

Rakesh Dhingra vs.national Scheduled Castes Finance & Development Corporation and Ors

Rakesh Dhingra vs.national Scheduled Castes Finance & Development Corporation and Ors

SooperKanoon Citation : sooperkanoon.com/1220225

Court : Delhi

Decided On : Dec-21-2018

Appellant : Rakesh Dhingra

Respondent : National Scheduled Castes Finance & Development Corporation and Ors

Advocate for Pet/Ap. : Mr. Jagat Singh, Mr. Ashish Kumar Singh

Judgement :

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

4. h December, 2018 Pronounced on:

21. t December, 2018 LPA1102017 Through: Appellant in person. RAKESH DHINGRA NATIONAL SCHEDULED CASTES FINANCE & DEVELOPMENT CORPORATION AND ORS versus Appellant

... RESPONDENTS

Through: Mr. Jagat Singh and Mr. Ashish Kumar Singh, Advocates. CORAM: JUSTICE S. MURALIDHAR JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J1 The present appeal under Clause 10 of the Letters Patent is directed against the judgment dated 19th December 2016 passed in W.P.(C) No.2177/1996 whereby the learned Single Judge while dismissing the writ petition has upheld the order passed by the Disciplinary Authority removing the Appellant from the service of the Respondent.

2. The present case has a long history starting from the year 1994. National Scheduled Castes Finance And Development Corporation (NSFDC), the erstwhile employer of the Appellant (the Respondent no.1 herein) imposed penalty of removal from service vide order dated 14th December 1994. The said order was assailed in W.P.(C) 2177/1996. The writ petition was LPA1102017 Page 1 of 17 dismissed by a learned Single Judge of this Court vide judgment dated 11th April 1997. The aforesaid order of dismissal was carried up in appeal in LPA No.117/1997. The Appellate Court set aside the impugned judgment and restored the writ petition before the learned Single Judge with a direction to decide the same afresh in accordance with the law. Pursuant to the order of remand, the learned Single Judge has passed the judgment impugned in the present appeal. Factual Background 3. The Appellant (Shri Rakesh Dhingra) joined the services of NSFDC in the capacity of Company Secretary-cum-Finance Manager pursuant to an advertisement dated 13th March 1989. He was initially on deputation and was absorbed after a period of six months.

4. On account of discrepancies in his service record inter alia relating to graduation certificate and service experience, a charge sheet dated 6th September 1993 containing a total of six Articles of Charge was issued to the Appellant and the same is being reproduced hereunder:

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI RAKESH DHINGRA, COMPANY SECRETARY. ARTICLE-I That the said Shri Rakesh Dhingra intentionally withheld a copy of his graduation (B.Com.) degree at the time of his appointment in NSFDC and thereby claimed service experience of almost two years for working as an Accounts Trainee with M/s Aggrawal Bansal & Associates, Jhandewalan Market, New Delhi during the period 15 J.76 to 25.5.1978, whereas he had completed his LPA1102017 Page 2 of 17 graduation

