
(2016) 07 BOM CK 0145
In the Bombay High Court
Case No : Writ Petition No. 7950 of 2016

Shri. Bharat K. Vakil

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Citation : (2016) 5 AIRBomR 163 : (2016) 6 BCR 440 : (2016) 3 CLR 335 :
(2016) LIC 4126 : (2016) 6 MhLJ 517

Hon'ble Judges : Anoop V. Mohta and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : Mr. Shanay Shah i/b. Rajeev Sawant and Associates, for the Petition;
Mr. R.S. Pai & Mr. Anand R. Pai with Mr. Darshan Ashar & Ms. Radha Ved i/b.
Sanjay Udeshi & Co, Advocates, for the Respondent Nos. 1 to 3; Mr. Suresh
Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Kulkarni, J.— Heard the learned Counsel for the parties.

2. This Writ Petition challenges order dated 27 June 2016 passed by Respondent No.1 dismissing the Petitioner from the services of Respondent No.1 which was confirmed by the Appellate Authority by an order dated 12 April 2016. The Petitioner has also sought direction against Respondent No.1 to reinstate the Petitioner in service.

3. The Petitioner was working as a Senior Manager (Maintenance) with Respondent No.1. In or about September, 2014 on a complaint of one Mr. Tushar Wakade who was awarded a contract by Respondent No.1, the Petitioner was arrested by the Central Bureau of Investigation (CBI). A FIR was registered by CBI under Section 7 of the Prevention of Corruption Act, 1998 on the ground that the Petitioner had demanded illegal gratification. On 15 September 2014 the Petitioner came to be suspended. On 13 September 2014 the Petitioner was enlarged on bail. Thereafter before the learned Special Court, a closure report

was submitted by the CBI, however, the same was rejected by the learned Special Court by an order dated 19 January 2015 with a direction to the CBI to carry out further investigation. This order dated 19 January 2015 was assailed by the Petitioner before this Court in Criminal Application No.192 of 2015. By an order dated 25 March 2015 this Court set aside the said order of the learned Special Court and directed the Special Court to accept the closure report. Consequent thereto by an order dated 30 April 2015 the learned Special Court accepted the closure report dated 3 December 2014. According to the Petitioner, in view of the acceptance of the closure report, the Petitioner stood exonerated from all the charges in the criminal case. However, before the order dated 30 April 2015 was passed by the Special Court accepting the closure report, Respondent No.1 had issued a charge-sheet dated 20 February 2015 to the Petitioner proposing to hold a departmental inquiry. The allegations against the Petitioner was that the action of the Petitioner of demanding/taking bribe for performance of the official duties and non adhering to the rules and procedure of the Corporation for availing services from third party vendors amounted to serious misconduct. The facts as contained in the charge-sheet on the basis of which the charges came to be framed against the Petitioner read thus:

" 1. Shri. Tushar Wakde, Proprietor of M/s. Remote Data Exchange in his complaint dated 11.09.2014 addressed to Superintendent of Police, CBI, ACB, Mumbai has mentioned that he has been awarded annual maintenance contract for GPS tracking system vide Purchase Order No. 4504597324 dated 22.05.2014 for a value of 10 lakhs approximately. He has mentioned that his firm started providing the maintenance services to BPCL since 01.10.2013. However, the purchase order was placed on the firm only from 22.05.2014. He submitted his monthly bills since December,2013 for which no payments were made to him. Subsequently, he met you in your office in Mumbai Refinery on 01.09.2014 in connection with his outstanding dues for the services rendered by his firm to the Corporation. He also alleged that you demanded 10% (i.e.) Rs. 1,00,000/- (approx.) as against the value of the Purchase Order 4504597324 dated 22.05.2014 issued to him for clearing his pending dues. Further, he alleged that on 05.09.2014, you called Shri. Wakde from your mobile and demanded 10% of the total purchase order to clear the pending bills.

