

(2013) 02 DEL CK 0299
In the Delhi High Court
Case No : Writ Petition (C) 8107 of 2012

Union of India

APPELLANT

Vs

Kamla Prasad Singh

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0299

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Amit Chadha, for the Appellant; Yashpal Singh, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—On November 8, 1994 a charge memo was issued to the respondent recording Presidential sanction to do so; and

as per Annexure-I, three Articles of Charge were alleged:-

(I) While functioning as Divisional Engineer (Plg.-III)/AGM (Plg. & Dev.) in Kanpur Telecom District during the period September 9, 1991 to

November 24, 1992 respondent negotiated a contract for laying underground cables and awarded the same to M/s. Unemployed Engineers

Constructions where his son Brijesh Singh was employed and this amounted to misusing the official position. The conduct was alleged to be a

grave misconduct inasmuch as devotion to duty and integrity were violated.

(II) During said period, in the execution of the contract the respondent showed undue interest and got issued cable drums bye-passing the

concerned Divisional Engineer by issuing verbal and telephonic orders to the Store Incharge Sh. K.P. Singh. Cable worth Rs. 8 lacs were stolen as

a result of official channels being bye-passed. The said act was also alleged to be

a grave misconduct and lacking in integrity.

(III) During the said period, respondent attempted to manipulate documentary evidence pertaining to the stolen cables as if the cables had not even been received in the Stores of the Department.

The Statement of Imputation pertaining to the three charges would reveal that the tender documents were processed and finalized by the

respondent as the Divisional Engineer (Plg.-III). The contract of laying underground cables was awarded to M/s. Unemployed Engineers

Constructions of which, one Hans Raj Singh was the proprietor, who had issued a Power of Attorney in the name of one Hari Mohan Singh to

manage the cable laying work; but as a matter of fact the work was being managed by respondent's son Brijesh Singh. It was stated that as per

Rule 4(2)(i)(ii) of the CCS (Conduct) Rules, 1964, being a Group "A" Officers, the petitioner had to obtain previous sanction from the

Government permitting his son to be employed with the firm since the respondent was having official dealings with the firm. It was stated that the

respondent was taking keen interest in the contract, evidenced by the fact that cable drums were being issued on verbal and telephonic orders by-

passing the concerned field Divisional Engineers. One day, cable drums were issued on a National Holiday. The contractor claimed 1150 meters

cables, costing Rs. 8 lacs missing, pertaining to the cable issued on August 15, 1992. The requisition and the receipt were dated September 21,

1992 and November 02, 1992. On November 27, 1992 one K.C. Upadhayay, a Telephone Operator, was caught with a letter from the

contractor purportedly evidencing that the stolen cables had actually been with the Department. Sh. Upadhayay confirmed that he had obtained the

letter from the contractor at the asking of the respondent.

2. At the inquiry, as usual, the official witnesses who were junior in rank to the respondent turned hostile and claimed that the statements obtained

during fact finding inquiry by the Vigilance Officers were under coercion or that blank signed papers were manipulated to record their statements.

To compound the problem of the department, the file pertaining to the policy decisions taken and finalization of the tender documents went missing.

In other words, a vital file which would have shown the involvement of officers at the planning stage, and we highlight that the petitioner was then

functioning as the Divisional Engineer (Plg.-III)/Asstt. General Manager (Plg.& Dev.).

3. Notwithstanding the file being missing and not proved at the inquiry, common sense guide us that in his twin capacity: (i) Divisional Engineer

(Plg.-III), and (ii) Asstt. General Manager (Plg. & Dev.), the petitioner would certainly have been involved in the tender. Common sense which is a cluster of life's experience tells us so.

4. But there is no need to speculate, for the reason the agreement S-19 executed by the Dy. General Manager and M/s. Unemployed Engineers

Construction bears the signatures of the respondent as a witness of the department and that of his son Brijesh Singh as a witness of the contractor.

5. Brijesh Singh, son of the respondent, as a defence witness denied correctness of Ex. S-3 i.e. the statement attributable to him at the preliminary

fact finding inquiry and stated that he signed the same under duress. He thus disowned admissions made by him of being employed with M/s.

Unemployed Engineers Construction as recorded in Ex. S-3, but admitted his signatures at pages 15 and 20 of Ex. S-17, which is the Store

Register. The entry at page 15 in the Store's Register containing Brijesh Singh's signatures would evidence that he had deposited some unused

cables in the CRLU Store and the entry bearing his signatures at page 20 would evidence that he had received tent and some other material as

representative of M/s. Unemployed Engineers Construction.

6. Sh. P.N. Singh, working as SDOP-I confirmed the correctness of Ex. S-8 i.e. statement made by him during preliminary inquiry as also the fact

that it was Brijesh Singh who had lodged an FIR at P.S. Panki when cables were stolen from the custody of M/s. Unemployed Engineers

Construction. He further deposed at the inquiry that whenever he used to visit the site where the work was being executed, he used to see Brijesh

Singh.

