
(2001) 07 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 23158 of 2001

Union of India and Others

APPELLANT

Vs

B. Sen

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Citation : (2002) 92 FLR 718 : (2001) ILR (Kar) 5573 : (2001) 6 KarLJ 321

Hon'ble Judges : Chidananda Ullal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Shireen Safrullah, for the Appellant; T.R. Sridhar, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Petitioner served respondent 1 (applicant before the Tribunal), who was working as Superintending Engineer an order dated 2nd of September, 1996 framing the following articles of charges:

"MES 181010 Shri B. Sen, while serving as CWE(P) NW Cochin during the period from May 1991 to March 1992 committed following lapses in execution of C.A. No. CECZ/CHN/34 of 1989-90 which resulted in collapse of AED Hanger on 2/-3-1992:

(a) Did not appreciate the safety hazards involved in construction of the steel structure of 48 M span and also did not warn GE and AGE about safety of men and material as a whole, thus providing ineffective technical administration.

(b) Did not ensure that GE/AGE checks the alignment of the trusses and measures its deformity at all stages and records it.

(c) Did not ensure that GE checks fabrication and erection method for sound engineering practices.

2. By his above acts, the said Shri B. Sen, SE failed to maintain devotion to duty and thus violated Rule 3(1)(ii) of CCS (Conduct) Rules, 1964".

2. Enquiry Officer after holding a detailed enquiry recorded the following findings in his enquiry report dated 2/-10-1997:

"30. On the basis of evidences including documentary evidences produced in this case before me and in view of reasons, analysis and assessment contained in this report, I hold remarks specifically given against in each article of charge in respect of SPS, whether a charge has been proved or otherwise.

31. SPS (Charged Official) MES-181010 Shri B. Sen, SE.

32. Article 1:

(a) Did not appreciate the safety hazard involved in construction of the steel structure of 48 M span and also did not warn GE and AGE about safety of men and material as a whole, thus, providing ineffective technical administration-Not proved.

(b) Did not ensure that GE/AGE checks the alignment of the trusses and measures its deformity at all stages and records it.

(c) Did not ensure that GE checks fabrication and erection method for sound engineering practices - Not proved.

(d) Violated Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964 -Not proved.

2. We also notice that in the previous section called "Summary - Analysis and Assessment of Evidences" the E.O. has observed that it was proved that there were a large number of deficiencies in the original design and further that the applicant had rendered effective technical administration during the relevant period and Government of India MOD letter No. 5/20/94/D(Lab), dated 2nd September, 1996 is not sustainable".

3. Disciplinary authority disagreed with the findings of the Enquiry Officer and held respondent 1, along with certain executive staff to be blameworthy and of poor performance for the reasons stated therein. Though the same communication, an opportunity was given to respondent 1, along with those other executive staff to submit any representation against the reasons enumerated therein and/or the findings of the Enquiry Officer, if any, within a period of 15 days. Applicant submitted his representation to the President of India, in whose name and by whose order the communication was issued. First respondent passed an order on 1st of August, 2000 and as stated therein, by order and in the name of the President of India, inter alia exonerating the respondent of the charges levelled against him. However, a warning was administered to respondent 1 for certain lapses on his part mentioned therein. The said communication is placed as Annexure-A14 with amended O.A. with the Tribunal with certain prayers. In the amended O.A., respondent 1 sought the following reliefs:

"(i) quash the Memorandum No. 5(20)/94/D(Lab), dated 2-9-1996 (Annexure-A1) issued by the 1st respondent-Union of India; and

(ii) quash the Disagreement Order No. 5(20)/94-D(Lab), dated 1-2-2000 (Annexure-A12) issued by the 1st respondent-Union of India; and

(iii) quash the Order No. 5(20)/94-D(Lab), dated 1-8-2000 at Annexure-A14 issued by the 1st respondent-Union of India, insofar as administration of warning on the applicant is concerned; and

(iv) direct the 2nd respondent-Engineer-in-Chief to open the sealed cover and give effect to the decision of the DPC held some time in February 1997 to the post of Additional Chief Engineer insofar as the applicant is concerned by granting all the consequential benefits from the date the applicant's immediate junior Sri T.K. Saha has been promoted to the post of Additional Chief Engineer, with arrears of pay, seniority etc., in the interest of justice; and

(v-8) direct the 1st and 2nd respondents to consider the case of the applicant to promote him to the post of the Chief Engineer with all the consequential benefits from the date of the applicant's junior with arrears of pay, seniority etc., by holding a special/review DPC in the interest of justice;

(vi) grant such other reliefs as this Hon'ble Tribunal deems fit in the facts and circumstances of the case, including award of adequate compensation and costs to the applicant, in the interest of justice".

