

(2010) 05 DEL CK 0359
In the Delhi High Court
Case No : WP (C) No. 10983 of 2005

R.V. Sahay

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Conduct, Discipline and Appeal (CDA) Rules — Rule 27, 30, 30A, 34.2, 34.3
Payment of Gratuity Act, 1972 — Section 4(6), 7(3), 7(3A)

Citation : (2010) 05 DEL CK 0359

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : V.P. Singh, for the Appellant; Alakh Kumar, for R-2, A.K. Bhardwaj, M.P. Singh and Jagriti Singh for R-3, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—The petitioner has filed this writ petition seeking quashing of the charge sheet against him, release of the withheld gratuity amount of Rs. 7500/- along with 24% interest and a writ of mandamus directing the respondents to execute the recommendations of the Departmental Promotional Committee endowing the petitioner with all benefits that would flow from the same and that would have accrued to the him.

2. The brief facts leading up to the filing of the present writ are that the petitioner being a professional cost and works accountant joined the respondent No. 2 as Joint Senior Manager (Finance) on 03.10.1989 and was posted at the Corporate Office, New Delhi. The petitioner was a member of the Tender Committee which comprised of the General Manager (Material), General Manager (Operations) and the petitioner i.e. the Joint Senior Manager (Finance, Operation and Costing).

3. Respondent No. 2 invited tenders vide a notice dated 02.11.1995 for the supply of coal on turnkey basis from various subsidiaries of Coal India Ltd. to two different districts in Madhya Pradesh. Three tenders were found to be technically

and commercially qualified and all three submitted that for the district Mandhar, the coal would go straight from the collieries but for district Nayagaon, which was a distance of about 500 kilometres, no direct transport could be possible as no trucks were available. The only solution being transshipment, the Committee agreed to the same provided that the quality and quantity of the coal remained unharmed. On 24.11.1995 the recommendations of the Committee were accepted by the Committee of Directors and the tender was awarded to M/s. Chandra Prabhu International Co. Ltd., New Delhi. The work envisioned in the tender was completed successfully without any hassle or complaint within the stipulated period of three months.

4. The petitioner received a charge-sheet on 11.06.2001 after about six years from the time of the above-mentioned event charging the petitioner with (a) processing a tender violating the policies of the Corporation and (b) for recommending a proposal as a member of the Tender Committee allowing transshipment of coal to one of the units which could have resulted in a loss. The petitioner denied the said charges vide a written representation dated 30.06.2001 after which an enquiry was conducted through the Central Vigilance Commission the preliminary meeting of which took place on 10.05.2002. However, before this, the powers of General Manager (Finance) were delegated to the petitioner vide letter dated 23.01.2002. Further, the petitioner was asked by the Assistant General Manager (Pers) to appear before the Department Promotion Committee for his promotion to the post of General Manager (Finance). Though the interview was held, due to the pendency of the above-mentioned charge sheet the recommendation of the Committee were kept in a sealed cover.

5. In the meantime, the petitioner retired from the service of respondent No. 2 on 31.05.2002 by virtue of superannuation and it was after this that the actual hearing on the charge sheet started i.e. from 06.02.2003. The report of the Enquiry Officer was submitted on 30.05.2003 wherein he held that charge (a) was proved and charge (b) was not proved. The petitioner submitted a representation against the report to the Disciplinary Authority on 30.06.2003 and by order dated the Disciplinary Authority reduced the petitioner's gratuity by 25% as punishment. The petitioner appealed against the same and on the appellate authority being the Board of Directors issued an order reducing the deduction to Rs. 7500/-. The petitioner by way of this writ has challenged this deduction in his gratuity as illegal and untenable in law.

6. I have perused the record and the contentions of the parties. The grounds on which the petitioner has argued the present writ are many-fold. Firstly, the recommendation vis-?-vis the tender was passed by the Tender Committee and not by the petitioner alone and therefore, all enquiries/action ought to be taken against the entire Committee.

7. Secondly, the said recommendation was considered and approved by the Committee of Directors headed by the Chairman and Managing Directors of the

respondent No. 2. As per the petitioner there is absolutely no shred of evidence pointing towards the petitioner and the entire procedure and consequent punishment given to him is under pressure from the Central Vigilance Commission.

