
(2013) 05 DEL CK 0130

In the Delhi High Court

Case No : Writ Petition (C) No. 1947 of 1991

Sh. R.C. Kapur

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0130

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : G.D. Gupta with Mr. S.K. Gupta, for the Appellant; Ruchir Mishra, Advocate for R-1 and Mr. C.N. Sree Kumar and Ms. Rresmitha R. Chandran, Advocates for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by Sh. R.C. Kapur impugning the orders passed by the Disciplinary Authority and the Reviewing Authority dated 30.9.1985 and 3.1.1990 respectively whereby the petitioner has been inflicted the penalty of removal from service of State Farms Corporation of India Ltd./ respondent nos. 2 and 3. On 22.7.1992, at the time of issuing of notice in the present writ petition, notice was restricted to the compliance of Regulation 151(4) of the Staff Regulations of the respondent nos. 2 and 3. What is contended on behalf of the petitioner is that there are two ingredients of Regulation 151(4) which have not been complied with, firstly of evidence having not been considered by the Disciplinary Authority and secondly of the Disciplinary Authority not having been independently passed itself an order giving its findings and conclusions.

2. In order to appreciate the arguments urged on behalf of the petitioner, Regulation 151 is reproduced in its entirety as under:-

ACTION ON THE INQUIRY REPORT:

151. (1) The disciplinary authority, if it is not itself the inquiring authority may,

for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 149 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reason for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of regulation 146 should be imposed on the employee, it shall, notwithstanding anything contained in regulation 152, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Regulation 146 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty. "proposed to be imposed.

3. Learned senior counsel for the petitioner has referred two grounds (c) and (h) of the writ petition and the contents of the order of the Disciplinary Authority dated 30.9.1985 and the Reviewing Authority dated 3.1.1990 to argue that the said orders do not show that the authorities have considered the evidence before passing the impugned orders. Stress is also laid on the Office Memorandum of CVC dated 16.4.1985 to contend that the said Memorandum shows that documents were not with the Disciplinary Authority and the Reviewing Authority which passed the orders as the same are said to be with the Department of Food.

4. Taking the second argument urged on behalf of the petitioner that Regulation 151(4) requires the departmental authorities to give their own findings and conclusions, I am of the opinion that the argument is misconceived inasmuch as, Regulation 151(4) does not require a fresh order to be passed by the Disciplinary Authority and the Reviewing Authority and all that Regulation 151(4) requires is that the Disciplinary Authority must have regard as to the findings of the enquiry report and arrive at its opinion for imposition of penalty. There cannot be any other interpretation to Regulation 151 (4), and, it is perfectly permissible in law for the Departmental Authority to adopt the findings and conclusions given in the detailed enquiry report.

5. Now, on the mere important argument urged on behalf of the petitioner, and which is as to whether the Departmental Authorities which passed the impugned orders have done so without considering the evidence recorded in the departmental proceedings and more particularly the documents filed.

6. In my opinion, even this argument is misconceived for the reason that the Departmental Authorities are not Courts of law and they are not required to use the perfect judicial language, or the specific language of a particular Regulation and in the absence of which, it cannot be urged that there is non-compliance of the language used in a particular Regulation. No doubt, language of Regulation 151(4) requires that the Departmental Authority must consider the evidence and the report of the Enquiry Officer, however, in my opinion, this must be shown to be independently established on record and merely because the Departmental Authorities do not use technical language that evidence has also been seen, cannot mean that the Departmental Authorities can be said to have passed the impugned orders without considering the entire record of the enquiry proceedings. I would on the contrary believe the averments made in the additional affidavit filed on behalf of respondent nos. 2 and 3, and which states that the entire evidence recorded before the Enquiry Officer was considered by the Departmental Authorities before passing the impugned orders. This para of the additional affidavit is para 4 and the same reads as under:-

4. At the time when the matter was discussed, the entire proceedings before the Inquiry Officer was also made available to the Board of Directors. The entire evidence recorded before the Inquiry Officer, the representation made by the Petitioner to the Inquiry Officer, were also before the Board of Directors. It is, therefore, respectfully submitted that the allegation that the Board did not independently consider the evidence against the Petitioner is wrong. The evidence was minutely examined and put before the Board of Directors. The entire papers forming part of the proceedings were also before the Board. The recommendations of the CVC was only a forwarding letter attached with the Inquiry Report. It may be pointed out that the Inquiry Officer i.e. the Commissioner for Departmental Inquiries is only a nominee of the Chief Vigilance Commissioner. Therefore, it is appropriate that the CVC forwarded their Inquiry Report to the answering respondent. The recommendation of the CVC is part and parcel of the Inquiry Report and cannot be treated as a separate document altogether. No new material had come into existence. Corporation had independently assessed the evidence before imposing the punishment. Therefore, all allegations made in the Petition to the contrary are without any basis. I also submit that the detailed representation made by the Petitioner before the Inquiry Officer was also placed before the Board of Directors.

7. Merely because the petitioner contends to the contrary than what is stated by the respondent nos. 2 and 3 in their affidavit, cannot mean that the contention has to be accepted. There is no reason for me to disbelieve a factual aspect stated in affidavit of respondent nos. 2 and 3 more so because there is nothing contrary pointed out to me from the record that the Departmental Authorities did not have the evidence recorded by the Enquiry Officer before it at the time of passing of the impugned orders.

8. So far as the argument urged on behalf of the petitioner by referring to the

Memorandum of CVC dated 16.4.1985 is concerned, I may note that the Memorandum is of April, 1985 and the orders of the Disciplinary Authority and the Reviewing Authority are much later on 30.9.1985/3.1.1990, thus showing that when the orders by the Departmental Authorities were passed on such later dates than the date of the Memorandum of CVC dated 16.4.1985, and therefore, even if we take the argument of the petitioner at best, the same will show the documents with the Department of Food only in April, 1985 and not in September, 1985 or January, 1990 when the orders were passed by the Departmental Authorities.

9. Therefore, both the arguments urged on behalf of the petitioner do not merit acceptance and are accordingly rejected. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.