

Devendra Kumar Vs. Ngef Limited, Bangalore and Another

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SooperKanoon Citation : sooperkanoon.com/373557

Court : Karnataka

Decided On : Mar-24-2000

Reported in : ILR2000KAR1514; 2001(1)KarLJ521

Judge : H.L. Dattu, J.

Acts : [Constitution of India](#) - Articles 12 and 226; Officers Conduct and Discipline and Appeal Rules, 1988 - Rule 5(1), 13, 16 and 25

Appeal No. : Writ Petition No. 25940 of 1995

Appellant : Devendra Kumar

Respondent : Ngef Limited, Bangalore and Another

Advocate for Def. : Sri Subramanyam ;for Sri B.C. Prabhakar, Adv.

Advocate for Pet/Ap. : Sri D'Souza, Adv.

Judgement :

ORDER

1. Petitioner-Sri Devendra Kumar, who was working as Manager in Motor Marketing Division of NGEF Limited, Bangalore, in this petition filed under Article 226 of the Constitution calls in question, the correctness or otherwise of the orders made by the Appellate Authority dated 3-4-1995 in confirming the orders made by the Disciplinary Authority dated 1-2-1995. By the impugned order, the Disciplinary

Authority has dismissed the petitioner from services of the respondent-company.

2. Facts in brief are as under:

Petitioner was working as a Manager in Motor Marketing Division of the respondent-company. He has worked in the company for more than two decades. The respondent is a company incorporated under the provisions of Companies Act. It is fully owned by Government of Karnataka. The company falls within the ambit of Article 12 of the [Constitution of India](#).

3. Petitioner was served with a charge memo dated 12/17-1-1994 inter alia alleging that he was running a partnership firm in the name and style of 'Mysore Electrical Works' at Wilson Garden, Hosur Road, Bangalore, in the name of his wife and was taking active part in running of the firm in view of his expertise in the field, since his wife does not possess any experience nor expertise in the field. It is also alleged that on 27-12-1993, the responsible officers of the company had conducted a search in the workshop of the firm and had seized a nameplate belonging to NGEF and was unauthorisedly taken by the delinquent officer with the dishonest intention to make use of the same, to promote the business of the firm in which he has personal interest.

4. The second charge that was alleged in the memo was that, he is also running a partnership firm in the name and style of 'M/s. Supertech Services' in the name of his brother Sri H.P. Jayachandra and one Sri Raghavendra s/o K.G. Nagabhushana, another employee of the respondent-company. The nature of the business of the firm was technical consultancy services, assembling of mechanical components and service jobs and such other allied service business. It was further alleged that under Clause 11 of the partnership deed of the firm, the Bank account of the firm is being operated jointly and severally by one Sri K.G. Nagabhushana and the delinquent officer for and on behalf of the firm. It was also alleged that since the partners of the firm and the manager of the firm had no technical knowledge and expertise in the assembling of mechanical components, petitioner and another employee of the company are directly running the business of the firm by virtue of their technical qualification and vast experience in the field of motor sales/motor factory designs and these acts would amount to engaging in private

business or trade while in employment of the company.

5. It is also alleged that petitioner has floated two other partnership firms in the name of his brother and those firms had made several correspondences with NGEF to secure business, suppressing the fact of his direct involvement and interest in the firm and those firms had also business dealings with prestigious customers of NGEF Limited which is detrimental to the interest of the company. Therefore, it was alleged that the acts mentioned in the charge memo against the petitioner, if proved, would amount to misconduct and violation of Rules 5(1)(v), (xx), 13(i), (ii) and (iv) and 16(iii) of NGEF Officers Conduct (Discipline and Appeal) Rules. It also contained a detailed statement of allegations and imputations and also the list of witnesses and documents on which the respondent-company intends to rely upon in support and proof of charges. The charge memo required the delinquent officer to furnish his explanations to the charge-sheet in a week's time from the date of receipt of a charge memo, as the enquiry was proposed to be held against him.