8. Thirdly, the Disciplinary Committee has been alleged by the petitioner to have started disciplinary proceedings against him under the influence of the Central Vigilance Commission and without any preliminary investigation or enquiry.

9. Learned Counsel for the petitioner has also contended that there is no provision in the Payment of Gratuity Act, 1972 which allows making recovery/ deduction from the payable gratuity unless a loss is quantified and attributed to the relevant officer. Section 4(6)(a) and (b) have been referred which provide as under:

Notwithstanding anything contained in Sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

10. The respondent No. 2 Corporation has, however, denied that the petitioner was associated as an ex-officio member of the Tender Committee but submitted immediately thereafter that the Committee for price bid opening was constituted of the "General Manager (MM), Senior Manager (M&S) and the JSM (Fin-Opn.)." The Committee for award of work constituted of the "General manager (MM), General Manager (Opn.) and the Jt. Sr. Manager (Fin-Opn.)." The said respondent has submitted that the charge sheet was issued to the petitioner on the basis of detailed investigation carried out during the period 1991-1997 by the Central Vigilance Commission and the departmental enquiry was instituted as advised by the Administrative Ministry on the basis of this investigation.

11. As regards the interview for promotion of the petitioner and the recommendations kept in the sealed cover, the respondent No. 2 has contended that before completion of the departmental proceedings vis-?-vis the promotion, the petitioner was relieved of his services due to superannuation and as such the recommendations in the sealed cover became infructuous.

12. The respondent No. 2 has also submitted that the Departmental Enquiry held by it was as per the provisions of the Conduct, Discipline and Appeal (CDA) Rules

of the respondent No. 2. Rule 30A of the said Rules states as under:

(i) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

(ii) During the pendency of the disciplinary proceedings, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in disciplinary proceeding or judicial proceeding to have been guilty of offences/misconduct as mentioned in the Sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated.

13. Learned Counsel for the petitioner argued that as per statute, after an employee/officer has superannuated/completed his services/retired no amount can be recovered/deducted from the petitioner's gratuity until and unless the conditions mentioned in Section 4(6)(a) and (b) are fulfilled and in the present matter, the Inquiry Officer's report clearly proves that there was no loss to the Corporation thereby falling short of the statutory requirements to be met for deduction of gratuity. Learned Counsel for the respondent No. 2 countered by arguing that as per Rule 30A of the CDA Rules deduction can be made from the gratuity amount.

14. A perusal of the record shows that the letter proposing to hold an enquiry against the petitioner dated 11.06.2001 under Rule 30 of the CDA Rules allowed him 15 days to give in his written explanation/representation. The Statement of Articles of charges framed against the petitioner were two fold. The first allegation was that the petitioner as a member of the Tender Committee improperly recommended for allowing transshipment for supply of linkage coal to Nayagaon, which recommendation was detrimental to the interests of the Corporation. The second allegation was that the petitioner had concurred proposal dated 07.12.1995 on 08.12.1995 for inviting offers from limited sources for an estimated value of Rs. 1.20 Crore despite the fact that respondent No. 2 has a Purchase Policy requiring open tendering for purchases of that much value.

15. The petitioner replied to these charges with a detailed letter dated 30.07.2001. A preliminary meeting was held on 10.05.2002 and regular hearing started from 06.02.2003. An Inquiry Report dated 30.05.2003 authored by the Inquiring Authority Mr. Puran Singh, Commissioner for Department Inquiries held the first allegation to be proved and the second to be not proved. The petitioner's written representation dated 30.06.2003 against this Report was

met with no respite and respondent No. 2 directed vide order dated 05.09.2003 that 25% of the gratuity payable to him be recovered. The petitioner filed an appeal against the said order and the Appellate Authority held in its order dated 15.04.2004 that as the findings of the Disciplinary Committee were warranted by the evidence adduced during the course of enquiry, the recovery of 25% of the payable gratuity would be reduced to a token amount of Rs. 7500/-.

16. As regards deduction from the amount of gratuity, Section 4(6)(a) and (b) are very clear and the only situations under which a portion or the whole of an officer's gratuity can be recovered are as under:

(i) if the officer's services have been terminated due to negligence, direct or indirect, which has caused loss or damage or destruction to the employer/company;

(ii) if the officer's services have been terminated for riotous/disorderly/violent conduct; and,

(iii) if the officer's services have been terminated due to act/s of moral depravity committed during the course of employment.

