

(2006) 10 DEL CK 0235

In the Delhi High Court

Case No : Writ Petition (Civil) No. 638 of 1989

Shri M.L. Aggarwal

APPELLANT

Vs

Cement Corp. of India and Others

RESPONDENT

Date of Decision : 06-10-2006

Acts Referred:

CCIs Conduct, Discipline and Appeal Rules — Rule 27, 7
Constitution of India, 1950 — Article 32(2)

Citation : (2006) 92 DRJ 377

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : U.S. Choudhary, for the Appellant; Raj Birbal and P.K. Bansal, for the Respondent

Final Decision : Disposed Off

Judgement

Manju Goel, J.—The writ petition is directed against the order of removal from service dated 9.2.1989. The petitioner at the relevant time was posted as the General Manager of Adilabad Unit of respondent No. 1, Cement Corporation of India (hereinafter referred to as the `respondent'). He was served with a charge-sheet on 22.8.1986 which is annexure I, which reads as under:

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI M.L. AGRAWAL, THE THEN GENERAL MANAGER, CEMENT CORPORATION OF INDIA, ADILABAD CEMENT FACTORY (PRESENTLY CHIEF MANAGER, CCI, NEW DELHI)

ARTICLE-I

Sh. M.L. Agrawal, while functioning as General Manager, CCI, Adilabad Cement Factory, during December'84 accepted an unsolicited offer of M/s Deep Auto & Allied Industries, Hyderabad, with the intention to cause undue favor to the form in the matter of procurement of Buckets for Deep Bucket Conveyor. Total value of the purchase was over Rs. 1 lakh but neither the Open Tender Procedure nor the Limited Tender Procedure was followed/adopted. The purchase proposal was

prepared on the day the party personally approached, was approved by him and order was placed on a "Single Party" violating the provisions of the Purchase Policy of the Corporation.

ARTICLE-II

Sh. M.L. Agrawal also misused his position and interfered with the work of his subordinates by instructing them to process the matter as per his wishes in total disregard of the prescribed procedure of the Corporation.

Sh. M.L. Agrawal, by his above acts, exhibited lack of integrity and conduct unbecoming of a Senior Executive of the Corporation, thereby violating Rule 7 read with Rule 27(x), (xviii) and (xxxv) of the CCI's Conduct, Discipline & Appeal Rules.

2. An inquiry was instituted against the petitioner in which the charges were found to be proved. The inquiry was conducted by Shri S.K. Roy, Inquiring Authority, Central Vigilance Commission, Government of India. The report of the Inquiring Authority is dated 28.12.1988. On the basis of the inquiry report the impugned order was passed on 9.2.1989. The impugned order narrates that on careful consideration of the inquiry report and the record of the inquiry, the disciplinary authority, namely, Chairman-cum-Managing Director, agrees with the findings of the Inquiring Authority and taking into consideration the facts, records and circumstances of the case, it was satisfied that good and sufficient reasons existed for imposing on Shri M.L. Agarwal (the petitioner) the penalty of removal from service. Accordingly the penalty of removal from service was imposed. The grounds on which the order of removal as well as the inquiry proceedings are challenged are as under:

(i) the punishment order of 9.2.1989 is a non-speaking order without disclosing the reasons and grounds in support thereof. The order has been passed without application of mind and, Therefore, violative of Article 32(2) of the Constitution:

(ii) adequate opportunity to defend was not given to the petitioner. The petitioner continuously requested for supply of certain documents for his defence which were turned down by the Inquiring Authority. Further the petitioner was not permitted to produce his witness during the inquiry proceedings:

(iii) no forum for appeal has been provided under the Rules:

(iv) the petitioner has been discriminated against as the repeat orders placed by the petitioner was based on the practices of the respondent Corporation:

(v) the report of the Inquiring Authority is without reasons:

(vi) the Inquiring Authority has taken into consideration only the defence produced by the department and has not considered the defence of the petitioner particularly the statement of DW-1 Mr. R.M. Maheshwari who deposed that there was no audit objection to the purchases made by the petitioner; and

(vii) the report of the Inquiring Authority was wrong on the basis of evidence before it.

3. The petition is opposed by the respondent. A counter affidavit has been filed by the Chairman-cum-Managing Director of the respondent Corporation. All the grounds of challenge to the writ petition have been refuted in the counter. It is contended that the impugned order is a reasoned order. It is further contended that full opportunity to defend was given to the petitioner and there was no violation of the principles of natural justice. It is denied that there was discrimination. It is also denied that the purchase order in question was a repeat order. About the Inquiring Authority's report it is stated that the same is based on evidence and is correct in fact and law. So far as the statement of the defense witness is concerned, it says that the Inquiring Authority did not find it inspiring any confidence.

