

(2009) 10 DEL CK 0110

In the Delhi High Court

Case No : Writ Petition (C) No. 2296 of 1991

S.P. Mangla

APPELLANT

Vs

Export Inspection Council of India and Others

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 226, 32

Citation : (2009) 10 DEL CK 0110

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : G.D. Gupta and Vikram Saini, for the Appellant; L.R. Khatana, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—In September, 1984, Petitioner was Deputy Director in Export Inspection Agency - Delhi and vide Office Memorandum (Annexure P-27), his explanation was sought regarding circumstances for the delay in communication of the rejection of the consignment of M/s. Jeevan Engineering Works, Delhi. A consignment of 100 ceiling fans of M/s. Jeevan Engineering Works was inspected by Shri S.K. Caroli, Assistant Director of Export Inspection Agency and it was declared export worthy on 4th July, 1983. On the very next day, Petitioner rejected the said consignment declaring that it did not meet the requirement of I.S. 374-1979 in respect of Power Input and Air Delivery. The rejection letter of 5th July, 1983 issued by the Petitioner to above said firm, was received by them on 24th July, 1983. This was in contravention of Office Circular of 21st October, 1982 (Annexure P- 20), which required that the certificate of inspection/rejection letter in respect of the consignments which are subjected to check should be kept ready within 48 hours after completion of Inspection and the same be handed over to the Exporter's representative or be dispatched as may be intimated by the Exporters. The Certificate of Inspection was required to be dispatched by the Agency under certificate of posting and dispatch should take

place immediately expiry of 48 hours of Inspection.

2. Petitioner vide Reply (Annexure P-28) informed that the rejection letter was issued on the same day and was sent to the delivery counter for collection by the manufacturer and it was not dispatched by post because the manufacturer was a local party.

3. Not satisfied with the Reply of the Petitioner, three articles of charges were framed against him. The first charge pertained to rejection of consignment of M/s. Jeevan Engineering Works in contravention of Instructions/Circular of 5th October, 1977, which provided for acceptance of lower service value of fans prescribed by the firm-buyer; the second charge related to delay in communicating the rejection of the consignment of the above said Firm to them; and the third charge was based upon the complaint of Executive Secretary of All India Small Scale Cable and Conductors Manufacturers Association alleging that the rejection of the consignment of M/s. Jeevan Engineering Works was because money was not paid to the Inspector and the Petitioner.

4. Statement of Defence (Annexure P-30) was furnished by the Petitioner to the Statement of Imputation of Charges. The Inquiry Officer, after recording the evidence vide his Inquiry Report (Annexure P-37) concluded that all the above said three charges stood proved against the Petitioner. Director of Export Inspection Council of India accepted the Inquiry Report (Annexure P-37) and had imposed the penalty of removal from service upon the Petitioner, which was challenged by way of Appeal (Annexure P-38) and appeal of the Petitioner stood rejected qua the first two charges and was accepted against the finding on the third charge, vide Order (Annexure P-39). However, Appellate Authority while affirming the findings of the Inquiry Officer on the first two charges maintained the penalty of removal of the Petitioner from service. Petitioner had sought Review of the Order (Annexure P-39) of the Appellate Authority and the Reviewing Authority, vide Order (Annexure P-32) dismissed the review petition.

5. Petitioner had challenged the penalty of Removal from Service by invoking the writ jurisdiction and vide Order (Annexure P-43) the Order passed in the review petition was set aside, being not by Competent Authority and the matter was remitted back to the Export Inspection Council to consider and dispose of the Review petition. Accordingly, vide impugned Order (Annexure P-45), Export Inspection Council of India rejected Petitioner's review petition.

