

(2001) 10 DEL CK 0003
In the Delhi High Court
Case No : C.W. No. 3575 of 1997

Roshan Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Citation : (2001) 10 DEL CK 0003

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : N.K. Goyal, for the Appellant; Kiran Suri, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—The present petition arises out of the order of punishment imposed upon the petitioner by the respondents pursuant to departmental proceedings instituted against him.

2. The Managing Director of the respondent Corporation issued a Charge Memo to the petitioner on 18.5.1996 listing the articles of charge therein. Along with the aforesaid charge memo statement of articles of charge, statement of imputation of misconduct and misbehavior, list of documents and list of witnesses were enclosed. The petitioner submitted his defense as against the aforesaid memo, on consideration of which the Disciplinary Authority found the same to be not satisfactory and accordingly ordered for an enquiry against the petitioner and appointed the Enquiry Officer to enquire into the charges framed against the petitioner. The Enquiry Officer conducted the enquiry and submitted his Enquiry Report finding the petitioner guilty of the charge framed against him. A copy of the aforesaid enquiry report was made available to the petitioner by memorandum dated 4.10.1996 asking the petitioner to submit representation, if any. Pursuant to the said communication the petitioner submitted his representation on 10.10.1996. The Disciplinary Authority thereafter considered the entire records including the enquiry report and the representation submitted

by the petitioner on 10.10.1996. On consideration of the same the Disciplinary Authority agreed with the findings contained in the Enquiry Report and by order dated 8.11.1996 imposed upon the petitioner the penalty of demotion to the post of Assistant Manager at the lowest grade applicable to the said post with immediate effect and recovery of Rs. 50,000/- as token compensation for the loss caused to the Corporation by the petitioner.

3. Being aggrieved by the said order passed by the Disciplinary Authority the petitioner filed an appeal which was considered by the Appellate Authority and the same was rejected. Accordingly, the present petition is filed in this court seeking for quashing and setting aside the order of punishment imposed upon the petitioner.

4. Counsel appearing for the petitioner submitted that the charge framed against the petitioner was false and baseless. It was submitted by him that there was no delay on the part of the petitioner in submitting his report and that he was not at all responsible for the delay, if any, and that Therefore, the petitioner cannot be held liable for any pecuniary loss that could have been suffered by the respondents. It was also submitted by him that the order passed by the Disciplinary Authority is not a speaking order and Therefore, the said order is liable to be set aside and quashed. It was also submitted by him that the petitioner was not allowed to have any defense Assistant which was in violation of the provisions of Regulation 58(8) of the Staff Regulations.

The next submission of the counsel appearing for the petitioner was that there was bias on the part of the Enquiry Officer in conducting the enquiry and Therefore, the entire enquiry proceedings stand vitiated and are liable to be set aside. He also submitted that the representation submitted by the petitioner on 10.10.1996 was not considered by the respondents and Therefore, the order is required to be set aside.

5. Counsel appearing for the respondent however, submitted that the aforesaid contentions are baseless and without any merit. She further submitted that the allegations that the petitioner was not allowed the assistance of defense Assistant was not raised in the writ petition and Therefore, the same cannot be raised at the time of arguments. She further submitted that same is the position with regard to the allegation of bias as against the Enquiry Officer which according to her was not raised in the writ petition and Therefore, cannot be permitted to be raised at the time of arguments in the writ petition.

6. Counsel appearing for the parties in support of their contentions have taken me through the records including the report of the Enquiry Officer and also the order of the Disciplinary Authority and the Appellate Authority upon perusal of the same and having heard the learned counsel appearing for the parties I proceed to record my findings thereon.

7. Since the contention is raised on behalf of the petitioner that the charge framed against the petitioner is false and baseless which goes to the root of the

proceedings I would prefer to take the same for consideration at this stage itself.

8. The allegations made in the charge framed against the petitioner were that the petitioner did not process the matter for award of handling and transport contract at Jind earnestly and delayed the process of finalisation of the handling and transport contract at Jind by indulging in piece-meal examination of the report received from District Office, Rohtak on 7.3.1995 regarding financial soundness and business competency of the tenderers and that late processing of the land verification report submitted by District Manager, Rohtak pertaining to the second lowest party immediately after its receipt in Regional Officer, Haryana on 7.4.1995 resulted in a loss of Rs. 16,65,570/- to the Corporation.

9. It was sought to be submitted by the counsel appearing for the petitioner that the petitioner submitted the report sought for from him before expiry of the validity period of the tender and Therefore, he cannot be held responsible for any alleged pecuniary loss said to have been caused to the Corporation. In this connection and in order to appreciate the aforesaid contention I have considered the report of the Enquiry Officer. The Enquiry Officer upon examination of the evidence on record found that the petitioner took 22 days in sending the reply even after receipt of the HRO letter of 13.3.1995 on 15.3.1995 in his office and despite the fact that the report was received in his office on 31.5.1995 which shows his complete negligence and complacency in the matter. In the light of the aforesaid conclusions it was found by the Enquiry Officer that the petitioner delayed verification of FS report in respect of landed property of M/s. Ramkishan & Co. called for vide HRO letter dated 13.3.1995 and that the charge stands proved. It was also found by the Enquiry Officer on consideration of the statement of the petitioner that either the petitioner did not exercise any control over his subordinates as the Supervising Officer or he did not take any interest in expediting the reply to HRO letter dated 13.3.1995 in view of the fact that the extended validity period of the offer up to 27.3.1995 had already expired.

