

# SUPREME COURT OF INDIA

Shobha Sinha

Vs.

State of Bihar

C.A.No.9366 of 2013

(Surinder Singh Nijjar and A.K.Sikri JJ.)

23.10.2013

## JUDGMENT

**A.K.SIKRI,J.**

1. Leave granted.

2. On the basis of departmental enquiry conducted against the appellant, herein in which the charges leveled against her were allegedly proved, the appellant was dismissed from service. She filed the Writ Petition challenging the dismissal raising various grounds on which the legality of the procedure adopted in the departmental enquiry as well as the punishment imposed as a consequence thereto was questioned by her. This Writ Petition was allowed by the learned Single Judge on the ground that enquiry conducted was not proper inasmuch as the State Government had not supplied her the documents and also not examined the witnesses. Furthermore, according to the learned Single Judge, even the penalty of dismissal was disproportionate to the charges proved. This order of the learned Single Judge was taken in appeal before the Division Bench of the High Court by the Government in which the State Government succeeded, as the order of the learned Single Judge has been upset by the Division Bench. This is how the present appeal arises against the judgment of the High Court.

3. To traverse the essential factual matrix of the case, it be noted that the appellant was charged on the allegation that she had made a proposal on 17th January 1994 for allotment of Bitumen to one M/s. Cosmo Transport Private Limited (hereinafter referred to as "M/s. Cosmo Transport") for around 1600 Metric Tonnes without disclosing the factum of misappropriation of 500 Metric Tonnes of Bitumen earlier

allotted to the M/s. Cosmo Transport and that an investigation was pending against the conduct of the M/s. Cosmo Transport. It was alleged that the delinquent had, under her notings dated 28th October 1993, reported the illegality committed by the M/s. Cosmo Transport in respect of the allotment of 500 Metric Tonnes of Bitumen and had suggested a criminal prosecution against M/s. Cosmo Transport. However, she did not disclose so in her notings. The acts of commission and omission of the delinquent amounted to lack of bona fide and lack of devotion to duty. On account of the said acts of the delinquent, the State Government had suffered a heavy loss.

4. The defence of the appellant was that she had merely submitted a draft proposal to the higher authorities, which was approved by the higher authorities, and therefore she was nowhere responsible for the alleged acts of omission and commission. Her reply was not found satisfactory and a regular departmental enquiry was ordered. The Enquiry Officer in his report dated 9th April 2007 concluded that the appellant was guilty of charges framed against her. On the basis of this report Government Resolution dated 10th April, 2009 was passed whereby the appellant was dismissed from service.

5. In the Writ Petition filed by the appellant, the appellant challenged the dismissal on various grounds. She pleaded that without any application of mind and simply at the dictates of the CBI, the charge sheet was served upon her even when her conduct was without blemish. Her submission was that being an Assistant in the department, when she received order from superior officer like Director(Purchase) of the department, she chose to put up for sanction or release order of the Bitumen. She acted according to the directions given by her superior officers, being lowest rank officer. It was also pleaded that not a single witness was examined to prove the charges and even the onus was wrongly shifted to prove her innocence which vitiated the sanctity and propriety of the entire enquiry. She was not even supplied the documents, particularly enquiry report of the review committee on which the punishment was awarded to her. In any case, for such a charge, that too vague, punishment of dismissal from service was totally disproportionate.

6. The learned Single Judge while accepting the aforesaid submission and allowing the Writ Petition, took note of the fact that in the counter affidavit filed on behalf of the State it had been admitted that no witness was examined and no documents were provided to the appellant. The impugned order of dismissal was sought to be justified by the Court on the ground that without assessing the requirement of Bitumen and availability of fund to purchase the same, the appellant had given a noting for further purchase. Moreover, the appellant was aware of several

complaints pending against the Cosmo Transport but still she did not mention this fact in her noting for purchase of Bitumen and due to this failure, serious loss had been caused to the Government. The learned Single Judge took the view that this justification of the department could not be countenanced in the wake of admission of non-supply of material documents as well as non-examination of any witnesses. Above all, onus could not be shifted on the appellant to prove her innocence and it was for the department to prove the charges.

7. The writ court also noted that there was a scope for review, as provided under Rule 24(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the “CCA Rules”). Thus, after setting aside the dismissal order, the writ court referred the matter back to the Secretary, Personnel and Administrative Reforms Department, Government of Bihar, for passing order afresh so far as punishment is concerned. Such an order was directed to be passed within 4 weeks.

