(2009) 05 DEL CK 0443

In the Delhi High Court

Case No : Writ Petition (C) No. 162 of 1996

Shri Parmeshwar Prasad APPELLANT

Vs

The Chairman and Managing Director, NTPC RESPONDENT

Date of Decision : 30-05-2009

Acts Referred:

Army Act, 1950 — Section 164, 165, 33(2)
Constitution of India, 1950 — Article 14, 21, 226, 227, 32
National Thermal Power Corporation Conduct Discipline and Appeal Rules — Rule 20, 23, 25, 32, 4(1)

Citation : (2009) 05 DEL CK 0443

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Mohinder J.S. Ruppal, for the Appellant; Janaranjan Das and Swetaketu Mishra, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By way of this writ petition filed under Articles 226/227 of the Constitution of India and Articles 14 and 21 of the Constitution of India the petitioner seeks to challenge the order of the disciplinary authority dated 8.6.1995 whereby the Disciplinary Authority had imposed the punishment of removal from service on the petitioner from his post of Deputy Manager, PMI, NOIDA in terms of Rule 23(f) of the NTPC CDA Rules and of the order of the Appellate Authority dated 13/16.10.1995 whereby the Appellate Authority upheld the order passed by the Disciplinary Authority. The petitioner also seeks directions to treat him in continuous employment of the NTPC with full consequential benefits.

2. Brief facts of the case relevant for deciding the present petition are as under:

The petitioner joined the service of the National Thermal Power Corporation (in short NTPC) on 26.11.1979 as Executive Trainee and after completion of training on 25.11.1980 he was posted in Contracts Department w.e.f. 26.11.1980. On

20.12.1990 a charge sheet was issued to the petitioner leveling allegations of passing official information for monetary considerations to M/s Modern Insulators Ltd., Abu Road in respect of the tender for supply of 400 KV Solid Core Bus Post Insulators. In order to conceal his own identity, the petitioner brought in his real uncle Shri Ram Naresh Prasad, proprietor of M/s Global Construction Company and Sh. Shiv Kumar Dua, Deputy Superintendent, (O&M), BTPS. The role assigned to Sh. R.N. Prasad was to enter into an agreement with M/s Modern Insulators Ltd., for sales promotion and to receive commission @ 2% of ex works price of the package from them under the guise of liaison work. Mr. S.K. Dua, enquiry officer of NTPC was introduced as representative of M/s Global Construction Company to M/s Modern Insulators Ltd. and he was assigned the role to pass on relevant information obtained from the petitioner to M/s Modern insulators Ltd. After pronouncement of the award of Package No. CC-4930-510 for Kahalgaon STPP in favour of M/s Modern Insulators Ltd. vide letter dated 20.4.1988, it made payment to the tune of Rs. 2,36,026.00 as credited in the current account No. F-5/736 of M/s. Global Construction Company with State Bank of India, Kanhar Bagh, Patna. As per the respondent, by this act, the petitioner not only exhibited dishonesty in connection with the business of NTPC but also became a beneficiary in acceptance of commission from M/s Global Construction Company. According to the respondent, the petitioner not only acted in a manner prejudicial to the interest of the company but also failed to maintain good discipline and behavior and failed to maintain absolute integrity and acted in a manner unbecoming of a public servant. According to the charge sheet, the above acts of the petitioner were violative of Rule 4(1), (3) & 5(1) (5) & 20 of CDA Rules of NTPC. A similar charge sheet was also issued to S.K. Dua who was named as co-accused in the charge sheet along with the petitioner. An Inquiry Officer was appointed on 20.12.1990 to inquire into the charge against the petitioner as well as against said Sh. S.K. Dua. The Inquiry Officer held the inquiry jointly in the matter. During the inquiry, the prosecution did not produce the only material witnesses, namely, Sh. P.K. Rastogi and Sh. R. N. Prasad, thereby depriving the petitioner valuable opportunity of cross- examining them. As per the petitioner, while on the one hand, both the material witnesses were withheld by the prosecution from the inquiry, on the other hand, their earlier statements made during investigation were wrongfully taken on record by the Inquiry Officer and were also taken into consideration to indict the petitioner. The Inquiry Officer submitted his report on 18.11.1991 holding the charges as proved against the petitioner. The petitioner submitted his objections on the report of inquiry on 21.4.1992 but the Disciplinary Authority took inordinately long time to take the final decision. The Disciplinary Authority passed his final order on 8.6.1995. While passing the final order the Disciplinary Authority imposed the penalty of removal from service on the petitioner but without dealing with the objections raised by the petitioner against the finding of enquiry report As per the petitioner, none of the charges leveled in the charge sheet were proved against him and the conclusion of guilt and the imposition of penalty were illogical and arbitrary. According to the petitioner, the Disciplinary Authority adopted double standards in the case of the petitioner in juxtaposition to the other officer Sh. S.K. Dua who was exonerated on the ground that the statement of Sh. P.K. Rastogi, of M/s Modern Insulators recorded by the investigating officer cannot be taken on record since he failed to report before the investigating officer but while implicating the petitioner the authority relied on the statement of same very witness. The petitioner preferred an appeal before the Appellate Authority on 10.7.1995 but the same was rejected by a cryptic order dated 16.10.1995 without dealing with the various grounds mentioned in the appeal and without affording a personal hearing to the petitioner for which he had earnestly requested. Aggrieved by the said two orders the petitioner has preferred the present petition.