2. On 11.09.2014, you were on duty in the general shift in your office in Mumbai Refinery. Shri.Wakde made a call to you twice, which you did not attend. Subsequently, you called Shri.Wakde wherein he said that he would bring Rs. 50,000/- as desired and you advised him to come to your office. Shri.Wakde expressed his inability to come to refinery due to the security check by the CISF. Thereafter, you told him that you would get back. After few minutes, you called up Shri.Wakde and asked him to come near Oasis Hotel, new Deonar Bus Stop at 4 p.m. Thereafter, you made few calls to Shri.Wakde informing him that you would be reaching the location in 1520 minutes, etc. On reaching the Hotel by your car, you asked Shri.Wakde to sit beside you and drove around Chembur. The conversation between you and Shri.Wakde during the drive were centered

around clearing of pending bills and payment of Rs. 50,000/- as bribe to expedite the same. As you were driving, you noticed a vehicle following behind you and anticipated some problem and told Shri.Wakde to get down from your car near Hotel Oasis and then Shri.Wakde offered you a sum of Rs. 50,000/- as bribe.

Meanwhile, you were apprehended by the CBI officials along with a cash of Rs. 50,000/- from your bag which was lying in the back seat of your car and took further action on the matter.

3. It has also been observed that you have engaged M/s.Remote Data Exchange to provide Annual Maintenance Contract for GPS Tracking system without any valid Purchase Order during the period 12.12.2013 to 12.06.2014 and failed to adhere to the procedures/guidelines for availing the services from the said party.

4. The above act of yours in demanding/taking bribe to exercise your official duties and non adherence to Corporation guidelines/procedures for availing services from third party vendors and other acts are serious misconducts which impacts the Corporation's image at large.

5. The above alleged act of yours if proved would amount to breach of conduct rules enumerated in Conduct, Discipline and Appeal Rules applicable to you in Part II - Conduct Rules as set out below:

Rule "2": Liability To Abide By Rules and Orders Every Management Staff shall conform to and abide by the rules incorporated herein and shall observe, comply with and obey all orders and directions which may from time to time, be given to him in the course of his official duties by any person or persons under whose jurisdiction, superintendence or control he may, for the time being, be placed.

Rule "4: General - Management Staff To Promote Corporation's Interest

Every Management Staff shall serve the Corporation honestly and faithfully. He shall use his utmost endeavour to promote the interest of the Corporation and shall show courtesy and attention in all transactions. Every Management Staff of the Corporation shall at all times:

- (a) maintain absolute integrity;
- (b) maintain devotion to duty; and
- (c) do nothing which is unbecoming of a Management Staff of the Corporation.

Every management staff of the Corporation shall take all possible steps to ensure the integrity and devotion to duty of all employees for the time being under his control and authority."

4. On the above factual background, the following charges were framed against the Petitioner:

" 7. You are therefore charged with having committed the following misconducts as enumerated in Part III (A) of the CDA Rules applicable to you:

Rule 2: Taking or giving bribes or any illegal gratification

Rule 4: Making use of one's position in the Corporation to influence business associates or others connected with the Corporation's business for personal gains.

Rule 20: Breach of rules duly notified or violation of procedures laid down in connection with the Corporation's business.

Rule 22: Commissioning of any act subversive of discipline or good behaviour.

Rule 31: Violation of conduct rules made by the Corporation."

5. An Inquiry Officer came to be appointed to examine the charges, as the Petitioner pleaded not guilty. The enquiry officer conducted a full fledged departmental inquiry. On behalf of the management seven witnesses came to be examined and the Petitioner was permitted to cross examine them. Further, the Petitioner also examined his witnesses who were cross examined on behalf of the Respondents.

