
(2015) 08 DEL CK 0298
In the Delhi High Court
Case No : W.P.(C) 6694/2014

Vikram Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-08-2015

Acts Referred:

Constitution of India, 1950 — Article 311(1)

Citation : (2015) 08 DEL CK 0298

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Brijender Chahar, Senior Advocate and Sashi Bhushan, Advocate, for the Appellant; Anil Soni, CGSC, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J.—With the consent of the parties, the writ petition is taken up for final hearing and disposal.

2. Aggrieved by the order passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") dated 28.08.2014 by which the OA filed by the petitioner herein seeking quashing of the charge sheet was rejected, has led to the filing of the present writ petition. The necessary facts which are required to be noticed are as under.

3. The petitioner was initially appointed in the Indian System of Medicines & Homeopathy (ISM&H) to the post of Research Officer (H) w.e.f. 26.05.1982. He was appointed Chief Vigilance Officer (CVO) in December, 2007 by the Department of AYUSH with prior approval of the Chief Vigilance Commission and lastly promoted to the post of Deputy Director (H) w.e.f. 01.02.2008. The petitioner was the second senior-most person in the Department below the Director General. On the last day of his service i.e. 31.12.2013, a major penalty charge sheet under Rule 14 of the CCS(CCA) Rules, 1965 was issued to the petitioner. The following charges were framed:

"Article-I

That the said Dr. Vikram Singh, Deputy Director(H) while functioning as Assistant Director In-charge, Central Research In-Charge, Central Research Institute (Homeo), (CRI(H) Noida, during May, 2007 informally awarded the work to develop the Research Garden behind the CRI (h) Noida, building to one M/s. Saleem Nursery, C/o Sardar Patel School, C-5-230B, Village Nithari, Sector-31, Noida, without following the proper procedure/codal formalities. He did not take approval of the competent authority before awarding the work to M/s. Saleem Nursery; ignored the specific directions of the competent authority; and submitted inflated bill for the said work.

Dr. Vikram Singh, Deputy Director (H) has, thus, acted in a manner violated Rule 3(1)(i) and (iii) of the CCS(Conduct) Rules, 1964.

Article -II

That the aforesaid Dr. Vikram Singh, while functioning as Deputy Director (H) and CVO in the Headquarters, New Delhi was asked to hand over the charge of CVO to Sh. M.S.P. Panicker to which he did not comply and adopted delaying tactics by seeking clarification.

The said action of Dr. Vikram Singh, Deputy Director(H) amounted not only to disobedience of the orders of the Competent Authority but also callused insubordination. Such action on the part of the said Officer is unbecoming of a Govt. Servant and has, thus, violated Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article III

That the said Dr. Vikram Singh, Deputy Director(H) CCRH was transferred to HDRI, Lucknow along with the post and stood relieved of his duties at the Council's Headquarters with effect from 05/10/2011. Consequently, the said Dr. Vikram Singh, DD(H) was required to hand over the charge of his office to the assigned officer. He was also required to return all Non-consumable Govt. stores etc., issued to him while working in the Council's Headquarter. But he failed to do so. Further, on 07/10/2011 at 7.50 a.m., the said Dr. Vikram Singh DD(H) entered room No. 404 of the Council's office with duplicate key, which he was using as his office and took away files etc. unauthorizedly. He again entered the office premises unauthorizedly on 10th October, 2011.

He has, thus, violated Rule 3(1)(I) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

4. It is the contention of the learned Senior Counsel for the petitioner that the order of the Tribunal is bad in law and the same is liable to quashed. The learned Senior Counsel for the petitioner submits that the petitioner had, amongst others, raised the following grounds before the Tribunal.

5. The charge sheet was signed by the Director General, Dr. R.K. Manchanda on 31.12.2013 when he was on earned leave and the petitioner was looking after his

duties. The charge sheet was issued by the President who could have only signed the same in the case of emergency, otherwise the disciplinary authority would be the Governing Body of Central Council. The learned Senior Counsel for the petitioner submits that the learned Tribunal has failed to take into consideration the law laid down by the Supreme Court in the case of Union of India (UOI) and Others Vs. B.V. Gopinath, , where it has been held that the charge memo should have been approved by the competent authority, failing which the disciplinary proceedings would stand vitiated. Additionally, it is submitted by the learned Senior Counsel for the petitioner submits that a mere reading of article of charge-I would show that it relates to a decision taken by the petitioner in the year 2007, which was to develop a Research Garden behind the Central Research Institute (Homeo) (CRI(H), Noida. As far as the second article of charge is concerned, it was alleged that there was delay in his handing over of charge after he was appointed as CVO, while the third article of charge was that he took away some files unauthorizedly from the office.

6. Learned Senior Counsel for the petitioner submits that as far as the first charge is concerned, there was no financial loss to the Department as the work did not commence and no work for developing the Garden was actually awarded, nor any financial loss was suffered. As far as the second charge is concerned, he submits that the delay in handing over the charge of CVO was on account that he had sought certain clarifications as to whether the order has been passed with the consent of competent authorities, and as regards the third charge, it is submitted that the charge is vague as there is no details with regard to the files.

7. Mr. Narula, learned counsel for respondent No. 2 has handed over in Court a copy of the approval duly signed by the then Minister of Health and Family Welfare dated 31.12.2013. Reliance is placed on para 6 by Mr. Narula in response to the submission made by the learned Senior Counsel for the petitioner that the approval was to be granted by the Governing Body of Central Council. Para 6 reads as under:

"6. The term of the Governing Body has expired on 25.2.2012 and is yet to be re-constituted. Therefore, approval of Hon"ble HFM as President of the Governing Body of the Council is required for instituting disciplinary proceedings against Dr. Vikram Singh."

