
(2013) 03 DEL CK 0060
In the Delhi High Court
Case No : LPA No. 568 of 2010

S.P. Mangla

APPELLANT

Vs

Export Inspection Council of India and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32

Citation : (2013) 03 DEL CK 0060

Hon'ble Judges : D. Murugesan, C.J.; V.K. Jain, J

Bench : Division Bench

Advocate : G.D. Gupta with Mr. S.K. Gupta, for the Appellant; L.R. Khatana, for the Respondent

Judgement

V.K. Jain, J.—The appellant before us, Shri S.P. Mangla, was working as Deputy Director in Export Inspection Agency, Delhi. On receipt of intimation for inspection of a consignment of 100 fans, from M/s. Jeevan Engineering Works, Delhi, an inspection of the said consignment was carried out by Shri S.K. Caroli, Assistant Director and the consignment was declared export worthy on 4.7.1983. The appellant, however, rejected the said consignment on 5.7.1983 on the ground that it did not meet the requirement of IS. 374-1979 in respect of power input and air delivery. The rejection letter was received by M/s. Jeevan Engineering Works only on 24.7.1983, though the Office Circular dated 21.10.1983 required such certificate to be dispatched within 48 hours of inspection. Since the respondent no. 1 was not satisfied with the explanation furnished by the appellant for rejecting the said consignment and the delay in dispatch of the rejection letter, a charge-sheet containing the following charges was served upon the appellant:

Statement of Articles of Charges Framed Against Shri S.P. Mangla, Deputy Director, Export Inspection Agency, Delhi.

ARTICLE-I

Shri S.P. Mangla, while functioning as Deputy Director, Export Inspection Agency-Delhi during the period June-July, 1983 decided to reject a consignment of 100 Nos. 56th Asha Brand Electric Ceiling Fans offered for inspection by M/s. Jeewan 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. CIN/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 Jul-July, 1983 deleted to communicate in writing his decision to reject a consignment of 100 nos. 56" Asha brand electric fans to M/s. Jeewan Engineering Works, Shahdara, inasmuch as he did not observe the time limit and procedure prescribed for the purpose vide Export Inspection Council, Delhi letter No. EIF/D(QC)/T-32/82 dated 21.10.1982 and specially when Shri S.K. Caroli, Assistant Director, Export Inspection Agency-Delhi had informed M/s. Jeewan 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 (1) (iii) of the Central Civil Services (Conduct) Rules, 1904, as applicable to the employee of the Export Inspection Agencies.

ARTICLE-III

Dr. Y.R. Singh, Executive Secretary, All India Small Scale Cables and Conductors Manufactures Association, New Delhi vide his letter dated 30.7.1983 has alleged that the consignment of 100 Nos. of electric fans offered by M/s. Jeewan Engineering Works, Shahdara on 2.7.1983 and 4.7.1983 for inspection was rejected as M/s. Jeewan Engineering Works, Shahdara did not pay the money to the inspector and Shri S.P. Mangla, Deputy Director. Shri N.K. Jain, Proprietor, M/s. Jeewan Engineering Works, Shahdara in his statement dated 11.8.1983 has stated that his consignment of 100 Nos. Electric fans were rejected as S/Shri S.K. Caroli, and S.P. Mangla did not get the money. Shri Mangla by his above act has failed to maintain absolute integrity and acted in a manner unbecoming of an Agency employees thereby violated rule 3(1)(i) and Rule 3(1) (iii) of the Central Civil Services (Conduct) Rules, 1964 as applicable to the employees of the Export Inspection Agencies.

Since the written statement of defence submitted by the appellant to the aforesaid charge-sheet was not found to be acceptable, an inquiry was instituted against him under Rule 11 of Export Inspection Agency Employees (Classification), Control and Appeal, Rules, 1978. The charges having been held to be proved, penalty of removal from service was imposed upon the appellant on 20.6.1986. Being aggrieved from the order passed by the Disciplinary Authority, the appellant preferred an appeal to the prescribed Appellate Authority. The Appellate Authority confirmed the findings on Charges No. I and II but held that Charge No. III was not proved beyond doubt. However, since the Appellate Authority was of the view that the Charges No. I and II were serious enough to warrant removal of the appellant from service, the penalty imposed upon him by the Disciplinary Authority was maintained. Being aggrieved from the order passed by the Disciplinary Authority and the Appellate Authority, the appellant filed a writ petition being W.P. (C) No. 22996/1991. The said petition having been dismissed vide the impugned order dated 6.10.2009, the appellant is before us by way of this appeal.