8. The State Government did not challenge the aforesaid order of the writ court immediately thereafter or within the stipulated period of limitation. On the contrary, the Order No. 3026 dated 29th July 2010 was passed by the Department of General Administration constituting the Review Committee to review the case of the appellant in terms of directions given by the learned Single Judge. It was a three Member Committee consisting of Special Secretary, Joint Secretary and Deputy Secretary. The Committee held couple of meetings and undertook the exercise of reviewing the case of the appellant. For this purpose, the Committee had also called for a representation from the appellant which was submitted by her. After examining the entire record, including representation of the appellant and giving “deep consideration” to the entire matter, the Review Committee submitted its report, as recorded in the proceedings of the meeting dated 25.2.2010. A perusal thereof would show that as per the Review Committee, the enquiry officer was not right in his assessment that charges against the appellant were proved. Since this is the exercise done by the Review Committee itself in exercise of its statutory function under Rule 24 of the CCA Rules, we would like to reproduce the relevant portion of the said discussion hereinbelow:

“Review of the points mentioned in the representation of the charged officer was done with the evidentiary documents from which the following facts appears:-

(i) The conducting officer of the departmental proceeding without deeply evaluating the evidence/documents against the charged officer assumed to be proved both the charges on the basis of doubts.

There are two points in the first charge, first is non- mentioning of requirement of bitumen and availability of fund and non- mentioning of implementation of earlier supply of bitumen, while putting proposal.

From perusal of notes portion relating to such supply order put up by the charged (page – 216/c and 215/c in file no.16/Jt.cadre -2 – 17/05) it is clear that order was given in the margin of letter no.38 dated 16.1.2004 of the Executive Engineer by the Director (Purchase) for 1000 MT. Bul. Prior to the aforesaid letter in respect of allotted 500 M.T. of Bulk bitumen, it has been mentioned that the same was not lifted by nominated transporter Messes Ansari and was transferred to other division. The quantity of supply was fixed in the margin by senior official, otherwise for want of any specific order in mentioning facts it would have been better to mention such facts therefore it should not be necessary to again to be estimated by the Assistant.

(ii) Prior allotment of bitumen has been mentioned in the letter of the Executive Engineer, Kishanganj, hence it was not necessary to bring it in her noting. With respect to availability of fund, from perusal of available evidence circular letter no. 8361 dated 30.12.85 page no. 314/c of the main file no.-16 Jt. Cadre -2-17/05 it is clear that payment of the required fund against the order will be made by Book Transfer. It is the responsibility of the Engineer –In-Chief to provide equivalent amount against the value of supply order issued by his Director (Purchase) with the advice of the Finance Department to the Accountant General. There is another wing of special officer, communication for availability of fund and provision in the budget and such work is performed through Budget section.

Hence it was not very necessary to mention about the availability of fund in notings, of the Assistant.

The fact is clear in respect of financial charge that the responsibility for carriage of bitumen mentioned in the supply order was that of the Executive Engineer, Kishanganj. There is no mention of carriage contractor Cosmo Transport company anywhere in the supply order. Prior to the issuance of the questioned supply order Proposal to file FIR and blacklisting Cosmo Transport company was put up by the charged Assistant and for this

Executive Engineer, Supaul and Chief Engineer, North Bihar and other were written.

#### Findings of the committee

From the facts mentioned aforesaid the committee has come to the conclusion that in putting up proposal for supply order the charged Assistant has put up it in routine nature. The charged Assistant should have mentioned all these facts in her notings also. But absence of devotion to duty lack of faithful service towards work cannot be assumed to be proved from this fully, although sign in respect of lack of duty appears. The conducting officer should have confirmed the charges only after deep perusal and analysis of evidentiary documents.”

9. It is manifest from the reading of the above extracted portion of the Report that the Review Committee in no certain terms concluded that financial charges against the appellant were not proved as it was the responsibility of the Executive Engineer, Kishanganj. Further, proposal for supply order was put up by the appellant, as Assistant, in a routine manner. No doubt, she was required to mention all these facts in the notings as well, but in no case absence of devotion of duty or lack of faithful service towards work could be attributed to her and the same could not be assumed to be proved fully, though there are signs in respect of lack of duty. Adversely commenting on the enquiry officer, the Review Committee stated that he should have confirmed the charges only after deep perusal and analysis of evidentiary documents.

10. It is thus clear that Review Committee virtually exonerated the appellant from the charges leveled against her except hinting that “sign in respect of lack of duty appears”. On that basis, as per the direction of the learned Single Judge, the Government was required to pass fresh order of punishment. However, after maintaining complete silence on the said Review Committee report, the State Government chose to challenge the order of the writ court and LPA was filed before the Division Bench of the High Court sometime in the year 2011.

11. The appellant herein took objections of the maintainability of the said LPA on the ground that the direction given by the learned Single Judge in his order had been complied with by the State Government by constituting the Review Committee and getting the exercise done through the said Review Committee. Thereafter, it was not open to the Government to challenge the order and file the appeal.