only in the year 1977. ARTICLE-II That the said Shri Rakesh Dhingra submitted an experience certificate at the time of his appointment in NSFDC for having worked as an 'Accountant' from 29.6.78 to 31.1.80 with a firm M/s Moon Enterprises whereas enquiries reveal that the said firm was not in existence at the stated time and place. ARTICLE-III That the said Shri Rakesh Dhingra defied the lawful and reasonable order of his superior by not complying with the instructions issued to him vide Order No.NSFDC/21/89-Pers. Dated 6.8.93 whereby he was placed under suspension w.e.f. 6.8.93 and advised to hand over all the files/documents key(s) of almirah(s) etc. under his custody to Shri Devanand, Assistant Manager (Vigilance) immediately. ARTICLE-IV That the said Shri Rakesh Dhingra sent certain information and representations about restoration of his designation as Company Secretary-cum-Finance Manager, sanction of dual charge allowance to him; complaint alleging wrongful appointment of Dr. S.P.Ram in the Corporation; recording of his ACR as 'Outstanding' by Ex-GM(Finance); alleged denial of opportunity to him for appointment to the post of DGM (Finance) and finally, his appeal against the suspension order, directly to the Board of Directors without any general or special order of the Competent Authority or routing the same through the Competent Authority. ARTICLE -V That the said Shri Rakesh Dhingra unauthorisedly enclosed a copy of an agenda note sent to him for submission before the Board of Directors with his Writ Petition filed against the LPA1102017 Page 3 of 17 Corporation and also quoted verbatim from a strictly confidential letter from the CMD addressed to the Joint Secretary (SCD), Ministry of Welfare, Govt. of India in his writ petition. ARTICLE-VI That the said Shri Rakesh Dhingra did not disclose at any stage either at the time of his appointment in the Corporation or even after his induction, the fact that there was a disciplinary case pending against him in his previous organization i.e. Pradeshia Industrial and Investment Corporation of U.P. Ltd. (PICUP) and the proceedings in the case were yet to be finalized. Shri Rakesh Dhingra by his above acts, furnished false information/certificate regarding his previous service, willfully disobeyed a lawful and reasonable order of his superior, unauthorisedly communicated official documents and information and suppressed material facts at the time of his appointment in NSFDC, thereby contravening Rule 5(4), 5(6), 5(20) and 11 of NSFDC Conduct, Discipline and Appeal Rules, 1990."

5. As a consequence to the above, inquiry proceedings were initiated. The Appellant initially participated in the inquiry proceedings, but midway he stopped appearing and sent medical certificates to the Inquiry Officer seeking leave of absence. The record of the proceedings shows that the Appellant regularly sought adjournments and ultimately failed to appear and inquiry proceedings continued ex-parte. The

... RESPONDENTS

led evidence and on conclusion of the proceedings, Inquiry Officer submitted the report dated 26th May 1994 holding the Appellant guilty of charges number (I), (II), (III), (IV), (V) (i) and (VI) and exonerating him for charge (V) (ii).

6. The Disciplinary Authority considered the Inquiry Officer's report and vide order dated 14th December 1994 imposed the penalty of removal from service on the Appellant. His challenge before the Appellate Authority was LPA1102017 Page 4 of 17 also rejected and the decision of the Disciplinary Authority was upheld.

7. Aggrieved with the aforesaid order, Appellant filed the W.P.(C) No.2177/1996 before this Court. The said writ petition as noticed in the opening para, was dismissed. The order dismissing the writ petition was set aside in LPA1171997. While setting aside the order dismissing the writ petition, the Appellate Court remanded the matter to the learned Single Judge observing as under: IN THE HIGH COURT OF DELHI AT NEW DELHI1108.2011 Present: Mr Rakesh Dhingra, Appellant in person. Mr Jagat Singh, Advocate for Respondent. LPA No.117/1997 The LPA is directed against the impugned order of the learned Single Judge (as he then was) dated 11.04.1997, in terms whereof the challenge laid by the petitioner to the order dated 14.12.1994, imposing penalty of removal from service of the petitioner, has been dismissed. The subsequent orders passed thereafter, by the Appellate Authority, are also consequentially impugned. A perusal of the impugned order shows that facts and pleas have been set out from para 1 to 12. Para 14 is the operative part disposing the writ petition. It is in para 13 that one can find the disclosure of the mind of the learned Single judge about the controversy in question which reads as under: I have heard learned counsel for the parties and perused the relevant documents on record. Despite number of

