

(2010) 02 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C.) No. 7895 of 2009

Union of India (UOI) and Others

APPELLANT

Vs

Ram Karan Sharma

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0097

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; M.M. Sudan, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The short point involved in this matter is as to whether the initiation of enquiry just a day before the retirement of the respondent on the charges framed against him as per the charge memorandum dated 30.01.2006 could be sustained by the petitioners and is justified under Rule 14 of the Central Civil Services (Classification, Control and Appeals) Rules 1965.

2. The charges leveled against the petitioner are reproduced for the sake of reference:

Statement of Articles of Charge framed against Shri Ram Karan Sharma, Deputy Director (Horticulture) Shri Ram Karan Sharma, Deputy Director (H) while working as Deputy Director (H), Horticulture Division-V during the period 31.01.2001 to 01.05.2001 committed the following lapses:

Article-I

a) Shri Ram Karan Sharma, Deputy Director (H) placed 4 Nos. Work Orders costing more than Rs. 1 lakhs each during 2001-2002 which were beyond his competency as per financial powers delegated to CPWD officers as per CPWD Manual Vol. II (1988 edition) and without taking the approval of the competent authority.

b) Shri Ram Karan Sharma, Deputy Director (H) approved the work orders worth Rs. 28,86,619/- during 2001-2002 exceeding financial limit of Rs. 15 lakhs per annum as per financial power delegated to CPWD officers as per CPWD Manual Vol. II (1988 edition).

Article-II

a) Shri Ram Karan Sharma, Deputy Director (H) procured materials other than liveries, stationery etc. costing Rs. 2,64,719/- during 2000-2001 and Rs. 27,24,097/- during 2001-2002 respectively and as per Appendix I & II on various unauthorized cooperative stores without ensuring the requirement of reasonability of rates which was in violation of DG(W)'s instructions issued vide No. 15/Misc./93-VS.I dated 03.06.93 and DOPT OM No. 14/3/88-Welfare dated 04.02.88 and 14/3/95-Welfare dated 03.08.95.

b) Shri Ram Karan Sharma, Deputy Director (H) placed indents for local purchase of materials other than liveries, stationery etc. from unauthorized consumer cooperative stores worth Rs. 27,24,097/- during 2001-2002 respectively in excess of local purchase power delegated to CPWD officers thereby contravening the provisions CPWD Manual Vol.II (1988 edition). Thus, the said Shri Ram Karan Sharma, Deputy Director (H), by his above acts failed to maintain absolute integrity and exhibited lack of devotion to duty thereby contravening Rules 3(1) (i) and 3(1)(ii) of CCS (Conduct) Rules-1964.

3. It has been submitted by the counsel for the petitioner that the aforesaid charge-sheet was issued to the respondent as by the impugned action the respondent caused financial loss to the petitioners and, therefore, the petitioner was entitled to hold a departmental enquiry even at the verge of retirement of the respondent as per the provisions contained under CCS (CCA) Rules 1965 in accordance with Rule 9(5)(b)(ii) of the CCS Pension Rules 1972. The petitioner has prayed for quashing of the order dated 07.12.2006 in OA No. 370/2006 which was preferred by the respondents against the impugned action of the petitioners.

4. The respondent who retired as Deputy Director (Horticulture) on 31.01.2006 assailed the memorandum issued to him on 30.01.2006 initiating departmental disciplinary proceedings against him in respect of charges as stated above. Charges pertained to the period 2001-2002 in the OA No. 370/2006 which had been set aside by the Central Administrative Tribunal. Primary attack about the issuance of aforesaid memorandum was on two accounts i.e. firstly the memorandum dated 30.01.2006 was not issued by any authority competent to start disciplinary proceedings against the petitioner. The second point which was taken before the Tribunal was that there was nothing in the charge-sheet which could show that any pecuniary loss has been caused by the respondent to the petitioners by the impugned action as detailed in the memorandum of charge. It was also pleaded that nothing was shown as to how commission of grave misconduct by the petitioner was committed by the respondent while issuing

work orders or purchase of material as mentioned in the charge-sheet.

5. It was averred by the respondent that while working as Deputy Director he earned excellent service records before superannuation and was accorded vigilance clearance on 12.01.2005. It was certified that neither there was any vigilance case pending nor being contemplated against him. The said certificate was, however, withdrawn on 27.01.2006, a day before his retirement i.e. on 30.01.2006 Under Secretary to the Government of India, without satisfying as to whether the proceedings have been initiated on behalf of the President being the appointing authority of applicant, initiated a disciplinary proceeding against applicant under Rule 14 of the CCS (CCA) Rules, 1965, on the allegation that he had sanctioned works beyond his sanctioning limits i.e. work orders costing more than one lac rupees and also sanctioning work orders beyond the limit of 15 lacs. It has also been alleged that during the years 2000 to 2002 without ensuring reasonability of rates, materials had been procured from unauthorized consumers cooperative stores. Accordingly, it was alleged that it amounted to failure to maintain absolute integrity and lack of devotion to duty under Rule 3 (i) and (ii) of the CCS (Conduct) Rules, 1964, has been alleged. The aforesaid is now being challenged before us.

