

(2013) 09 DEL CK 0028
In the Delhi High Court
Case No : Writ Petition (C) 1075 of 2013

Shri Narayan Singh

APPELLANT

Vs

Indian Oil Corporation and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 140 FLR 821 : (2014) LLR 18

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Pranay Mishra, Mr. Nitin Saluja, Mr. Amrit Rathore and Mr. Shiv Chopra, for the Appellant; Rajiv Shukla, Ms. Sneha Mukherjee, Advocates for Respondents Nos. 1 and 2, Mr. Karan Bindra, Kumar Ankur and Mr. Chayan, Advocates for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner, who was an employee of the respondent no. 1-Indian Oil Corporation challenges the impugned order dated 12.11.2012. By the impugned order petitioner's services were terminated. The impugned order reads as under:

Confidential

INTER OFFICE MEMO

TO:

Shri Narayan

Singh Emp. No. 18936

Chargeman (F),

Tikrikalan Terminal

FROM

GM (HR), NR

REF : IR/1241

Date: 12.11.12

Sub: Disciplinary Case against you-Final Order

This has reference to chargesheet ref IR/N (18936) dated 02.03.12 and the subsequent departmental enquiry held in this connection against you.

The proceedings of the enquiry, findings of the EO, and reply dated 05.11.12 to show cause notice dated 01.10.12 for "Dismissal" have been carefully considered by me. I find you guilty of the following acts of misconduct as per Certified Standing Orders of the Corporation:

a) Theft, fraud, forgery embezzlement or dishonesty or misappropriating in connection with the Corporation's business and property.

Accordingly, I have decided to impose upon you the penalty of "Dismissal" as a measure of disciplinary action against you.

You are further informed that you may, if you so desire, prefer an appeal through proper channel as per the provisions contained in Rule 12.6 of the P &A Manual for workmen against this order to the Appellate Authority within 90 days from the date of receipt of this order.

Please acknowledge the receipt of this letter.

Sd/-

(J.S. KAUSHAL)

GM (HR), NR & CDA

In this case, the petitioner was issued a charge-sheet dated 2.3.2012 stating that he gave false declaration with respect to children who were not his children and claimed LTC. benefits for them. There is also the charge of raising false medical claims including by overwriting/manipulation. Some instances of the same were given in the charge-sheet. The instances which are mentioned in the charge sheet read as under:

2. On receipt of the charge-sheet, the petitioner responded vide letter dated 10.4.2012. He stated that nothing wrong has been done by him intentionally. There was no specific denial of the specific instances mentioned in the charge-sheet. In the reply it was also stated that if something wrong has happened, since the petitioner had done it unintentionally, therefore he should be exonerated. This reply dated 10.4.2012 reads as under:

10-04-2012

The General Manager (HR),

Indian Oil Corporation Limited,
(Marketing Division)
Northern Region,
Yusuf Sarai,
New Delhi.

Sub. : Chargesheet

Respected Sir,

I am very much surprised and shocked to received the Chargesheet

Ref. No. IR/N (18936) dated 02-03-2012 wherein very serious charges on account of medical bills and LTC. have been levelled against me.

In this regard, I would like to state that nothing has been done wrong intentionally but if something has been found wrong by the Management while reimbursing the medical claims, I feel that the same would have happened absolutely unintentionally. For the past few years, I have not been keeping good health; hence not keeping proper shape of mind. I think if at all something has taken place, it would have been during this period only.

Keeping in view of the above, I request you to kindly exonerate me of the charges levelled against me.

Thanking you,

Yours faithfully,

(Narayan Singh)

PF No. 18936

Chargeman (F)

Tikrikalan Terminal

3. In my opinion, this reply, in fact, was no reply in the eyes of law, and no further enquiry was required to be held to determine the truth of the charges, yet, the department initiated proceedings and appointed an enquiry officer. Before the enquiry officer, the petitioner made statements on 11.6.2012 and 19.6.2013, and admitted all the charges against him. The proceedings of both these dates read as under:

No: IOC/MD/NR/AK/NS/03/12-13

Location: Tikri Kalan Terminal, Tikri, Delhi

Place : Tikri Kalan, Delhi

Date 11.06.2012

Record of enquiry proceedings dated 11.06.2012

Sub : Departmental Enquiry against Sh. Narayan Singh, Employee Number 18936, Chargemen (F), Tikri Kalan Terminal Present

a) Sh. Arvind Kumar, Enquiry Officer

b) Sh. Naryan Singh, CSE

c) Sh. Sanjay Sharma, Presenting Officer

The first hearing started on 11.06.2012 at 1145 hrs

EO to CSE : Have you received the charge sheet IR/N 18396) dated 02.03.2012.

CSE to EO : Yes

EO to CSE : Have you read the charge sheet and have you fully understood the charges mention in the said charge sheet?

CSE to EO : Yes

(EO read the entire charge sheet to CSE in Hindi)

EO to CSE : Please inform us whether you have fully understood charges mention in the charge sheet

CSE to EO : Yes

EO to CSE : Whether you accept all the charges levelled against you?

CSE to EO : Yes, I accept all the charges levelled against you.

EO to CSE : All though you have accepted all the charges levelled against you, still would you like to be defended by defending employee, do you have anything to say regarding this offer.

CSE to EO: I do not want to take help of any defending employee. I have fully accepted all the charges levelled against me and I have nothing to say on this issue.

EO to PO : In this circumstance where the CSE has accepted all the charges levelled against him, whether you have anything further to say in the matter and whether you have any documents or witness to be presented in this matter.

PO to EO : Sir, I am in the process of collecting necessary/relevant document from the NR. I request you for a next date to bring in necessary documents and put my case forward.