6. In this petition, the stand of the Petitioner is that M/s. Jeevan Engineering Works had not given any specification as required by the Council's Circular of 1977, therefore, Mr. Caroli, had advised the aforesaid firm to amend column No. 6 relating to "Technical Requirement" to mention "IS 274-1979. and Mr. Caroli had inspected the consignment in question and had discussed about it with the Petitioner on 5th July, 1983 and the Petitioner found that the consignment was failing in "minimum Air Delivery. and "high input wattage. and hence the consignment was rejected and Mr. Caroli was instructed by the Petitioner to

inform the manufacturer about the rejection of the consignment. According to the Petitioner, Mr. Caroli had confirmed that he had informed about the rejection of the consignment to M/s. Jeevan Engineering Works. It is the case of the Petitioner that letter of rejection of consignment in question was sent to the counter of the Export Inspection Agency on 5th July, 1983 for collection by the manufacturer as the mode of dispatch was not indicated by the manufacturer. Petitioner claims that he was called by Shri S.C. Arora, Joint Director, Incharge of the Agency on 8th July, 1983, as he had received phonogram on 6th July, 1983 and had discussed this matter with the Petitioner and Mr. S.C. Arora had called Shri K.N. Bhaduri, Assistant Director, Administration and had instructed him to send the rejection letter in question for dispatch by post. Petitioner contends that if the decision of the Petitioner was wrong, then his senior officer Mr. S.C. Arora, Joint Director, could have passed the consignment in question. Petitioner further claims that Mr. Naresh Gupta, Electrical Engineer of M/s. Jeevan Engineering Works had met him on 14th July, 1983 and he went back satisfied. Petitioner further contends that it is wrong to say that M/s. Jeevan Engineering Works was not aware of the rejection of the consignment before 24th July, 1983, when the rejection letter had reached them by post. Petitioner points out that Mr. Naresh Jain, Proprietor of M/s. Jeevan Engineering Works had stated in the Inquiry proceedings that the letter could have been received earlier.

7. It is the case of the Petitioner that Mr. R.C. Palhan, Assistant Director of the Export Inspection Agency, Delhi, who had sought explanation regarding the delay in conveying the rejection, was satisfied with the explanation of the Petitioner and had put up a note sheet to Sh. D.C. Majumdar, Director of the Agency proposing closure of the case and during the Inquiry, one of the documents sought by the Petitioner was the copy of the said note sheet, but it was not supplied to him. According to the Petitioner, Sh. D.C. Majumdar, Director of the Export Inspection Agency was biased against the Petitioner and addition of two charges, in the Charge Sheet was malafide. In this regard, the averments made by the Petitioner in the writ petition deserve attention and they read as under:

That the Petitioner has reason to believe that the Article "A Callous Council" was engineered by Shri D.C. Majumdar, Respondent No. 5, as a clever move to get rid of the various officers who were not to his liking. With the same motive, he prevailed upon Mr. Soumitra Bose to swear the affidavit (Annexure P-4). All the persons named in the said affidavit with the exception of Mr. B. Bhattacharya, and Shri Shyamal Banerji are no longer in service. They have either been removed, compulsorily retired or forced to resign. The affidavit was totally false.

8. Petitioner asserts that since Sh. D.C. Majumdar, Director of the Export Inspection Council was having a strong bias against him, therefore, Petitioner was not supplied copy of the Inquiry Report thereby denying opportunity to the Petitioner to represent on the quantum of punishment. Petitioner further asserts that the finding of the Inquiry Officer/Disciplinary Authority is wholly perverse and untenable and the present case is of no evidence. It is further asserted that

the rejection of the consignment of M/s. Jeevan Engineering Works by the Petitioner does not amount to any misconduct and the same could have been challenged in appeal, but it was not done and for the delay in communication of the rejection letter, Petitioner cannot be held responsible as on the same day it was sent to the counter of the Agency for being collected by the manufacturer or its representative. Quashing of the impugned order of the Disciplinary Authority as well as of the Appellate Authority and of the Reviewing Authority has been sought with consequential relief.

9. In the counter affidavit filed by the Respondents, it is stated that before initiating departmental action against the Petitioner, advice of Central Vigilance Commission was taken and thereafter Charges were framed against the Petitioner and the Central Vigilance Commission had nominated the Commissioner for Departmental Inquiry as the Inquiring Authority in this case and an impartial Inquiry was held. Petitioner was given full opportunity to defend himself and on the basis of the report of the Inquiry Officer, penalty of Removal from Service was rightly imposed upon the Petitioner as well as upon Shri S.K. Caroli and Mr. Bhaduri was reverted to lower rank for a period of two years. The allegations of Bias and Mala fide have been refuted and it is stated that an unqualified apology was tendered by the persons who were responsible for publication of special report "A Callous Council. in Surya magazine.