6. In the inquiry proceedings, the evidence of the complainant Mr. Tushar Wakde (M.W.2) was very crucial who had stated before the Inquiry Officer that the Petitioner did not make the payments as the Petitioner was demanding 10% of the order value (approximately Rs. 1 lakh) covering not only the period for which services were rendered (without any purchase order) as well as the period of one year for which purchase order was placed. The said witness further stated that the Petitioner had called him at the Hotel Oasis in Chembur. The Petitioner reconfirmed the time and venue before leaving the office which was at Refinery. In his evidence he further stated that he had requested the Petitioner to sit inside the hotel but the Petitioner refused on the ground that there is a problem from the vigilance department and it is not safe to sit inside the hotel, and suggested that as many people know him from the area, it is better to take a ride and then the Petitioner would drop him at the hotel. It was further stated that the Petitioner had demanded money over telephone and this had taken place in the presence of the CBI officer and independent witnesses between 2 p.m. to 3.30 p.m. on 11 September 2014. Apart from this Deputy Manager (Estate) (M.W.1), Inspector of Police, CBI, Special Unit, Mumbai (M.W.3), Manager (Maintenance and Instrumentation)(M.W.4), an independent witness working with Bombay Customs (M.W.5), Inspector CBI ACB, Mumbai (M.W.6), General Manager (maintenance, pipelines) were examined, and have been cross examined by the Petitioner. A perusal of the Inquiry Report clearly shows that the Inquiry Officer analysed the entire evidence which had come on record and came to a conclusion that the charges against the Petitioner are established. Accordingly, accepting the inquiry report and after following the procedure, the impugned order of termination dated 12 April 2016 came to be passed. The Petitioner had approached in a departmental appeal which came to be rejected by the Appellate authority by its detailed order dated 27 June 2016.

7. The learned Counsel for the Petitioner in assailing the termination order as confirmed by the Appellate Authority has urged the following contentions:

(i) The Appellate Authority passed the order dated 27 June 2016, dismissing the Petitioner's appeal, without giving a personal hearing to the Petitioner. It was obligatory on the part of the Appellate Authority to give a personal hearing to the Petitioner considering the provisions of Regulation L(2) as appearing at page 85 of the paper book.

(ii) The impugned order is thus violative of principles of natural justice.

(iii) The inquiry proceedings are vitiated inasmuch as the Petitioner was exonerated in the CBI case. In view of the closure report, the criminal proceedings had come to an end against the Petitioner. On similar charges, inquiry could not have been conducted against the Petitioner. In support of his submissions, the learned Counsel for the Petitioner has placed reliance on the following decisions:

(i) Ram Chander v. Union of India & Ors., (1986) 3 SCC 103

(ii) Anil Amrut Atre v. District and Sessions Judge, Aurangabad, 2002 (3) Mh.L.J. 750

8. On the other hand the learned Counsel for the Respondents in supporting the impugned order submits that the Petitioner is not correct in contending that the hearing was required to be given by the Appellate Authority. It is submitted that reading interpretation of Regulation L(2) as made by the Petitioner to read a personal hearing in the said rule, is misconceived. It is submitted that each and every ground which is urged on behalf of the Petitioner in the Appeal has been extensively dealt and reasons are recorded on the same in the appellate order. It is submitted that the charges were of serious nature and were clearly established in view of the evidence which has come on record in the inquiry proceedings and taken into consideration by the disciplinary authority. It is submitted that there was no bar whatsoever on the management in not undertaking an inquiry only on the ground that the CBI had filed a closure report and decided not to proceed against the Petitioner. It is, therefore, submitted that considering the serious nature of the charges which were proved in the inquiry proceedings the Writ Petition does not call for interference.

9. Having heard the learned Counsel for the parties and with their assistance having perused the documents as placed on record, the inquiry report, termination order and the appellate order and the other documents pertaining to the inquiry proceedings, we are of the opinion that this is not a case where we would exercise our extraordinary jurisdiction under Article 226 of the Constitution of India to interfere in the impugned orders, for the reasons we immediately set out.

10. As noted above, the charges against the Petitioner inter alia relate to the Petitioner demanding a bribe from the complainant - M.W.2 Mr. Tushar Wakde.

