

(2008) 05 DEL CK 0063
In the Delhi High Court
Case No : WP (C) 2559 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Shri R.C. Gupta

RESPONDENT

Date of Decision : 26-05-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2008) 103 DRJ 550

Hon'ble Judges : Manmohan, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner-Union of India assails the judgment/order dated 14.8.2007 passed in O.A No. 2192/2006 by the Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal by the impugned judgment allowed the application of the respondent herein Mr.R.C.Gupta, for quashing the Memorandum dated 29.8.2001, issued under Rule 14 of CCS(CCA) Rules, 1965, alleging misconduct against him and the penalty of reduction of pay by three stages in the time scale of pay till his retirement, with cumulative effect, imposed vide order dated 2.8.2006. The Tribunal while allowing the OA of the respondent held that findings recorded by Inquiry Officer suffer from material irregularities resulting in miscarriage of justice.

2. Brief facts of the case are:

i) Respondent was posted and functioned as Superintending Engineer during the period 19.12.1996 to 28.2.1997 having within his jurisdiction among other works, the construction of residential quarters at IGNOU, Maidan Gari, New Delhi. Respondent was issued a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 vide memorandum dated 29.8.2001 for irregularities in grant of extension of time without getting any scrutiny in his office allegedly with the intention of

giving undue benefit to the contractor. It was claimed that as a result of extension, a loss of Rs. 16,33,089/- (Rs. Sixteen Lac Thirty Three Thousand and Eighty Nine.) was suffered by the Government. Enquiry was conducted against the respondent and enquiry report dated 1.12.2002, held the charge as proved against the respondent. On 4.4.2003, Central Vigilance Commissioner after perusing the inquiry report and connected documents advised imposition of suitable major penalty to the respondent and one Mr.Om Prakash, E.E. After considering the advice of UPSC dated 7.7.2006, Disciplinary Authority passed the order imposing penalty of reduction of pay by three stages in the time scale of pay till his retirement with cumulative effect. As noted above, the Tribunal allowed OA No. 2192/2006 filed by the respondent and quashed the Memorandum dated 29.8.2001 as also the order dated 2.8.2006 imposing the penalty. Petitioner Union of India assails, the impugned judgment of the Tribunal in this writ petition.

3. Learned Counsel for the petitioner Mr.R.V.Sinha in support of writ petition, submitted that the Inquiry Officer had duly considered all the facts and circumstances of the case and came to the conclusion that extension of time had been granted to the contractor with the intention of giving him undue benefit by the respondent. He claims that the defense raised by the respondent has also been duly considered. He submitted that the conclusions of the Inquiry Officer and the Disciplinary Authority holding the charges against the respondent as duly proved were based on a fair and just evaluation of the evidence and record. He submitted that it did not lie in the province of the Tribunal to reappraise the evidence. It was urged that the conclusions reached by the Inquiry Officer and the Disciplinary Authority were in conformity with the advice of the UPSC.

4. We have heard Mr.Sinha in support of the petition and perused the comprehensive and detailed judgment of the Tribunal. Perusal of the Tribunal's judgment shows that it was duly conscious of limitations of judicial review. The Tribunal itself has not entered into the realm of re-appreciating or reappraising the evidence. Rather the Tribunal only examined the evidence to ascertain whether the findings of the Inquiry Officer which were accepted by the UPSC as well as by the Disciplinary Authority were based on some material or evidence or whether the approach adopted was in consonance with recognized judicial principles.

5. The findings in a domestic inquiry or as affirmed by the Disciplinary Authority can be interfered with when the conclusions reached are either not based on any evidence or no prudent man would reach such a conclusion. Cases where the findings can be categorized as perverse or where there is non- application of mind or absence of legal evidence are cases amenable to judicial scrutiny and review.

6. The crux of the allegations against the respondent was that he with the intention of giving undue benefit granted extensions of time to the contractor. Allegation of irregularity in granting extension of time was made. A factor which

cuts at the very root of this hypothesis is that the extension of time had been recommended and granted by the predecessor of respondent himself and thereafter by his successor on 31.10.1996, 28.2.1997 and 31.3.2000 respectively. All were identically worded. It is an admitted position that neither the predecessor of the respondent nor his successor were departmentally proceeded against for any irregularity in granting extension of time.

7. The existence of numerous hindrances which were in existence from the time of award of the contract till its actual date of completion are a matter of record. It is also a matter of record that the Inquiry Officer had avoided to give a finding on the primary issue as to whether grant of extension of time was justified or not. Curiously, the Inquiry Officer adopted the position that it was not his concern to find out whether the extension was justified or not. He stated 'It is not within my domain to go into the merits of the details of hindrances at this stage. The Tribunal has also rightly noted that the alleged undue benefits allowed to the contractor had neither been described nor noted by Enquiry Officer, U.P.S.C. or Disciplinary Authority. This the Tribunal has rightly observed was central to the whole issue of the extension of time. It was a gravamen of charge of misconduct against the respondent.

8. We may also note that the Superintending Engineer who holds a responsible position is conferred the power and authority under the contract to take a decision on extension of time with or without levy of compensation. The Superintending Engineer takes this decision upon evaluating the hindrances, causes of delay and the parties responsible therefore. For fair and effective administration, it is essential to ensure that such discretion is exercised by the Superintending Engineer independently without fear of any reprisal or adverse consequence, in case the decision is against the department. Otherwise, it can have a demoralizing effect on the fair functioning of administration. We shall not be understood to be saying that decisions which are vitiated by extraneous or ulterior considerations are not to be inquired into or made the subject matter of departmental action.

9. We find on perusal of the judgment of the Tribunal that it has carefully analyzed the factual position in the light of the existing law. The Tribunal had taken note of the fact that material existed on record showing that clear site for work was not made available, structural drawings for foundation of the Type III were not provided and as such Clause-2 of the contract providing for damages to be levied on the contractor was rendered inoperative. The Director General (Works) and the Chief Engineer in correspondence had duly recognized the delay and major hindrances on the part of the Department namely non availability of leveled ground, improper planning by the consultants, delay in issue of structural drawings for foundation of the Type III accommodations, hindrances on the part of electrical work. The Disciplinary Authority duly noticed the said hindrances. It neither rejected nor disbelieved the same. It failed to deal with the said contention of the respondent.

10. In these circumstances, if the respondent had exercised the discretion in grant of extension of time which had been exercised by others as well, i.e. his predecessor and the successor for the same contract, the respondent could not be proceeded with for misconduct. There could hardly be any justification for proceedings against the respondent for alleged misconduct and irregularities while leaving the predecessor and successor for the same contract and cause of action.

11. In view of the foregoing discussion and after a careful perusal of the judgment of the Tribunal, we are satisfied that it has done complete justice between the parties. The Tribunal was fully justified in upsetting the findings of the Disciplinary Authority and the Inquiry Officer, which were not sustainable. It did not exceed its jurisdiction and has remained well within the parameters of judicial review as the said findings stood vitiated on account of material irregularities, the inferences and conclusion drawn being such which no prudent man could arrive at.

Writ petition has no merit and is accordingly dismissed.