10. On merits, it was stated that there were indications that IS-374 was interpolated in the Notice of Intimation subsequently to support the rejection and therefore the rejection of the consignment was not bona fide. Regarding M/s. Jeevan Engineering Works preferring an appeal against rejection of the consignment by the Petitioner, the specific stand taken in the counter affidavit by the Respondents is as under:

The question of appeal etc. by the firm would otherwise sound logical and reasonable, had the decision been made known to the firm by the Petitioner in time and if the consignment was in their own custody; moreover the L/C had already expired and the firm was never guided properly by the Petitioner about the available remedies and proper procedure thereof.

11. According to the Respondent, the plea of bias taken by the Petitioner is an afterthought and the same was not put forth by the Petitioner in his Statement of Defence at the first available opportunity. Imposition of penalty of Removal from Service upon the Petitioner is said to be justified in the facts of this case.

12. Counsels for the parties have been heard at length and the record of this case has been perused with their able assistance and the decisions cited have been taken note of.

13. In the first instance, I would like to deal with the plea of Sh. D.C. Majumdar, Director of the Export Inspection Council being biased against the Petitioner. Although it has been stated in the writ petition that the Petitioner had fielded a candidate for the post of Resident Secretary in the Council Elections and one of

the candidates fielded for this post was to the liking of Sh. D.C. Majumdar, Director of the Export Inspection Council and Petitioner's candidate had won, whereas Sh. D.C. Majumdar's candidate lost in the said Election and therefore Sh. D.C. Majumdar was completely prejudiced against the Petitioner and was looking for an opportunity to harm the Petitioner. In the counter affidavit filed, there is a denial. There is no affirmation of the aforesaid averments by way of rejoinder nor is anything there on record to substantiate the aforesaid bald plea of the Petitioner.

14. It is true that Report (Annexure P-2) titled "A Callous Council. was published regarding functioning of the Export Inspection Council and of rampant corruption being there in its functioning. Regarding Sh. D.C. Majumdar, Director of the Export Inspection Council, mainly what was said in this Report (Annexure P-2) was as under:

EIC Director Majumdar desperate effort in clinging to his chair adopting all methods.

15. The inputs of this Report (Annexure P-2) are said to have been given by the employees of this Council whose names were disclosed by the Reporter in his affidavit (Annexure P-4) in a case of defamation. Though Petitioner's name does not find mention in it, but Petitioner claims in the writ petition that his name was there in the affidavit (Annexure P-4) and therefore, Sh. D.C. Majumdar, Director of the Export Inspection Council was biased against him.

16. There must be a "real likelihood. of bias and that means there must be a substantial possibility of bias. The Court will have to judge the matter as a reasonable man would judge any matter in the conduct of his own business. The test of likelihood of bias is based on the "reasonable apprehension. of a reasonable man fully cognizant of the facts. A real likelihood of bias has to be made to appear not only from the material in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries. There must exist circumstances from which reasonable men would think it probable or likely that the Inquiring Officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision. For the aforesaid premise, decision in S. Parthasarathi Vs. State of Andhra Pradesh, can be referred to, with advantage.

17. In the instant case, Petitioner wants this Court to believe that the defamatory article "A Callous Council. was engineered by Sh. D.C. Majumdar - Respondent No. 5 as a clever move to get rid of various officers of the Council who were not of his likings. To say the least, this plea appears to be far-fetched as no prudent person would stake his honour to defame his rivals. Furthermore, it is not the case of the Petitioner that Sh. D.C. Majumdar, Respondent No. 5 had prejudiced the Inquiry Officer against the Petitioner. In any case, it is a matter of record that

the Inquiry Officer was not nominated by Sh. D.C. Majumdar - Respondent No. 5 but was nominated by an independent body, i.e., Central Vigilance Commission. In this background, it cannot be said that the Inquiry proceedings stood vitiated due to the bias or prejudice nursed by Sh. D.C. Majumdar against the Petitioner. Reliance placed upon decision reported in Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, by the Petitioner is of no assistance as in the above cited case, one member of the Inquiry Committee had appeared as a witness against the delinquent to prove the several charges and so it was said that his bias percolates throughout the Inquiry proceedings.