The charges are also of violating the Rules and Regulations in carrying out official duties in the nature as set out in the charge-sheet. It may be noted that the charge in the criminal proceedings inter alia as regards the amount of Rs. 50,000/- being found on the backseat of the Petitioner's car when the complainant was present along with the Petitioner and the CBI officers, did not culminate into a conviction but resulted into a discharge of the Petitioner, cannot mean that the Respondent-Management was precluded from proceeding against the Petitioner in a departmental inquiry. The Respondents cannot be faulted in issuing a charge-sheet to the Petitioner and on the basis of evidence which has come on record in the inquiry proceedings, take a proper decision in the interest of the management. The Respondent is a public sector undertaking and it is required act in public interest. The inquiry proceedings as well-settled would be based on the principles of preponderance of probabilities and not on the nature of "proof beyond reasonable doubt" as in criminal proceedings.

11. This is a case where the Respondents have followed all the necessary procedure for conducting the departmental proceedings namely the principles of natural justice by permitting the Petitioner to lead evidence, cross examine the management witness and the documents. On the conduct of the inquiry proceedings, the learned Counsel for the Petitioner has not advanced any submissions.

12. The only grievance as being urged on behalf of the Petitioner as noted above is that no personal hearing was given by the appellate authority. Though this submission is made, the learned Counsel was unable to point out on which of the findings as arrived by the Appellate Authority a specific prejudice is caused to the Petitioner. As the learned Counsel for the Petitioner has relied on Regulation No.L(2) to contend that the said Regulation is required to be interpreted to mean that a personal hearing is mandatory by the Appellate Authority, it would be useful to refer to the said Regulation which reads thus:

L. Withholding of Appeals.

(1) The Authority who passes the order which is appealed against may withhold the appeal if it is not made in accordance with the rules or not submitted within the prescribed time limit or if it is a repetition of any appeal already decided and no new facts and circumstances/considerations have been adduced.

(2) Where the appeal is in order, the Authority whose order is appealed against shall forward the appeal together with its comments and records of the case to the Appellate Authority within 15 days. The Appellate Authority shall consider whether the order of suspension under Rule "C" of premature retirement under Rule I is justified or whether the prescribed procedure has been complied with or whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within 3 months from the date of appeal. The Appellate Authority may pass an order confirming/enhancing/reducing or setting aside the penalty or remitting the case to any other Authority with such

directions as it may deem fit in the circumstances of the case Provided that :

(i) If the enhanced penalty which the Appellate Authority proposes to impose is a major penalty specified in clauses (e) and (f) of the Rule "B" when an inquiry as provided in Rule "F" has not already been held in such case, the Appellate authority shall direct that such an inquiry be held in accordance with the provisions of Rule "F" and thereafter consider the record of the inquiry and pass such orders as it may deem proper.

(ii) If the Appellate Authority decides to enhance the punishment in a case where an inquiry has already been held as provided in Rule "F", the Appellate Authority shall give a show cause notice to the Management Staff as to why the enhanced penalty should not be imposed upon him and shall pass the final order after taking into account the representation, if any, submitted by the Management Staff."

(emphasis supplied)

13. The learned counsel for the Petitioner submitted that the use of the word "consider" in Sub-Rule (2) is required to be construed to include that a personal hearing is mandatory before the Appellate Authority. In support of this submission, the learned Counsel for the Petitioner has relied upon the decision of the Supreme Court in the case of "Ram Chander" (supra) and more particularly, the observations in paragraphs 17 and 18 of the judgment. We are not persuaded to accept that this judgment would assist the Petitioner, inasmuch as this is not a case where the Petitioner was denied the opportunity to participate in the inquiry proceedings and/or the inquiry proceedings are conducted in violation of the principles of natural justice or that an ex parte inquiry is conducted against the Petitioner. Moreover, the observations in paragraph 9 of the said judgment of the Supreme Court completely militate against the submissions of the Petitioner. The Supreme Court after considering several authorities on the issue has held that in the absence of a requirement in the statute or rules, there is no duty cast on an Appellate Authority to give reasons where the order is one of affirmance. Even in the context of the word "consider" as used in the rule in question in the said case, the Supreme Court has held that the word "consider" has different shades of meaning and in the context in which it appears in Rule 22(2) of the Railway Servants Rules as considered in the said decision, would mean an objective consideration by the Railway Board after due application of mind, which implies giving of reasons for its decision. In paragraph 9 the Supreme Court has observed thus :-

