Mahendra Singh vs.delhi Power Supply Co. Ltd.

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Court : Delhi

Decided On : Jun-11-2018

Appellant : Mahendra Singh

Respondent : Delhi Power Supply Co. Ltd.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

18. h January, 2018 Pronounced on:

11. h June, 2018 + W.P. (C) 5835/2002 MAHENDRA SINGH .....

... Petitioner

Through: Mr. Pradeep Gupta, Mr.Parinav Gupta and Ms.Mansi Gupta, Advocates versus DELHI POWER SUPPLY CO. LTD. ..... Respondent Through: Mr.Sandeep Prabhakar, Adv. for R/BSES Mr.S.K.Singh, Adv. Ms.Avnish Ahlawat, Adv. for R-1 CORAM: HON'BLE MR. JUSTICE C.HARI SHANKAR % JUDGMENT C. HARI SHANKAR, J.

1. The petitioner Mahendra Singh seeks, by means of this writ petition, quashing of order, dated 15th June, 2002, whereby, consequent on disciplinary proceedings held against him, the Additional General Manager (hereinafter referred to as AGM) of the Delhi Vidyut Board (hereinafter referred to as DVB) the predecessor-Corporation to the present respondent dismissed him from service. The petitioner appealed, on 3rd July, 2002, to the Member (Tech-I) of the DVB, against the impugned punishment order and, having waited, fruitlessly, for some time, for the appeal to be decided, moved this Court by means of the present writ petition. W.P. (C) 5835/2002 Page 1 of 17 2. The proceedings against the petitioner who, at the time, was working as Inspector in the DVB may be said, legitimately, to have commenced with the issuance of Memorandum, dated 7th July, 1998 (hereinafter referred to as the charge-sheet), by the AGM, proposing holding of an enquiry, against him, under Regulation 7 of the Delhi Electric Supply Undertaking (DMC) Service (C & A) Regulations, 1976 (hereinafter referred to as the Regulations), and giving him an opportunity to show cause thereagainst. The charge, against the petitioner, was of having accepted a bribe, of 10,000/, from Mr. Sushil Bansal, threatening him, in the alternative, with disconnection of his electricity supply and issuance of inflated bills regarding electricity consumption by him for earlier periods, as the electricity meter installed at Mr. Bansals premises was defective. It was alleged that the petitioner had directed Mr. Bansal to pay the demanded amount of 10,000/ by the afternoon of 24th February, 1995, and to bring, with him, a copy of his last paid Bill, or security deposit receipt, in respect of the electric meter installed at his workshop, so that it could be replaced. Mr. Bansal, thereupon, as per the charge-sheet, lodged a complaint with the Superintendent of Police (SP) of the Anti- Corruption Branch (ACB), Central Bureau of Investigation (CBI), which registered a case and set up a trap, to catch the petitioner red- handed. In accordance with the said plan, 5000/- was handed over, by Mr. Bansal to the CBI, which was treated with phenolphthalein. In the afternoon of 24th February, 1995, it was alleged that the petitioner dropped by the workshop of Mr. Bansal, and asked him to pay 10,000/, instead of the earlier demanded 5000/ and that, in view of the inflated demand,

Mr. Bansal carried, with him, another amount of W.P. (C) 5835/2002 Page 2 of 17 5000/, from his workshop. It was alleged that, thereafter, Mr. Bansal, accompanied by Mr. H. R. Gambhir, a shadow witness, proceeded to the juice shop, designated at the spot where the money was to be handed over, to the petitioner and that, after the money was handed over, the officials of the CBI apprehended the petitioner and, from his trouser pocket, recovered 5000/. (The Recovery Memo prepared on the spot refers to recovery of 5000/, and not 10,000/, though the oral evidence that emerged during enquiry was to the effect that 10,000/ was recovered from the petitioner.) It was further alleged that the petitioners hands were, thereafter, dipped in sodium carbonate solution, which turned pink, thereby proving that the notes recovered from his trouser pocket were the same notes which had been handed over, by Mr. Bansal, to the CBI and treated, earlier, with phenolphthalein. The chargesheet proceeded to observe that, by thus accepting bribe from Mr. Bansal, the petitioner had exhibited lack of integrity, devotion to duty, and had acted in a manner unbecoming of a public servant, thereby contravening clauses (i), (ii) and (iii) of Rule 3 (1) of the Central Civil Services (Conduct) Rules, 1964 [hereinafter referred to as the CCS (Conduct) Rules]., rendering him liable to be proceeded against, departmentally, under Regulation 7 of the Regulations.