8. Mr. Narula submits that the approval was sought from the Minister as the term of the Governing Body had expired. As far as the legal submission raised by the learned Senior Counsel for the petitioner is concerned, reliance is placed on para 9, which reads as under:

"9. Approval of Hon"ble HFM as President of the Governing Body of CCRH is solicited to initiation of disciplinary proceedings against Dr. Vikram Singh, Deputy Director and issue of the charge sheet. Approval may also be accorded for taking further follow up action like appointment of Inquiry Authority in case the charges are denied by the delinquent official. The inquiry, if necessitated, may be

conducted at New Delhi."

9. Mr. Narula contends that the Minister had duly applied his mind. All the relevant material was placed before him and he had granted approval for initiation of disciplinary proceedings against the petitioner and also for issuance of the charge sheet. Thus, the submission of the learned Senior Counsel for the petitioner is without any force that there was no application of mind.

10. We have heard the learned counsel for the parties and their rival submissions.

11. The first submission of learned Senior Counsel for the petitioner is that approval for initiation of departmental proceedings of the petitioner was granted by the Minister as is evident from the communication dated 31.12.2013, but the communication also evinces that the charge sheet was approved on the same date which could not have been approved in view of the settled position of law in the case of *Union of India v. B.V. Gopinath*. We deem it appropriate to reproduce paras 21, 23, 44, 49, 53 and 56 of the aforesaid judgment, as under:

"21. It was further submitted that there may be some situations where even despite the fact that approval has been accorded to initiate the enquiry, charge sheet may not be issued or approved. To illustrate, it was pointed out that there may be circumstances where the Disciplinary Authority, after approving the initiation of proceedings but before giving approval to the charge sheet, comes to a conclusion that a lesser charge or no charge is made out against the officer concerned. In such circumstances, the Disciplinary Authority proceeds accordingly and may drop the proceedings. Thus, it is for this reason that Rule 14 provides that the Disciplinary Authority has to apply its mind separately at two different stages: (i) initiation of proceedings and (ii) approval of charge sheet.

23. The next submission of Mr. Patwalia is that the Office Order No. 205/2005, Clause/Item No. (8), mandates that the approval of the charge sheet has to be granted by the Finance Minister. This interpretation is fortified by clause 9 of the 2005 office order. Clause (9) requires that if there has to be any dropping/modification/amendment of the charges, after receiving the Written Submission of Defence, then the file has to be put up to the Finance Minister. Learned Senior Counsel states that if dropping/modification/amendment of charges is required to be undertaken by the Finance Minister then it would necessarily mean that the initial approval of the charge sheet has to be sanctioned by the said minister only. It was further submitted that acceptance of the stand of the appellant that approval granted for initiation of proceedings includes approval to the charge-memo would lead to the position where the charge memo would get approval even before it has come into existence.

44. Under Clause (9), the department firstly puts up the file before the Finance Minister seeking "approval for issuing charge memo/sanction of prosecution." The department is seeking an order as to whether the officer is to be proceeded against departmentally or criminal proceedings are to be initiated or both proceedings are to be commenced simultaneously. When the decision is taken by

the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of charge memo arises. The department would thereafter complete the necessary formalities and then place the file before the Finance Minister, for "approval of" charge memo. This provision is in harmony with the mandate contained under Articles 311(1) and (2) that no civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. The second limb of the same direction is that punishment on a public servant of dismissal, removal or reduction in rank can only be imposed when the charges have been proved against him in a departmental enquiry held in accordance with the rules of natural justice.

49. We are unable to accept the submission of the learned Additional Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DOP & T, issuance of show-cause notice in case of disagreement with the enquiry officer report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty and revision/review/memorial have to be taken by the Finance Minister.

53. Further, it appears that during the pendency of these proceedings, the appellants have, after 2009, amended the procedure which provides that the charge memo shall be issued only after the approval is granted by the Finance Minister.

56. For the reasons stated above, we see no merit in the appeals filed by the Union of India. We may also notice here that CAT had granted liberty to the appellants to take appropriate action in accordance with law. We see no reasons to disturb the liberty so granted. The appeals are, therefore, dismissed."

12. Having regard to the judgment of the Supreme Court also taking into consideration the fact that it was noticed that, after 2009, the respondents had amended the procedure that the charge memo would be issued only after the approval is granted by the Minister, would itself show that the respondents had reconciled that the grant of leave to initiate proceedings and approval of charge sheet are two distinct and different stages. We may also notice that the aim and objective of such a procedure is that, at the first stage, the material is placed before the Minister (as in this case) to enable him to satisfy himself that it is a fit case in initiating departmental proceedings. The rationale of splitting the second stage of approval of charge sheet can be explained as, after the proceedings are initiated, a reply would have been received and it would allow the Minister (as in this case) to apply his mind based on the reply and thereafter take a decision whether it was a fit case for issuance of charge sheet or not. Such a safeguard,

in our view, is in line with the principles of natural justice which was not followed in the present case.

13. Accordingly, we allow the writ petition. Rule is made absolute. The respondents are, however, granted liberty to take appropriate action, if available, in accordance with law.

C.M. APPL 15884/2014(stay)

14. Since the present writ petition has been disposed of, the application also stands disposed of.