10. The aforesaid conclusions have been arrived at by the Enquiry Officer after consideration and appreciation of the evidence on record. The same are findings of fact arrived at the Enquiry Officer. The appellate Authority before whom an appeal was filed also considered the records and thereafter recorded the following conclusions:

(i) It is clear from the evidences that the R.O. letter dated 1.2.95, Exhibit P-1/3, together with a reminder letter dated 24.2.95, Exhibit P-1/6 were received in the office of the petitioner. On both these letters, the petitioner was expected to act fast and get the verification done particularly when it was brought to his notice by RO, Haryana that the date fixed by him for verification of records at Jind was too far. The petitioner by his own statement has admitted that his Dealing Assistant and AM took 16 working days in processing the case. This amply proves lack of control on the part of the petitioner over his subordinates. He did not even bother to take cognizance of the communications from RO, Haryana to expedite the matter. Whether the report was forwarded 20 days before the

expiry of the validity of the tender is not the matter in question. The charge against the petitioner was about his complacency in delaying the matter unnecessarily which stands duly established.

(ii) The records reveal that the necessity of referring the matter again to the petitioner for verification of Business Competency had arisen only because of his earlier report dated 1.3.95, was found lacking. Had the petitioner given a complete report, the question of referring the matter back to him by the RO again would not have arisen. Therefore, whether the petitioner forwarded the 2nd report, 24 days before the expiry of the date, is not material.

(iii) While it is true that there was slackness on the part of certain officers in the R.O. the defaulters have been dealt with appropriately. However, the contentions of the petitioner that it was the R.O. Haryana which was squarely responsible for award of contract his neither relevant nor tenable so far as the charges against him are concerned. The specific charge against the petitioner was about avoidable delay that occurred on his part and finally resulted in award of contract to a party whose rates were the highest. Petitioner's request for change of Inquiry Officer is seen to have been examined. The petitioner was also formally informed about rejection of his request vide Vigilance Division's letter No. Vig. 21(89)/95-Pt.II/Vol.II dated 4/6.9.96."

This court cannot act as an Appellate Authority over the findings and conclusions of the Enquiry Officer, disciplinary Authority and the Appellate Authority and re-appreciate the evidence to come to a contrary finding. The jurisdiction of the High Court in matters relating to departmental enquiries and the findings recorded therein is very limited. It is also disclosed from the record that the aforesaid conclusions have been arrived at by the Enquiry Officer, Disciplinary Authority and the Appellate Authority on the basis of the documentary evidence. It is clear from the Enquiry Report that the petitioner was required to submit the report called for from him within a week of the letter dated 13.3.1995 which was furnished by him on 7.4.1995 but the same was also found to be incomplete in itself as the same did not contain the verification of the landed property of the second lowest party which was called for by the Regional Office vide its letter dated 13.3.1995. In response to the aforesaid communication sent calling upon the petitioner to furnish a further report the petitioner furnished the second report only on 7.4.1995 i.e. after 22 days. Taking into consideration the aforesaid delay on the part of the petitioner in submitting his report conclusion was arrived at by the Enquiry Officer that the petitioner was guilty of the charge. The aforesaid findings of the Enquiry Officer were affirmed by the Disciplinary Authority as he agreed with the findings recorded by the Enquiry Officer which were upheld by the Appellate Authority giving detailed reasons. In view of the aforesaid position it cannot be said that the findings of the Enquiry Officer are in any manner perverse. The aforesaid conclusions prove and establish that the charge leveled against the petitioner cannot be said to be false and baseless as alleged by the counsel appearing for the petitioner. The aforesaid contention of

the counsel appearing for the petitioner Therefore, has no merit and is rejected.

11. So far as the allegation that the order of the Disciplinary Authority is not a speaking order, suffice it to say that the Disciplinary Authority has passed a detailed order. The said order clearly and categorically discloses that he has perused the Enquiry Report, the reply filed by the petitioner and all other relevant records and upon such consideration he found no reason to disagree with the findings contained in the enquiry report to the effect that the charges had been proved against the petitioner. It is a case of agreement of the Disciplinary Authority with the findings of the Enquiry Officer and Therefore, it is not required to record detailed reasons which is required when the Disciplinary Authority disagrees with the findings of the Enquiry Officer. Therefore, the said contention of the counsel appearing for the petitioner is also without merit.

12. The contention raised that the Enquiry Officer did not allow the petitioner to be represented by a defense Assistant as is required under Regulation 58(8) of the Staff Regulations, I am satisfied that the aforesaid issue was not specifically raised in the writ petition. Similarly allegation of bias against the Enquiry Officer was also not raised in the writ petition and Therefore, the said allegations could not be controverted by the respondents in the counter affidavit filed. So far the allegation of bias is concerned, no material has been shown or placed on record in support of the said allegation. Specific circumstances from which any such bias of the Enquiry Officer could be inferred have not been brought to my notice. The allegation appears to me to be wild and bald and Therefore, cannot be accepted. Regarding representation by a defense Assistant, it transpires from record that fair opportunity was given to the petitioner in the enquiry proceedings. It is also revealed that opportunity was also given to the petitioner to engage a defense Assistant but the petitioner himself did not co-operate with the Enquiry Officer and proceeded to defend himself. The aforesaid grievance raised at the time of argument has also no merit.

13. No other argument was advanced by the counsel appearing for the petitioner and Therefore, I find no merit in this petition and the petition is dismissed.