Vidya Sagar Shukla Vs Heavy Engineering Corporation Limited

Court: Jharkhand High Court

Date of Decision: July 5, 2013

Hon'ble Judges: Shree Chandrashekhar, J

Bench: Single Bench

Advocate: Sohail Anwar and Mr. Affaque Ahmed, for the Appellant; Shresth Gautam, for the Respondent

Final Decision: Dismissed

Judgement

Shree Chandrashekhar, J.
The present petition has been filed with the following prayers:

(i) For quashing portion of the order No. 015 dated 17.03.2004 issued by chief of Plant/Heavy Machine Building Plant and Disciplinary Authority

whereby order has been passed that the petitioner is reduced to the lower stage of Rs. 9300/- in the scale of pay of Rs. 7000-275-8100-300-

9600/- from his present basic pay of Rs. 9600/- with immediate effect in terms of Rule 23(e) of Heavy Engineering Corporation Employees

Conduct Discipline and Appeal Rules, 1981 and period of suspension of the petitioner has been ordered to be treated as dies on and petitioner

will be paid only the subsistence allowances.

(ii) For quashing the order dated 30.04.2004 by which partial modification has been made in the aforesaid order dated 17.03.2004 whereby order

has been passed that the petitioner is reduced from his present basic pay of Rs. 9600/- to 9300/- in the time scale of Rs. 7000-275-8100-300-

9600/- for a period of one year from 17.03.04 and further order has been made that petitioner will not earn increment of pay during the aforesaid

period, (as contained in Annexure-6 to this application).

(iii) For quashing portion of the order dated 10.01.2005 whereby the appellate authority has restored the pay of the petitioner to Rs. 9600/- from

Rs. 9300/- w.e.f. the date of increment in the year 2004 and not from 5.11.2002 (i.e. the date of suspension) causing irreparable loss and injury to

the petitioner, (as contained in Annexure-6/A to this writ application).

(iv) For quashing the letter No. 198 dated 30.07.2005 issued by General Manager, Heavy Machine Building Plant, Dhurwa, District Ranchi

(respondent No. 2) whereby petitioner has been communicated that review petition of the petitioner has been found not tenable (as contained in

Annexure-7 to this writ application).

(v) For any other appropriate relief(s) to which the petitioner may be found entitled in law and equity.

The brief facts of the case are that, the petitioner was working as Senior Manager, since 1996. On 05.11.2002, he was issued a charge-memo

and he was put under suspension. A memorandum of charges dated 28.11.2002 was served upon the petitioner on the following allegations:

Sri V.S. Shukla while functioning as Sr. Manager, Central Purchase, HMBP, changed the name of party/supplier in the price agreement No. 1383

dated 06/08/1998 without ascertaining the genuineness.

Sri V.S. Shukla while functioning as Sr. Manager, Central Purchase, HMBP, Sent a cheque of value Rs. 40,052.00 without ascertaining physical

procurement of spares for TA Division.

Sri V.S. Shukla failed to complete the task assigned by the General Manager, HMBP.

Sri V.S. Shukla was to make purchases of two locks of a good company other than Navtal available in local market. He failed to procure the

same. Moreover he asked Sr. DGM l/c. MM/HMBP to write the name of the companies of which locks are to be purchased instead of finding out

the name of such companies himself.

2. On conclusion of enquiry, an enquiry report was submitted. The petitioner filed his representation and the order of penalty was passed on

17.03.2004 which was subsequently corrected by order dated 30.04.2004. The petitioner preferred an appeal and the appellate authority by

order dated 10.01.2005 modified the order of punishment dated 17.03.2004 ordering that pay of the petitioner would be restored at Rs. 9600/-

with effect from the date of increment, that is, since 2004. The revision petition of the petitioner has been dismissed by order dated 30.07.2005.

Aggrieved, the petitioner has approached this Court by filing the present writ petition.

3. A counter-affidavit has been filed stating that the petitioner was afforded all reasonable opportunity to defend himself in the enquiry proceeding.