3. Counsel for the petitioner Mr. Mohinder Uppal vehemently contended that the orders passed by the Disciplinary Authority and the Appellate Authority are based on no material and are a classic example of non-application of mind on the part of both these Authorities. The order of the Disciplinary Authority, as per the counsel for the petitioner, was also discriminatory as against the petitioner since, based on the same charges, the other Officer Mr. S.K. Dua who was also serving on the same post of Deputy Superintendent in Badarpur Thermal Power Station, was exonerated. The contention of the counsel for the petitioner was that Disciplinary Authority had adopted double standards with regard to the case of the petitioner and the said S.K. Dua who was charge sheeted being involved in the same transaction and based on the same material the Inquiry Officer held both of them guilty but the Disciplinary Authority adopted a different yardstick in exonerating Mr. S.K. Dua while awarding punishment of removal to the petitioner. According to the counsel for the petitioner, the role assigned to Mr. S.K. Dua and that to the petitioner was so inextricably intertwined that no separate decision could have been taken by the Disciplinary Authority that too by taking two extreme positions of exonerating the one and implicating the other. Finding serious fault with the proceedings of the Inquiry Officer, the counsel contended that the enquiry officer wrongly and illegally placed reliance on the statement of two witnesses i.e. Sh. R.N. Prasad and Sh. P.K. Rustgi who never appeared to depose before the Inquiry Officer. The contention of the counsel for the petitioner was that the said two witnesses gave their statements to the vigilance officer but they were never examined before the Inquiry Officer, where alone, the veracity of the testimony of these witnesses could have been tested after their cross-examination by the petitioner. Counsel thus urged that without there being any corroborative material on record, the petitioner has been linked with the alleged receipt of 2% commission by Mr. R.N. Prasad from the successful tenderer M/s Modern Insulators Limited. Inviting attention of this Court to the counter affidavit filed by the respondents, the counsel submitted, that the respondents have admitted that the statements of those two witnesses i.e. of Mr. Prasad and Mr. Rastogi were not relied upon by the Disciplinary Authority and with this admitted position there was no other material before the enquiry officer or the Disciplinary Authority to come to the conclusion of finding involvement of the petitioner to

