
(2013) 01 DEL CK 0223

In the Delhi High Court

Case No : Writ Petition (C) 480 of 2011

Vinesh Chandra Saxena

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0223

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.K. Sharma, Mr. Ankur Chibber, Mr. Milan Deep Singh and Ms. Aakriti Jain, for the Appellant; K.K. Rai, with Mr. Digvinay Rai, for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner has challenged the impugned order dated 13.10.2010 passed by the Disciplinary Authority, whereby invoking the provisions of Regulation 33 of the AAIE (CDA) Regulation 2003 has dismissed the services of the petitioner with immediate effect. The petitioner has also challenged the order dated 28.1.2010 passed by the Appellate Authority, whereby, the appeal of the petitioner has been dismissed.

2. The case of the petitioner in brief is that the petitioner was working as Manager (Accounts) at IGI Airport Cargo Complex and a criminal case was registered against him by CBI for accepting bribe of Rs. 5,000/- from a furniture repair contractor. Based on the said complaint an FIR was registered against the petitioner under Sections 7, 13(2), 13(1)(d) of the Prevention and Corruption Act. The petitioner was taken into custody and remained in judicial custody. Since the petitioner was in judicial custody for more than 48 hours, the petitioner was placed under suspension w.e.f. 11.07.2001.

3. It is stated in the petition that since the respondent did not pass any orders for further extension of suspension period of the petitioner, he made a request to

revoke the suspension order. There was no response from the respondents, therefore, the petitioner had filed a writ petition bearing No. 641/2004 before this court for revocation of his suspension order.

4. Vide order dated 24.05.2005 passed by this court the respondents were directed to pass appropriate orders revoking the suspension of the petitioner. Accordingly, the suspension of the petitioner was revoked and taken back into the service.

5. Vide order dated 25.04.2009, the trial court convicted the petitioner u/s 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act and sentenced the petitioner to undergo rigorous imprisonment for 3 years and to pay Rs. 25,000/-. In default of payment to undergo further 3 months simple imprisonment.

6. The petitioner being aggrieved by judgment dated 25.04.2009 of the trial court filed Criminal Appeal bearing No. 363/2009 before this court. Vide order dated 14.05.2009 this court has admitted the Appeal and suspended the sentence of the appellant during the pendency of the case.

7. After the petitioner being convicted by the trial court, the respondent issued Memorandum dated 01.09.2010 by invoking Regulation 33 of the AAIE (CDA) Regulation 2003 and tentatively decided to impose the major penalty by dismissing the petitioner from service with immediate effect. The petitioner was given an opportunity to represent against the same within fifteen days.

8. Pursuance to Memorandum dated 01.09.2010 mentioned above, the petitioner submitted his representation. The same has been dismissed vide order dated 13.10.2010 by the Disciplinary Authority. Consequently, the petitioner was dismissed from the service. Being aggrieved, the petitioner filed an appeal before the Appellate Authority and the same was also dismissed vide order dated 28.12.2010.

9. Learned counsel for the petitioner submits that the Disciplinary Authority has not considered the representation made by the petitioner to the Memorandum issued by the respondent. The said Authority without application of mind, to the ground raised by the petitioner in representation dated 18.09.2010, rejected the same. The Appellate Authority also did in the same manner.

10. Learned counsel for the petitioner submitted that the Disciplinary Authority has dismissed the petitioner from service on the basis of conviction order passed by the trial court. The petitioner had filed an appeal against the judgment of the trial court and the same has been admitted by this court and further suspended the sentence imposed till the pendency of the appeal. The said appeal is yet to be decided.

11. Learned counsel further submits that till the appeal is decided by this court, the sentence awarded by the trial court cannot be said to be final.

12. The second ground, which has been taken by the petitioner is that the

respondents have failed to appreciate that they could not be allowed to discriminate between the similarly situated persons working in the Airport Authority of India, who had been allowed to continue in service namely, Sh. Sumit, Assistant (Office), AAI Office Complex and Sh. M.P. Singh, Senior Supdt. (Office) posted at Agra Airport who were also convicted by the trial court and whose appeals are also pending in this court. They are being allowed to continue in service whereas the services of the petitioner had been terminated.

13. It is submitted by Id. Counsel of the petitioner that the case of the petitioner is on a better footing than the above two cases. As in aforesaid cases, they have been convicted by the trial court and as well as by the Disciplinary Authority after holding of the departmental enquiry, whereas, in the case of the petitioner, he has only been convicted by the trial court against which an Appeal is pending and there has been no departmental enquiry in his case. Therefore, the department cannot maintain two different yardsticks for similarly situated persons under Conduct Discipline and Appeal Regulation 2003.