In Paragraph Nos. 9 and 10 of the counter-affidavit filed on the behalf of the respondents, it has been stated:

9. That in reply to paragraphs 4, 5 and 6 of the writ application, it is stated that the petitioner was made incharge of the Central

Purchase/H.M.B.P. with the responsibility and accountability for the functions of Central Purchase vide order dated 19.08.1999, he was

transferred from Central Purchase/H.M.B.P. To Stores/H.M.B.P. As Incharge Stores vide Order dated 23.04.2002, he was placed under

suspension as per rules contained in H.E.C. Employees'' Conduct, disciplinary Appeal Rules, 1981 vide order dated 05.11.2002 of General

Manager/HMBP & Disciplinary Authority. During the period on suspension, he was entitled to draw subsistence allowance as per rules. He was

issued Memorandum of Charges as per the provisions of H.E.C. Employees'' CDA Rules on 28.11.2002. He was also directed to submit written

statements of defence within 10 days of receipt is memorandum of charges.

10. That in reply to paragraphs 7 to 9 of the writ application under reply, the answering respondents deny and dispute the same and further say

and submit that the petitioner, instead of submitting timely reply as per Rules, went on to prolong the case on the pretext of supply of various

documents and papers. The petitioner was already supplied all information and documents particularly the copies of lists as mentioned in memo of

Charges were duly supplied to the petitioner for submitting his reply. It was only the tactics of the petitioner to prolong the case that he repeatedly

demanded papers one after another.

It is further stated that instead of submitting his reply, the petitioner again represented vide his letter dated 09.01.2003 insisting to supply all

certified copy of the documents which was again replied to him vide letter dated 15.01.2003. The petitioner finally replied vide letter dated

27.01.2003. After considering the reply of the petitioner, the Disciplinary Authority was not satisfied with the same and therefore, an enquiry was

initiated against the petitioner.

The petitioner thus, instead of replying within ten days as per the memo of charges, took almost 2Ã¯Â¿Â½ months to file his written reply and inspite of

supply of documents along with memo of charges, made allegation that no documents of time was granted to him is absolutely incorrect.

4. Heard learned counsel appearing for the parties and perused the documents on record.

5. Mr. Sohail Anwar, learned Senior counsel appearing for the petitioner has challenged the impugned orders only on the ground that the impugned

orders are non-speaking orders and these orders do not reflect any application of mind by the authorities. Drawing the attention of the Court to

the, proceeding before the enquiry officer in 48th sitting, it has been pointed out that a copy of the preliminary enquiry report was not given to the

petitioner. The learned Senior counsel has relied on the decision of Hon''ble Supreme Court reported in (i) Nand Kishore Prasad Vs. State of

Bihar and Others,

6. Per contra, Mr. Shresth Gautam, learned counsel appearing for the respondents reiterating the stand taken in the counter-affidavit submits that,

this is not a case which requires interference by this Court The impugned orders have been passed confirming to all the requirements as prescribed

under the law and it cannot be said that these are non-speaking orders.

7. Before adverting to the facts of the case, it would be useful to notice the judgments relied upon by the learned Senior counsel appearing for the

petitioner. In Nand Kishore Prasad Vs. State of Bihar and Others, the Hon''ble Supreme Court has held as under,

24. The desirability of writing a self-contained speaking order in disciplinary proceeding culminating in an order of removal of the delinquent from

service, cannot be over-emphasised. It is true that the impugned orders do not fully measure upto this devoutly desired standard. Nevertheless,

they do contain a bald and general allusion to the primary facts, and a cryptic inference therefrom. There is no specific reference to or discussion of

the evidence. The High Court, therefore, examined the record of the disciplinary tribunal, not with a view to make out or reconstruct a new case,

but only to see whether there was some evidence of the primary facts relied upon by the domestic tribunal in support of its conclusion. We do not

see any impropriety in the course adopted by the High Court.

8. As if would be seen from a discussion in paragraph No. 24 of the said judgment, the Hon''ble Supreme Court has found that though it may be

desirable that an order should be a speaking order, in all the cases it is not necessary to deal with each aspect of the matter specifically.