3. Simultaneously, RC No 16 (A)/95-DLI was registered, against the petitioner, by the CBI, under Section 13(1) (d), read with Section 13(2) of the Prevention of Corruption Act, 1973 (hereinafter referred to as the PC Act). A closure report was filed, by the CBI, in the said proceedings, to the effect that the evidence available was insufficient W.P. (C) 5835/2002 Page 3 of 17 to warrant proceeding against the petitioner criminally under the PC Act. However, the said closure report was rejected, by the learned Special Judge (CBI), vide order dated 18th May, 1996, opining that the commission of offence, by the petitioner, under the aforementioned provisions of the PC Act stood prima facie established.

4. The petitioner replied, to the charge-sheet, dated 7th July, 1998 supra, vide his letter dated 14th August, 1998, denying the charges levelled against him. Finding the response insufficient to exonerate the petitioner, the disciplinary authority proceeded to appoint an Inquiry Officer (hereinafter referred to as I/O), to enquire into the allegations against the petitioner.

5. Eleven witnesses (PWs) were cited by the respondent. Their depositions, to the extent relevant, may be noted as under: (i) PW-1 Subash Chander, one of the independent witnesses who went with Mr. Bansal to the juice shop, confirmed the fact of the petitioner having been trapped by the CBI, and of 10,000/ having been recovered from his person, though, he admitted, the Recovery Memo referred only to recovery of 5000/. He, however, accepted that, at the time of such recovery, he was standing about 50 yards away from the spot, and was unaware of the exact conversation, or of what exactly transpired, between Mr. Bansal, Mr. Gambhir and the petitioner. W.P. (C) 5835/2002 Page 4 of 17 (ii) Mr. H. R. Gambhir, deposing as PW-2, also confirmed the acceptance, by the petitioner, of 10,000/, from him, in two bundles of 5000/ each. (iii) The complainant Sushil Bansal, deposing as PW-5, also confirmed having paid 10,000/ to the petitioner, but stated that he was not standing at the site, at the time of recovery of the said amount, from the petitioner, by the CBI. He also admitted that the electricity connection, at the premises in his occupation, was not in his name, but was in the name of Ram Jivani, and that the electricity meter had been defective since two to three months. His deposition was supported by the testimony of PW-6 R. P. Gupta, another partner in M/s. Shalimar Motors, who confirmed that the complaint, dated 24th February, 1995, to the CBI, had been written by him, on the instructions of Sushil Bansal, and had been signed by Sushil Bansal. He further deposed that he did not recollect the exact quantum of money given by Sushil Bansal to the petitioner, or the amount recovered from the petitioner by the CBI team. (iv) The members of the raiding team of the CBI, Insp. Vipin Kumar (PW-7), Deputy Superintendent of Police P.C. Sharma (PW-8), Insp. S.R. Singh (PW-9), Insp. J.B. Singh (PW-10) as well as Insp. Rajesh Kumar of the DC Cell, Delhi Police (PW- 11), confirmed the laying of trap for the petitioner, and the recovery, from him, of 10,000/-, of which 5,000/- consisted of the notes given by Sushil Bansal to the CBI and treated with phenolphthalein. The non-mention, in the Recovery Memo of W.P. (C) 5835/2002 Page 5 of 17 the recovery of 5,000/-, separately carried by Sushil Bansal (PW-5) was attributed to the fact that the Recovery Memo, as a matter of practice, reflected only the amount of tainted cash recovered from the

accused. In any event, all the prosecution witnesses, in one voice, 6. confirmed the laying of the trap for the petitioner, the handing over, on the demand made by the petitioner, of 10,000/- by Sushil Bansal, and the recovery of 5000/, from the petitioner, by the CBI officials. Some degree of uncertainty does exist, regarding the recovery of the untainted 5000/ (i.e., which was not treated with phenolphthalein), owing to the Recovery Memo, prepared on the occasion, referring only to recovery of 5000/. This uncertainty on facts, however, even if it were assumed to exist, would not necessarily translate into any uncertainty in law, as the discussion hereinafter would reveal.

