2024 INSC 564

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 290 OF 2014

DELHI TRANSPORT CORPORATION ....APPELLANT(S)

VERSUS

ASHOK KUMAR SHARMA ....RESPONDENT(S)

O R D E R

1. This appeal by special leave has been preferred by the appellant-Delhi Transport Corporation(hereinafter being referred to as 'Corporation') for assailing the judgment dated 12th March, 2013 rendered by the learned Division Bench of the Delhi High Court dismissing the W.P.(C) No. 7661 of 2010 preferred by the appellant-Corporation questioning the legality and validity of the judgment and final order dated 1st July, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi(hereinafter being referred to as 'Tribunal'). The Tribunal accepted the Original Application(for short 'OA') No. 1592 of 2009 filed by the respondent(hereinafter being referred to as 'charged officer') and set aside the order dated 24th April, 2009 passed by

the Chairman-cum-Managing Director(hereinafter being referred to as the 'CMD') thereby, dismissing the respondent from service.

2. We have heard and considered the submissions advanced at bar and have gone through the impugned judgment and the material available on record.

3. *Ex facie*, we find that the action of the appellant-Corporation in dismissing the respondent from service suffered from fatal lacuna of having been arrived at with sheer non-application of mind in addition to being non-speaking.

4. Undisputed facts as available on record indicate that a memorandum of charge dated 19th December, 2006 was issued to the charged officer and a disciplinary enquiry was held by the Commissioner for Departmental Inquiries, Central Vigilance Commission who was appointed as the enquiry authority by the CMD, appellant-Corporation *vide* order dated 9th July, 2007. The Enquiry Officer conducted enquiry and held seven out of the eight charges proved against the charged officer. A show cause notice dated 15th April, 2009 was issued to the charged officer by the CMD.

5. The charged officer approached the Tribunal by filing OA No. 1054 of 2009 for assailing the show cause notice dated 15th April,

2009 on the ground that the CMD was neither the appointing authority nor the disciplinary authority of the charged officer.

6. The Tribunal, while disposing of OA No. 1054 of 2009, directed the Enquiry Authority to first decide the question of competence of the Enquiry Authority and thereafter, deal with the merits of the case. The charged officer was permitted to make a representation against the show cause notice. Accordingly, the charged officer submitted a detailed representation dated 27th April, 2009 to the appellant-Corporation. The charged officer was to retire from the services of the appellant-Corporation on 30th April, 2009.

7. It is averred on behalf of the appellant-Corporation that in view of the impending retirement of the charged officer, an agenda was circulated to the Board of Directors of the Corporation under Regulation 11 of the DTC Meeting Regulations, 1981 incorporating a list of issues drafted by the CMD in the following terms: -

> "(viii) The CMD submitted the following issues for consideration of the Board of Directors:
>
> > "(i) To accord the approval for Show Cause Notice (Annexure-IV) proposing to impose the penalty of 'Dismissal from the services of the Corporation' as it was issued by the Chairman- cum-Managing Director in anticipation of the approval of the DTC Board due to paucity of time as the Charged Officer is to retire on 30-4-2009 on attaining the age of superannuation.

> (ii) To take a decision in the matter by considering the facts of the case and the reply submitted by the Charged Officer in response to Show Cause Notice dated 15-4-2009(Annexure-IV) with regard to the imposition of the penalty of 'Dismissal from the services of the Corporation'. List of Penalties is at Annexure-VI.
>
> (iii) To the Chairman-cum-M.D. to issue necessary Orders imposing the penalty as may be approved by the Board, upon Shri A.K. Sharma, Dy. CGM."

8. As a sequel to the above, a Resolution No. 14 of 2009 was drawn under the signatures of the CMD on 29th April, 2009, as per which the Board members considered the agenda item; the reply of the charged officer and accorded their approval to the show cause notice dated 15th April, 2009 issued earlier to the charged officer and recommended to dismiss him from service.

9. Resultantly, the order dated 29th April, 2009 dismissing the charged officer from service came to be passed by the CMD. The charged officer i.e. the respondent herein filed OA No. 1592 of 2009 before the Tribunal for assailing the afore-stated dismissal order which came to be allowed by the Tribunal *vide* judgment dated 1st July, 2010.

10. The appellant-Corporation unsuccessfully challenged the order passed by the Tribunal by filing W.P. (C) No. 7661 of 2010 before the learned Division Bench of the Delhi High Court which dismissed the same *vide* order dated 12th March, 2013. Being

aggrieved, the appellant-Corporation has preferred the instant appeal by special leave.

11. This Court issued notice to the respondent *vide* order dated 16th August, 2013. Leave in the matter was granted on 10th January, 2014.

Submission on behalf of the appellant-Corporation:-

12. Learned counsel, Ms. Monika Gusain, representing the appellant-Corporation vehemently and fervently contended that the agenda which contained the details of the charges attributed to the appellant was circulated amongst the Board members; who applied their mind to the agenda item; took a well considered decision approving the show cause notice dated 15th April, 2009; and also approved the proposed penalty of dismissal from services of the Corporation against the charged officer.