7. Truth has a strange way to reveal itself. Not only did two departmental witnesses: (i) Sh. K.L. Singh, JTO, and (ii) Sh. Bal Chandra Shukla,

Lineman, though hostile, refer to Brijesh Singh as the Supervisor of the contractor, even Hari Mohan Singh the admitted Power of Attorney holder

of Hans Raj Singh referred to Brijesh Singh as the Supervisor.

8. The Store Incharge, Bahadur Rai SW-10 stated during inquiry that he was

issuing items from the Central Store under verbal orders from the respondent and specifically stated that on August 15, 1992 as ordered by the respondent he had issued the cables.

9. Various requisition slips were marked as Ex. S-16 with a sub number. Some of the requisition slips received by the Assistant Engineer would reveal that an order to issue more cables was passed on November 2, 1992 whereas the cables had already been received by the contractor on August 18, 1992. Similarly, pertaining to the cables which had been physically issued on August 15, 1992, the requisition slips Ex. S-16(5) had been received through Brijesh Singh and cables were released pursuant to verbal orders issued by the respondent. Similarly some of the slips would reveal that they were received on August 18, 1992 and order for issue was passed on September 21, 1992. The requisition slips Ex. S-17 pertaining to five cable drums was not even countersigned by the Divisional Engineer, as per practice, and in spite there of the cable drums were issued.

10. With such overwhelming documentary and oral evidence, the Inquiry Officer submitted a report holding Article-I of the charge partly proved, and in respect of which finding we would simply state that as a matter of fact Article-I of the charge has been fully proved but the Inquiry Officer appears to have got bogged down on the fact that the tender file was not available and thus there was lack of direct evidence to show respondent negotiating the contract. But in view of the fact that the agreement S-18 between the department and the contractor, was witnessed by the respondent, he found some evidence. And this appears to be the reason he opined that Article-I was partly proved. Holding Article-II to be fully proved, notwithstanding there being evidence of back dated entries and a cover up attempt made he opined that Article-II of the charge was not proved.

11. Complying with the procedure of law and making available the report of the Inquiry Officer to the respondent, who had since superannuated from service, and considering the reply as also that Article-I was partly proved, Article-II was fully proved and Article-III was not proved, the Disciplinary Authority levied penalty of 50% cut in pension and no gratuity to be paid, which decision has been set aside by the Tribunal vide

impugned decision dated March 28, 2011, and strangely enough the finding is that it is a case of no evidence. The Tribunal has laid emphasis on

paragraph 4.2 of the report of the Inquiry Officer where he has written that there is no direction evidence to show that the son of the respondent

was employed with M/s. Unemployed Engineer Construction.

12. Now, conspiracies are hatched in the darkness of secrecy and only a fool would conspire in the open. An open proclamation would be a revolt.

13. With regret, we have to note that the Tribunal has overlooked telltale evidence, which we put at seriatim as under:-

(i) The agreement S-18, pertaining to the contract for laying cables, awarded to M/s. Unemployed Engineers Construction was signed by the

respondent as a witness of the department and his son Brijesh Singh as a witness for the contractor.

(ii) The respondent was the Divisional Engineer (Plg.-III) as also the Asstt. General Manager (Plg. & Dev.). Common sense dictated that he would

be associated with the tender.

(iii) The tender file pertaining to the planning and pre-bid stage be missing was not to be used against the department, for the petitioner would be

the beneficiary of the file being lost.

(iv) Respondent's son, Brijesh Singh, as the defence witness admitted his signatures on pages 15 and 20 of Ex. S-17 the Log Book Register

maintained at the Stores; the former entry evidencing he having deposited some unused cables and the latter entry evidencing he having received

tent and some other material from the stores as the representative of the contractor.

(v) Testimony of Sh. P.N. Singh who appeared as SW-8 to the effect that respondent's son had lodged the FIR when cables were stolen and that

whenever he visited the site where work was being carried out he used to see respondent's son Brijesh Singh.

(vi) Though they turned hostile, K.L. Singh and Bal Chandra Shukla referred to respondent's son, Brijesh Singh, as Supervisor of the contractor

and likewise the defense witness, Hari Mohan Singh, the purported Power of Attorney holder under Hans Raj Singh, the proprietor of the

Contractor, referred to Brijesh Singh as the supervisor.

(vii) Bahadur Rai, the Store Incharge, who appeared as SW-10 categorically deposed before the Inquiry Officer that he was issuing items from the

Central Store under verbal orders from the respondent and specifically stated that on August 15, 1992 he issued the cables under verbal orders of

the respondent.

(viii) Though not linking the respondent but Ex. S-16, Ex. S-16(b) and Ex. S-17 would evidence that documents were being manipulated.

(ix) Requisition slip Ex. S-16(5) was submitted by Brijesh Singh for which respondent had issued verbal orders on August 15, 1992.

14. The cumulative effect of all the evidence aforesaid has been eschewed by the Tribunal, in fact not even one item of incriminating evidence has

been noted, and this explains the finding that it is a case of no evidence. A finding which is ex-facie perverse.

15. The writ petition is allowed. Impugned order dated March 28, 2011 passed by the Tribunal is set aside and OA No. 1144/2008 filed by the

respondent is dismissed. No costs.