opportunities, the petitioner chose not to participate during all the hearings of the inquiry proceedings virtually leaving no option for the LPA1102017 Page 5 of 17 inquiry officer but to proceed with the inquiry in absence of the petitioner. The charges have been proved on the basis of the documents. All that has been stated is that: the petitioner had failed to join proceedings and thus the inquiry officer proceeded in the absence of the petitioner and that the charges had been proved on the basis of the documents. There is, in our considered view, a total absence of any consideration of rival pleas as alleged by the two parties. We thus have no option but to set aside the impugned order and remand the matter to the learned Single Judge so that the matter can be decided in accordance with the law after considering the rival submissions of the parties. The appeal is allowed, leaving the parties to bear their own cost. Parties to appear before the learned Single judge in WP(C) 2177/1996 on 29.08.2011, when the matter shall be listed for directions. 8. Pursuant to the order of remand, the learned Single Judge has passed the impugned judgment assailed in the present appeal. Submissions of the Parties 9. The Appellant, appearing in person has filed a voluminous petition and written submissions. Primarily the challenge is on the ground that the learned Single Judge while passing the impugned judgment dated 19th December 2016, has not considered the contentions raised before the learned Single Judge, as was directed by the Appellate Court in the order of remand noted above. The Appellant has also cited judgments in Commissioner, Karnataka Housing Board v C. Muddaiah (2007) 7 SCC689 and City and Industrial Development Corporation of Maharashtra v Ekta Mahila Mandal (2007) 7 SCC701 on this issue. Further, the Appellant has also LPA1102017 Page 6 of 17 challenged the impugned judgment on the ground that learned Single Judge has erred in not appreciating that the order passed by the Disciplinary Authority was without jurisdiction. Elaborating this contention, the Appellant argued that his appointment was by the Board of Directors and not the Chairman-cum-Managing Director (CMD). According to him, as per Article 64 of the Articles of Association of the Respondent-company and also as per NSFDC Code, Conduct and Disciplinary Rules, 1990, the Disciplinary Authority for taking action against the Appellant is the Board of Directors and not the CMD.

10. It has also been argued that Inquiry Officer has erred in proceeding ex- parte, as Appellant has justifiable reasons for his absence before the Inquiry Officer that being his unfortunate medical condition. The written submissions and the pleadings in the appeal postulate several other legal objections and contentions challenging the appointment of the Inquiry Officer and the CMD acting illegally, arbitrarily and whimsically by arrogating to himself the power of Disciplinary Authority, though not vested with him. The contentions can be broadly summarized as follows: (i) non- compliance of order in LPA No.117/1997; (ii) the Board of Directors and not the CMD is the disciplinary authority for the Appellant; (iii) the Appellant has been denied Natural Justice based proceedings; (iv) the Appellant is entitled to protection under Article 311 of the Constitution; (v) the penalty levied on the Appellant is disproportionate.

11. The learned counsel for the

... RESPONDENTS

on the other hand, has argued that the Appellant is misreading the order of remand passed by the Appellate Court and is attempting to widen the scope of challenge. The order of LPA1102017 Page 7 of 17 remand directed the learned Single Judge to decide the petition in accordance with law after considering the rival submissions of the parties and the learned Single Judge has as a matter of fact dealt with all such submissions. The inquiry proceedings were conducted ex- parte. The Appellant, for reasons best known to him, chose to abstain himself from joining the inquiry proceedings and failed to lead any evidence to controvert the Articles of Charge. Therefore, the learned Single Judge could decide the writ solely on the basis of documents and evidence before the Inquiry Officer. Courts consideration was thus circumscribed and restricted to such evidence that was part of the proceedings before the Inquiry Officer. The Appellant could not refer to extraneous evidence, to challenge the inquiry proceedings. The learned counsel further argued that the jurisdiction of the Court while examining the findings of the departmental inquiries is limited and the Court does not exercise the powers as an Appellate Court. Analysis NON- COMPLIANCE OF THE ORDER DATED 11H AUGUST 201112. First and foremost, we would like to take note of the observations made by the learned Single Judge in para 6 of the impugned