14. Id. Counsel for the petitioner argued that the respondents have failed to appreciate that the petitioner had categorically referred the names of Sh. Sumit Kumar and Sh. M.P. Singh, but the Disciplinary Authority as well as the Appellate Authority without considering or referring to the said persons have passed a stereotyped order without giving any reasons for maintaining two different parameters in respect of similarly situated persons.

15. It is further argued that the orders passed by respondents are non-speaking orders and without application of mind. No reasons whatsoever have been given for taking such a drastic decision. Moreover the grounds raised by petitioner in his reply and appeal have neither been examined nor discussed in the impugned orders.

16. Learned counsel for the petitioner has relied upon a decision of Apex Court in Civil Appeal No. 7654/2004 in Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, wherein it has been observed as follows:-

9. The Enquiry Officer in his report dated 5.5.79 recorded the allegations made as against the appellant in the disciplinary proceedings in the following terms :

The brief facts of the case appear to be that Sh. N.M. Arya issued a cover note No. 09643 dated 21.10.76 covering a consignment of cotton bales valued for Rs. On Lac in transit from Hansi to Phulwari Shariff by Truck No. HRR 7297 covering the risk of Marine Insurance T.P.N.D. and water damage charging a premium of Rs. 165/- plus Rs. 1/- as stamp duty totalling Rs. 166/- This consignment while awaiting transshipment at the UP border near Ghaziabad caught fire on 22.10.76 resulting into heavy damage to the stock of cotton bales. It is alleged that the cover note No. 09643 was issued on or after 22.10.76 after the fire had broken out antedating the date of issue on 21.10.76. This is only one charge and that is that the cover note No. 09643 was issued after the fire damage to the consignment had taken place and cover note was antedated to 21.10.76.

17. Further learned counsel for the petitioner relied upon the decision of the Apex Court in Punjab State Electricity Board and Others Vs. Jit Singh, wherein it was observed as under :-

20. Now, we come to the order passed by the Board dated 5-10-2004. In our view, it is suffice to state, that, the order is a non-speaking order in the sense, it does not contain any reasons much less cogent reason so fair play requires recording precise and cogent reasons when an order affects the rights of citizen. In the impugned order, we do not see any reason in the order passed by the authorities of the Board. Therefore, in our view, the High Court ought to have set aside the order and remitted the matter to the authorities of the Board, to reconsider the claim with reference to a particular principle laid down by the High Court in a different factual scenario. Since, we are remanding the matter, we have not answered the second issued.

18. He further relied upon the decision of the Apex Court in Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, wherein, it was observed as under :-

9 In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

10 The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N. Mukherjee Vs. Union of India, , is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

11 No doubt, in S.N. Mukherjee's case (supra), it has been observed (vide para 36) that:

.....The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

12 The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.

19. On the other hand, learned counsel for the respondents submitted that the petitioner was caught red handed by CBI while accepting bribe of Rs. 5,000/- from furniture repair Contractor. Accordingly, the CBI registered a case and he was taken in judicial custody. After the completion of trial, the learned Special

Judge, Delhi convicted the petitioner vide judgment dated 25.4.2009 and sentenced him to undergo RI for a period of 3 years u/s 7, 13(2), 13(1)(d) of Prevention of Corruption Act and to pay fine of Rs. 25,000/-. In default of payment of fine he has to undergo further 3 months SI.

20. It is further submitted that the Disciplinary Authority of the petitioner after having carefully gone through the representation dated 18.09.2010 decided the same as there was no merits of substance in the representation submitted by the petitioner. The Disciplinary Authority, after taking into consideration all the facts and circumstances of the case and submissions made by the petitioner, imposed a penalty of dismissal from service upon the petitioner vide its order dated 13.10.2010.

21. Learned counsel further submitted that the Disciplinary Authority has exercised its power under Regulation 33 of the AAIE (CDA) Regulation 2003, which is as under :-

33 Special procedure in certain cases.-(1) Notwithstanding anything contained in regulation 29, 30, 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 the 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 in the interest of the security of the Authority it is not expedient to hold inquiry in the manner provided in these regulations.

22. It is further submitted that the respondents have not discriminated the petitioner for the reasons that disciplinary authority in various cases e.g. in the case of Kailash Chandra Pandey, R.K. Bali, P.V. Thankachan, Harish Mahajan have invoked Regulation 33 and punished the delinquent officer accordingly.