4. Tribunal found that most of the reliefs sought for by the applicant had become infructuous. Only two reliefs survived for consideration: (i) to quash the Order No. 5(20)/94-D(Lab), dated 1-8-2000 at Annexure-A14 issued by the 1st respondent-Union of India, insofar as administration of warning on the applicant is concerned; and (ii) to direct the respondents, to open the sealed cover and give effect to the decision of the DPC and to promote him to the post of Additional Chief Engineer and Chief Engineer with effect from the date his immediate junior Shri T.K Saha was promoted to the post of Additional Chief Engineer, with all consequential benefits. Tribunal allowed O.A. on both the points. It was held that once respondent 1 was exonerated of the charges levelled against him there was no legal basis to issue a warning on account of certain lapses on his part. The action was held to be arbitrary and therefore not sustainable in law. On the second point the Tribunal directed the petitioner to appoint the respondent as Additional Chief Engineer and Chief Engineer with effect from the date his immediate junior was promoted with all consequential reliefs.

5. On the second point the finding recorded by the Tribunal is as under:

"As regards the first of these surviving reliefs, we observe that on behalf of the respondents a clear commitment has been made that the case of the applicant has already been forwarded for appointment as an Additional Chief Engineer retrospectively and further that his case will be considered for promotion and appointment as a Chief Engineer with effect from the time that his immediate junior Shri T.K. Saha was so considered and for such consideration the impugned

part of the order at Annexure-A14 shall not stand in the way. We further notice the fact that the said Shri T.K. Saha has since been promoted as a Chief Engineer under the order dated 13-12-2000 passed by the second respondent. In these circumstances, we direct the respondents, particularly the first and the second respondents, to consider the case of the applicant for retrospective promotion, first as an Additional Chief Engineer and further for promotion as a Chief Engineer with effect from the date his immediate junior Shri T.K. Saha was so promoted. If he is found otherwise suitable, his promotion to the Chief Engineer shall also be effective from the date that the said Shri T.K. Saha was promoted as a Chief Engineer. The applicant shall be eligible for all the consequential benefits flowing from such retrospective promotions".

6. Counsel for the petitioner has confined her submissions on the second point regarding the directions issued by the Tribunal in paragraph 7 of the order of the Tribunal only. Counsel for the petitioner has stated that respondent 1 has been promoted as Chief Engineer. Taking aid of the rule of "No work-No pay", Counsel for the petitioner argued that respondent 1 is not entitled to the consequential benefits like arrears of salary etc., as he had not worked as Additional Chief Engineer and the Chief Engineer.

7. We do not agree with his contention. Admittedly Mr. T.K Sana was junior to respondent 1. He was promoted as Additional Chief Engineer and Chief Engineer ignoring the claim of respondent 1. Respondent 1 having been exonerated of the charges levelled against him, was held to be eligible for promotion as Additional Chief Engineer and Chief Engineer. Since the person immediately junior to the respondent was promoted to the post of Additional Chief Engineer ignoring the claim of the respondent, the Tribunal was right in giving a direction to consider the case of the respondent for promotion as Additional Chief Engineer and thereafter as Chief Engineer with effect from the date the person immediately junior to him was promoted to those posts. Normal rule of "No work-No pay" is not applicable to cases like the present one. Persons junior to respondent 1 were promoted without considering the case of the respondent who was admittedly senior. He was kept away from the work because of no fault of his. Respondent 1 was not provided with an opportunity to work to the promotional post. Under the circumstances, the rule of "No work-No pay" would not apply and the respondent would be entitled to the consequential benefits on his deemed promotion as Additional Chief Engineer and Chief Engineer from the date his immediately junior was promoted. The direction issued by the Tribunal in paragraph 7 of its order does not call for any interference. Dismissed.