judgment. This would define the scope of challenge in the present appeal. The said para reads as under: 6. At the outset, it is relevant to note that during the course of hearing in this writ petition, repeatedly it was put to the petitioner, that it would be advisable for the petitioner to agree to have the ex-parte proceedings set aside and the petitioner to lead evidence before the departmental authorities in his defence, and with respect to which aspect counsel for respondent No.1/employer was inclined to take instructions, LPA1102017 Page 8 of 17 however, the petitioner insisted that the writ petition be decided as it is on merits on the basis of record. The effect of this is that this Court has to decide the writ petition on the basis of the record and evidence before the Enquiry Officer. Once, before the Enquiry Officer petitioner has failed to lead evidence by remaining ex-parte, this Court cannot allow while hearing a writ petition challenging the orders of the departmental authorities, the petitioner to refer to documents and evidence which was not led before the Enquiry Officer and which evidence is therefore not a part of the proceedings/file of the Enquiry Officer. It is not permissible for the petitioner/charged officer to contend and argue that he can remain ex-parte in the enquiry proceedings yet treat the writ petition as original proceedings whereby evidence can be led to disprove the charges against the petitioner/charged officer. Accordingly, I have disallowed the petitioner to refer to any evidence which is beyond the record of the Enquiry Officer except on one aspect of inherent lack of jurisdiction as regards the disciplinary proceedings wherein I have taken the necessary documents filed by both the parties before this Court so as to determine this issue on merits. 13. From the above observation it is clearly demonstrated that during the course of hearing in the writ petition, the Appellant was given an option to have the ex-parte proceedings set aside and lead evidence before the Departmental Authorities in his defense. However, he was not inclined to exercise this option and requested the learned Single Judge to decide the matter on merits. In this view of the matter, the learned Single Judge had to decide the rival submissions of the parties as directed by the Appellate Court cognizant of the fact that the inquiry proceedings were conducted ex-parte. The learned Single Judge has rightly observed that while hearing the challenge in the ex-parte proceedings, the Appellant could not refer to material and evidence that was not produced before the Inquiry Officer. Appellant having declined the option to lead evidence

before the Inquiry LPA1102017 Page 9 of 17 Officer, to disprove the charges, has been rightly disallowed to refer to any evidence that was beyond the record of the Inquiry Officer. The Appellant cannot construe the order of remand to mean that the findings of the Enquiry proceedings can be challenged on the strength of the material that was never brought on record.

14. The learned Single Judge has also meticulously and carefully evaluated and securitized the record before the Inquiry Officer as noted in para 7 of the impugned judgment that leaves no room for doubt that the Appellant deliberately delayed the proceedings, as noted by the Inquiry Officer. Several opportunities were given to the Appellant to defend the case, but the Appellant did not avail of the same. Therefore, there was no other option before the Inquiry Officer but to proceed ex-parte against the Appellant.

15. The learned Single Judge analyzed the merits of the Articles of Charges and the evidence produced by the parties before the Inquiry Officer on each charge. After weighing all such material, the learned Single Judge concluded that there was no illegality or perversity in the findings of the Inquiry Officer and the conclusion in the Inquiry Officers report was correct and legally sustainable. We would aver to the challenge on the merits of the charges, later in the judgment.

16. From the above, it clearly transpires that the first submission of the Appellant that the learned Single Judge has not complied with the directions of the Appellate Court as contained in the order dated 11th August 2011 is untenable. The learned Single Judge has considered and decided all the contentions raised by the parties and therefore the order of remand has been LPA1102017 Page 10 of 17 complied with.

17. The judgments cited by the

... Petitioner

in Commissioner, Karnataka Housing Board v C. Muddaiah (supra) and City and Industrial Development Corporation of Maharashtra v Ekta Mahila Mandal (supra) relate to the obligation to obey and implement a direction issued by a competent court. The said judgments are not applicable to the present case as the order in

LPA1171997 has been complied with and implemented. This ground of challenge is therefore rejected. LACK OF JURISDICTION OF CMD TO INITIATE DISCIPLINARY PROCEEDINGS¹⁸ The Appellants contention is that the Chairman-cum-Managing Director of the Respondent-company is not his Disciplinary Authority. The Inquiry Officer has referred to the minutes of the 33rd meeting of the Board of Directors and has held that CMD is the Disciplinary Authority having jurisdiction to suspend the petitioner and initiate the disciplinary proceedings against him by issuing a charge sheet. On this issue, the Appellants contention is that the learned Single Judge has erred in holding that the Articles of Association can be amended by the Board of Directors. According to him, under the Companies Act, 1956 there is a proper procedure for alteration of Articles of Association of a Company which was not followed by the