23. As per the Airport Authority of India Employees (Conduct, Discipline & Appeal) Regulation, 2003, the Disciplinary Authority, for different post of employees, is different and can take a independent view. In the case of M.P. Singh and Sumit Kumar, the Disciplinary Authority was Airport Director whereas in the case of the petitioner the Disciplinary Authority was the Member (Finance), hence, it cannot be the case that the petitioner has been discriminated. Action has been taken against the petitioner as per law. Both the authorities, i.e., Appellate Authority and the Disciplinary Authority have carefully considered the submissions made by the petitioner and came to the conclusion that the petitioner was not entitled for lenient view and therefore, he was dismissed from services.

24. To strengthen his arguments, learned counsel for the respondents has relied upon a decision of the Apex court in *S. Vasundara Vs. Canara Bank and Others*, in which it has been observed as under:-

2. The admitted facts are that the petitioner, while working as a Manager of the respondent-Bank, was charged on November 3, 1986 for an offence punishable under Sections 420, 467, 477 IPC read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (for short, the "Act"). The trial Court convicted the petitioner for an offence under Sections 420 and 477A IPC and 5(2) read with 5(1)(d) of the Act and sentenced to undergo one year imprisonment and also imposed a fine of Rs. 3,000/- on each of the counts. On appeal, the High Court suspended the sentence on September 15, 1987 and enlarged the petitioner on bail. The respondents had issued a show cause notice pending trial to the petitioner on September 24, 1987. The petitioner challenged the same which was subsequently withdrawn. After the conviction, they issued another notice to the petitioner on September 12, 1994. The petitioner challenged the show cause notice in the above writ petition. The High Court in the impugned order dismissed the same. Shri Sampath, learned counsel for the petitioner, contended that the conviction on the basis of a criminal charge is not one of the specified enumerated misconducts. Removal does not lead the conviction due to the misconduct under the Regulation. Therefore, Regulations 6, 7 and 8 would not apply to the facts in this case. Consequently, Regulation 11 of the Canara Bank Officer Employees" (Discipline and Appeal) Regulations does not get attracted. The action taken, therefore, is without jurisdiction. We find no force in the contention. It is true that the High Court had suspended the operation of the judgment but nonetheless the conviction recorded by the trial Court cannot be obliterated. It is still conviction but only redemption is that by operation of the suspension, the petitioner is not required to undergo the sentence pending appeal in the High Court. Regulation 11 reads as under;

Regulation 11:-

Notwithstanding anything contained in Regulation 6 or Regulation 7 or Regulation 8 the Disciplinary Authority may impose any of the penalties SPECIFIED IN Regulation 4, if the Officer employee has been convicted on a Criminal Charge or on the strength of facts or conclusions arrived at by a judicial trial.

...

4 It is then contended that the conviction must be such that leads to the criminal misconduct under the Regulation and when only the action could be taken. We find no force in the contention. If the action is taken for any of the misconducts specified in Regulation 4, the procedural requirements contemplated under Regulations 6, 7 and 8, as the case may be, are required to be followed and order passed. In other words, if any delinquent employee of the Bank was convicted of a criminal charge, action is taken not on the basis of the misconducts on the basis of a crime committed by the employee by abuse of the

office or on the basis of an offence that led to the conviction on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial irrespective of the abuse of office. Since the petitioner is not an employee governed by the proviso to Article 311(2) of the Constitution, we need not go into the conviction leading to the conviction as to whether the authority can take disciplinary, action pending criminal proceedings leading to conviction. In this case, since there is already a finding of conviction recorded by the criminal court, though the sentence was suspended by the High Court on appeal, the authorities are still competent to take action under Regulation 11. Therefore, the High Court was clearly right in not interfering with the notice issued to the petitioner.

25. He further relied upon a decision of the Apex court in Balbir Chand Vs. Food Corporation of India Ltd. and others, in which it has been observed as under:-

6 It is further contended that some of the delinquents were let off with a minor penalty while the petitioner was imposed with a major penalty of removal from service. We need not go into that question. Merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser punishment lest the same mistaken would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the matter and take appropriate decision according to law. Present one is a case of a notorious contractor known to have committed on earlier occasions misappropriation in relation to the Corporation property; he sought and obtained another benami contract in the name of other persons by impersonation. Obviously all those who had prior knowledge of the contractor and had earlier dealt with him should have taken proper care to point out to the higher authorities the true facts so as to enable the concerned authorities take necessary decision. Accountability and openness is an imperative in conducting public dealings, lest they/he become/s a bettor to perpetrate offences. This case is apart from pending suit to recover about Rs. 16 lacs from the erring officials. They would become privy to the abetment of impersonation by the contractor and appropriate action is required to be taken against them according to law.