6. By his reply letter dated 1-2-1994, petitioner requested the management of the respondent-company to furnish him xerox copies of the documents listed in the letter for his effective reply to the charge memo. In response to this letter, the respondent-company by its letter dated 17-2-1994 informed the petitioner that in view of Rule 25(iii) of Conduct and Discipline Rules of the Company, it is not necessary to furnish copies of the documents listed in the charge-sheet or any other document before commencement of the enquiry and the copies of the documents would be furnished at the time of enquiry, if the Disciplinary Authority decides to hold domestic enquiry after petitioner furnishes his explanation to the charge memo and therefore, he was directed to submit his explanation within three days from the date of receipt of the endorsement.

7. The petitioner had filed his written statement of defence dated 22-2-1994 denying the allegations contained in the charge memo and further stated that at no point of time, he had acted against the interest of the company and on the contrary has made large contribution to the best interest of the company in promoting its business and to earn huge profits and further requested the respondent-company

to drop the proposed domestic enquiry proceedings.

8. The Disciplinary Authority of the respondent-company not being satisfied with the explanation offered by the charge-sheeted officer, by its office memo dated 15-4-1994 appointed one Sri V.M. Upadhyaya, a retired District and Sessions Judge as Enquiry Officer to conduct an enquiry into the charges alleged in the charge memo dated 12/17-1-1994. Petitioner was also informed that he can take the assistance of any co-officer to defend him in the enquiry proceedings and he would be permitted to cross-examine the witnesses if he so opts and he can also produce his defence witnesses in the enquiry, if he so desires.

9. Pursuant to the office memo dated 15-4-1994, the delinquent officer requested the Disciplinary Authority of the respondent-company to permit him to take the assistance of a legal practitioner in the domestic enquiry proceedings.

10. By an order dated 7-5-1994, the Disciplinary Authority of the respondent-company rejected the request of the petitioner to take the assistance of a legal practitioner in the enquiry proceedings in view of the provisions contained in Conduct and Discipline Regulations of the company and that the Presenting Officer in the enquiry proceedings is also a technical person and not a legally qualified person having experience in the enquiry. It is also informed to him once again that he is free to take the assistance of any co-officer or employee of the company to assist him in the enquiry.

11. After all these preliminaries, the Enquiry Officer actually commenced the inquiry proceedings on 2-6-1994. The management examined six witnesses M.W. 1 to M.W. 6 and got marked several documents in support of its case. The charge-sheeted officer had examined himself and other two witnesses. Both sides had filed their lengthy written arguments before the Enquiry Officer. The Enquiry Officer after completing the enquiry proceedings and after a careful analysis of documentary and oral evidence on record and the written brief submitted by both the parties, submitted his report and the findings thereon dated 30-12-1994 to the Disciplinary Authority. The Enquiry Officer was of the view that the charge-sheeted officer is guilty of charges framed against him. The reasons for coming to this conclusion are the following:

'26. The CSO admits that his wife is a partner of MEW at Wilson Garden and the other partner is the wife of his co-employee Devaraj. He says that the said Devaraj played a mischief by sending excess materials to the representative of the MEW which was detected before leaving the sales department premises and in that connection there was an enquiry and he was warned not to indulge in the affairs of the MEW with NGEF directly or indirectly. He says that after that incident he instructed his wife not to have any dealings with NGEF or involve in it. This evidence is corroborative to the statement of M.W. 4-Chief Vigilance Officer that the CSO is managing the work in the firm MEW with the assistance of Devaraj and the CSO was responsible for registering MEW with NGEF for repair of motors. Ex. M. 11 is produced as the letter by CSO to NGEF to give some spare parts to MEW. The evidence of M.W. 4 and M.W. 5 is that Ex. M. 9 which is a nameplate of NGEF was found in the office of MEW at the time of search. Whether any document was prepared for the search or not, the fact of recovery of Ex. M. 9 at the search cannot be denied. There is no provision of law that any search list should be prepared in case of such a search. The question is only of believing the veracity of the witnesses who speak about it. From the circumstances brought out to show the necessity of the search, I cannot reject the evidence of M.Ws. 4 and 5 about the recovery of Ex. M. 9 at the search. From all this evidence, I have to conclude that the CSO was assisting his wife in managing the affairs of the partnership. Both the partners are inexperienced and have no expert knowledge to use it for the business. This is spoken to by M.W. 4 and on behalf of the CSO no evidence was brought in to show their knowledge in that business of MEW. From the evidence of M.Ws. 4 and 5, it can be taken that the nameplate Ex. M. 9 was taken out unauthorisedly from the NGEF with the dishonest intention to use the same to promote private business. CSO states that it might have been the one affixed to a motor with MEW and might have been removed while repairing the same. But on a look at Ex. M. 9 it does not appear to have been once used and removed from any machine. There is no evidence to support this defence and has to be rejected.