hold him dishonest in passing official information to M/s Modern Insulators Limited in respect of the tender in question and for arranging commission for his alleged uncle Mr. R.N. Prasad, proprietor of M/s Global Construction Company from M/s MIL. Counsel for the petitioner further submitted that as per the mandate of the said rule the Enquiry officer in his report was required to mention about gist of articles of charges and a statement of imputations of mis-conduct, gist of defence of employee in respect of each article of charge and assessment of evidence in respect of each articles of charge and ultimately the findings on each articles of charge and the reasons in support thereof. Not only this, counsel contended that on the failure of the enquiry officer to specifically deal with the evidence on record and to give reasons for each and every charge, the report not only shows non-application of mind on the part of the enquiry officer but is a non-speaking report. Similarly even the disciplinary authority did not deal with the various contentions raised by the petitioner pointing out various discrepancies and illegalities committed by the enquiry officer in his report. Counsel thus contended that the order of the disciplinary authority is as illegal as that of the enquiry officer. Not only this, the disciplinary authority adopted double standards while dealing with the case of the petitioner and that of Mr. S.K. Dua as based on the same material Mr. S.K. Dua was discharged while major penalty of dismissal was imposed upon the petitioner. The contention of the counsel for the petitioner was that once the charges against Mr. S.K. Dua were not found to be proved leads to his exoneration, then no different order could have been passed by the Disciplinary Authority as against the petitioner based on the same charges and the same evidence. Assailing the order of the Appellate Authority, the counsel submitted that the appellate authority also violated the principles of natural justice by not granting any personal hearing to the petitioner and by endorsing the order of the Disciplinary Authority without application of mind.

4. Counsel for the appellant specifically invited attention of this Court to Rule 32 of the Conduct Discipline and Appeal Rules of NTPC to contend that the said Rule was majorly violated by the Appellate Authority. For better appreciation. Rule 32 of the Conduct and Disciplinary and appeal Rules of NTPC is referred as under:

Rule 32 Appeals

(i) An employee may appeal against an order imposing upon him any of the penalties specified in Rule 23 or against the order of suspension referred to in Rule 20. The appeal shall lie to the authority specified in the schedule.

(ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority specified in the schedule and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the appellate authority within 15 days. The appellate authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The appellate authority may pass order confirming, enhancing reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any another authority with such direction as it may deem fit in the circumstances of the case;

Provided that if the enhanced penalty which the appellate authority proposes to impose is a major penalty specified in clauses (e), (f) and (g) of Rule 23 and an enquiry as provided in Rule 25 has not already been held in the case, the appellate authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of the enquiry and pass such orders as it may deem proper. If the appellate authority decides to enhance the punishment but an enquiry has already been held as provided in Rule 25, the appellate authority shall give a show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The appellate authority shall pass final order after taking into account the representation, if any, submitted by the employee.

5. Counsel for the petitioner also invited attention of this Court to para 8 of the counter affidavit filed by the respondent wherein they admitted that statements of two witnesses, namely, PW 3; Mr. R.K. Rastogi and PW 4 Mr. R.N. Prasad were recorded by the vigilance department and since they did not appear before the enquiry officer therefore the same not relied upon by the disciplinary authority but still the stringent punishment of removal was awarded to the petitioner by the disciplinary authority.

6. In support of his arguments counsel for the petitioner placed reliance on the following judgments:

Central Bank of India Ltd. Vs. Prakash Chand Jain,

AIR 1986 SCC Ram Chander v. Union of India and Ors.

Ministry of Finance and Another Vs. S.B. Ramesh, Kuldeep Singh Vs. The Commissioner of Police and Others,

Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others,

Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao,

WP (C) No. 5096/1994 DHC Smt. Sunita Rani v. Union of India

Director (Marketing) Indian Oil Corpn. Ltd. and Another Vs. Santosh Kumar,

Mathura Prasad Vs. Union of India (UOI) and Others,

Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra Sarmah,

7. Refuting the said submissions of the counsel for the petitioner, the counsel for the respondent Mr. Janaranjan Das, submitted that this Court under Article 226 of the Constitution of India will not exercise jurisdiction to act as an Appellate Authority over the findings arrived at by the Enquiry Officer duly confirmed by