EO to PO/CSE : On the request made by the PO and keeping in mind the opportunity of natural justice, todays proceedings is adjourned till the next date 19.06.2012 at 11:30 PM Tikrikalan Terminal

No: IOC/MD/NR/AK/NS/03/12-13

Location: Tikri Kalan Terminal, Tikri, Delhi

Place: Tikri Kalan, Delhi

Date 19.06.2012

Record of enquiry proceedings dated 19.06.2012

Sub : Departmental Enquiry against Sh. Naryan Singh, Employee Number 18936, Chargemen (F), Tikri Kalan Terminal Present

a) Sh. Arvind Kumar, Enquiry Officer

b) Sh. Naryan Singh, CSE

c) Sh. Sanjay Sharma, Presenting Officer

EO to All: Todays proceedings is commenced

EO to CSE: Do you have anything to say about any of the charges levelled against you and whether you accept all the charges against you. CSE to EO: I admit to all charges which are levelled against me and I request you that you should consider my apologies

EO to PO: In this situation where the CSE has accepted all the charges levelled against hi, whether you have anything further to say in the matter.

PO to EO: Because CSE has accepted all the charges levelled against hi, I have nothing further to say about this matter.

EO to All: As CSE has accepted all the charges levelled against him and PO also has nothing to say regarding this matter, henceforth proceeding for this case is closed.

4. A reference to the aforesaid proceedings before the enquiry officer shows that the petitioner did not at all dispute the charges against him and in fact admitted the same.

5. Accordingly, the enquiry officer held the petitioner guilty and thereafter a show cause notice was issued by the Disciplinary Authority to the petitioner for imposing of punishment. This show cause notice is dated 1.10.2012. In response dated 15.10.2012 to this notice, the petitioner has only stated that the punishment is very harsh and one month time be granted for reply. Thereafter in reply dated 5.11.2012 it was again harshness of the penalty that was reiterated. Apology was given by the petitioner and a request was made on account of humanitarian grounds for not giving punishment. This letter dated 5.11.2012 reads as under:

05-11-12

To

The GM (HR),

Indian Oil Corporation Ltd., NR

Marketing Division,

New Delhi.

SUB. : DISCIPLINARY CASE AGAINST ME

Sir,

This has reference to Show Cause Notice no. IR/1241 dt. 1-10-12. In the notice the Penalty of Dismissal has been proposed.

Sir, in this connection, I would like to submit that the penalty of Dismissal is very harsh. I admit that I have done a very serious mistake and I really apologise for that.

Sir, my old mother suffering from various disease is dependent on me. She is really very pathetic condition. My wife is also not working. She is also dependent on me.

Sir, I request you with folded hands that kindly give me only one chance to improve myself. Simultaneously, I am prepared to repay the amount which I have wrongly claimed. I request you again that consider my request on humanitarian ground for which I shall always remain grateful to you.

Thanking you.

Yours faithfully,

Sd/-

(Narayan Singh)

PF-18936

Chargeman (F), Tikrikalan Terminal

The Disciplinary Authority thereafter passed the order dated 12.11.2012 imposing the penalty of removal from services on the petitioner.

6. The scope of proceedings before a Court hearing a petition under Article 226 against the orders passed by the Departmental Authorities is well settled. A court can only interfere when there is violation of principles of natural justice or there is perversity of findings by the Departmental Authorities. Courts can also interfere when there is violation of rules or law.

In the present case, reference to the various documents, replies of the petitioner and proceedings before the enquiry officer show that the petitioner categorically admitted his guilt. It has to be noted that substantial amounts running into thousands of rupees was lost to the employer and was taken benefit of by the petitioner illegally from his employer. I do not think in a case like the present one there is any perversity of findings, much less for the exercise of extraordinary

jurisdiction under Article 226 of the Constitution of India.

7. Learned counsel for the petitioner has placed strong reliance upon the judgment of the Supreme Court in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, read with Ground (XV) to urge that enquiry proceedings are in violation of principles of natural justice because the petitioner has not been supplied with the necessary documents which form part of the charge-sheet and stated in the charge-sheet.

8. In my opinion, the argument urged by the petitioner is misconceived because it is necessary that a person must refute the charges as also dispute the contents of the documents, before he can say that there is violation of principles of natural justice by non-supply of the documents, however, in the present case there was no demand for the documents because petitioner admitted all the charges against him. In the judgment in the case of Saroj Kumar Sinha (supra) relied upon by the petitioner, Supreme Court made the observations of violation of principles of natural justice because the employee specifically and repeatedly asked for documents in support of his defence, but the said documents although being necessary for his defence and reply to the charge-sheet, were not supplied with on frivolous grounds. That case was a case where the charges were contested.

9. Therefore, in my opinion, neither the judgment relied upon by the petitioner applies and nor the argument that there is violation of principles of natural justice is valid.

10. With respect to the conduct of departmental enquiry it is well settled that principles of natural justice are not inflexible hidebound rules. Application of principles of natural justice vary as per the facts of each case. The Supreme Court has held that strict provisions of Evidence Act do not apply in the departmental enquiry. Aforesaid aspects as to principles of natural justice in their application varies depending on the facts of each case as also that strict rules of the Evidence Act do not apply to departmental proceedings as has been held by the Supreme Court in the cases of State Bank of India and Others Vs. Narendra Kumar Pandey, and Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others,

11. In view of the above, in the present case, since the petitioner repeatedly admitted the charges against him, never demanded documents; whether before commencing of the enquiry, during the enquiry proceedings or even before the Disciplinary Authority; therefore, I do not find that there is any violation of principles of natural justice as is sought to be urged before me by the petitioner. In view of the above, I do not find any reason to grant relief by setting aside the impugned order dated 12.11.2012, and the writ petition is therefore dismissed leaving the parties to bear their own costs.