17. In a case with very similar facts titled Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others, the Supreme Court held as under:

10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.

11. Power to withhold penalty (sic gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefore is rendition of five years' continuous service.

12. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will bear repetition to state that the Rules framed by Respondent 1 or its holding company are not statutory in nature. The Rules in any event do not provide for withholding of retiral benefits or gratuity.

14. Termination of services for any of the causes enumerated in Sub-section (6) of Section 4 of the Act, therefore, is imperative.

It is clear that the provisions of a statute cannot be bypassed or violated by virtue of private rules of corporations.

In the present matter the petitioner's services were not terminated by the respondent Corporation as admittedly, the petitioner's services ceased due to superannuation. Learned Counsel for the respondent No. 2 during the course of the hearing also admitted that there were no losses/damage caused to the respondent No. 2 by the petitioner's actions. In such a scenario, it is but pointless to harangue this issue as statutorily, neither part nor whole of the petitioner's gratuity can be recovered.

19. Another case Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra Sarmah, has been referred wherein the Supreme Court held in paragraphs 17 and 18 that since there were three Committees involved in the decision making procedure of the petitioner company and there were several other persons in the said Committees who were part of the procedure along with the petitioner, the respondent employee alone would not be held responsible for the decision taken by the Committees. It was observed that the High Court had rightly determined that the respondent was made a scapegoat as the decision by all the Committees was unanimous and arrived at by all the persons involved in decision of the price.

20. In the writ at hand also, there were three persons involved in the Tender Committee who made the recommendation allowing the transshipment of coal vis-?-vis the Nayagaon District and the said recommendation was admittedly approved by the Committee of Directors comprising of the Chairman and managing Directors of the respondent No. 2. It seems harsh and unjust for the respondent No. 2 to have singled out the petitioner and it appears that the petitioner was made a scapegoat for the actions of all the persons involved. Further, if the respondent No. 2 was so convinced of the petitioner's wrongdoing, it seems natural that respondent No. 2 should have at least suspended the petitioner's services if not terminated them altogether.

21. In view of the above-held discussion, there appears to be no reason for the respondent No. 2 to hold the petitioner solely responsible for the actions of the Tender Committee as well as the Committee of Directors. Even in the Inquiry Report dated 30.05.2003, the Inquiry Officer with respect to charge (I) which was proved has observed that "the tender committee including the CO recommended on 22.11.95 as per S-% allowing for a transshipment for supplies in Nayagaon while recommending award of contract to M/s. Chanderprabhu International Limited. Entertainment and acceptance of this request after opening of price bids was irregular and was against the purchase policy of the CCI. Transshipment was fraught with the risk of loss in quantity and of the quality getting adversely affected." However, after making this lucid observation as regards the Tender Committee's recommendation, the Inquiry Officer has narrowly and wrongly observed that "This improper recommendation of the CO for acceptance of condition for transshipment of coal was detrimental to the

interest of the CCI." The observation is blatantly unfounded and unreasonable as the CO, the petitioner herein, cannot be held to be solely accountable for the act/recommendation of the entire Committee. The proceedings and the finding against the petitioner are hereby quashed and set aside.

22. In lieu of the above finding and if reference is made to the Inquiry Officer's report as well, paragraph 4.02 indicates that no loss was actually caused to the respondent No. 2 insofar as it is stated that "the argument of the defense that there was no loss to the Corporation is also of little significance because the improper recommendation will always remain improper in spite of the fact that it may or may not lead to any financial loss" the deduction of a token amount of Rs. 7500/- from the petitioner's gratuity is held to be unjust and unfounded and against the statutory provisions of law.

23. For the aforesaid reasons, the present writ petition is allowed. The respondent No. 2 is directed to release the withheld amount of gratuity i.e. Rs. 7500/- along with 12 % simple interest per annum. As regards the other prayer made by the petitioner, a writ of mandamus is issued directing the respondents to open the sealed cover and comply with the order/recommendations of the Departmental Promotional Committee and to give the benefits accruing to the petitioner from the due date in accordance with law.

24. The writ petition is accordingly allowed with costs.