the Disciplinary Authority. Counsel for the respondent further contended that sufficient opportunity was afforded to the petitioner during the course of the enquiry proceedings and the enquiry officer found the charges proved against the petitioner based on statements of various witnesses and documentary material placed on record. The contention of the counsel for the respondent was that unlike a civil or criminal trial misconduct on the part of the delinquent employee is not required to be proved beyond reasonable doubt. The enquiry officer found sufficient material on record to prove mis-conduct on the part of petitioner to prove imputations made against him in the article of charges. Counsel thus urged that this Court will not take another possible view simply because the same was one possible view which could have been taken by the enquiry officer and the Disciplinary Authority. The counsel further argued that this Court while exercising supervisory jurisdiction of Judicial Review under Article 226 of the Constitution of India will only examine as to whether the findings given by the enquiry officer are wholely perverse, illegal or irrational and the order of punishment passed by the disciplinary authority can shake the conscious of this Court and if not, then this Court ordinarily will not interfere in the order of punishment awarded by the disciplinary authority. Justifying the exoneration of the other co-accused Mr. S.K. Dua, the counsel submitted that he was given the benefit of doubt on account of the fact that the main witness Mr. P.K. Rastogi (PW 3) who had identified him as the man impersonating as representative of M/s Global Construction Company was not produced before the enquiry officer for his cross-examination. Counsel thus submitted that the petitioner cannot claim parity with the said co-accused who was differently placed than the petitioner. Counsel for the respondent further submitted that the letter dated 12.3.1988 referred to in the statement of imputations clearly disclosed settlement of percentage fixed between M/s Modern Insulators Ltd. and M/s Global Construction Company. The contention of the counsel for the respondent was that the said letter was duly exhibited as PEX-4 before the enquiry officer and therefore, it cannot be said that the enquiry officer did not rely upon the said letter. Counsel further submitted that it was duly proved before the enquiry officer that the commission amount was duly credited in the account of the Global Construction Company through cheques/DDs for a sum of Rs. 71.506.50, Rs. 71,506.50 and Rs. 93,013/-, respectively. PW 2 Mr. A.K. Sen proved the same and letter issued by the bank confirming the said credit of cheques was duly proved as Ex. PEX-15. Counsel also submitted that the petitioner failed to rebut the statements made by PW 1 Sh. Pradep Vaidya and PW 2 Sh. A.K. Sen and therefore their statements remained unchallenged. Even the testimony of PW 6 and PW 7 were also not rebutted by the petitioner in their cross-examination and therefore, their testimony also remained unchallenged before the enquiry officer. Even the petitioner had admitted his relationship with Sh. R.N. Prasad as that of his uncle and nephew before the enquiry officer and, therefore, the petitioner cannot be heard to say that there could be many such similar names dealing with the tenderor M/s Modern Services Limited. Counsel thus submitted that sufficient evidence was available before the Enquiry Officer and before the Disciplinary Autority so as to hold the petitioner guilty for mis-conduct in terms of articles of charges issued against him. In support of his argument counsel for the respondent has placed reliance on the following judgments:

Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora,

Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other,

Commissioner and Secretary to the Govt. and Others Vs. C. Shanmugam,

R.S. Saini Vs. State of Punjab and Others,

Syed Rahimuddin Vs. Director General, C.S.I.R. and Others,

Lalit Popli Vs. Canara Bank and Others,

Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane,

State Bank of India and Others Vs. Ramesh Dinkar Punde,

Union of India (UOI) and Others Vs. K. Rajappa Menon,

Telecommunication Research center Scientific Officers'' (Class I) Association and Others Vs. Union of India (UOI) and Others,

Indian Institute of Technology, Bombay v. Union of India .