7. The aforementioned inquiry proceedings culminated in an Inquiry Report, dated 15th November, 2000, submitted by the IO. In view of the evidence that had emerged during the proceedings, the IO opined that the acceptance, by the petitioner, of the tainted 5,000/-, from Sushil Bansal, and the recovery, thereof, by the CBI team, stood proved. In arriving at the said conclusion, the IO also observed that he had himself compared the numbers of the notes recovered from the petitioner by the CBI team outside the juice shop, with the numbers of the notes as reflected in the Handing Over Memo prepared at the time when the notes were handed over, by Sushil Bansal, to the CBI, and that they were found to tally. At the same time, the IO acknowledged W.P. (C) 5835/2002 Page 6 of 17 that it was not possible to state, with certainty, whether the amount recovered from the petitioner was 5,000/- or 10,000/-, as the Recovery Memo reflected recovery, from the petitioner, only of 5000/. Even so, opined the IO, the recovery of the tainted 5,000/- (coated with phenolphthalein) from the pockets of the petitioner, stood conclusively proved, so that the acceptance, by the petitioner, of bribe, from Sushil Bansal, was established.

8. Certain observations were entered, in the Inquiry Report, to the effect that, on 23rd and 24th February, 1995, the meter installed at the premises of Sushil Bansal, was not faulty and that, therefore, the statement, to the said effect, contained in the complaint of Sushil Bansal, was wrong. Mr. Pradeep Gupta, learned counsel for the petitioner, has emphasized this fact, as recorded in the Inquiry Report, to contend that, if the meter was not faulty, no motive for the petitioner to demand bribe from Sushil Bansal, existed at all. As such, in his submission, this finding of the IO, as contained in his Inquiry Report, demolishes the case of the respondent. The Inquiry Report of the IO, even after noticing this fact, went on to hold that, irrespective of the reason therefor, the acceptance of bribe, by the petitioner from Sushil Bansal, stood established, and that this was sufficient to confirm contravention, by the petitioner, of clauses (i), (ii) and (iii) of Rule 3 (1) of the CCS (Conduct) Rules.

9. The aforementioned Inquiry Report, dated 15th November, 2000, of the IO, was forwarded, to the petitioner, by the DVB, vide memorandum dated 1st December, 2000, conveying the inclination, of W.P. (C) 5835/2002 Page 7 of 17 the AGM, to accept the findings of the IO and, calling for the response of the petitioner thereto.

10. The petitioner responded vide communication dated 20th December, 2002. Nearly a year and a half thereafter, the AGM, as disciplinary authority, passed the impugned order, dated 15th June, 2002, holding that, as the fact of acceptance, by the petitioner, of the tainted 5,000/-, from Sushil Bansal, and the recovery thereof by the CBI team, stood established, the charge against the petitioner, in the charge-sheet issued to him, stood proved. Opining that such dishonest employees are burden to public utility organization like DVB the disciplinary authority, vide order, dated 15th June, 2002, dismissed the petitioner from service.

11. The petitioner appealed, against the said order, to the Member (Tech.), DVB. Having waited, for a while, for a decision on the appeal, the petitioner approached this Court, by means of the present writ petition.

12. I have heard Mr. Pradeep Gupta, Mr. Sandeep Prabhakar, Mr. S.K. Singh, and Ms. Avnish Ahlawat, learned counsel for the parties, at length, and perused the record. Analysis 13. Judicial review of disciplinary proceedings, against an allegedly errant employee or workman, and of the decision to punish him W.P. (C) 5835/2002 Page 8 of 17 therefor, invariably involve examination of the following distinct issues: (i) whether the allegations in the charge-sheet, if taken as true, amount to misconduct or not, (ii) whether due process

was followed, at every stage of the proceedings, from issuance of the charge-sheet to the final appellate or reversionary order, as the case may be; and, if not, whether the lacuna(e) in following due process was fatal to the proceedings, (iii) whether the findings of the disciplinary/appellate/ reviewing authority were sustainable on merits, and (iv) whether the punishment awarded to the employee was proportionate to the misconduct committed by him.

14. On each of these issues, there is a wealth of judicial authority. The facts of the present case are, however, so plain that any lengthy dissertation thereon would be an unwarranted academic exercise. I, however, proceed to examine this case, by reference to the above four issues, as under.

15. On Issue (i), i.e. whether the allegations, as contained in the charge-sheet issued to the official concerned, amount to misconduct or not, the position, in law, is well-settled that every transgression, by an official or employee, is not misconduct. Non-attainment of the highest standards of performance, or highest degree of efficiency, by an employee, is not misconduct, though it may be a relevant consideration while taking up the case of the employee for service W.P. (C) 5835/2002 Page 9 of 17 benefits such as promotion, etc. Misconduct involves transgression of an established code of conduct, and is usually tainted with an element of culpability. Such culpability may be express, i.e. where the misconduct is deliberately committed, or implied, such as a case of gross negligence, in which substantial loss has resulted to the establishment, as a consequence of the alleged delinquency of the employee concerned. Mere negligence, sans these elements, would not constitute misconduct. [Refer UOI v. J.

