
(2010) 01 DEL CK 0106

In the Delhi High Court

Case No : Writ Petition (C.) No. 304 of 2001

Shri R.K. Sachdeva

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0106

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : D. Mathew, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Shri R.K. Sachdeva, has challenged the order dated 24th October, 2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 342 of 1999 titled Shri R.K. Sachdeva v. Union of India and Ors. dismissing his Original Application filed against the order of the appellate authority and disciplinary authority in dismissing the petitioner from service.

2. The allegations against the petitioner were that as a Junior Engineer while officiating as Assistant Engineer (Installation) during the period 1984-86 in the office of General Manager, he committed gross misconduct by misappropriating the government money by fabricating and inflating bills of items purchased locally. The imputation against the petitioner were also that he did not maintain any record for the items which were locally purchased and he exceeded his financial powers for making cash payment to private parties. The charges framed against the petitioners were communicated to him which were denied by him, therefore, an inquiry was conducted. The inquiry officer after a detailed inquiry found the petitioner guilty of charges made against him and the disciplinary authority imposed the punishment of dismissal. The appellate authority also upheld the punishment imposed on the petitioner considering the gravity of

charges.

3. While the appeal was pending before the appellate authority, the petitioner had filed another original application being OA No. 2185 of 1991. By order dated 1st April, 1997, the said OA was allowed and the matter was remitted to the appellate authority to decide the appeal in accordance with law. However, during the pendency of the OA No. 2185 of 1991 the appeal filed by the petitioner against the order of disciplinary authority passing an order of dismissal was decided by order dated 12th April, 1993. However, since the Tribunal had directed the appellate authority to decide the appeal in accordance with law, the appeal was reconsidered afresh and was decided again and the punishment of dismissal of the petitioner was upheld again by order dated 21st December, 1998.

4. Before the Tribunal, the petitioner had contended that he was not given proper inspection of documents and cross-examination of witnesses was not allowed and he was deprived of the right to file the list of defense witnesses and the defense statement was not allowed to be filed after the evidence of the department was recorded.

5. The Tribunal after perusing the proceedings of the inquiry and the inquiry report had noticed that the petitioner had not been responding to the inquiry notices. On account of not responding to the notices issued by the inquiry officer, inquiry proceedings had been postponed on many occasions. Regarding the allegations of non-inspection of the documents, the inquiry proceedings revealed that he was asked to inspect the documents by letter dated 30th March, 1988 up to 15th April, 1988 and the memo dated 30th March, 1998 was received by the petitioner on 11th April, 1988, however, the inspection was not carried out. The petitioner instead of inspecting the documents, made a representation that it is not possible for him to inspect the documents as the defense assistant was ill though the petitioner is a literate person being a junior engineer who had even officiated for considerable period as Assistant Engineer.

6. The plea of the petitioner that he should have been granted more time to inspect the documents as the defense assistant was ill was declined on the ground that nothing was produced by the petitioner to show that the defense assistant was ill. The petitioner has raised the similar ground before us, however, learned Counsel for the petitioner is unable to point out as to how the documents could not be inspected by the petitioner himself who was a Junior Engineer and who was even officiating as Assistant Engineer. The learned Counsel for the petitioner is also unable to show any document reflecting or proving that the defense assistant was ill on 11th April, 1988.

7. The learned Counsel for the petitioner has also challenged the inquiry proceedings on the ground that the witnesses who had appeared in support of pleas and contentions of the department were not allowed to be cross-examined. Learned Counsel is, however, unable to give any justifiable reason for not cross-examining the witnesses. The petitioner had been present when the witnesses

were examined. No ground had been made out by the petitioner for adjourning the inquiry proceedings and in the circumstances the petitioner should have cross-examined the witnesses and for not cross-examining the witnesses, the petitioner cannot blame the inquiry officer or can contend that he was not given adequate opportunity to cross examine the witnesses and the inquiry proceedings are vitiated. The Tribunal has also noticed that even the defense assistant was allegedly ill only on 11th April, 1988 and since nothing was produced about the illness of the defense assistant, therefore, there was no sufficient reason for the petitioner not to cross-examine the witnesses. If the defense assistant was sick, the petitioner would have got another defense assistant appointed, however, the petitioner did not make any effort to have any other defense assistant appointed after producing the proof of the illness of earlier defense assistant. In the circumstances, the inquiry proceeding cannot be faulted on the ground as raised by the petitioner nor the findings of the Tribunal can be faulted.

8. Learned Counsel for the petitioner challenges the departmental proceedings on the ground that he was not allowed to file the defense statement and list of witnesses. Learned Counsel for the petitioner is, however, unable to deny that the petitioner had opportunity to file the statement of defense and the list of witnesses. Learned Counsel is unable to show any sufficient reason which would have entailed adjournment of inquiry proceedings. In the circumstances, if the defense statement and list of witnesses were not filed by the petitioner, it was at his own peril and the departmental proceedings cannot be vitiated on that ground. Learned Counsel is also unable to point out infraction of any rule or any such rule which would have entitled the petitioner for adjournment of departmental proceedings without their being any sufficient ground for the same. Consequently, even on this ground the departmental proceedings cannot be vitiated nor the findings of the Tribunal can be faulted.