27. The other charge is of the involvement of the CSO with the firm RKSS which is run by Jayachandra and Raghavendra in partnership. Jayachandra is the brother of the CSO and he says in his statement that Jayachandra was having house

building contracts at Hassan and whenever he was to come to Bangalore he would come to the house of CSO. Such frequent visits of Jayachandra will not make him friendly with Raghavendra, who is B.Sc student to start a business of their own at Bangalore. The business started was of Technical Consultancy Service with the work of assembling of machined components and such allied service business which only the CSO or Nagabhushana can take up on account of their experience in that line in NGEF. The partnership deed is produced at Ex. M. 12. It provides at para 11 that the bank account shall be operated jointly and severally by Nagabhushana and CSO on behalf of the firm. If these persons had no connection with the business there is no necessity to have them as the persons to manage the finance of that firm. In Ex. M. 16 which is the balance-sheet as at 31-3-1993 of the firm RKSS Ex. M. 16 which is the balance-sheet. The names of CSO, Nagabhushana and his father K. Gundu Rao are shown to have advanced Rs. 56,000/- for this business and in the trading account for that year at Ex. M. 15 it is shown that there is a gross profit of Rs. 97,228.14. Though the CSO and his witness DW1 say that it was wrongly mentioned in the accounts about the advances by them, there cannot be any reason for such entries in the accounts submitted to the Sales Tax Department unless the same is true. Ex. M. 17 is produced as the copy of the partnership deed dated 1-4-1992. This is a revised one to that dated 14-12-1990 produced at Ex. M. 12. The provision of the Bank accounts being operated by the CSO and Nagabhushana mentioned in Ex. M. 12 is removed in Ex. M. 17. But that document was executed in 1992 and for the two years after execution of Ex. M. 12 the same was in force and hence the certificate of the Chief Manager of the State Bank of India produced at Ex. D. 1 cannot be taken to be disclosing the true state of affairs. From all these facts it can be concluded that the business of RKSS was run by CSO and Nagabhushana who are the employees of NGEF.

28. The further allegation in the charge-sheet is that this Jayachandra and Raghavendra have floated another partnership concern as R.K. Motors and Industries to carry on the manufacture of motors/accessories/consultancy service/assembling of machined components etc. and in this business also the CSO has direct interest. Since the partners are not having necessary expertise to carry on the nature of the business stipulated in the partnership deed, Exs. M. 18

and 19 which are the copies of the partnership deed is produced. They would appear to be the true copies of Ex. M. 12 in which the name of the company is only changed and according to M.W. 5 the correctness in Ex. M. 18 are made by Nagabhushana a co-employee and ones in Ex. M. 19 are made by the CSO himself.

29. There is one more partnership by name KMT Electricals with the place of business at Coimbatore. In the partnership deed produced at Ex. M. 20 the address of Raghavendra is given as a resident of Coimbatore and the other partner Jayachandra is also shown to be residing at Coimbatore. The business undertaken by the firm can never be expected to be done by them and for the reasons given as regards the business of RKSS it can be held that even the business that is turned out as for KMT Electricals is also done by the CSO and Nagabhushana who are the close relatives of Jayachandra and Raghavendra.