... RESPONDENTS

. Additionally, he argued that there was no amendment/alteration in the AOA at the time the Chairman-cum-Managing Director initiated the action against the Appellant. The amendment has to be applied prospectively and cannot be applied retrospectively and therefore the disciplinary action initiated by CMD is without jurisdiction. LPA1102017 Page 11 of 17 19. The learned Single Judge has considered the aforesaid contentions and has dealt with them elaborately in paras 23 and 24 which reads as under: 23. I cannot agree with the argument urged on behalf of the petitioner that the CMD of the respondent No.1/employer is not the disciplinary authority of the petitioner inasmuch as no doubt originally the respondent No.1 company as per para 64 of its Articles of Association specified that the Board of Directors was the competent authority for appointing the Company Secretary and also take disciplinary proceedings, however, in law it is perfectly possible for the Articles of Association of a company to be amended by the Board of Directors, this the Board of Directors did when it amended the Articles of Association para 64 in its 33rd meeting agenda item No.11 whereby the CMD of the respondent No.1/employer became the disciplinary authority with respect to post which the petitioner occupied. It is impermissible for the petitioner to argue that since the petitioner was the Company Secretary when the Board meeting of the Board of Directors was held, it should be held that this agenda item No.11 of the 33rd meeting of the Board of Directors did not exist, inasmuch as petitioner

has no locus standi to question the minutes of the meeting of the Board of Directors with respect to the 33rd meeting once the copies of the agenda item No.11 of the meeting has been filed in this court and in fact which have been also approved in the subsequent meeting i.e 34th of the Board of Directors of the respondent No.1/employer. In fact a necessary and consequent office order pursuant to agenda item No.11 of the 33rd meeting was issued by the respondent No.1/employer on 13.7.1993 and which has been reproduced above showing that it was the CMD who was designated to be the competent authority to initiate disciplinary proceedings for the post which the petitioner was appointed and occupying, and which was in the pay-scale as found in the agenda item No.11 of the 33rd meeting of the Board of Directors of the respondent no.1/employer and further details of which are found in the office order dated 13.7.1993 issued by the respondent No.1/employer as stated above. LPA1102017 Page 12 of 17 24.

... Petitioner

in support of this proposition that the petitioner could not have been proceeded against by the CMD because CMD was an authority below the Board of Directors, has placed reliance upon the judgments of the Supreme Court in the case of The Management of D.T.U. vs. Shri B.B.L. Hajelay and Another, (1972) 2 SCC744 and the later judgment of the Supreme Court in the case of Municipal Corporation of Delhi vs. Ram Pratap Singh, (1976) 4 SCC828 and which follows the ratios of the judgment in the case of The Management of D.T.U. (supra). However the judgments relied upon by the petitioner does not support the case of the petitioner because in the case of The Management of D.T.U. (supra) and Ram Pratap Singh (supra) the issue was that as to whether a subordinate legislation being the rules and regulations could violate the provisions of the principal Act/Statute in that whereas in the main provision of the Act a particular authority was specified as the authority to take disciplinary action, but by the rules a lower authority was authorized to take disciplinary action, and it is in such circumstances that the Supreme Court held that a lower authority as per the rules cannot be said to be authorized to take disciplinary action against the employee. In the present case, there is no question of violation of any provisions of any Act/Statute because the Articles of Association of a company can always be amended by the Board of Directors, and once that is done whereby the CMD is designated as the

appropriate authority to take disciplinary against a particular set of employees such as the petitioner, it cannot be held that the disciplinary proceedings against the petitioner were without jurisdiction because para 64 of the Articles of Association requiring taking of disciplinary action by the Board of Directors stood substituted by entitling the CMD of the respondent No.1/employer to take disciplinary action against persons in the designation at which the petitioner was working. 20. We have also noted para 64 of the Articles of Association as it existed at the relevant time. The same reads as under: Subject to the applicable provision of the Act, a Company LPA1102017 Page 13 of 17 Secretary may be appointed by the Board for such time and at such remuneration and upon such conditions as it may think fit and any secretary so appointed may be removed by the Board. 21. Undeniably, as per the aforesaid provision, the Competent Authority for appointing the Company Secretary and to initiate disciplinary proceedings is specified as Board of Directors. However, in the present case, the

... RESPONDENTS

have amended the Articles of Association in its 33rd meeting of Board of Directors. The agenda of the meeting included the delegation of disciplinary powers to Chairman-cum-Managing Director. The said agenda items have been noted in the impugned judgment. Pursuant to the 33rd meeting, held on 30th June 1993, a further order was also issued by the

... RESPONDENTS

on 13th July 1993, whereby CMD was delegated with full appointing/disciplinary powers in respect of the employees including the post of Company Secretary. The said order has also been noted and reproduced in the impugned judgment. After considering the aforesaid order, the learned Single Judge has correctly observed that CMD was designated to be the Competent Authority as far as the Appellant is concerned.