18. It is not the case of the Petitioner that because Sh. D.C. Majumdar was biased against the Petitioner therefore, before imposing the penalty of Removal from Service upon the Petitioner, copy of the Inquiry Report was not supplied to him to enable the Petitioner to make submission on the quantum of punishment. In any case, it is not a case of bias in action. Non supply of copy of Inquiry Report to the Petitioner does not cause any prejudice to the Petitioner as it is not shown as to what difference it would have made, if a copy of the Inquiry Report was supplied to him before imposing the penalty of Removal from Service upon him. The inquiry proceedings do not stand vitiated on account of non supply of Inquiry Report to the Petitioner as it has been made crystal clear by the Apex Court in Commandant, Central Industrial Security Force and others Vs. Bhopal Singh, that the law laid down in Mohd. Ramzan Khan case in November 1990, would operate prospectively and the ratio of Mohd. Ramzan Khan's case is inapplicable to the cases where penalty has been imposed prior to the year 1990. In the instant case, the penalty has been imposed upon the Petitioner in the year 1986. Thus, technically also, inquiry proceedings do not stand vitiated on this account.

19. Since there is no whisper in the writ petition that Inquiry Officer, Appellate Authority or the Reviewing Authority had exhibited any bias against the Petitioner, or that Sh. D.C. Majumdar, Respondent No. 5, had prejudiced the Inquiry Officer against the Petitioner, therefore, the plea of "bias. fails.

20. On the question of non supply of additional documents, the Order (Annexure P-33) of Inquiry Officer needs to be adverted to. It reads as under:

Please refer to the list of Shri S.P. Mangla, Charged Officer for additional documents. The documents mentioned at Sl. Nos. 1, 2, 6, 7 and 10 have been found relevant. They may be collected and inspection be given to the Charged Officer as per order sheet dated 30.01.86.

21. During the course of the arguments, it has not been pointed out by the Petitioner's counsel if any grievance of non supply of the additional documents was made in the Appeal (Annexure P-38) or in the Review Petition (Annexure P-44). It is not even shown before this Court as to what prejudice the Petitioner has suffered on account of non supply of some of the additional documents

sought. Though the Petitioner placed reliance upon decision reported in 1967 SLR (SC) 759 but the same is to no avail as the Petitioner fails to show as to what prejudice he has suffered on account of non supply of some of additional documents. Moreover, on this aspect, Apex Court in its recent decision in Pandit D. Aher v. State of Maharashtra (2007) 1 SCC 445 has gone to the extent of declaring as under:

A copy of the document which has not been relied upon, is not required to be supplied to delinquent officer. The documents which are required to be supplied are only those whereupon reliance has been placed by the department.

22. In the present case, Petitioner fails to show that as to how he is prejudiced and by non supply of which documents. It is not the case of the Petitioner that relied upon documents were not supplied to him. Therefore Departmental proceedings do not stand vitiated on this account.

23. The next aspect, which pertains to the merits of this case, is the alleged act of the Petitioner is not a "misconduct. and that the present case is of no evidence, which vitiates the findings of the Inquiry Officer. Before dwelling on this aspect, it has to be kept in mind that the power of judicial review is meant to ensure that the delinquent receives a fair treatment and not to ensure that the conclusion which the Authority reaches is necessarily correct in the eye of the Court. What is required to be seen is as to whether the Inquiry has been conducted by the Competent Authority and as to whether the Rules of Natural Justice have been complied with or not. Adequacy of evidence or reliability of evidence is not required to be gone into. In the relied upon decisions reported in Union of India (UOI) and Others Vs. J. Ahmed, and Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, it has been said that lack of efficiency or failure to attain highest standards of administrative abilities do not constitute misconduct and error of judgment or negligence simpliciter is not a misconduct. There is no dispute about it.

24. In the case of Inspector Prem Chand (supra), merely because he had not seized the tainted money, it was said that it would not amount to a misconduct, especially when the criminal proceedings had ended in acquittal and there were no adverse remarks by the Court concerned regarding the aforesaid lapse. Similarly, in the case of Union of India v. J. Ahmad (supra), the nature of the charge was quite generalized and it arose out of the delinquent handling the large scale disturbances in the State and in the Inquiry, he was not found fit to hold responsible post and he was retired from service.

