliberation at all on those aspects is discernible on the part of the disciplinary authority. It simply recites the article of charges, sequence of events in the departmental proceeding with the abrupt decision that the charges stood established against the petitioner. For a ready reference the relevant portion of the findings recorded in the impugned order is quoted below:

3. NOW THEREFORE, the President having considered the report of the Inquiry Officer, disagreement note, representation of the charged officer dated 25.10.02 and other relevant records of the case and also consulted the UPSC. After the said consideration, the President has come to the conclusion that Article-I and II of the charges framed against Shri R.S.H.S. Sahota, Commandant have been proved.

17. In the impugned order, there is no discussion at all as to how the note of disagreement is sustainable in reference to the enquiry report and the representation made by the petitioner against the said note of disagreement. As noted above, it simply refers to the charges, written statement of the petitioner and as to what transpired during the enquiry proceeding. It is only on the basis of such recording of events and with the aforesaid finding, the disciplinary authority imposed the penalty of reduction of pay as indicated above. It was incumbent on the part of the disciplinary authority to specifically deal with the note of disagreement and the contentions raised by the petitioner and then to arrive at a finding on the basis of the entire evidences on record. The impugned order has been passed as if the same was predetermined and that the representation of the petitioner against the note of disagreement was inconsequential.

18. By the time, the charges were issued against the petitioner on the basis of an anonymous complaint long 8 years had gone by since the alleged incident took place in 1994. Having regard to the nature of the charges it gives an impression that the matter was dug up at the behest of some interested person who did not want to disclose his identity, but the disciplinary authority readily fell pray to his said design. Consequently, the petitioner is being dragged on through the proceeding for the last about 11 years.

19. For all the aforesaid reasons, I am inclined to accept the writ petition by setting aside and quashing the impugned order dated 17.6.2003 (Annexure-P/6) with the direction that the petitioner will be entitled to all consequential benefits. Writ petition is allowed leaving the parties to bear their own costs.