8. I have heard learned Counsel for the parties at considerable length and perused the record. It is a settled legal position that the scope of judicial review while exercising jurisdiction under Article 226 of the Constitution of India so as to examine the correctness of facts arrived at by the enquiry officer and the punishment imposed upon by the Disciplinary Authority, is extremely narrow and limited. Under Article 226 of the Constitution of India the High Court would not interfere with the findings recorded by the enquiry officer just as a matter of course. The Court while exercising jurisdiction under Article 226 of the Constitution of India will not assume the role of an appellate authority. In this regard, the Hon''ble Apex Court in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, observed as under:

20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic viz. State of A.P. v. S. Sree Rama Rao, State of A.P. v. Chitra Venkata Rao, Corporation of the City of Nagpur v. Ramchandra and Nelson Motis v. Union of India. At the same time, it is also not

in dispute that the disciplinary proceedings held before the domestic tribunals are of quasi judicial character and therefore, it is necessary that such tribunals must arrive at its conclusions on the basis of some evidence with some degree of satisfaction clearly pointing out the guilt of the delinquent and does not leave the matter in a suspicious state. In this regard, the Apex Court in Nand Kishore Prasad Vs. State of Bihar and Others, observed as under:

Disciplinary proceedings before domestic Tribunal are of a quasi judicial character; therefore, the minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries.

9. It was reiterated in Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, as under:

It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

10. As mere suspicion cannot take the place of proof even in domestic enquiries. If there is no evidence to sustain the charges framed against the delinquent officer than he cannot be held guilty as in that event the findings recorded by the enquiry officer would be assessed as perverse being not supported and substantiated by any evidence on record. The legal position which stands crystalised through various authoritative pronouncements of the Apex Court and of High Courts places the delinquent employee approaching the High Court to a very heavy responsibility to put a strong case to show that the findings of misconduct arrived at by the domestic tribunal are perverse findings based on no legal evidence or based on mere conjectures and surmises or the same suffers from some apparent illegality or from the vice of non-application of mind warranting interference under Article 226 of the Constitution of India. A broad distinction, therefore, has to be maintained between the decision which is perverse and those which are not. If a decision is arrived at, based on no evidence or evidence which is thoroughly unreliable that no reasonable or prudent person would act upon it, than such an order would be certainly treated as a perverse order and if there is any evidence on record which is acceptable or which is sufficient enough clearly pointing out, to the guilt of the delinquent employee than the conclusions based on such evidence would not be treated as perverse and, ordinarily would not be interfered with. Judgment cited from both the sides supports the above principle of law. In this regard in Central Bank of India Ltd. Vs. Prakash Chand Jain, as under:

4. The court then proceeded to consider whether the Tribunal in that case had acted rightly, and noted that one had merely to read the order to be satisfied

that the Tribunal had exceeded its jurisdiction in attempting to enquire if the conclusions of fact recorded in the enquiry were justified on the merits. The Tribunal did not hold that the enquiry was defective or the requirements of natural justice had not been satisfied in any manner. The court then indicated that the Tribunal had proceeded to examine the evidence, referred to some discrepancies in the statements made by witnesses and had come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges had been proved against the workmen in question. It was then held that, in making these comments against the findings of the enquiry, the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry u/s 33(2)(b). The court then indicated the principle applicable by saying:

It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as u/s 33(2)(b). It is conceivable that even in holding an enquiry u/s 33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence.

5. These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal u/s 33(2)(b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all. This principle was further affirmed in a different context in State of Andhra Pradesh v. S. Sree Rama Rao where this Court had to consider whether a High Court, in a proceeding for a writ under Article 226 of the Constitution, could interfere with the findings recorded by departmental authority in disciplinary proceedings taken against a Government servant. The court held:

But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

11. Further paras 6 to 10 of the decision in Kuldeep Singh Vs. The Commissioner of Police and Others, is also relevant and the same is reproduced as under:

6. It is no doubt true that the High Court under Article 226 or this Court under

Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

12. Para 26 of the decision in Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, in as under:

26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das.) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand v. Union of India and State of U.P. v. Om Prakash Gupta.) (3) Exercise of discretionary power involves two elements - (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. State Bank of India.) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan.) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. [See Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra.] (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash

Chand Jain, Kuldeep Singh v. Commr. of Police.)