2. After making submissions for sometime on the merits of the charges no. I and II, held to be proved against the appellant, the learned senior counsel for the appellant, on instructions from the appellant who was present in the Court, stated that the appellant did not seek to challenge the findings in respect of charges no. I and II and, therefore, he was confining his challenge to the penalty imposed upon the appellant which, according to the learned senior counsel for the appellant was wholly disproportionate to the charges established against the appellant and would in fact shock the conscience of the Court.

3. On perusal of the charges, we are satisfied that charge no. III alleging that the decision of the appellant to reject the consignment of M/s. Jeewan Engineering Works was a clear case of corruption since the party did not pay the money to him was the most serious charge against the appellant and since the Appellate Authority took the view that the said charge was not established, it would be difficult to uphold the punishment of removal from service only in respect of charges no. 1 and 2, which pertain primarily to breach of the instructions issued by the Council in the matter of inspection of such a consignment and the delay in dispatch of the rejection to the consigner.

4. In nutshell, the first charge against the appellant was that though the Council had vide Circular No. CEN/E-I/77 dated 5.10.1977 decided to allow export of consignment of electric fans having a lower service value as compared to the Indian standards provided the same was acceptable to the overseas buyer and documentary proof of the buyers' acceptance of the lower service value was furnished whereas the appellant had rejected the consignment without first checking up with the consigner, as to whether the lower service value was acceptable to the foreign buyer or not. This was not the case of the appellant in the charge-sheet that the aforesaid act of the appellant amounted to any misconduct. The charge was that the appellant by the above act had failed to

maintain devotion to his duty, thereby violating Rule 3(1)(ii) of the CCS Conduct Rules, 1964 as applicable to the employees of the Council. It would, therefore, be difficult to dispute that the aforesaid charge could not have warranted penalty of removal of service.

5. The second charge against the appellant in nutshell was that the certificate of rejection of the consignment should have been kept ready within 48 hours after completion of inspection for handing over to the consigner or for dispatch to him. The exporter was required to record in the notice of intimation as to whether he would collect the certificate of inspection by himself from the office or the same may be dispatched to him by the Agency. In case the certificate was to be dispatched, such dispatch should have taken place immediately on expiry of 48 hours from the inspection. The officer who was responsible to issue certificate of inspection was also required to ensure implementation of the system. Thus, the charge proved against the appellant was that he did not ensure dispatch of the certificate to the exporter/consigner within 48 hours of the inspection in terms of the instructions issued by the Council. The Statement of Imputation of Misconduct accompanying the charge-sheet shows that the rejection letter dated 5.7.1983 indicating the reason of rejection was prepared and signed by the appellant on 5.7.1983 but it was actually dispatched on 21.7.1983 and received by the exporter/consigner on 24.7.1983. This delay took place despite a phonogram dated 8.7.1983 from the consignor/exporter asking for the inspection certificate. Though it is alleged in the Statement of Imputation of Misconduct pertaining to the aforesaid charge that there was a deliberate delay in intimating the rejection of the consignment to the exporter/consigner, considering the fact that the charge of corruption against the appellant has not been proved, it would be difficult to say that the delay in dispatch of the rejection certificate was deliberate. Had the charge no. 3 been proved, it could be said that the delay in dispatch was deliberate on account of the exporter/consigner not paying the bribe to the appellant, but in the absence of such an allegation being proved, the delay in dispatch cannot be said to be a deliberate act. It is stated in the charge-sheet that the aforesaid delay in dispatch of the inspection certificate amounts to failure to maintain devotion to duty and acting in a manner unbecoming of an employee of the Agency thereby violated Rule 3(1)(ii) and Rule 3(1)(iii) of CCS Conduct Rules, 1964. We are in agreement that the delay in dispatch of inspection certificate would amount to failure to maintain devotion to duty and thereby violating Rule 3(1)(ii) of CCS (Conduct) Rules, 1964, we cannot accept that such an act would be an act unbecoming an employee of the Agency and thereby amounts to misconduct. The said charge could be said to be a misconduct only if it was shown that the delay in dispatch of the inspection certificate was deliberate, on account of exporter/consigner not paying the bribe to the appellant.