9. The next plea raised on behalf of the petitioner is of hostile discrimination against him. According to the learned Counsel for the petitioner, similar charges were made against another Junior Engineer Shri B.D. Kaushik, however, after a detailed inquiry he had been let off with lesser punishment of reduction in pay whereas the petitioner has been dismissed from service. Discrimination is also alleged on the ground that the case of the petitioner was also referred to the CVC whereas the case of another Junior Engineer, B.D. Kaushik, had not been referred to the CVC. The appellate authority and the Tribunal, both have considered the plea of the petitioner and have rejected that hostile discrimination was meted out to the petitioner. The appellate authority had held that the evidence adduced during the inquiry in two cases could not be the same. It was held that even if there is a miscarriage of justice in case of Mr. B.D. Kaushik, the petitioner cannot propound discrimination so long as the punishment imposed on the petitioner commensurate with the charges and the evidence against him.

10. Learned Counsel for the petitioner is unable to show us the evidence against

Sh. B.D. Kaushik, another Junior Engineer, who was awarded lesser punishment. If the evidence in the case of Sh. B.D. Kaushik was not sufficient for proving the charges conclusively against him, the petitioner cannot contend that he should also have been awarded the same punishment despite having more reliable and conclusive evidence against him. In any case, the learned Counsel for the petitioner is unable to show that the evidence against the petitioner is not conclusive. The witnesses examined against the petitioner were not cross-examined and perusal of the testimony of the witnesses who had appeared and deposed against the petitioner conclusively established the charges against the petitioner as the testimony of those witnesses were not impeached in the cross examination.

11. The next point canvassed by the learned Counsel for the petitioner is about the advice taken by the respondent from the Chief Vigilance Commission. According to him, the extreme punishment of dismissal has been awarded pursuant to the advice tendered by the CVC. The Tribunal had noted that the appeal was disposed of by order dated 12th April, 1993, however, since an original application being OA No. 2185 of 1991 was filed which was disposed of by order dated 1st April, 1997 directing the respondents to dispose of the appeal in accordance with law, therefore, the order dated 12th April, 1993 was not acted upon rather the appeal was reconsidered and while reconsidering the appeal, the opinion of CVC was not considered and acted upon. The order dated 12th April, 1993 which was based on the advice of CVC was not acted upon nor was impugned by the petitioner and, therefore, this ground that the advice of the CVC was taken cannot be agitated. In any case, it has also been noticed by the Tribunal that the irregularity of obtaining the advice of CVC was wholly inconsequential in the facts and circumstances.

12. The learned Counsel for the petitioner has also relied on JT 2001 (Supp. 1) SC 44, State of U.P. and Ors. v. Raj Pal Singh Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, and Sunil Kumar Banerjee Vs. State of West Bengal and Others, in support of his pleas and contentions.

13. In Sunil Kumar Banerjee (supra), it was held that the inquiry proceedings shall not be vitiated on account of non-examination of delinquent officer unless it is established that the prejudice had been caused to such an officer. It was further observed that since the delinquent had eloquently pleaded his case in person before the Supreme Court also, therefore, it had to be inferred that no prejudice or bias on the part of the inquiry officer should be inferred. Apparently, the petitioner cannot take support from the ratio of the said judgment. Rather it was held in Sunil Kumar Banerjee (supra) that if the conclusion of the disciplinary authority was based on evidence and not on the advice rendered by Vigilance Commission and arrived at independently on the basis of the charges and evidence and relevant material before the inquiry officer, it could not be held that the decision of the disciplinary authority shall be a tainted one.

14. In Nagaraj Shivarao Karjagi (supra), the Supreme Court had held that the

advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority and it was not obligatory upon the punishing authority to accept the advice of Central Vigilance Commission. In the case of the petitioner also though while disposing of the appeal by order dated 12th April, 1993, the advice rendered by the Central Vigilance Commissioner was referred to, however, in view of the order passed by the Tribunal in the earlier original application dated 1st April, 1997 to decide the appeal in accordance with law, the order dated 12th April, 1993 by the appellate authority was not acted upon and thereafter without adverting to the advice of the Central Vigilance Commissioner, an independent order was passed by the appellate authority. In the circumstances, the disciplinary proceedings against the petitioner could not be vitiated on the ground that the respondent had obtained the advice of Central Vigilance Commission in the facts and circumstances.

15. The reliance by the petitioner on *State of U.P. and Ors. v. Raj Pal Singh* (supra) is also not of much help as in that case the charges against the delinquents were same and identical in relation to one and the same incident and in these circumstances it was held that despite the High Court coming to the conclusion that the gravity of charges was the same, it was held that it would not be open for the disciplinary authority to impose different punishments on different delinquents. In contradistinction, it has not been established that the charges against the petitioner and Shri B.D. Kaushik, another delinquent, are the same arising out of the same incidence of misappropriation and fabrication and inflated bills of items purchased locally. Even the learned Counsel for the petitioner has not even established that the evidence in both the cases recorded before the inquiry officer was same. Apparently, it could not be same as in the case of the petitioner neither the defense statement was filed nor the list of witnesses was filed nor the witnesses examined by the petitioner were cross-examined. It is not known whether in the case of another Junior Engineer, Sh. B.D. Kaushik, also the witnesses of the respondents were cross-examined or not. If the witnesses in the case of Sh. B.D. Kaushik were cross-examined and their testimonies were refuted, apparently the charges against B.D. Kaushik would not have been established to that extent they have been established against the petitioner. Consequently, on the basis of the ratio of the said judgment, petitioner cannot establish that there had been hostile discrimination against him.

16. The findings of the Tribunal in the facts and circumstances, therefore, cannot be faulted. No other ground has been raised by the petitioner impugning the order dated 24th October, 2000. In the circumstances, there are no grounds to interfere with the said order as there is no such illegality or irregularity which will entail any interference by this Court. The writ petition is, therefore, dismissed. Considering the facts and circumstances, the parties are, however, left to bear their own costs.

(Guj)