4. So far as the application of mind in passing the impugned order is concerned, it will be sufficient to quote the part of the relevant impugned order which reads as under:

WHEREAS, the undersigned, on a careful consideration of the Inquiry Report (Copy enclosed) and the record of the inquiry, agrees with the findings of the Inquiring Authority and holds that Articles I and II stand proved.

NOW, Therefore, having regard to the findings of the Inquiring Authority as stated above and taking into consideration the facts, records and circumstances of the case, the undersigned is satisfied that good and sufficient reasons exist for imposing on Sh. M.L. Agrawal the penalty of removal from service.

ACCORDINGLY, the penalty of removal from service is hereby imposed on Sh. M.L. Agrawal with immediate effect.

5. The order in the introductory part mentions the charges leveled against the petitioner. It then goes on to say that the undersigned Authority had carefully considered the inquiry report as well as the record of the inquiry. The order further says that the Disciplinary Authority agrees with the finding of the Inquiring Authority and held that Articles I & II to have been proved. The Disciplinary Authority then proceeded to say that taking into consideration the facts, records and circumstances of the case it was satisfied that good and sufficient reasons existed for imposing the penalty of removal from service. The report of the Inquiring Authority was enclosed with the penalty order. It is not necessary for the Disciplinary Authority to write a detailed judgment like the one written by the Inquiring Authority. When the order narrates that the report of the Inquiring Authority has been gone through and that the Disciplinary Authority has also found from the Inquiring Authority's report and the record that the charges had been established it has to be held that the Disciplinary Authority has applied its mind. The Disciplinary Authority also says that the penalty was imposed on the basis of records as well as other attending facts and circumstances. Therefore, the impugned order of punishment cannot be faulted

on the ground that this is an order without application of mind.

6. The next question that requires to be gone into is whether sufficient opportunity was given to the petitioner to defend himself. Here it is stated that certain witnesses were not allowed and that certain documents were not provided to the petitioner despite his request. So far as the witnesses are concerned, the proceedings of the Inquiring Authority of 29th October, 1986 can be referred to. On that day, the petitioner submitted a list of witnesses. The list was objected to by the Presenting Officer. The Inquiring Authority found that witnesses Nos. 1 to 9 were relevant and out of the witnesses Nos. 2 to 8, the petitioner was permitted to choose any one witness as all the witnesses were on the same point. The petitioner was then permitted to write to the Inquiring Authority about the choice of witnesses so that notice could be issued to the witnesses. Admittedly one of the witnesses from amongst witnesses Nos. 2 to 8 was examined by the Inquiring Authority. The other evidence Afzalluddin excused himself by writing a letter to the Inquiring Authority. The petitioner accepted the proposal to examine only one witness which can be seen from the petitioner's own letter dated 11.11.1986 in which the petitioner said that he was grateful for the advice of choosing only one witness out of the witness at Serial Nos. 2 to 8. He, however, requested that witness at Serial Nos. 5 & 7 may be allowed. Admittedly both the witnesses were summoned by the Inquiring Authority but one of them could not appear. There is nothing on the record to show that the petitioner thereafter insisted on appearance of the other witness or that the Inquiring Authority declined such request.

7. So far as the documents are concerned, reference can be made to the proceedings of 29.10.1986. Some of those documents demanded were not available with the Inquiring Authority. However, the petitioner was allowed to produce those documents if he could procure them. Some documents were held to be extraneous to the charge and description of some was vague so that such document could not be provided. Only one document was withheld as confidential. The petitioner has not made any grievance in respect of the document which was withheld on the ground that it was confidential.

8. The petitioner was also fully satisfied about the opportunity given to him regarding inspection of documents. The petitioner's letter dated 12.12.1986 proves that he had been given inspection of all the documents available with the respondent. Only after he was fully satisfied having inspected the documents that the Inquiring Authority proceeded further with the inquiry. The letters of the petitioner dated 28.4.1986 & 13.7.1987 show which documents were allowed to be inspected. Thus the petitioner cannot have any grievance that the principles of natural justice were not followed by the Inquiring Authority.