Ahmed, (1979) 2 SCC286 Insp. Prem Chand vs Govt. of NCT of Delhi, (2007) 4 SCC566and Ravi Yashwant Bhoir vs. Collector, (2012) 4 SCC407 It is equally well-settled that, where such negligence results in serious or irreparable consequences to the employer, disciplinary action, and punishment following thereupon, is merited.

16. It is not necessary to dilate, further, on this issue, as, in the present case, the allegation against the petitioner was of accepting bribe from Sushil Bansal which, viewed any which way, would, if established and proved, constitute misconduct.

17. Proceeding, now, to issue (ii), i.e. the following of due process in the conducting of the inquiry proceedings. On this aspect of the matter, too, no serious objection was raised by Mr. Gupta, learned counsel for the petitioner; indeed, no exception can really be taken, to the manner in which the IO or the disciplinary authority proceeding in the matter. Full opportunity was granted, to the petitioner, to establish his case, and defend the charges against him, as well as to file his written responses/submissions. He was also given due opportunity of W.P. (C) 5835/2002 Page 10 of 17 hearing, including opportunity to cross-examine the PWs. As such, on this issue, too, no illegality can be discerned in the proceedings before the IO, or the disciplinary authority.

18. That carries us to the third issue, i.e., whether the finding of guilt, as returned by the IO and accepted by the disciplinary authority, was sustainable on merits. While examining this issue, the court is required to be ever-mindful of the fact that it does not sit in appeal over the decision of the disciplinary authority, and would tinker with the merits thereof, on facts, only where the analysis of facts, by the IO or the disciplinary authority, are vitiated on account of perversity. Perversity, needless to say, would arise only where the decision is such that no reasonable man, on the facts of the case, would arrive thereat, and would be required to meet the exacting, and well-known, Wednesbury standards. The following passages, from Gohil Vishvaraj Hanubhai vs State of Gujarat, (2017) 13 SCC621 are instructive in this regard: 15. The basic principles governing the judicial review of administrative action are too well settled. Two judgments which are frequently quoted in this regard are Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB223(CA) and Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC374: (1984) 3 WLR1174: (1984) 3 All ER935(HL) .

16. Lord Diplock in his celebrated opinion in Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC374: (1984) 3 WLR1174: (1984) 3 All ER935(HL) summarised the principles as follows: (AC p. 410 D-H &

411 A-B) Judicial review has I think developed to a stage today when without reiterating any analysis of the W.P. (C) 5835/2002 Page 11 of 17 steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality and the third procedural impropriety. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well- established heads that I have mentioned will suffice. irrationality can by I mean what By illegality, as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable. By now be succinctly referred to as Wednesbury unreasonableness [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB223(CA)].. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no to Viscount Radcliffe's ingenious explanation in Edwards (Inspector of Taxes) v. Bairstow, 1956 AC14: (1955) 3 WLR410(HL) of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. Irrationality by now can stand upon its own feet as longer needed W.P. (C) 5835/2002 Page 12 of 17 an accepted ground on which a decision may be attacked by judicial review. I have described the third head as procedural impropriety rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all. laid down the in the head the possibility of new heads It can be seen from the above extract, Lord Diplock identified three heads under which judicial review is undertaken i.e. illegality, irrationality and procedural impropriety. He also recognised such as proportionality being identified in future. He explained the concepts of the three already identified heads. He declared that irrationality synonymous with Wednesbury unreasonableness. The principle laid down in Council of Civil Service 17. Unions v. Minister for the Civil Service, 1985 AC374: (1984) 3 WLR1174: (1984) 3 All ER935(HL) has been quoted with approval by this Court in Tata Cellular v. Union of India, (1994) 6 SCC651and Siemens Public Communication Networks (P) Ltd. v. Union of India, (2008) 16 SCC215: AIR2009SC1204. is 18. Normally while exercising the power of judicial review, the courts would only examine the decision-making process of the administrative authorities but not the decision itself. The said principle has been repeatedly stated by this Court on a number of occasions. [All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC614at para