6. The respondent also alleged that enquiry was initiated against him on the basis of mala-fides and bias on the part of the petitioners. It was also stated that as per the vigilance certificate dated 12.01.2005 no such enquiry was contemplated at least up to 27.01.2006. Moreover, the charge-sheet had not been issued under authentication of the order of the Appointing Authority. It is only later by corrigendum dated 24.03.2006 the words "by order and in the name of President", were added. It was, thus, alleged that charge-sheet issued to the respondent was without jurisdiction and accordingly by resorting to Rule 14(4) of CCS (CCA) Rules 1965 it was specifically stated that Under Secretary who issued the charge-sheet was not Disciplinary Authority and, thus, had no jurisdiction to start such an enquiry.

7. The Tribunal allowed the application filed by the respondent quashing the charge-memo dated 30.01.2006 primarily on the ground that the charge-sheet was issued by a person who was not authorized to do so and the authentication dated 24.03.2006 will not make the charge-sheet valid for the reason that if a thing is to be done in a particular manner then no other manner can be adopted for executing that thing, more particularly, when it relates to functioning of an Executive Authority even on a quasi-judicial side. In this regard, the Tribunal further observed:

11. CCS (CCA) Rules, 1965 and Article 311 of the Constitution of India President is undoubtedly the appointing authority of applicant being working before superannuation on a Group A post. Rule 14(4) of the Rules, empowers only DA to issue or call to deliver a chargesheet. Rule 12 of the CCS (CCA) Rules, empowers the President to impose any punishment upon a Government servant. However, Authentication Rules *ibid* authorize when an order passed by the

President to be authenticated by the Under Secretary. However, the condition precedent for such an order is that the President accords his approval for initiating a disciplinary proceeding against a Government servant of the particular category being the DA. However, under the Delegation of Powers the Minister concerned of the Ministry has been delegated upon the functions of the DA by the President but this power is to be exercised in the name of the President. Whatever transpires in the file or withheld cannot be a substitute of the order and has to be adjudged on the touchstone of the person issuing order whether acting for the competent authority or on his behalf.

12. In the above backdrop, if the memorandum issued to applicant on 30.1.2006 was issued by the Under Secretary to the Government of India, though a competent authority to authenticate the orders of the President, non-mentioning of the words that it has been issued in the name of the President and a subsequent corrigendum to this effect issued on 24.3.2006 would not cure the defect as the DA has either himself and or through the delegated authority should issue a chargesheet to initiate disciplinary proceedings and this has to be in expressed terms reflect in the order. If this was the only irregularity and the approval of the concerned Minister was taken on file on 27.1.2006, as it appears from the record, there would have been no occasion for the respondents to have rectified through corrigendum their mistake of not to incorporate for and on behalf of President being DA. In nutshell, the chargesheet issued by the Under Secretary without mentioning as to acting on behalf of the President has been discussed by the Tribunal in one of the cases of termination in S.P. Tantis case (supra), where the following observations have been made:

11. No doubt, as per the Allocation of Business Rules and principle of subordinate legislation the Competent Authority, i.e., Appointing Authority for a Group A officer is the President of India who has validly delegated its power to the Minister of State concerned. However, the requirement of Rule 5(1) which is statutory framed under Article 309 of the Constitution of India cannot be dispensed with. The order of termination has not been passed by the Competent Authority, i.e., Appointing Authority of applicant and approval on file by the Minister of State cannot legalise the order. The order should have been passed in the name of the President by the Competent Authority.

15. If one has regard to the above, in the present case having no legal communication of either approval of the corrigendum before applicant to be retired on superannuation, we do not find any legal service effected of the memorandum upon applicant and as it has been issued by an incompetent authority, the memorandum cannot sustain in law. We also find that under Rule 9 (vi) of the Pension Rules the departmental proceedings shall be deemed to be instituted on the date when the statement of charges is issued to a Government servant and the issuance would be complete and legal only when it is passed with all formalities attached and by the competent authority. In such an event the order is complete in its entirety with all formalities only on 24.3.2006

through a corrigendum and this is an effective date. As the chargesheet has not been served upon applicant during the service tenure, Rule 9(2)(a) (b) of the Pension Rules would have to be invoked and operated upon.

8. For invoking the provisions contained in Rule 9(2)(a)(b) of the Pension Rules it was necessary for the petitioners to establish that the charge-sheet was in respect of committing grave misconduct or negligence alleged or causing any pecuniary loss to the Government, as held by the Apex Court in D.V. Kapoor Vs. Union of India and others, .

9. During the course of arguments, we asked the counsel for the petitioner to inform us as to whether there are any allegations of committing a grave misconduct or causing any pecuniary loss to the Government by the public servant i.e. the respondent within 4 years from the date of his retirement. However, no such allegation has either been made in the charge-sheet nor has been brought to our notice by the learned Counsel for the petitioner.

10. In these circumstances, we find full justification in the order of the Tribunal in allowing Original Application and quashing the memorandum dated 30.01.2006. We find no infirmity in the aforesaid order requiring any interference by us under Article 226. The writ petition is, therefore, dismissed.