
(2013) 03 DEL CK 0178
In the Delhi High Court
Case No : LPA 148 of 2013

Vinesh Chandra Saxena

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2013) 03 DEL CK 0178

Hon'ble Judges : D. Murugesan, C.J.; V.K. Jain, J

Bench : Division Bench

Advocate : Ankur Chibber, for the Appellant; Archana Gaur, Advocate for R. 1/ UOI and Mr. Digvijay Rai, Advocate for R. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant, while he was working as Manager (Accounts) with the respondent Airport Authority of India, a criminal case was registered against him by CBI for accepting bribe of Rs. 5000/- from a furniture repair contractor. He was arrested and prosecuted for the offences under Sections 7, 13(2), 13(1)(d) of the Prevention and Corruption Act. Vide order dated 25th April, 2009 passed by the learned Special Judge, Delhi, the appellant was convicted in the aforesaid case and sentenced to undergo imprisonment for 3 years and to pay a fine of Rs. 25,000/-, or in default of payment of fine to undergo simple imprisonment for three months. Being aggrieved from the aforesaid judgment dated 25th April, 2009, the appellant filed an appeal which is stated to be pending before this court and the sentence awarded to the appellant has been suspended during the pendency of the appeal. Pursuant to the conviction of the appellant, the respondent Airport Authority of India issued a Memorandum dated 1st September, 2010 to him referring to his conviction by the learned Special Judge and tentatively seeking to impose major penalty of dismissal from service upon him. The appellant was given an opportunity to make representation, if any in this regard within a period of 15 days. The appellant replied to the aforesaid

Memorandum on 18th September, 2010. It was submitted in the reply that two persons, namely, Sumit Kumar and M.P. Singh who were also convicted by the Trial court for similar offences were allowed to continue in service whereas the appellant was alone issued a memorandum for dismissal from service and secondly the punishment was imposed even without any departmental inquiry. The Disciplinary Authority, after considering the representation made by the Appellant, found no merit in the said representation and accordingly imposed penalty of dismissal from service. The appellant preferred an appeal against the order passed by the Disciplinary Authority. The said appeal was dismissed by the Appellate Authority, vide order dated 28th December, 2010. Being aggrieved, the appellant filed WP(C) No. 480/2011 challenging the penalty imposed upon him. As the said writ petition was dismissed, the appellant is before us by way of this appeal.

2. The bone of contention of the learned counsel for the appellant is that the respondent has treated differently the appellant and other two employees, while imposing the penalty when both the appellant and two employees involved in similar offences were also convicted and imposed with same penalty. It is further the contention of the appellant that in case of two employees, the respondents conducted inquiry and imposed lesser penalty whereas in the case of the appellant, penalty of dismissal was imposed even without inquiry. Hence, on the above grounds, the penalty of dismissal should be set aside.

3. We are not inclined to accept the said submission. It is an admitted position that though Sumit Kumar and M.P. Singh, were convicted for the offences under the provisions of Prevention of Corruption Act, the conviction was with reference to an entirely different occurrence and the appellant was not tried along with them. For having taken bribe in a different incident, the appellant was tried and convicted. The power of the disciplinary authority to impose penalty specified in Regulation 27 of Airport Authority of India Employees (Conduct, Discipline & Appeal) Regulation 2003, is provided under Regulation 33 which reads as under:-

33. Special procedure in certain cases.- (1) Notwithstanding anything contained in regulation 29, 30 and 31, the disciplinary authority may impose any of the penalties specified in regulation 27 in any of the following circumstances, namely:-

(i) where the employee has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial; or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these regulations; or

(iii) where the disciplinary authority is satisfied that in the interest of the security of the Authority it is not expedient to hold inquiry in the manner provided in these regulations.

The dismissal from service is one of the penalties specified in the above Regulation. As per the Regulation 27(1) in the event an employee is convicted in a criminal charge by a criminal court, the employer is entitled to impose any one of the penalty specified therein. The said Regulation does not contemplate any enquiry prior to the imposition of penalty. Equally, the Regulation does not restrict the power of the employer to either hold or not to hold an enquiry. The discretion of the employer to resort any one of the above depends on facts of each case. Equally, imposition of penalty also depends upon the facts of each case. Merely because a different procedure has been adopted by the Disciplinary Authority in respect of employees involved in different set of occurrence, the invocation of Regulation 33 in the case of the appellant cannot be faulted and for that reason, the contention of the appellant that he was discriminated by the respondent in imposition of penalty merits no acceptance.

