

(2006) 06 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 3408 of 1996

Sh. Vivekanand Singh

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 136, 226

Citation : (2006) 130 DLT 636

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : O.P. Khadaria, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner was working as LDC with the respondent since December, 1984. On 4.1.1985 he was posted in Delhi Lotteries, being run by DDA. He was given duty of sales officer in Delhi Lotteries with effect from 28.9.1986 at its camp office situated in the Vijaya Bank Branch, Connaught Place, New Delhi. While working as Sales Officer, he was charged sheeted and the following charges were framed against him:

Shri Vivekanand Singh while working as LDC/Sales Officials of Delhi Lotteries during the year 1987 failed to maintain absolute integrity and devotion to duty inasmuch as:

Article-I

That the said Shri Vivekanand Singh, LDC during the above said period had unauthorizedly sold prepaid lottery tickets of Delhi Lotteries on credit to the local dealers/agents in violation of the Scheme of Delhi Lotteries.

Article-II

That the said Shri Vivekanand Singh, LDC, as on 17.6.1987 when his Branch was

inspected by the CAO, had to deposit a sum of Rs. 2,55,000/- against which till 12.8.1987, he had deposited only Rs. 79,500/-. The balance amount of Rs. 1,75,000/- was left to be deposited by Shri Vivekanand Singh, LDC which tentamounts to embezzlement of Govt. money.

Article-III

That the said Shri Vivekanand Singh, LDC during the aforesaid period in the aforesaid office did not maintain or render detailed account of sales of lottery tickets on credit. The lottery accounts were kept pending despite issue of repeated instructions from the office of Delhi Lotteries, with ulterior motive.

Shri V.N. Singh, LDC by his above acts of commission and omission failed to maintain absolute integrity and devotion to duty thereby contravening Rule 3 of CCS (Conduct) Rules, 1964, made applicable to the employees of the Authority.

2. A departmental inquiry was conducted and in the departmental inquiry, the Inquiry Officer found that charges under Article I and III have been proved against the petitioner. However, in respect of Article II, it was found that the conduct of the petitioner had caused financial losses to the DDA to the tune of Rs. 1,65,151.80, but there was no embezzlement of Government money in the sense that any part of this money was not misappropriated by the petitioner for his own use. This amount was due to be recovered from local dealers/agents to whom lottery tickets had been sold by the petitioner on credit despite a written order dated 9.12.1986 directing all the officers to ensure that tickets were not sold on credit.

3. After completion of disciplinary inquiry, the competent authority passed an order of dismissal of the petitioner from service following due procedure. The petitioner preferred an appeal against the order which was dismissed by the appellate authority vide order dated 15.1.1991. The petitioner preferred a writ petition No. 990/92 before this Court challenging the order of Appellate Authority upholding his dismissal from service. The writ petition was allowed on the ground that the Appellate Authority had not recorded detailed reasons in the order rejecting appeal of the petitioner and in coming to conclusion that the dismissal was justified. It was observed that the Appellate Authority should have considered the representation of the petitioner and should have given reasons for rejecting the representation and upholding the dismissal. The matter was remanded back to the Appellate Authority for considering the entire matter afresh, without being prejudiced in any manner by its earlier order which was set aside. After the matter was remanded back, the Appellate Authority passed a fresh order dated 2.5.1996 upholding the decision of dismissal of the petitioner, giving reasons for the conclusion. The petitioner has again approached this Court assailing the order of the Appellate Authority on the ground that it was bad in law. No negligence of the duty could be attributed to the petitioner. The petitioner was merely a LDC who could not have been given the duty of selling lottery tickets. He had not violated the scheme of lottery tickets, while selling the

same on credit. The subsequent instructions issued by the respondent for maintenance of accounts in the manner in which they were to be maintained clearly shows that there was no such instructions prior to 3rd October, 1988 when such instructions were issued. The written instructions issued on 9.12.1986 prohibiting the sale of tickets on credit also shows that prior to 9.12.1986, tickets were being sold on credit and the petitioner had not done something wrong by selling tickets on credit. The petitioner was working under the supervision and control of other officers like Account Officer and Superintendent and they were equally responsible for sale of tickets on credit. It was also pleaded that there was an outstanding credit of Rs. 4,76,89,659/- as per the audit report for the year 1987-88 which proved that not only the petitioner but all other Sales Officers were selling tickets on credit, otherwise, this amount could not have been outstanding. There was an established practice of sale of lottery tickets on credit basis to the registered dealers, as the registered dealers used to have security deposit with the respondents. The petitioner was not accountable for non-maintaining and non-redemption of the detailed account of sale of lottery tickets against the sale of tickets on credit as he had not received any formal training in accounts.

4. It was prayed in the petition that a writ of certiorari be issued quashing order dated 27.7.1990 and 2.5.1996 dismissing the petitioner from service.

