
(2014) 11 MP CK 0129
In the Madhya Pradesh High Court
Case No : Writ Petition No. 677/2007

S.D. Bind

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) 3 JLJ 436 : (2015) 1 MPLJ 74

Hon'ble Judges : Sanjay Yadav, J; Rajendra Menon, J

Bench : Division Bench

Advocate : Parag Tiwari, Advocate for the Appellant

Judgement

Rajendra Menon, J

1. Calling in question tenability of an order dated 17th November 2006 (Annexure P-3) passed by the Central Administrative Tribunal, Jabalpur Bench in O.A. No. 857/2005 dismissing an application filed by the petitioner challenging an order of punishment imposed upon him vide Annexure P-1 on 26th August 2005; whereby, his pay was reduced by one stage for a period of one year with non-cumulative effect with a further direction that it shall not have any adverse effect on his pension, this appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005.

2. Facts in brief, which are relevant for deciding the controversy in question goes to show that the petitioner Shri S.D. Bind was working as Telecom District Manager and at the relevant time when the cause of action accrued in the year 2003, he was posted in District-Satna (M.P.). It seems that a notice inviting tender was issued by the office of Telecom District Manager, Satna for the purpose of laying of underground cable in the jurisdiction of Satna Telecom District. Various guidelines were circulated for issuance of the tender.

3. After the work was allotted, making allegation of violation of guidelines and irregularities in award of work a writ petition was filed before this Court being W.P. No. 2176/2002 - Kamlendra Singh v. B.S.N.L. and others. The matter was considered by the learned Single Judge of this Court and by a detailed order passed on 20th August 2002, vide Annexure P-4, the learned Single Bench found that various guidelines in the matter of award of contract was not followed. The officers of the BSNL have committed various illegalities and defaults and accordingly petition was allowed and it was directed that a cost of Rs.5000/- be recovered from the officer, viz., the present petitioner.

4. The order passed by the learned Writ Court was challenged in L.P.A. No. 612/2002 and learned Division Bench of this Court reconsidered the entire matter and vide judgment dated 2.4.2004 (Annexure P-5) disposed of the matter in the following manner:

"8. When the matter was taken up today it was thought condign to give a decent burial to this controversy. We have noticed that the learned Single Judge by his order has referred to series of facts and catena of decisions. We need not refer to the same for the simon pure reason that the work has been completed. Mr. Kamlendra Singh has been given a clean chit and has been permitted to bid. However, the matter should not be allowed to rest here as the learned single judge has expressed his anguish over the matter in the manner in which the BSNL has conducted itself and imposed costs of Rs.5,000/- to be paid by the respondent nos.1 to 5. We do not intend to sustain the aforesaid cost aspect as during the pendency of the appeal the officers have worked hard to see the work is properly done."

(Emphasis Supplied)

5. Thereafter in paragraph 9, keeping in view the controversy involved in the matter, learned Division Bench laid down various guidelines by way of certain procedures to be followed in the matter of finalization of tenders in future.

6. After the matter was so disposed of by the Division Bench, it is seen that a charge sheet was issued to the present petitioner under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules (Annexure P-6) on 13.11.2003 and in the statement of imputation of misconduct the same allegations which formed part of writ petition and the writ appeal, i.e., procedural irregularities in issuing tender and awarding work was repeated and it was alleged in the charge sheet that while approving the tender the petitioner herein Shri S.D. Bind as Telecom District Manager did not discharge his duties properly, has not followed the guidelines; as a result the BSNL has to sustain a loss of Rs.5000/- being the cost imposed by the High Court in the writ petition.

7. A departmental enquiry under Rule 16 was held and thereafter based on the advice tendered by the Union Public Service Commission, the impugned order of punishment (Annexure P-1) was issued whereby punishment of reduction of salary by one stage for a period of one year has been imposed without

cumulative effect with a further stipulation that it shall not adversely affect his right of pension. The Central Administrative Tribunal having refused to interfere into the matter, this writ petition under Article 227 of the Constitution of India was filed.