12. The Division Bench, however, did not see any merit in the aforesaid contention questioning the maintainability of the LPA. Thereafter, the order of the learned Single Judge is examined on merits. In the opinion of the writ appeal court, since the appellant had not denied the factum of her making the notings dated 28th October 1993 and 17th January 1994 which notings were supplied to her along with charge-sheet, and further that she had not denied that she was aware of the misdeed of the Cosmo Transport, charge was proved against her. According to the Division Bench, the appellant only tried to throw burden on the superior officers and asserted her right under Rule 17 of the CCA Rules and Article 311(2) of the Constitution of India. The Division Bench also took the view even when Rule 17 sets out a detailed procedure for conducting the departmental enquiry for imposing a major penalty, it cannot be read to mean that in all cases charges have to be proved by examining the witnesses. In the preset case, the charge was sought to be proved on the basis of documentary evidence alone and it was within the discretion of the State Government, whether or not to examine any witness in support of the charge. As far as non-supply of documents demanded by the appellant is concerned, the impugned judgment states that none of the said documents were required by the appellant for effective defence or that any such documents even existed. The position in this behalf is explained by the High Court is as under:

“In our opinion, the delinquent having not denied the factum of her making notings on 29th October 1993 and 17th January 1994; she having not denied the knowledge of the misdeeds of the aforesaid M/s.Cosmo Transport; nothing else was required to be proved. The lack of bona fide and lack of devotion to duty cannot be proved or disproved by documentary or oral evidence. These are the matters to be inferred from the conduct of the delinquent. The challenge on the principle of equality is not maintainable. The principle of equality does not apply in the matter of disciplinary proceedings. Suffice that the imputation of charge made against the delinquent is proved. Further, although it is not answered on affidavit, learned counsel Mr. P.K. Verma, has at the bar, submitted that the rest of the officers involved in the incidence were prosecuted by the CBI. It was in respect of the delinquent alone that the departmental proceeding was recommended.”

13. After hearing the learned senior counsel for the parties on either side, we are of the opinion that the impugned judgment of the High Court is unsustainable in law, which is liable to be set aside and this appeal warrants to be allowed. In the first instance, the High Court was wrong in brushing aside the contention of the

appellant regarding the maintainability of the LPA. As noted in detail above, the writ court had found loopholes in the conduct of the enquiry inasmuch as neither any document was supplied nor any witnesses were examined and on the contrary burden was shifted on the appellant to prove her innocence. The learned Single Judge, however, did not direct denovo enquiry and instead opined that it was not a case where punishment of dismissal from service should have been imposed upon the appellant as the same was disproportionate to the charge framed. Accordingly, having regard to the provision under Rule 24 (2) of the CCA Rules, the matter was remitted back for passing order fresh so far as punishment is concerned. It was also observed that while passing the penalty order, this fact shall be taken into consideration that it was the first occasion that the appellant was facing the departmental proceedings.

14. If the State Government was not satisfied with the course of action adopted by the writ court and the aforesaid direction, proper course was to challenge the order by filing appeal there against. However, it chose to implement the direction and Review Committee, as contemplated under Rule 24 (2) of the CCA Rules, was constituted. This Review Committee consisting of three very senior officials went into the entire gamut of the matter and made some very pertinent observations in favour of the appellant. It is a departmental remedy provided under the Rules and the Review Committee was empowered to go into the length and breadth of the entire enquiry proceedings as well as the merits of the findings recorded by the conducting officer (i.e. Enquiring Officer). The findings of the said Review Committee, as reproduced above, would reflect that at the most it was a case where there was “sign in respect of lack of duty” and in any case “absence of devotion to duty” , “lack of faithful service towards work” cannot be assumed to be proved from this fully. Such a report of the Review Committee, which was empowered to undertake this exercise in terms of Rule 24, finding hardly any serious charge made out against the appellant, deserved serious consideration at the hands of the State Government. It was duty bound to decide as to what appropriate penalty should be imposed upon the appellant, in lieu of punishment of dismissal awarded to her earlier. However, finding that report of the Review Committee was not palatable to the Government, it turned turtle and taking summersault, decided to challenge the order of the learned Single Judge. It was too late in the day to do so, after deciding not only to accept that judgment but even implementing the direction contained therein by constituting the Review Committee and allowing the Review Committee to accomplish its task. We are of the view that in this backdrop, LPA filed by the State Government should not have been entertained and this contention of the appellant, the Division Bench has failed to appreciate which has been turned down by simply stating that “if the State Government has,

no doubt, de hors to the direction by the court constituting a Review Committee and if such committee has made its report, the State Government would not forfeit right to prefer appeal". What is missed in the process is that acceptance is shown of the order of the learned Single Judge by going ahead with the implementation thereof. More importantly, the High Court failed to take cognizance of the report of the Review Committee which had virtually exonerated the appellant of all serious charges; except a mild adverse comment. Though no authority is needed for the proposition delineated by us on the facts of the case, our view finds some support from the judgment of this Court in *Union of India & Ors. V. Carpenter Workers Union & Ors.* (2006) 12 SCC 435.