26. He has also relied upon a decision of Apex court in Lalsai Khunte Vs. Nirmal Sinha and Others, in which it has been observed as under:-

11 Therefore, this Court in recent decisions held that the appellate Court has power to stay the execution of the conviction and if appellate Court has stayed the conviction then in that case, this will not operate as a disqualification. But simply order of suspension of the sentence will not operate as staying the conviction. It was specifically mentioned that the stay of order of the conviction will mean it is temporarily non-operative.

27. I have heard Id. Counsel for the parties. It is emerged that while working as Manager (Accounts) at IGI Airport Cargo Complex, a criminal case was registered

against the petitioner by CBI for accepting bribe of Rs. 5,000/- from a furniture repair contractor.

28. Vide order dated 25.04.2009, trial court convicted the petitioner for the offences punishable u/s 17, 13(2) and 13(1)(d) of the Prevention of Corruption Act. Consequently, petitioner was sentenced to undergo RI for a period of 3 years with fine of Rs. 25,000/-. In default of the payment he was further sentenced to undergo SI for a period of 3 months.

29. Being aggrieved, petitioner has also preferred an Appeal bearing No. 363/2009, which is pending for disposal before this Court. However, this Court has suspended the sentence of the petitioner till its final disposal.

30. The law has been settled in S.N. Mukherjee (Supra) is that unless reasons are disclosed, one cannot say that the authorities have applied its mind in passing the order. It is an essential requirement of the rule of law that some persons, at least in brief must disclose in judicial and quasi-judicial order even if it is an order of affirmation. It is also a settled law that the appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

31. The respondent authorities have power under Article 33 of the Airport Authority of India Employees (CDA) Regulations 2003 that where the employee has been convicted on a criminal charge or on the strength of the facts or conclusions arrived at by a judicial trial, the disciplinary authority may impose any of the penalties specified in Regulation 27 as has been exercised on the petitioner in the present case.

32. The disciplinary authority is different for different post of employees, therefore, there is no doubt that each disciplinary authority can take its independent view. In case of M.P. Singh and Sumit Kumar as referred above, the disciplinary authority was Airport Director, whereas in the case of the petitioner, the disciplinary authority was the Member (Finance) and the appellate authority was the Chairman. Hence, it cannot be said that the petitioner has been discriminated.

33. After going through the order passed by the disciplinary authority and appellate authority, I am of the considered view that both the aforesaid authorities carefully considered the submission made by the petitioner and thereafter only came to the conclusion that the petitioner was not entitled for any lenient view, therefore, he was dismissed from the service.

34. As discussed above, the petitioner has been convicted by the trial court in a corruption case. The sentence thereof has been suspended by this Court.

35. The settled law is that suspension of operation of the judgment cannot obliterate the conviction recorded by the trial court. It is still a conviction, but the only redemption is that by operation of the suspension, the petitioner is not

required to undergo the sentence pending appeal.

36. It is pertinent to mention that if the officer/employee have been convicted on a criminal charge, the disciplinary authority may impose any of the penalties under Regulation 33 as discussed above.

37. In the present case, since there is already a finding of conviction recorded by Criminal Court, though the sentence was suspended by this Court on Appeal, the authorities are still competent to take action under the Regulations mentioned above. The Apex Court in Balvir Chand (Supra) has observed that some of the delinquents were let off with a minor penalty while some were imposed with a major penalty of removal from service. The courts need not go into that question, merely because, one officer was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser punishment lest the same mistake would be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice.

38. In case of Lalsai (Supra) it is held that simply the order of suspension of sentence will not operate as staying the conviction, the stay of order of the conviction will mean it is temporarily non-operative.

39. In case of Union of India (UOI) and Others Vs. Gyan Chand Chattar, it is held that in cases involving corruption, there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest.

40. The Apex Court in case of The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, has held that as far as the judicial review is concerned, it is primarily with the decision-making process and not with the decision itself. In case of misconduct of grave nature like corruption or theft, no punishment other than the dismissal would be appropriate.

41. In view of the above discussion and settled position of law, I find no discrepancy in the orders passed by the disciplinary authority as well as the appellate authority. I find no merit in the instant petition. The same is accordingly dismissed with no order as to costs.