30. As regards the business of Ravi Associates the evidence of M.W. 4 is that DW1-Skanda Murthy, the Manager of RKSS handed over the quotations of Ravi Associates, RKSS and one Nagamohana to M.W. 6-the Deputy Manager in NGEF. It was all managed by the co-employee Nagabhushana and the work was given to the said Ravi Associates. DW1 says that Ravi Associates and RKSS are usually exchanging the works taken up by them whenever there is pressure of work.

31. It is admitted that CSO is holding the managerial position in the NGEF Company wherein he is having the task of achieving the goals and protecting the larger interest of the company. The facts discussed above would show that he had acted in a manner prejudicial to the interest of the Company by floating the partnership concerns mentioned in the charge-sheet to make profit for himself and his co-employee to have business in the name of the firm with prestigious customers of the company like Ekoram Engineering Enterprises etc., in the name of the firm which is detrimental to the interest of the company. His acts and omissions which are proved would amount to misconduct and violation of Rules 5(1)v, (xx), 13(i), (ii), (iv) and 16(iii) of the NGEF Officers Conduct, Discipline and Appeal Rules. Hence, I hold that the CSO is guilty of charges framed against him'.

12. The Disciplinary Authority after receipt of the report and the findings of the Enquiry Officer and other records of the enquiry proceedings, issued a second show-cause notice dated 16-1-1995, enclosing a copy of the report of the Enquiry Officer and further requested the delinquent officer to file his objections to the report and the findings of the Enquiry Officer, if any, within 7 days from the date of receipt of the report and show-cause notice. Pursuant to the said notice, petitioner had filed his written remarks. The Disciplinary Authority thereafter accepting the report of the Inquiry Officer has passed the order dated 1-2-1995 dismissing the petitioner from services of the respondent-company. Thereafter, the appeal filed before the Appellate Authority by the petitioner came to be dismissed by an order dated 3-4-1995 concurring with the orders made by the Disciplinary Authority. It is the correctness or otherwise of these orders, which are called in question by the petitioner before this Court being aggrieved by the same.

13. The learned Counsel for the petitioner has raised the following legal issues for consideration of this Court. They are:

A. The charges are vague as vagueness could be and therefore, petitioner was denied a reasonable opportunity to defend himself in the enquiry proceedings. Hence, the enquiry proceedings are vitiated.

B. The findings of the Enquiry Officer in his report is not based on any evidence and further without considering the evidence of the defence witnesses and therefore, the findings are perverse and based on such a perverse findings, the Disciplinary Authority could not have imposed any punishment. Therefore, the impugned order is bad, invalid and illegal.

C. The Disciplinary Authority was not justified in imposing a major penalty of dismissal from service without taking into consideration the past meritorious and unblemished service of the petitioner.

14. These are the only three legal issues canvassed by learned Counsel for the petitioner at the time of hearing of the petition. In support of his case, the learned Counsel relies upon the observations made by the Apex Court in the case of State of Uttar Pradesh v Mohd. Shariff (dead) through L.Rs. I will refer to the gist of this

decision a little later.

15. Mr. Subramanyam, learned Counsel for respondent-company ably justifies the impugned orders. In support of his submissions, the learned Counsel relies on the observations made by this Court in the case of D. Ananda kumar v Indian Airlines and Another, and the observations made by the Supreme Court in the cases of Dr. Anil Kapoor v Union of India, Secretary to Government, Home Department and Others v Sri-vaikundathan, Sanchalakshri and Another v Vijayakumar Raghuvir prasad Mehta and Another, and lastly, Apparel Export Promotion Council v A.K. Chopra.

16. Re. Contention A: It is now well-settled law that the charge-sheet should disclose with adequate clarity and precision the charge levelled against the employee and his requirement is one of the essential adjuncts of the concept of a reasonable and adequate opportunity of defending oneself [Deputy Inspector General of Police v K.S. Swaminathan]. The Supreme Court in the case of Mohd. Shariff, supra, held that where the date, time and location of the alleged incident which constituted the charge of misconduct was not indicated with sufficient particularity, the charge-sheet was vague and the employee-officer was prejudiced in the matter of enquiry. The Courts have also made it clear that whether the charge-sheet in a given case is vague or not will depend on the facts and circumstances of each case and the Courts have also observed that having regard to the text of the charge-sheet and the statement of imputations, if it is difficult for the charged employee to put forth his defence and effectively participate in the inquiry proceedings, then the charge memo and the enquiry proceedings requires to be quashed on the ground of violation of principles of natural justice.