8. Learned counsel for the petitioner argued that once the imposition of cost was quashed by the High Court in the writ appeal and when no loss is caused to the department the finding recorded with regard to loss of 5000/- is a perverse finding. That apart inviting our attention to the findings recorded by the Tribunal in paragraphs 7 and 8 learned counsel tried to emphasize that the Tribunal has not given any reason for rejecting the application. It has mechanically passed the order without adverting to consider various grounds, canvassed by the petitioner.

9. We considered the submissions and gone through the record.

10. A perusal of the allegations levelled in the charge sheet (Annexure P-6) clearly goes to show that the allegations levelled in the charge sheet and the imputation of allegations are nothing but a repetition of the procedural irregularities committed in the matter of award of contract and finally it is held that because of the act of the petitioner a loss of Rs.5000/- has caused to the department.

11. Even though the learned writ court while disposing of Writ Petition 2176/2002 has found various procedural irregularities in awarding the contract and imposed a cost of Rs.5000/- but when the matter was taken up by the Division Bench, the Division Bench went into each and every aspect of the matter and gave its observation in paragraph 8 as is reproduced herein above. A perusal of the aforesaid observation of the learned Division Bench would go to show that the Division Bench was of the opinion that the matter should be allowed to rest here and as the cost imposed was not proper the imposition of cost was also quashed. Thereafter following observations made by the Division Bench needs special consideration; viz. "We do not intend to sustain the aforesaid cost aspect as during the pendency of the appeal the officers have worked hard to see the work is properly done."

12. This observation clearly goes to show that during the pendency of the matter in the High Court, Officer including petitioner worked hard to ensure that the project is completed properly and there is no illegality in the same.

13. In view of the aforesaid observation of the learned Division Bench we are disposed of to observe that the Tribunal did not bother to look into this aspect of the matter while dismissing the original application. If the order is taken note of it would be seen that the Tribunal in paragraph 1 to 6 noted the facts and rival contentions of the parties. In paragraph 7 dealt with the question of tendering of advice by the U.P.C and non-supply of advice to the delinquent employee and found that there is no merit in the same. Thereafter with regard to merit of the case in paragraph 8, the Tribunal has recorded following finding:

8. Giving our anxious consideration to various aspects of the case, we are inclined to observe that the applicant has failed to indicate any content or specific ground calling for our interference with the impugned penalty awarded to the applicant. In our considered view, no case has been made out by the applicant and hence the O.A is liable to be dismissed. Accordingly the OA is dismissed. No costs."

14. This finding of the Tribunal is wholly perverse, without application of mind and without taking note of the observation made by the learned Division Bench as indicated herein above.

15. That apart, another aspect of the matter warrants consideration. The irregularities which is found against the petitioner is only non-following of certain procedure in the matter of awarding contract. The question is as to whether such an irregularity in the matter of following the procedure can be termed as a misconduct. The Supreme Court has considered the aforesaid aspect in the case of Union of India (UOI) and Others Vs. J. Ahmed, which has been followed again by the Supreme Court in the case of Inspector Prem Chand v. Govt. of National Capital Territory of Delhi and others [(2007) 4 SCC 1022]; wherein it has been held by the Supreme Court that merely lack of efficiency, failure to attain the highest standard of administrative ability or negligent or careless way of dealing with a matter on one isolated may not constituted a misconduct for which punishment can be imposed.

16. In the present case apart from the fact that the Division Bench has made the observations as reproduced herein above and interfered with the imposition of cost, it found that there was certain discrepancy in the guidelines laid down and, therefore, in paragraph 9 fresh guidelines for future action was issued. Once this is the factual scenario then merely because the petitioner failed to follow the guidelines for once, it cannot be said that the petitioner has committed misconduct in the matter. At best action of the petitioner may fall in the category of careless or negligence in the matter of dealing with the case once an isolated occasion and if the principles laid down by the Supreme Court as indicated in the case of J. Ahmed (supra) is applied, we are of the considered view that allegations levelled even do not amount to misconduct for which action can be taken.

17. As the Tribunal has ignored all these aspects, it is a fit case where interference should be made and entire action of the department is quashed.

18. Accordingly we allow this writ petition. The order dated 26.8.2005 (Annexure P-1), 21.7.2005 (Annexure P-2) imposing the punishment on the petitioner passed by the Department and order dated 17.11.2006 (Annexure P-3) refusing to interfere in the matter are quashed. No order as to costs.