(2010) 2 SCC (L&S) 293; Sterling Computers Ltd. v. M&N Publications Ltd., (1993) 1 SCC445 State of A.P. v. P.V. Hanumantha Rao, (2003) 10 SCC121 (Emphasis supplied) W.P. (C) 5835/2002 Page 13 of 17 19. To be fair to him, Mr. Pradeep Gupta, learned counsel for the petitioner, restricted his challenge, to the findings in the Inquiry Report, to the aspect of whether, in the face of the observation that the meter installed at the premises of Sushil Bansal, was not, in fact, faulty or defective, as stated in his complaint, any motive, for the petitioner to demand bribe from Sushil Bansal, or any compulsion on Mr. Bansal to accede to such demand, could be said to be existed at all. Mr. Gupta would contend that the demand alleged to have been made by the petitioner, being dependent on the defective nature of the meter installed at the premises, where the workshop of Sushil Bansal was situated, the observation of the IO, that the meter was not, in fact, defective, took the wind, as it were, out of the sails of the respondents case.

20. The IO, in my view, appreciated this issue in the correct perspective. Though Mr. Gupta may undoubtedly have a point in contending that the motive, for the petitioner, to accept bribe from Sushil Bansal, was unclear, no such lack of clarity exists, insofar as the fact of acceptance of bribe, by the petitioner, from Sushil Bansal, was concerned. The Inquiry Report sets out, in graphic detail, the entire preparatory process before the trap was laid for the petitioner outside the juice shop. It is clearly recited, therein, how a particular number of notes of specified denominations (which were noted in the Handing Over Memo), were handed over, by Sushil Bansal, to the CBI. These notes were treated with phenolphthalein. The fact of money having been handed over, by Sushil Bansal, to the petitioner, W.P. (C) 5835/2002 Page 14 of 17 outside the juice shop, and of 5,000/- (at least) having been recovered from the pockets of the petitioner, outside the juice shop, stands vouchsafed, not only by Sushil Bansal but by the shadow witness H. R. Gambhir (PW-2), the independent witness Subhash Chandra (PW-1), and R. K. Gupta (PW-6) as well as the members of the CBI team and Insp. Rajesh Kumar of the Delhi Police. These depositions are consistent, and completely corroborative of each other, in all material particulars.

21. Equally, the recovery of the said tainted money, from the petitioner, and the turning of sodium carbonate solution pink, when the petitioners hands were dipped in it, also stands testified by the said witnesses. In these circumstances, drawing an analogy from Section 106 of 22. the Indian Evidence Act, 1872, it was for the petitioner, if at all, to explain the circumstances in which he accepted the said money from Sushil Bansal, outside a juice shop, and the circumstances in which 5000/ was recovered, from him, by the CBI team. No such explanation, worth its name, has been forthcoming, from the petitioner, at any point of time. In these circumstances, this Court has necessarily to concur 23. with the conclusion of the IO, and the disciplinary authority, that the fact of acceptance of bribe, from Sushil Bansal, by the petitioner, stands established and proved beyond reasonable doubt. The discrepancies regarding the nature of the meter installed at Sushil Bansals premises, as well as the non-reflection of the untainted W.P. (C) 5835/2002 Page 15 of 17 5,000/-, also allegedly recovered from the petitioner, in the Recovery Memo, cannot, as has rightly been observed by the IO, detract from the factum of acceptance, by the petitioner, from Sushil Bansal, of bribe of 5,000/-, and the recovery of the said amount, by the CBI team.

24. Coming, then, to the last issue, regarding proportionality of the punishment awarded to the petitioner, it is clear that, in the above circumstances, it cannot be said that the punishment awarded to the petitioner was disproportionate to the misconduct committed by him. Judicial authority exists, in abundance, to the effect that corruption in public service can only be rewarded by dismissal therefrom. It is hardly necessary to burden the present judgement by any specific precedential references; so trite, by now, is this proposition.

25. The petitioner having been proved to have taken, from Sushil Bansal, bribe of at least 5,000/-, it is not possible to say that, in dismissing him from service, the disciplinary authority was unduly harsh. Conclusion 26. In view of the above discussion and findings, this Court must necessarily refuse succour, to the petitioner, from the rigour of the impugned order dated 15th June, 2002, dismissing him from the service of the respondent. W.P. (C) 5835/2002 Page 16 of 17 27. Consequently, the writ petition is dismissed. There shall be no order as to costs. JUNE11 2018 rk/dsn C.HARI SHANKAR (JUDGE) W.P. (C) 5835/2002 Page 17 of 17