17. Keeping in view this well-settled and well-accepted principles, let me now look into the charge memo that was served along with statement of imputations on the petitioner. The charge alleged in the memo are only to the effect that the charge-sheeted officer, holding a very responsible position in the company, could not have involved himself directly or indirectly in the business of several partnership firms with his wife and brother, who had no experience or expertise in technical consultancy, assembling of motor parts, etc., and those acts would amount to

engaging in private business or trade while in employment and those acts are detrimental to the interest of the company. The charge memo clearly specifies the names of the firms, their address, the nature of business, the partnership deeds and the interest and involvement of the petitioner in the business activity of the firms. In my opinion, the charge-sheet clearly spells out the role played by the petitioner in the activities of the firm, which is unbecoming of an officer of his rank. Therefore, it cannot be said that the charges are vague and the delinquent officer was denied a reasonable opportunity to put forth his case by way of defence. This Court while considering more or less similar situation in the case of D. Ananda kumar, supra, was pleased to observe as under:

'7. Next it was contended that charges in the charge memo are vague and it does not contain material particulars. Whether charges are vague or not, has to be examined in the light of circumstances of each case. The test is whether the charge conveys to the employee concerned the exact nature of the alleged offence in a way that would enable him to meet the charge. Reason being, if the charges are vague, then there is no reasonable opportunity to show cause. Therefore, it is always said that the charges should contain particulars and should be specific and not vague. Otherwise, it will vitiate the entire enquiry proceedings.

A charge for indiscipline cannot be viewed with the same strictness as a charge for an offence triable under criminal law. In disciplinary matters, it is sufficient if the person proceeded against is told, what in substance the accusation against him is. If, for any reason, the charge memo failed to furnish the particulars of the offence, the enquiry will not be vitiated on account of the omission of particulars, if there has been not failure of justice by reason of lack of particulars in the charge memo. In the present case, one of the circumstances to infer that workman understood the charge is the reply of the employee himself to the charge-sheet. When a worker gives an elaborate reply, then he cannot later on say that the charge is vague. Further, the objection about the vagueness of the charge has to be raised by the employee at first instance before disciplinary proceedings and it cannot be raised for the first time in a writ petition'.

18. In the instant case, the charge memo dated 12/17-1-1994 would show that it is capable of being understood and is sufficiently definite for the delinquent official to effectively reply the charge memo. In fact, the charge-sheeted officer has filed his detailed reply denying the allegations of misconduct alleged in the charge memo which constituted his dishonesty, lack of integrity unbecoming of senior officer of the respondent-company and at no point of time, he had even whispered either before the Enquiry Officer, Disciplinary Authority or the Appellate Authority about the vagueness of the charges and thereby he was prevented from effectively making his representation to the allegations contained therein. For the first time, petitioner tries to canvass this issue knowing fully well that the same has no semblance of truth in it. Therefore, this contention is rejected.

19. Re. Contention B: The second submission of the learned Counsel for petitioner is that the findings of the Enquiry Officer is wholly perverse and therefore, the enquiry proceedings are vitiated and based on such perverse finding, the Disciplinary Authority was not justified in imposing the major penalty of dismissal from service.

20. Concept of perversity in the findings of the Enquiry Officer is now well-explained by Apex Court in several decisions. It is uniformly said in all these decisions, that a finding is perverse if it is based on no evidence whatsoever or if it is based on misreading of the material evidence or based on mere suspicion or is so unreasonable or grossly unjust that no reasonable person could arrive at that conclusion. The Apex Court has also pointed out that this Court while exercising powers of judicial review should not embark upon the appreciation of evidence and arrive at a conclusion of its own on the sufficiency of the evidence or on the correctness of the conclusion which is based on such evidence. The Supreme Court in the case of A.K. Chopra, supra, was pleased to observe:

'The Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not

normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities'.