6. The Appellate Authority while deciding the appeal, did not appreciate the fact that in the absence of charge no. III, having been proved, no misconduct on the part of the appellant was established and, therefore, penalty of removal form

service, which was the penalty awarded by the Disciplinary Authority holding all the three charges to be proved, could not be sustained on the basis of charge nos. 1 and 2.

7. We are conscious of the fact that ordinarily this Court should not interfere with the penalty imposed by the employer since primarily it is for the employer to decide as to what would be the appropriate penalty in respect of the charges proved against an employee but, it is also a settled proposition of law that when the penalty awarded to an employee in the disciplinary proceedings is so disproportionate to the charges held proved against him that it shocks the conscience of the Court, it would only be appropriate for the Court to intervene in the matter so as to prevent gross miscarriage of justice.

8. In *B.C. Chaturvedi Vs. Union of India and others*, , Supreme Court, after considering a Constitution Bench decision in *State of Orissa Vs. Bidyabhusan Mohapatra*, and some other decisions, inter alia held as under:

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional" and rare cases, impose appropriate punishment with cogent reasons in support thereof.

In *Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another*, , the Apex Court while observing that a Court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, hold that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation its may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. In the case before it, the court, noticing that the charge established against the appellant was not motivated by any ulterior consideration and at the most could be an act of negligence, substituted the penalty imposed upon him by punishment of withholding one increment stoppage at the efficiency bar and also directed that he would not be entitled to any back-wages for the period of suspension.

9. The learned counsel for the respondent has referred to the decision of the Supreme Court in *Sunil Kumar Banerjee Vs. State of West Bengal and Others*, .

We, however, find nothing in this judgment which can be of any help to the respondent. The learned counsel for the respondent has next referred to *Daman Singh and Others Vs. State of Punjab and Others*, , where the Supreme Court dealing with the contention that several questions raised in the writ petition before the High Court had not been considered observed that it is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. It was further observed that no party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not. This judgment, in our opinion, does not come in the way of the Appellate Court permitting the appellant to argue on the disproportionality of the punishment assuming that such a plea was not raised before the learned Single Judge. The learned counsel for the respondent has last referred to *The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar*, , the Court referred to its earlier decision i.e. *Union of India and Others Vs. R.K. Sharma*, , taking a view that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the face of it there is perversity or irregularity that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution. There is no quarrel that the proposition of law enunciated in the above referred case, but, the Court would be failing in its obligation to protect the rights of the citizens if it refuses to interfere with the penalty awarded to an employee even where it finds the penalty to be so disproportionate to the charges proved against him as would shock the conscience of the Court.

10. The next question which comes up for consideration is as to whether we should remit the matter back to the Appellate Authority for re-consideration of the penalty to be awarded to the appellant in the light of the view taken by us or we should take it upon ourselves to decide the penalty which would be appropriate to be imposed upon the appellant. During the course of arguments, the learned counsel for the respondent informed that since the appellant had already availed the remedy of review available to him under the Rules and the Reviewing Authority is Export Inspection Council which meets only once or twice of the year, any re-consideration of the penalty can be carried out only by the Reviewing Authority and not by the Appellate Authority. We take note of the fact that the penalty imposed upon the appellant came to be imposed way back on 20.6.1986 i.e. more than 26 years ago. The appellant has superannuated long

ago. During the course of arguments, his counsel informed us that the appellant is suffering from cancer and does not know how long he is going to survive. If we remit the matter back to the Review Authority, for reconsideration of the penalty in the light of the view taken by us, that may take quite some time considering the fact that the Council meets only once or twice a year. In these exceptional and rare circumstances, we are of the view that it would not be appropriate to remit the matter back to the Reviewing Authority for reconsideration of the penalty to be imposed upon the appellant. In our view, the ends of justice would be met by substituting the penalty of removal from service by penalty of stoppage of three increments without cumulative effect. We ordered accordingly. We also direct that despite modification of the penalty, the appellant will not be entitled to any back-wages, though he would be entitled to counting of whole of the service till the date of his superannuation for the purpose of working out his pension. He will not be entitled to any additional payments towards leave encashment or gratuity etc on account of modification of the penalty imposed upon him. With above modification, the appeal stands disposed of. There shall be no orders as to costs.