9. The learned Senior counsel relied on paragraph No. 6 of the judgment of this Court in ""Kameshwar Prasad Vs. State of Jharkhand and Others"",

reported in 2004 (4) JCR, 172, which is as under,

6. Having heard the learned counsel and perused the records, I find that the impugned order (Annexure-24) is laconic, cryptic and non-speaking.

The order in brief states the charges and then that on the basis of the documents and the evidences on record, the charges are proved and the

conclusion is the order of dismissal of the petitioner. I do not find any discussion of the documents or the evidences on the basis of which that

conclusion has been drawn. The said order is without any reason. Similarly, in the order as contained in Annexure-26 also, there is no discussion of

the documents or other evidences and grounds taken in appeal. There is mere conclusion that what has been held by the disciplinary authority is

justified and on that basis, the appeal has been rejected.

10. In the case of ""Kameshwar Prasad Vs. State of Jharkhand and Others"" (supra), a charge of defalcation was levelled against the delinquent

employee and a First Information Report was also lodged on the allegation of defalcation of the amount of Rs. 535,152.00/-. The learned Single

Judge of this Court in the case of ""Kameshwar Prasad Vs. State of Jharkhand and Others"" (supra) interfered with the order of punishment in the

facts of the case and it cannot be said that an absolute proposition of law has been laid down in that case. Moreover, a Constitution Bench of the

Hon"ble Supreme Court in State of Assam and Another Vs. Bimal Kumar Pandit, while dealing with the effect, if dismissing authority does not

expressly say that it has accepted the finding of the enquiring officer against the delinquent officer, has held as under,

7. .....It may be conceded that it is desirable that the dismissing authority should indicate in the second notice its concurrence with the

conclusions of the enquiring officer before it issues the said notice under Article 311(2). But the question which calls for our decision is if the

dismissing authority does not expressly say that it has accepted the findings of the enquiring officer against the delinquent officer, does that

introduce such an infirmity in the proceedings as to make the final order invalid? We are not prepared to answer this question in the affirmative. It

seems to us that it would be plain to the delinquent officer that the issuance of the notice indicating the provisional conclusions of the dismissing

authority as to the punishment that should be imposed on him obviously and clearly implies that the findings recorded against him by the enquiring

officer have been accepted by the dismissing authority; otherwise there would be no sense and no purpose in issuing the notice under Article

311(2).

11. In State of Madras Vs. A.R. Srinivasan, a Constitution Bench of the Hon"ble Supreme Court while, repelling the contention advanced on

behalf of the employee that the State Government"s order compulsorily retiring him from service was bad as it did not give reasons for accepting

the findings of the enquiring tribunal and imposing the penalty of compulsory retirement, held as under,

15. We are not prepared to accept the argument. In dealing with the question as to whether it is obligatory on the State Government to give

reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against

such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public

Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which

is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons

why it accepts the findings of the tribunal. It is conceivable that if the State Government does not accept the findings of the tribunal which may be in

favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the

conclusions of the tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State

Government agrees with the findings of the tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that

the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the tribunal unless it gives reasons

to show why the said findings were accepted by it The proceedings are, no doubt, quasi-judicial, but having regard to the manner in which these

enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

12. In Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, again a similar contention has been answered by the Hon''ble Supreme

Court as thus,

19. In the instant case, the incorrectness of the first limb of the contention is apparent from a bare reading of the aforesaid order passed by the

Deputy Commissioner on May 20, 1969 which clearly states that he agrees with the findings of the enquiring officer Reading the order as a whole,

it becomes crystal clear that the disciplinary authority held the charge drawn up against the appellant as proved.

13. In Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, the Hon''ble Supreme Court has held as under,

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same

must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his

jurisdiction under Rule 37 of the Rules.

14. In view of the aforesaid and on a perusal of the impugned orders, I find that the impugned orders cannot be termed as non-speaking orders.

15. It is also a matter of record, appearing from a document filed by the petitioner himself that the petitioner himself tried to delay the proceeding

and he was warned by the enquiry officer in the proceeding dated 21.10.2003. From the record it appears that the enquiry proceeding continued

for more than 49 occasions and therefore, it is also not open to the petitioner to contend that he was not afforded sufficient opportunity to defend

himself. In view of the aforesaid, this writ petition is dismissed.