13. Based on the above legal position let me deal with the facts of the present case to see whether the petitioner has made out a case for interference by this Court while exercising power of judicial review under Article 226 of the Constitution of India to upset the findings of the enquiry officer and punishment imposed by the Disciplinary Authority and the order passed by the Appellate Authority. It is not in dispute that the petitioner Mr. S.K. Dua was charge sheeted for his alleged mis-conduct of passing official information for monetary consideration to M/s Modern Insulators limited in respect of a tender for the supply of 400 KV Solid Core Bus Post Industries. It would be relevant to reproduce the chargesheet issued against the petitioner as under:

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SH. SHIV KUMAR DUA, DY. SUPDT. (O&M), BTPS, Employee No. 54578.

Shri Shiv Kumar Dua, while functioning and posted as Sr. Engineer/Dy. Supdt. (O&M), Badarpur Thermal Power Project during the year 1987-88 evidently entered into an arrangement with Shri Parmeshwar Prasad, Employee No. :00826, Dy. Manager (Contracts), Corporate Centre, National Thermal Power Corporation Ltd. New Delhi and Shri Ram Naresh Prasad, proprietor M/s Global Construction Co. to pass on the official information for monetary considerations to M/s Modern Insulators Ltd., Abu Road, in respect of tender package Nos. CC-4930-510 for Kahalgaon STPP and CC43-046 for Farakka STPP for supply of 400 KV Solid Core Bus Post Insulators. Sh. Shiv Kumar Dua impersonating as "Shri Sunil" and posing himself as a representative of M/s Global Construction Company, passed on the relevant information received from Shri Parmeshwar Prasad, Dy. Manager, (Contracts), NTPC, who was dealing with the above referred packages to M/s Modern Insulators Ltd. Abu Road subsequently, M/s Modern Insulators limited were awarded a contractor of 400 KV Bus Post Insulators for Kahala Gaon STPP vide LOA No. ; 01;CC;4930-510/AL dated 20.4.88 for Rs. 1,47,61,500. Sh. Shiv Kumar Dua by his above said act not only exhibited dishonesty in connection with the business of NTPC but also acted in a manner prejudicial to the interest of the company, and failed to maintain good discipline and behavior. Sh. S.K. Dua further failed to maintain absolute integrity and acted in a manner unbecoming of a public servant. The above acts of Sh. Shiv Kumar Dua, thus are violative of Rule 4(1) (3) & Rule 5(1) (5) & (20) of CDA Rules of NTPC.

14. The main plank of argument of counsel for the petitioner was that two important material witnesses were not produced before the enquiry officer for their cross-examination and their statements were believed as truthful even though recorded during the investigation by the vigilance officer. Another contention raised by the counsel for the petitioner was that although the enquiry officer placed reliance on the statements of these two witnesses but the disciplinary authority reached to his own conclusions and held the petitioner guilty of mis-conduct based on the other material even after ignoring the

statements of the said two witnesses, namely, P.K. Rastogi and Mr. R.N. Prasad. It is not in dispute that based on the same evidence, the enquiry officer did not find the other chargesheeted employee, Mr. S.K. Dua, guilty of mis-conduct but he was exonerated by the Disciplinary Authority on the ground that the main witness Mr. P.K. Rastogi was not produced before the enquiry officer who identified him as impersonator to represent M/s Global Construction Company for liasoning with M/s Modern Insulators Ltd., Abu Road. The argument raised by the counsel for the petitioner was that once the other charge sheeted employee was exonerated by the Disciplinary Authority the entire vital link to establish and implicate the petitioner also vanishes. The effect of exoneration of Mr. S.K. Dass as per the counsel for the petitioner was that his exoneration would mean that he neither acted as representative of M/s Global Construction Company and he never contacted M/s Modern Insulators Ltd., nor he ever received any communication from the petitioner to be illegally passed on to M/s Global Construction Company and then to M/s Modern Insulators Ltd. relating to the tender in question. Counsel for the petitioner strongly urged that the role of S.K. Dua was so inextricable intertwined with that of the petitioner, that his exoneration would necessarily lead to exoneration of the other co-accused.