25. Reliance placed upon the aforesaid decisions is of no avail as in the instant case, the nature of imputation of Article-I and Article-II of the charges framed against the Petitioner, speaks volumes and they read as under:

Article-I

Shri S.P. Mangla, while functioning as Deputy Director, Export Inspection Agency

- Delhi during the period June - July, 1983 decided to reject the consignment of 100 Nos. 56" Asha brand Electric Ceiling Fans offered for inspection by M/s. Jeevan Engineering Works, Shahdara vide their intimation dated 1.7.1983, while the same was declared as export worthy by Shri S.K. Caroli, Assistant Director, Export Inspection Agency-Delhi after conducting inspection on 2.7.1983 and 4.7.1983. While rejecting the said consignment, Shri Mangla totally ignored the instructions issued by Export Inspection Council, Calcutta to all Export Inspection Agencies vide Circular No. CLN/EF/77 dated 5.10.1977 which provides acceptance of lower service value of the fans prescribed by the foreign buyer.

Shri Mangla by his above act has failed to maintain devotion to his duty thereby violated Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964 as applicable to the employees of the Export Inspection Agencies.

Article-II

Shri S.P. Mangla while functioning as Deputy Director in Export Inspection Agency - Delhi during the period June- July, 1983 delayed to communicate in writing his decision to reject a consignment of 100 Nos. 56" Asha brand electric fans to M/s. Jeevan Engineering Works, Shahdara, in as much as he did not observed the time limit and procedure prescribed for the purpose vide Export Inspection Council, Delhi letter No. EIF/D(QC)/T-32/82 dated 21.10.82 and specially when Shri S.K. Caroli, Assistant Director, Export Inspection Agency-Delhi had informed M/s. Jeevan Engineering Works on 4.7.1983 after inspection of the said consignment that the said consignment was export worthy.

Shri Mangla by his above act has failed to maintain devotion to his duty and acted in a manner unbecoming of an Agency employee thereby violated Rule 3(1)(ii) and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964, as applicable to the employees of Export Inspection Agencies.

26. A bare reading of the aforesaid two Article of Charges per se shows that first the consignment was cleared by co-delinquent and then it was rejected on the next day and the rejection was not conveyed by the Petitioner within the stipulated time of 48 hours, so that the remedy of appeal could not be resorted to by the complainant firm - M/s. Jeevan Engineering Works. By any standard, it cannot be said that the aforesaid imputation of Charges would not constitute "misconduct. on the face of it.

27. Now, in the face of the evidence of Naresh Kumar Jain, Proprietor of M/s. Jeevan Engineering Works, it cannot be said that the present case is of no evidence. What is required to be seen is that there should be "some evidence. and this Court cannot re- appreciate the evidence and to substitute its own view. It has been so said by the Apex Court in the case of State of Rajasthan and Another Vs. Mohammed Ayub Naz, The present case is not of error of judgment as it is not Petitioner's case that he was not aware of Instructions/Department Circular of 1977. 28. In the case of Kuldeep Singh Vs. The Commissioner of Police and Others, the scope of Judicial Review was noticed as under:

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.

29. However, in the aforesaid decision, it was found that the witness examined had not supported the case and material witnesses were not examined and in that context, it was said that it was a case of no evidence. It is not so in the instant case as there is deposition of not only Mr. Naresh Kumar Jain, proprietor of M/s. Jeevan Engineering Works but also of Dr. Y.R. Singh, Secretary General of the Complainant - Association. Therefore, it cannot be said that there is no evidence to support the Charges against the Petitioner, nor it can be said that the findings of the Inquiry Officer affirmed by the Appellate Authority and the Reviewing Authority on the twin charges is perverse. The major thrust of the stand of the Petitioner centers around the merits of this case, requiring re-appreciation of evidence, which is beyond the scope of Judicial Review. Even on the reconsideration of the review petition, the Reviewing Authority had found that charge No. 1 and 2 were serious enough in the context of National Export Effort to warrant removal of the Petitioner from service. Impugned order (Annexure P-45) discloses a conscious application of mind and does not suffer from any infirmity warranting any interference by this Court in the writ jurisdiction.

30. In the light of the aforesaid, this petition deserves dismissal and is accordingly dismissed. Parties are left to bear their own costs.