"9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification,

Control & Appeal) Rules, 1965. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall "consider" as to the matters indicated therein. The word "consider" has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

Even otherwise the decision in "Ram Chander" (supra) would not be applicable to the facts of the present case, as the said decision pertains to an ex parte inquiry.

14. In the case "Oriental Bank of Commerce and Another v. R.K. Uppal", (2011) 8 SCC 695 as relied upon on behalf of the Respondents, taking into consideration the entire law on the issue as also the decision of the Supreme Court in Ram Chander's case (supra), it is observed that Ram Chamder's case does not lay down an absolute proposition that in the matters of departmental appeal against the punishment order passed by the disciplinary authority, the Appellate Authority must offer a personal hearing to the delinquent. The law in this regard can be very well ascertained from the observations of the Supreme Court in paragraphs 22, 24 and 26 which read thus:

" 22. It is now fairly well-settled that the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth. In the words of Ramaswami, J. (Union of India & v. P.K. Roy) the extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of the doctrine depends upon the nature of jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.

23. ? ? ?

24. The appeal provision in regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the provision? We think not. In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing. It is so because the appellate authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. Although there are no positive words in regulation 17, requiring that the appellant shall be heard before enhancement of the penalty, the fairness and natural justice require him to be heard.

25. ? ? ?. ...

26. However, personal hearing may not be required where the appellate authority, on consideration of the entire material placed before it, confirms, reduces or sets aside the order appealed against. Regulation 17 of the 1982 Regulations does not require that in all situations personal hearing must be afforded to the delinquent by the appellate authority. The view taken by the Full Bench of Punjab and Haryana High Court in Ram Niwas Bansal is too expansive and wide and cannot be held to be laying down correct law particularly in the light of the judgment of this Court in Mahendra Kumar Singhal . We answer this question accordingly."

15. Applying the above principles of law as enunciated from the decisions of the Supreme Court, it is clear that the submissions as urged on behalf of the Petitioner are wholly unfounded. The order passed by the Appellate Authority confirms the order passed by the Disciplinary Authority dismissing the Petitioner from service. It is not a case where the Appellate Authority has enhanced the penalty different from what is awarded by the Disciplinary Authority. A perusal of the order of the Appellate Authority clearly indicates that each and every ground as urged on behalf of the Petitioner has been taken into consideration and detail reasoning has been provided on each of these grounds. In view of the above principles of law, surely no personal hearing was required to be given taking into consideration the Regulation in question. We do not see any infirmity, illegality or perversity in the approach of the Appellate Authority.

16. We are not persuaded in regard to the other submissions on merits as urged on behalf of the Petitioner, inasmuch as the jurisdiction of this Court under Article 226 of the Constitution in interfering with the matters of disciplinary proceedings would be very limited. This Court certainly cannot re appreciate the evidence and substitute a finding of fact as recorded in the disciplinary proceedings. This is a case in which the impugned order has been passed on the basis of the evidence which has come on record of the inquiry proceedings which is conducted in accordance with law. Considering the charges which are clearly grave, it cannot be said that the punishment which has been awarded to the Petitioner is in any manner unjustified. The principle of law which would be necessary to be taken into consideration in exercising the powers of judicial review in disciplinary matters has been reiterated by the Supreme Court in a recent decision in the case "Union of India & Ors. v. P. Gunasekaran", (2015) 2 SCC 610 : AIR (2015) SC 545. Considering these principles as laid down by the Supreme Court, we do not find that there is any infirmity whatsoever in the impugned orders.

17. As a result of the above discussions, the Writ Petition fails and is accordingly dismissed. No order as to costs.