5. I have heard learned Counsel for the parties and perused the record.

6. It would be seen that the disciplinary inquiry was conducted following due procedures of law. The petitioner was given full opportunity to defend himself and all the issues which have been raised by the petitioner were considered by the disciplinary authority. Disciplinary Authority after taking into account all facts and circumstances, held the petitioner guilty of the charges. Thereafter, the appellate authority passed a reasoned order (after directions from this Court) upholding the dismissal of the petitioner. The counsel for the petitioner has vehemently argued that the punishment of dismissal from service awarded to the petitioner was highly disproportionate to the charges proved. If the Department had come to the conclusion that the petitioner had caused loss to the government, that loss could have been recovered from the petitioner and some lesser penalty should have been imposed. The imposition of penalty of dismissal was not only disproportionate but was shocking and the Court should, under these circumstances, set aside the penalty and lesser punishment be awarded to the petitioner. Reliance was placed in the case of *Kailash Nath Gupta v. Enquiry Officer (R.K. Rai), Allahabad Bank and Ors.* AIR 203 SC 1377, wherein it was observed:

A Bench of three learned Judges of this Court in *B.C. Chaturvedi Vs. Union of India and others*, , while dealing with the power to interfere with the punishment imposed by the disciplinary authority, in para 17, stated thus:

The next question is whether the Tribunal was justified in interfering with the

punishment imposed by the disciplinary authority. A Constitutional Bench of this Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in *Union of India (UOI) Vs. Sardar Bahadur*, . It is true that in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, , a Bench of two Judges of this Court, while holding that the High Court did not function as a Court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under these circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, Therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In *Rangaswami Vs. State of Tamil Nadu*, , a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in *State Bank of India* case, where the Court elaborately reviewed the case law on the scope of judicial review and power of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts it was remitted to the appellate authority to impose appropriate punishment. (Para-9)

It is also further stated in the same judgment that "the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the

penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases imposed appropriate punishment with cogent reasons in support thereof. (Para-10).

In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank(which he quantifies at about Rs. 46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularities which cannot be termed to be negligent to warrant the extreme punishment of dismissal from service.(Para-11)

7. It is clear from the judgment cited by petitioner's counsel that the power of the High Court to interfere with the quantum of punishment is extremely limited. However, Court can look into all the relevant factors and consider if the same have been taken into account by the disciplinary authority while deciding the quantum of punishment and whether the punishment was so disproportionate as to shock the conscience of the Court.

8. From the record it is apparent that the disciplinary authority and appellate authority were fully conscious of all the facts while awarding punishment. In Maharashtra State Seeds Corpn. Ltd Vs. Haridas and Another, , the respondent had violated the instructions of DM for distribution of seeds on credit to eligible seed growers. He was also responsible for non recovery of outstanding amount of Rs. 19,938.50 from the seed growers and he was held responsible for not depositing Rs. 2675/- as per his undertaking. The inquiry officer had recommended for recovery of the un-recovered amount from the respondent with interest and 50% costs of shortage in foundation seeds amounting to Rs. 1290/-. He proposed for stopping two increments permanently. The disciplinary authority first issued notice proposing this penalty but later on amended the notice and issued notice for imposing punishment of dismissal and thereafter service of the respondent was terminated. The writ petition filed by the respondent before the High Court was allowed, holding that the quantum of punishment was not in accordance with law and his reinstatement was directed. The Maharashtra State Seed Corporation filed an appeal before Supreme Court and Supreme Court reversed the decision of High Court holding:

The first respondent held an office of trust. He distributed seeds to the farmers. He collected a huge amount from them. He not only defalcated a huge amount

but also misappropriated some bags of seeds. It was in the aforementioned situation improper for the High Court to interfere with the quantum of punishment. It is now well settled that in a matter of disciplinary proceedings the High Court exercises a limited power. (Para-23)

9. The petitioner herein was working as Sales Officer in Delhi Lottery with effect from 28.9.1986. Specific instructions were issued on 9.12.1986 that lottery tickets are not to be sold on credit. He admitted having received this letter but maintained that after the receipt of these written instructions, he met the accounts officer who advised that he should continue selling tickets on credit. During the evidence, the accounts officer denied of having given any such oral instructions to him. Obviously, the petitioner violated the specific directions of not selling tickets on credit and incurred heavy losses to the department to the tune of Rs. 1,65,151.80. The petitioner also did not maintain accounts of the tickets sold on credit and did not submit the detailed accounts. He took the plea that he was working single handedly and it was not possible for him to maintain or handle the accounts in the desired manner. In view of the nature of the charges against the petitioner, the disciplinary authority and later on appellate authority came to conclusion that the conduct of the petitioner causing losses to the department and not maintaining accounts amounted to willful and gross violation of the written instructions dated 9.12.1986 with ulterior motive. The disciplinary authority imposed penalty of dismissal which was upheld by the appellate authority. I do not find any reason to differ with the appellate authority. There should be strong reasons for any court to interfere with the punishment awarded by disciplinary authority. An employee who despite specific written instructions not to sell tickets on credit, defies the order and continue to sell the tickets on credit thereby causing heavy loss to the department, cannot be a trustworthy employee for the department and respondent was justified in terminating the services of the petitioner. I do not find that the punishment awarded was disproportionate to the guilt of the petitioner. The writ petition is hereby dismissed. No costs.