9. This court cannot examine the report of the Inquiring Authority as is done in an appeal. All that this Court is required to do is to see whether the report of the Inquiring Authority is perverse. In other words, this Court can set aside the report of the Inquiring Authority only if it is found that there was no evidence

before the Inquiring Authority on the basis of which the Inquiring Authority arrived at its conclusions. The Inquiring Authority's report is fairly exhaustive. It took into consideration 14 documents, S1 to S14, and six witnesses of the department. It also noted the defense documents, Ex.D1 to D17, and three defense witnesses, DW-1 to DW-3. The petitioner himself did not offer to come in the witness box. The Inquiring Authority in para 3 onwards of the Inquiry Report has given his assessment of evidence. In para 4 of the Report the Inquiring Authority says that from document, Ex.S-1, it could be found that Shri Tejinder Singh, Proprietor of M/s. Deep Auto and Allied Industries made his offer to the petitioner on 11.12.1984 and the petitioner noted on that document asking the SSPO for raising the requirement for the product, namely, buckets for Deep Bucket Conveyor. Admittedly no notice inviting tender (NIT) was issued for supply of those buckets. Nor was there any indent for supply of the material by the user department up to that date. The Inquiring Authority noted that only on 11.12.1984 indent was raised after receiving the documents, Ex.S-1 & S-2, by the petitioner on that day. It was also observed by the Inquiring Authority that 57 buckets were available in the stock on 11.12.1984. According to the Inquiring Authority indent was raised in deference to the instructions of the petitioner. Further the purchase proposal was prepared on 11.12.1984 itself and cleared by the SSPO on that very day and was approved by the petitioner without raising any query. Thus, the Inquiring Authority found that all the formalities had been completed by the petitioner as well as other officers on the same day on which the documents S-1 & S-2 were received. The value of the purchases was Rs. 1,00,005/-. The Inquiring Authority also found from the statements of the two witnesses that the offer of M/s. Deep Auto and Allied Industries was entirely unsolicited. He has also mentioned that document Section 11 and the deposition of SW-1 showed that the petitioner had issued verbal instructions to raise the indent and to clear the entire proposal immediately.

10. The Inquiring Authority thereafter proceeded to examine all the other witnesses and documents on record and returned a finding against the petitioner and found the charges proved. Whether the petitioner was guilty of dereliction of duty was also separately considered. The plea of the petitioner that it was a case of repeat order as other units of the organization had also placed similar orders with the same supplier at the same rate was also considered by the Inquiring Authority. The Inquiring Authority after seeing the evidence produced before it arrived at a finding that the orders in question, i.e., of 11.12.1984, could not be treated as repeat order. It followed that the purchase could not be made without raising a notice inviting tender and without following the usual rules of purchase. The relevant paragraph in the Inquiring Authority's report is paragraph 16.

11. The learned Counsel for the petitioner has drawn my attention to the statement of the defense witnesses who stated that the purchase orders once made by one unit were being treated as repeat orders and generally purchases were being made by different units based on the orders placed by the other units. The Inquiring Authority has not ignored this evidence. In any case it is not

disputed before this Court that the rules of repeat orders, strictly speaking, did not allow purchases by one unit on the basis of purchases made by other units and to treat the same as repeat orders. It may be mentioned here that the petitioner has placed on the record of the writ petition various documents which did not form part of the Inquiring Authority's report and hence cannot be considered while disposing of the petition.

12. In view of the above it is not possible to say that the report of the Inquiring Authority is perverse. As stated earlier this Court cannot become an appellate authority and scrutinize the findings and come to a different finding altogether. Therefore, the petitioner's objection to the report of the Inquiring Authority also cannot be accepted.

13. Finally I come to the question of punishment. The petitioner has been removed from service. It is explained by Mr. Raj Birbal, Senior Advocate appearing for the respondent that this punishment is lesser than the punishment of dismissal inasmuch as the dismissal entails the consequences of debarring the employee from future employment. So far as the present petitioner is concerned, the two punishment of removal and dismissal are almost the same since the petitioner at this age is not looking for a new job. The facts disclosed in the inquiry showed that the petitioner violated certain Rules. The possibility that violation was caused on account of misinterpretation of Rules cannot be ruled out. It is true that the petitioner accepted the unsolicited proposal and obtained an indent on the same very day and placed the order on that very day. However, there is no allegation or any proof that the petitioner obtained any undue advantage out of this deal or that the petitioner caused any pecuniary loss to the respondent. The buckets in question were not perishable products and, Therefore, could be held in store for a long period. The respondents do not allege that the buckets purchased by the petitioner went waste.

14. The petitioner is guilty of misconduct and has to be suitably punishment for the misconduct. However, the nature of misconduct is more in the nature of violation of practice and procedure than in the nature of corruption. In view of what is stated in the foregoing paragraphs, it appears that the extreme penalty of removal from service is shockingly disproportionate to the offence. The punishment can be reconsidered by the Disciplinary Authority.

15. In view of the above, the impugned order of punishment dated 9.2.1989 is quashed and the Disciplinary Authority of the respondent Corporation is directed to consider afresh the punishment to be imposed on the petitioner and pass a fresh punishment order within two months hereof. With the punishment order quashed, the petitioner, for the purpose of pay and allowances, etc., will be relegated to the same status as obtained immediately preceding the order of punishment, subject however to the punishment eventually imposed.

16. The writ petition stands disposed of with the above directions.