21. In the present case, the learned Counsel for petitioner contends that the findings recorded by the Enquiry Officer is perverse since he has not considered the evidence adduced by the petitioner through his defence witnesses and placed reliance on inadmissible materials and hearsay evidence and failed to consider the admissions made by one of the management witnesses in the cross-examination and has accepted Ex. M. 9 as having been found in the godown of one of the firms without there being unclenching documentary and oral evidence and lastly, without properly appreciating the letter of the Chief Manager of the Bank (Ex. D. 1) produced while recording the evidence of delinquent officer. It is therefore urged that all the findings recorded by the Enquiry Officer against the petitioner is merely on surmises and conjectures and they are not based on materials on record and therefore, they are unsustainable.

22. After carefully considering the submissions made by the learned Counsel for petitioner and after carefully scrutinising the decision and the reasons assigned by the Enquiry Officer in his report, which I have already extracted in the earlier part of this order, I am of the firm opinion that the contention canvassed by the learned Counsel for petitioner has no merit whatsoever.

23. In the present case, the Inquiry Officer appointed by the Disciplinary Authority to enquire into the allegations contained in the charge memo is a retired District and Sessions Judge with vast experience in conducting criminal trial. A reading of the report of the enquiry proceedings clearly demonstrates that the Enquiry Officer in fact goes deep into the evidence of the witnesses to arrive at his conclusion, which is not one of the requirements in domestic enquiry proceedings. The

Enquiry Officer analyses both documentary and oral evidence threadbare to arrive at his findings as if he is dealing with a sessions case. May be to do justice to the delinquent officer or it could be 'old habits die hard'. In my opinion, the findings recorded by the Enquiry Officer is based on proper appreciation of both oral and documentary evidence. It is neither on surmises nor on conjectures. Therefore, it is difficult to accept the second contention of the learned Counsel for petitioner. Accordingly, it is rejected.

24. Re. Contention C: The learned Counsel contends that the punishment imposed on the petitioner is not in commensuration with the gravity of charges alleged and proved and without taking into consideration the commendable service rendered by the charge-sheeted officer.

25. In my opinion, this ground urged by learned Counsel for the petitioner is a pretty fragile ground and does not deserve a detailed discussion. The Supreme Court in B.C. Chaturvedi v Union of India, has observed:

'Even on so far as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary Authority or the departmental Appellate Authority is either impermissible or such that it shocks the conscious of the Court, it should not normally substitute its own opinion and impose some other punishment or penalty'.

26. In the present case, the Disciplinary Authority has alleged and proved that the charge-sheeted officer has committed several irregularities which would constitute and falls within the -definition of 'misconduct' as defined under Rule 5 of Officers Conduct and Discipline and Appeal Rules, 1988. Petitioner was holding a very responsible position of a Manager in the Motor Marketing Division. He was expected to make use of knowledge and experience for the prosperity of the Government Company. Instead of that, he thought of floating his own firms in the name of his wife and brother and started having business connection with prestigious customers of respondent-company and thereby acted in a manner unbecoming of an officer of his caliber and status and is detrimental to the interest of company. Further, it is proved in the enquiry proceedings that the petitioner was making use of the name-plate of the company which certainly affects the interest

of the company. Therefore, in a case of this nature, in my opinion, no lenient view could have been shown by the Disciplinary Authority. The society expects from these well-placed high officers of the Government company to forget and forego their selfish interests and to strive hard for improving the fate of Government companies and to erase a feeling in the common man that Government companies and establishments are only loss making companies or ventures. In view of all this, it cannot be said that the punishment imposed by the Disciplinary Authority is so disproportionate which shocks the conscious of this Court. Accordingly, this issue requires to be rejected. Accordingly, it is rejected.

27. These are the three contentions canvassed by learned Counsel for the petitioner at the time of hearing of this petition. Since I have negatived all these contentions, petition deserves to be dismissed.

28. In the result, petition is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.