15. Coming to the merits of the decision of the Division Bench, there was a heated debate before us about the validity of the observations of the Division Bench for non-supply of the documents and whether non-supply prejudiced the case of the appellant or not, Mr. Sinha, learned senior counsel for the appellant had referred to the judgment authored by one of us (S.S.Nijjar,J.) in the case of *State of Uttar Pradesh & Ors. v. V.Saroj Kumar Sinha* (2010) 2 SCC 772, wherein the departmental enquiry was set aside on finding that there was non-supply of essential documents to the delinquent. The court observed that when a departmental enquiry is conducted against the Government servant, it cannot be treated as a casual exercise and procedural fairness is to be shown while conducting the enquiry. Learned senior counsel for the respondents, on the other hand, had attempted to argue the non-supply of documents had not prejudiced the case of the appellant and the Division Bench was right in holding that the charge against the appellant was proved in view of her own notings. Though, we may make tentative observation that non-supply of documents could still be necessary for the appellant to give justification and explain the circumstances in which she had made the notings in question, it is not necessary to go any further to deal with this argument as this exercise is already undertaken by the Review Committee itself. Even if we proceed on the basis that there is some kind of dereliction of duty in making the notings by the appellant made on 28th October 1993 and 17th January 1994, the more pertinent and important issue is as to what kind of charge and to what extent it is proved. That is already reflected in the report of the Review Committee in exercise which could not be ignored or glossed over by the High Court.

16. At this juncture, we would like to refer to the provisions of departmental appeal and review power contained in CCA Rules. As already noticed, Rule 24 of the CCA Rules is relevant in this regard. Rule 23 along with Rule 24 are reproduced below:

“23.Orders against which appeal lies: - a government servant may prefer an appeal against order of suspension or order of punishment.

24.Appellate Authorities: (1) A government servant, including a person who has ceased to be in government service, may prefer an appeal against the orders specified in rule 23 to the authority specified in this behalf by a general or special order of the Government or, where no such authority is specified.

(i) where such government servant is or was a member of Civil Service, Group-A or Group-B or holder of Civil Post, Group- A or Group-B,

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it, or

(b) to the Government where such order is made by any other authority;

(ii) where such government servant is or was a member of a Civil Service, Group-C or Group-D, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) There shall be no appeal against the orders of the Government, however review petitions may be filed in the form of Memorials.

(3) Where the person, who made the order appealed against becomes by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate or to an authority specially authorized for this purpose by the Government.”

17. Rule 23 gives right to a Government servant to prefer an appeal against the order of punishment. However, where the order is passed by the Government itself, though no appeal is provided. Still, remedy of review is accorded to such an officer who may file the same in the form of Memorial. Keeping in mind this provision, the learned Single Judge had referred the matter back to the Government and pursuant to those directions, the appellant had filed his representation/Memorial before the Review Committee which was specifically constituted for this purpose. The Review Committee thus discharged its functions, as statutorily authorized. It

was bounden duty of the Government to consider the same, taking it to logical conclusion.

18. While exercising this power under Rule 24 (2) of the CCA Rules, the said Committee has categorically stated that only “ sign in respect of lack of duty appears” and the enquiry officer has not undertaken deep perusal and analysis of evidentiary documents while conducting the enquiry. On the basis of this element of charge only having been proved even as per the departmental authorities, the punishment of dismissal is totally unwarranted. It is not a case of lack of devotion to duty or any financial irregularities on the part of the appellant. More importantly, the Review Committee, in clear terms, accepted the plea of the appellant that she had put up the proposal in a routine manner and that the main responsibility was that of Executive Engineer, Kishanganj.

19. In this conspectus, we are of the view that on the report of the Review Committee appropriate penalty order was to be passed by the State Government which it failed to do after the receipt of the said report. The respondents have not given any satisfactory explanation whatsoever as to why there was no consideration of the said report and whether there were any valid or cogent reason to ignore the same. In the absence thereof, we are of the view that Government is supposed to proceed further and act on the basis of the said report.

20. We, thus, allow this appeal and set aside the order of the Division Bench. Direction is given to the respondent-Government to pass penalty order on the basis of Review Committee report and also the observations of the learned Single Judge that it is the first case in her entire service career where the appellant has faced the departmental proceedings.

21. During the course of hearing, we were also informed that appellant is going to attain the age of superannuation by the end of this month. Since the punishment which is to be awarded would not be dismissal, removal or compulsory retirement, but lesser punishment, the appellant shall be reinstated in service forthwith. The order shall be passed by the State Government within 2 weeks.

22. Appeal is allowed in the aforesaid terms. No costs.