22. It is also worth noting that the 33rd meeting of the Board of Directors was held on 30th June 1993 and the minutes were approved in the 34th Meeting. A perusal of section 195 of the Companies Act, 1956 shows that there is a statutory presumption regarding the validity of the minutes of the meeting, duly drawn and

signed. The presumption is rebuttable by adducing contrary evidence. In the present case, except for challenging the minutes, we have not been shown any contrary evidence to disprove the same. We also note that pursuant to the 34th meeting, an office order was issued on 19th LPA1102017 Page 14 of 17 July 1993 implementing the Resolution passed by the Board. The charge sheet was issued to the Appellant, nearly two months later on 6th September 1993. Therefore, the contention of the Appellant that the amendment has been applied retrospectively is also completely misplaced.

23. In view of the above, the reasoning of the learned Single Judge is correct and we concur with the same. ARTICLE 311 OF THE CONSTITUTION OF INDIA: PROPORTIONALITY²⁴ The powers of the Board of Directors to appoint Company Secretary were delegated to the Chairman-cum-Managing Director pursuant to the 33rd meeting of the Board of Directors. As such, Chairman-cum-Managing Director became the appointing Authority. It is needless to say that the employees of companies are not civil servants and they cannot claim protection in Article 311 (1) of the Constitution of India. Appellant cannot take the plea, that he cannot be dismissed or removed by an Authority subordinate to that by which he was appointed since on the date when Appellants services got terminated, the CMD had the powers of appointing Authority and he was legally competent to remove the Appellant from service. DENIAL OF NATURAL JUSTICE-BIASED INQUIRY PROCEEDINGS²⁵ The contentions of the Appellant regarding denial of Natural Justice is without merit. As noted above, the Appellant despite several opportunities did not join the inquiry proceedings. His plea is complete volte-face. He cannot now turn around and raise a plea that he has been denied an LPA1102017 Page 15 of 17 opportunity to defend the charges. These submissions are without any basis whatsoever. The Appellant once again declined to avail this option during the proceedings in the Court, as noted by Learned Single Judge. The findings of the Inquiry Officer were arrived at on the basis of the material produced before him and that remain uncontroverted. The Appellant did not cross examine the witnesses or bring any material to traverse and contradict their statements. Therefore, the contention of the Appellant that the allegations made against him are false, cannot be accepted as Appellant has not taken any step to prove his defense except for denying the charges. DISPROPORTIONATE

PUNISHMENT26 The charges levelled against the Appellant are serious and grave. The Inquiry Officer has held that Appellant obtained his B.Com degree in 1977 and therefore he could not claim service experience prior to the said date. The Inquiry Officer has further observed that the Appellant has deliberately suppressed this fact. When the P & A Department asked him to submit his certificate, he did not comply with this request. The Appellant could have claimed innocence on his omission of furnishing the detail at the time of seeking employment in the Organization. He evaded the request of the General Manager (P & A) and for considerably long time did not comply with the direction. Ultimately, he furnished only a photocopy of the certificate. The Appellant furnished all degree certificates including his Secondary education certificate, but not his original B.Com certificate and this suppression strengthens the charge. After elaborately considering the testimonies of the witnesses and other material the Inquiry Officer held that the charge is proved. Besides, the other charges levelled against him also LPA1102017 Page 16 of 17 show misconduct on the part of the Appellant. The charges entail severe penalty. Thus, taking all the charges into consideration, the Disciplinary Authority has rightly imposed a punishment of removal from service and we do not find any perversity that would invite interference by this Court.

27. There is no ground to interfere with the impugned judgment. The appeal is accordingly dismissed. No costs. SANJEEV NARULA, J S. MURALIDHAR, J
December 21, 2018 nk LPA1102017 Page 17 of 17

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com