13. She urged that approval to impose the penalty of dismissal from services upon the charged officer was a collective decision of the Board members whereby, the entire material on record was considered including the reply of the charged officer. Hence, there is no reason to cast a doubt that the members of the Board of Directors failed to make an objective consideration of the agenda

item with proper application of mind. She thus implored the Court to accept the appeal and reverse the impugned judgment.

Submissions on behalf of the respondent-in-person - Charged officer:-

14. *Per contra*, the respondent appearing-in-person contended that the minutes of meeting dated 29th April, 2009 reflect total non-application of mind. The minutes contain not even a whisper of expression of opinion by any of the members of the Board on the merits of the matter and thus, the resolution approving dismissal of the respondent from service is *ex facie* bad in the eyes of law and was rightly interfered with by the Tribunal. He further submitted that the High Court was perfectly justified in affirming the decision of the Tribunal and implored the Court to dismiss the instant appeal filed by appellant-Corporation.

15. We have given our thoughtful consideration to the submissions advanced on behalf of the appellant and the respondent appearing-in-person and have gone through the impugned judgments and so also the contentious Resolution dated 29th April, 2009.

Discussion and Conclusions:-

16. We find that firstly, there is a serious question mark on *ex post facto* approval by the Board to the show cause notice dated

15th April, 2009 issued by the CMD to the charged officer. It is a settled principle of administrative law that the Disciplinary Authority must indicate an independent application of mind to the findings in the enquiry report followed by opportunity of hearing to the charged officer and only thereafter, the order imposing a major penalty can be passed against the charged officer. Law is also well settled that the Disciplinary Authority must afford an opportunity of hearing to the charged officer before proceeding to impose the major penalty like dismissal from service. Neither of these two mandatory compliances were admittedly made by the Board.

17. Furthermore, the agenda item which was circulated by the CMD for consideration of the Board(reproduced *supra*) clearly indicates that the Board was to take a decision in the matter while considering the facts of the case and the reply submitted by the charged officer in response to the show cause notice dated 15th April, 2009. However, other than giving a blind approval to the show cause notice and the agenda item *albeit* referring to the reply of the charged officer, the Board's Resolution dated 29th April, 2009 does not reflect any independent or objective application of mind by the members of the Board to the enquiry report either

individually or collectively. In this regard, reference may be made to the judgment rendered by this Court in the case of ***A.L. Kalra v. Project & Equipment Corporation of India Ltd***.[1] the relevant paragraph thereof is reproduced hereinbelow for the sake of ready reference:-

> "**29.** The situation is further compounded by the fact that the disciplinary authority which is none other than Committee of Management of the Corporation while accepting the report of the inquiry officer which itself was defective did not assign any reasons for accepting the report of the inquiry officer. After reproducing the findings of the inquiry officer, it is stated that the Committee of Management agrees with the same. It is even difficult to make out how the Committee of Management agreed with the observations of the inquiry officer because at one stage while recapitulating the evidence the inquiry officer unmistakably observed that appellant was subjected to double punishment and at other place, it was observed that granting extension of time and acceptance of documents and balance advance would tantamount to extending the time which would make the affair look wholly innocuous. This shows utter non-application of mind of the Disciplinary Authority and the order is vitiated."

18. In addition thereto, we have gone through the enquiry report which has been placed on record with the appeal. We find that the very foundation of the impugned action i.e. the enquiry report suffers from a fatal lacuna which goes to the root of the matter thereby vitiating the proceedings. On going through the report, we find that the Enquiry Officer categorically noted(at page No. 39 of the paper-book) that the prosecution neither listed nor produced

[1] (1984) 3 SCC 316

any witness during regular hearing and that the prosecution case was closed with the consent of the Presenting Officer.

19. Upon a pertinent query being put to Ms. Gusain in this regard, she candidly conceded that no witness was examined on behalf of the prosecution during the course of departmental enquiry which fact is also borne out from the enquiry report(Annexure P-1).

20. This Court in the case of ***Roop Singh Negi v. Punjab National Bank and Others*** [2] categorically held that even in a case of *ex parte* enquiry, it is essential that the department must lead evidence of witnesses to bring home the charges levelled against the delinquent employee.

21. Ms. Gosain feebly tried to convince the Court that the documents(Exhibits 51-53) which were marked in support of the department's case, conclusively establish the guilt of the charged officer for the charges framed against him. As per Ms. Gusain, these documents were admitted by the charged officer. However, the enquiry report nowhere records that any document was admitted by the charged officer. Since no evidence was led on behalf of the department in the enquiry proceedings, there is no

[2] (2009) 2 SCC 570

escape from the conclusion that the enquiry report is based on no evidence whatsoever.

22. Consequently, we are of the view that the Tribunal committed no error whatsoever while accepting the original application preferred by the respondent and the learned Division Bench of the High Court rightly refused to interfere in the judgment of the Tribunal.

23. As a result of the above discussion, the appeal is hereby dismissed as being devoid of merit. No order as to costs.

24. Pending application(s), if any, shall stand disposed of.

.....J.
(SANDEEP MEHTA)

.....J.
(R. MAHADEVAN)

New Delhi;
July 18, 2024