

(2005) 05 DEL CK 0091
In the Delhi High Court
Case No : LPA No. 397 of 1999

Shri V.K. Sayal

APPELLANT

Vs

Bharat Heavy Electricals Limited and Others

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Citation : (2005) 119 DLT 581 : (2005) 82 DRJ 419

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Sandeep Sethi and Kamal Mehta, for the Appellant; J.C. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—Shri V.K. Sayal was the Deputy General Manager in Bharat Heavy Electricals Limited. A departmental inquiry under Bharat Heavy Electricals Limited Conduct, Discipline and Appeal Rules, 1975 was held against him on five charges two of which were held as proved. The said two charges are as under:-

"2 (i) Shri V.K. Sayal made Shri S.C. Nayyar, Assistant Gr. I to draw a departmental advance of Rs. 1500/- on 28.8.91 purportedly for repair of doors and windows of the BHEL Transit Flat situated at Safdarjung Enclave, New Delhi. The amount so drawn from the Finance Department was retained by Shri Sayal. The final settlement of the said advance was again done through Shri Nayyar on 27.9.91 enclosing therewith a fake Bill-cum-Receipt dated 5.9.91 of Rs. 1600/- from one Shri Gyas Mohd. Khan, 97, Lajpat Nagar, Central Market, New Delhi.

2 (ii) On 1.8.91, an advance of Rs. 3000/- was taken purportedly for repair of Sofa Set and Setty in the above mentioned Transit Flat. A Bill fraudulently procured from one M/s. Sharda & Co., Lii/65, Madangir, New Delhi 110 062 for Rs. 3480/- was submitted on 19.8.91 against the settlement of aforesaid advance."

2. The report of the Enquiry Officer is dated 16th September, 1996. Consequent

upon the report, the Disciplinary Authority passed the penalty order directing reduction of rank of Shri V.K. Syal from Deputy General Manager to Senior Manger. Feeling aggrieved, V.K. Syal filed a writ petition. The same was dismissed by learned Single Judge on 2nd September, 1999. He has now come up in appeal.

3. We feel, at this stage, that a brief resume of what transpired in the inquiry proceedings is called for. The Management examined fourteen witnesses. As for V.K. Syal he filed the affidavit of one Gyas Mohd. Khan by way of evidence but he did not produce him before the Enquiry Officer for cross examination. It was the Management who produced him as a witness. The said Gyas Mohd. Khan instead of lending support to the version of V.K. Syal as given in the affidavit bent forward to demolish the same. On the same day the appellant withdrew from the case. He thus remained un-represented. He did not even enter the witness box to give his version of the charges framed against him.

4. It may be noticed that one of the witnesses examined by the Management was Shri S.C. Nayyar. A major slice of the arguments advanced on behalf of the appellant related to this witness. We Therefore feel that a few words need to be said about him. The said S.C. Nayyar also faced a departmental inquiry. In that inquiry the appellant before us had appeared as a Court witness. The inquiry report had gone against Nayyar.

It so happened that when Nayyar appeared as a witness of the Management against the appellant, the appellant asked for supply of the inquiry report but the same was not made available to him. It was supplied later. It is the non- supply of this report which occupied the centre stage of the arguments advanced by learned counsel for the appellant.

5. Another ground canvassed revolved around the examination of Gyas Mohammad Khan by the Management as its own witness. It was argued that he having been cited as a defense witness though not produced could not be examined, more particularly, when his name did not figure in the list of witnesses, filed by the Management.

6. Yet another ground taken was the examination by the Management of a witness by the name of Jamna Prasad behind the back of the appellant. Objection was also taken to the visit of the Enquiry Officer to a guest house in Safdarjung Enclave and to his making certain enquiries from the landlady. Last of all, it was contended that there was no evidence to connect the appellant with the charges against him. Of course, it was also the grievance of the appellant that the learned Single Judge had not dealt with the contentions raised by him.

7. (i) Are the findings recorded in the departmental inquiry perverse? (ii) Are they based on no evidence? (iii) Does the inquiry suffer from the infirmity of non-application of mind? (iv) Has the appellant been prejudiced by some act of omission or commission that the entire proceedings stand vitiated? These questions have made us look anxiously into the record. And to what result?

8. We find that neither any finding can be characterised as perverse nor biased or based on no legal evidence. The Enquiry Officer peeped into the evidence, sifted it, analysed it and then only returned his findings. The report, thus, cannot be condemned on the non-existent infirmity or non application of mind. Of course, the report of the Enquiry Officer who conducted the inquiry against Nayyar was not supplied at the earliest. It was supplied a little later but then the appellant had been supplied with the record of that inquiry. As the entire record of that inquiry was made available to the appellant, the report itself was of no relevance. Let us remember that the non- supply of the report about which so much of grievance is being made was not against the appellant. It was against Nayyar. The inquiry report of the appellant shows that ample opportunity was granted to him to cross examine Nayyar which opportunity was fully utilised. In any case it was not shown as to how non supply of the inquiry report against Nayyar had caused prejudice to the appellant's defense, much less, such prejudice as may have occasioned failure of justice. In any case what prevented the appellant from recalling the witness for further cross examination after the receipt of copy of the report. No such request was made. No application for the purpose was made.

9. Coming to the examination of Gyas Mohd. Khan, the appellant had originally cited him as its own witness but later on had chosen to give him up by not making him enter the witness box. It was under these circumstances that the Management chose to examine him as its own witness. The said Gyas Mohd. was considered a key witness. During the inquiry, the petitioner produced an affidavit from him to establish his innocence. But Mr. Khan when examined as a witness by the Management stated that he had done no carpentry work in the premises in question and that the bill was fake. He also stated that he signed the affidavit at the instance of the petitioner on an undertaking that a genuine bill was typed on a stamp paper which was provided by the petitioner. It is also interesting to note that immediately after the examination of the said witness, the defense Assistant as also the charged officer withdrew from the proceeding and never appeared thereafter. These vital aspects of the enquiry was dealt with by the Enquiry Officer and so also by the Disciplinary Authority in his order dated. 3.3.1997. Relevant extract thereof also finds mention in paragraph 7 of the judgment of the learned Single Judge. We concur with the aforesaid findings.

10. Coming to the examination of Jamna Prasad, it may be pointed out that before the examination of the witness the appellant had withdrawn from the proceedings and had boycotted the same. If that be so, how can he now complain that witness was examined at his back?

11. Lastly, of course, the Enquiry Officer visited the building in Safdarjung Enclave. The visit had bearing on the inquiry and as such no fault can be found on that score.

12. The principles to be followed in such matters are well settled. The Supreme Court has time and again laid emphasis on the same. For purposes of elucidating

reference can be made to Bank of India and Another Vs. Degala Suryanarayana, . In paragraph 11 of the said judgment the following is what was laid down:-

"Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence of weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India (UOI) Vs. H.C. Goel, the Constitution Bench has held:-

"the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

13. Keeping in view the guidelines laid down by the Supreme Court, we are satisfied that the charges in question were established by the presence of overwhelming evidence and that Enquiry Officer acted reasonably and with the objectivity by holding those charges as proved. We discern no malafides or perversity at any stage of the proceedings. The learned Single Judge thus, with respect, rightly found no ground to interfere. We concur. The appeal is consequently dismissed leaving the parties to bear their own costs.