4. In so far as the interference by the Court, the matters of penalty imposed upon an employee, it must be stated that it is restricted. In this regard, we may refer to the judgment of the Division Bench of this Court in Ex. Head Constable Manjeet Singh Vs. Union of India and Others,

It is a settled proposition of law that neither the Central Administrative Tribunal nor the Writ Court can interfere with the punishment awarded in a departmental proceeding, unless it is shown that the punishment is so outrageously disproportionate, as to suggest lack of good faith. While reviewing an order of punishment passed in such proceedings, the Court cannot substitute itself for the Appellate Authority and impose a lesser punishment, merely because it considers that the lesser punishment would be more reasonable as compared to the punishment imposed by the Disciplinary Authority. The Court or for that matter even the Tribunal can interfere with the punishment only if it is shown to be so disproportionate to the nature of the charge against the delinquent official that no person, acting as a Disciplinary Authority would impose such a punishment. The following observations made by Supreme Court in V. Ramana Vs. A.P.S.R.T.C. and Others, are pertinent in this regard:

The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in

support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

In *B.C. Chaturvedi (supra)*, Supreme Court, after considering a Constitution Bench decision in *State of Orissa Vs. Bidyabhushan Mohapatra*, and some other decisions, inter alia held as under:

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

5. Even otherwise, in our opinion dismissal from service cannot be said to be a harsh penalty, in a case of corruption by a public servant. In *U.P. State Road Transport Corporation Vs. Suresh Chand Sharma*, the respondent before Supreme Court was dismissed from service on the charge of embezzlement of a petty amount, which he had recovered from 13 passengers whom he had allowed to travel without tickets in a bus. It was contended on his behalf that dismissal from service, for embezzlement of such a small amount could not be justified, the same being disproportionate to the proved delinquency of the employee. The contention was, however, rejected by Supreme Court. In taking this view, Supreme Court referred to its decision in *Municipal Committee, Bahadurgarh Vs. Krishan Behari and others*, wherein it had observed that in cases involving corruption, there cannot be any punishment other than dismissal. The Court was of the view that any sympathy shown in such cases was totally uncalled for and opposed to public policy. The Court also relied upon its earlier decision in *Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh*, and *U.P. State Road Transport Corporation Vs. Vinod Kumar*, where it had held that though punishment should always be proportionate to the gravity of misconduct, in a case of corruption/misappropriation, dismissal is the only punishment. A number of other cases reiterating the aforesaid view were referred by Supreme Court in *Suresh Chand Sharma (supra)*.

Considering the view taken by the Supreme Court in the above referred cases, it cannot be said that the penalty imposed upon the appellant is so disproportionate to the charge proved against him in the criminal trial that it would shock the conscience of the Court.

6. It was also submitted by learned counsel for the appellant that the plea of discrimination in the matter of penalty, as discussed hereinabove, was not duly considered by the Disciplinary Authority and therefore the penalty order betrays lack of application of mind. We, however, cannot agree. A perusal of the order passed by the Disciplinary Authority would show that he had taken into consideration all the submissions contained in the representation made by the appellant. It would not be necessary for the Disciplinary Authority to give express reasons for not accepting a plea of this nature. In any case, we are of the view that the plea of discrimination in the matter of awarding penalty has no merit and, therefore, the absence of reasons, in the order of the Disciplinary Authority for rejecting this plea, would not vitiate the penalty imposed upon the appellant. As far as the second contention namely that since no inquiry was conducted in the case of the appellant whereas the inquiry was conducted in respect of other employees, we may point out that both the appellant and the other two employees are not placed in the same pedestal. Have they were not tried for the same offence, in the same trial, that apart in the wake of Regulation, we cannot find fault with the invocation of the Regulation 33 in the case of the appellant. Hence, the contention as to the discrimination also must be negated. Accordingly, the same is rejected.

For the reasons stated hereinabove, we find no merit in the appeal and the same is hereby dismissed.