15. Undoubtedly, Mr. S.K. Dua as per the charge sheet issued against him was the front man of the petitioner to pass on the official information for monetary considerations to M/s Modern Insulators Ltd. in respect of the tender in question who impersonated himself as (Sunil) and then to pose himself as representative of M/s Global Construction company and exoneration of Mr. Dua based on the same material, documentary and oral, has upset the entire story as set up by the respondents against the petitioner, as well, in the absence of any other incriminating material against the petitioner. No doubt Sh. S.K. Dua was exonerated primarily on the ground that Sh. P.K. Rustagi of M/s Modern Insulators limited failed to appear before the enquiry officer to depose against Mr. Dua as Mr. Rastogi was the only witness who had identified Mr. Dua in his statement recorded before the vigilance officer. Once the charges were not found to have been proved against Mr. Dua, then, certainly the important missing link in the chain of events to implicate the petitioner also gets weakened.

16. The enquiry officer in his enquiry report based his conclusions on the two statements i.e. one made by Mr. R.N. Prasad (PEX-11) alleged uncle of the petitioner and sole proprietor of M/s Global Construction Company and the statement of Sh. P.K. Rastogi (PEX-12) of M/s Modern Insulators Ltd. The enquiry officer also placed reliance on the depositions of PW 1,2,5 6 & 7 and documents exhibited by the prosecution referred to as PEX-10-15-18 & 19 and defence exhibits referred as DEX-13 & DEX-14. The enquiry officer also found that after the letter of award dated 20.4.1988 in favour of M/s Modern Insulators Limited, payments to the tune of Rs. 2,36,026.00 were credited in the current account No. F-5/736 of M/s Global Construction Company with State Bank of India, Kanhar Bagh, Patna towards their commission. This finding of fact was arrived at by the enquiry officer based on PEX-1,2,3,10,11,12 & 15 and depositions of PW

1,2,5,6 & 7. Counsel appearing for the respondent has failed to categorically point out as on what basis the enquiry officer found the involvement of the petitioner in the award of the said contract in favour of M/s Modern Insulators Limited. Various documents proved on record and the deposition made by the prosecution witnesses does show that the petitioner was functioning as Deputy Manager (Contracts) and in his official capacity had all access to the relevant files and documents concerning the said award of the said tender and he was also to lias with the tender committee members in his official capacity. The documents and statements proved on record also exemplify that M/s Modern Insulators Limited was awarded a contract in question for the supply of 400 KV Solid Core Bus Post Insulators and M/s Modern Insulators limited had engaged the services of M/s Global Constructions Company of which Mr. R.N. Prasad was the proprietor to lias on their behalf for facilitating the award of contract in their favour. It was also proved on record that payment of Rs. 2,36,026.00 was made by M/s Modern Insulators Limited through three separate cheques and the said amount was duly credited in the account of Mr. R.N. Prasad in his current account being maintained with State Bank of India, Kanhar Bagh, Patna. In the face of the aforesaid material the crucial question which arises for consideration is whether the documents and the oral evidence produced before the enquiry officer proves complicity of the petitioner in abusing his official position for dishonest purposes in terms of imputations made against him in the chargesheet. It is a settled legal position that the case against the delinquent employee before the domestic tribunal has not to be proved beyond any reasonable doubt and it can be based on preponderance of probabilities. In this regard the Hon''ble Apex Court has in Lalit Popli Vs. Canara Bank and Others, observed as under:

16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena.) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

17. Nevertheless, for holding the delinquent employee to be guilty of charges framed against him, the evidence may not be foolproof or sufficient enough to establish a clear-cut case against such an employee but at least some reliable evidence has to be brought forth before the enquiry officer and same should be proved for holding such an employee to be guilty of charges framed against him in the charge sheet. The enquiry officer is not supposed to base his findings merely on conjectures or draw inferences out of blue without having any

incriminating material to support such findings. This what has happened in the present case as would be evident from the findings of the enquiry officer and that of the order passed by the Disciplinary Authority. Two material witnesses i.e. Mr. R.N. Prasad, proprietor of M/s Global Construction Company alleged uncle of the petitioner and Mr. P.K. Rastogi of M/s Modern Insulators Limited were the only vital links to prove the complicity of the petitioner in the said deal for monetary consideration but these witnesses never appeared before the enquiry officer although as per the respondent sufficient efforts were made to produce them before the enquiry officer and therefore, the case of the petitioner is no way different, than that of Mr. S.K. Dua who was exonerated by the order of disciplinary authority. There is a reference of one letter dated 12.3.1988 issued by one Mr. C.M. Jain, Joint Executive President of M/s Modern Insulators Limited to M/s Global Construction Company on the address bearing house No. 35-C, Block-A-12,/35C, Pocket A-12, Kalkaji Extension, New Delhi which was the accommodation leased by the company in favour of the petitioner at the relevant point of time and on the said letter there was also an endorsement in the name of the petitioner as "Attention Mr. P. Prasad" but the said letter was not proved on record and even relied upon by the enquiry officer in his report. The only other evidence which could have proved involvement of the petitioner were some payments received by the petitioner from his uncle Mr. R.N. Prasad after the alleged deal and the subsequent deposit of these payments by the petitioner with Nagarjuna Society for the purchase of flat by the petitioner but no incriminating evidence was proved on record to show that the payments of Rs. 35,000/- and Rs. 30,000/- were received by the petitioner from the said Mr. R.N. Prasad, rather the petitioner sufficiently proved on record the source of the said payments from his father and one Mr. Arvind Kumar and thereafter deposit of the same with the Nagarjuna Society. Undoubtedly, Mr. R.N. Prasad and Mr. P.K. Rastogi in their depositions before the vigilance officer made disclosure to show involvement of the petitioner but the testimony of the said witnesses who were never produced before the enquiry officer cannot be given any credence or weightage as the petitioner never got an opportunity to cross-examine the said witnesses. In the light of the above discussion, I do not find that the charges against the petitioner can sustain based on the material placed by the respondents before the enquiry officer. Apparently, the findings of the enquiry officer against the petitioner are wholely illegal, perverse and irrational. The enquiry officer also did not deal with the defence statement at all in his enquiry report which further shows that the enquiry officer has not taken a balanced view of the material placed before it.

18. The Disciplinary Authority in his order dated 8.6.1995 did not properly appreciate the inherent perversity in the findings arrived at by the enquiry officer and in a most cavalier manner upheld the findings of the enquiry officer and imposed the punishment of removal of the petitioner from service. The Appellate Authority did no better job by upholding the order of the disciplinary authority without giving any reasons after dealing with various contentions raised by the

petitioner in his appeal. The Appellate Authority thus also failed to discharge its legal obligation to properly deal with the pleas raised by the petitioner and to pass a reasoned order and instead blindly following the order passed by the Disciplinary Authority. In this regard the Hon''ble Apex Court has in Ram Chander Vs. Union of India (UOI) and Others, as under:

Again, in Som Datt Datta v. Union of India a Constitution Bench of this Court rejected the contention that the order of the Chief of the Army Staff confirming the proceedings of the General Court Martial u/s 164 of the Army Act, 1950 and the order of the Central Government dismissing the appeal of the delinquent officer u/s 165 of the Act were illegal and ultra vires as they did not give reasons in support of the orders, and summed up the legal position in these words:

Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

19. In view of the foregoing discussion, the order of removal passed by the Disciplinary Authority dated 8.6.1995 and order of Appellate Authority dated 13/16.10.1995 are set aside. Since the order terminating service of the petitioner is being set aside, the respondent NTPC is directed to reinstate the petitioner within one month of this order with all consequential benefits and continuity of service.

20. The appeal is allowed in the above terms.

