

(2013) 03 DEL CK 0198

Delhi High Court

Case No: Writ Petition (C) No's. 7615 of 2008 and 540 of 2012

Shri S.M. Dongarwar

APPELLANT

Vs

PEC Limited

RESPONDENT

Date of Decision: March 19, 2013

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Avneesh Garg, for the Appellant; Baankey Bihari Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

W.P.(C) No.7615/2008

1. This writ petition has become infructuous inasmuch as this writ petition sought quashing of the chargesheet dated 14.7.2006 and the departmental proceedings ensued on that basis, inasmuch as the respondent-corporation has already withdrawn the chargesheet and proceedings on that basis. This writ petition is accordingly disposed of.

W.P.(C) No.540/2012

2. By this writ petition, the petitioner who was an employee of the respondent-corporation, a public sector undertaking, seeks quashing of the chargesheet bearing No. PEC/PERS 2 (117/98) dated 20.6.2011 and the departmental proceedings initiated thereupon.

3. Two basic arguments have been urged on behalf of the petitioner before this Court. The first argument is that issuing of chargesheet dated 20.6.2011 is barred by the general principle of res judicata because with respect to similar charges earlier departmental proceedings were initiated and which resulted in passing of a penalty order against the petitioner. The second argument is that the impugned chargesheet dated 20.6.2011 has been issued by withdrawing an earlier

chargesheet dated 14.7.2006, although there is no power vested in the respondent-corporation to withdraw a chargesheet and issue a fresh chargesheet. The second argument, in fact, is an issue of lack of jurisdiction of the respondent-corporation of issuing a fresh chargesheet.

4. The facts of the case in a nutshell are that the respondent-corporation is engaged in selling of gold TT bars. With respect to gold TT bars, the petitioner was found to have been guilty of various illegal acts and which were the subject matter of the articles of charges dated 24.8.2005. The statement of articles of charges reads as under:-

Statement of Articles of Charges Against Shri S.M. Dongarwar, Marketing Manager

Article of charge-I

While functioning as Marketing Manager at PEC Bangalore, Shri S.M. Dongarwar delivered gold of 900 TT bars on 19th/20 the March, 2003 and 1000 TT bars on 3rd/4th April, 2003 to M/s. Paresh Exports Pvt. Limited, Bangalore without realizing the price of Gold.

Article of Charge-II

Shri S.M. Dongarwar did not present following cheques to the bank for encashment

Cheque No.	Date	Amount (Rs.)	Drawn on
548250	19th March, 03	6.5 crores	Indusind Bank
500003	3rd April, 03	3.0 crores	J & K Bank
500004	3rd April, 03	3.5 crores	J & K Bank

Article of Charge-III

Shri S.M. Dongarwar as head of sub-branch was authorized to operate PEC locker in IDBI Bank, Bangalore where gold is stored. He was required to open the bank locker whenever delivery of gold was to be given to a PEC Associate. But he opened locker on various dates without any corresponding delivery of gold record in stock register.

Article of Charge-IV

Shri S.M. Dongarwar did not keep proper records of FDRs received from M/s. Paresh Exports Pvt. Ltd., Bangalore against which Gold was delivered.

5. The statement of articles of charges is supported by the detailed statement of imputation of charges containing the facts. With regard to this chargesheet, the disciplinary authority passed an order on 3/4.4.2006 imposing the major penalty of reduction in rank of the petitioner from a Marketing Manager to a Deputy Marketing Manager-I.

6. Thereafter, the respondent-corporation issued another chargesheet dated 14.7.2006 against the petitioner containing the following articles of charges:

Statement of Imputation of Misconduct in Support of Articles of Charges Against Shri S.M. Dongarwar, Dy. Marketing Manager

Article of Charge-I

Shri Dongarwar, the then Marketing Manager, PEC, Bangalore was responsible for making delivery order of gold to the associate, M/s. Paresh Exports after completing all the procedural formalities. Shri Dongarwar failed to exercise due care and caution in making deliveries of the gold to the associate with the result that a substantial debit accumulated against the associate, M/s. Paresh Exports. Shri Dongarwar was raising invoices in respect of gold on his own without asking for instructions from head office. These invoices were not marked provisional even by him nor they contained any stipulation with regard to additional debits, if any, accruing on account of rupee dollar rate fixation.

Article of Charge -II

During 2003-04 and 2004-05 there were communications from H.O. to branch office, Bangalore communicating the delivery order rates in respect of the L/Cs. These rates were advised from time to time depending upon the gold rate and the Rupee Dollar rate. Shri Dongarwar failed to follow these rates while making delivery of the gold to M/s. Paresh Exports, Bangalore. For instance, some of the specific cases where delivery order rates issued from Head Office were not followed by him are as follows:-

File No.	LC No.	DO rate/KG (Rs.)	Net Amt. due (Rs.)	Amount of FDRs (Rs.)
PS-6	9237	631944	126388934	115200000
PS-7	9314	635332	63533257	57000000
PS-8	9338	659786	98967837	83200000
PS-9	9345	651181	97677121	92500000
PS-11	9363	672157	134431356	129000000
PS-13	9385	676712	135342408	124000000
PS-14	9060	666278	133255690	123620898
PS-15	9008	666600	133320092	119000000

Article of Charge -III

As per procedure for import of gold the associate was required to fix dolloar rate to determine the rupee liability for the import. Shri Dongarwar should have thus enquired the dolloar rate fixated by the associate from PEC head office and incorporated the same in setting the accounts with the associate. However, Shri Dongarwar failed to enquire the rupee dollar rate from head office while raising invoices on M/s. Paresh Exports which resulted into huge debits against the associate.

Article of Charge -IV

The F.D. Rs. issued by M/s. Paresh Exports, Bangalore, at the time of maturity were sent by head office to PEC, Bangalore for encashment. However, Shri Dongarwar failed to monitor that there were no matching receipts in PEC's account equivalent to the maturity amounts of the FDRs and he did not report this to head office.

Shri Dongarwar thus failed to maintain devotion to duty, acted in a manner prejudicial to the interest of the Corporation and exhibited negligence in the performance of duty violating Rule 4(1) sub rule (ii) and Rule 5 sub rule (5) & sub rule (9) of PEC Employees Conduct, Discipline & Appeal Rules.

7. This statement of articles of charges dated 14.7.2006 was however withdrawn in terms of order of the disciplinary authority dated 20.6.2010 (Sic: 20.6.2011), and thereafter, the following statement of articles of charges was issued against the petitioner:-

Statement of Articles of Charges Against Shri S.M. Dongarwar, Dy. Marketing Manager

Article of Charge -I

Shri S.M. Dongarwar, the then Branch Manager of Bangalore Branch Office of PEC Ltd. did not keep proper records and did not carefully track the realization of the proceeds of the sixteen Fixed Deposit Receipts (FDRs) and thus did not maintain devotion to duty, acted in a manner prejudicial to the interests of PEC and functioned dishonestly and fraudulently. As a result, PEC Ltd. has suffered a huge loss of Rs. 11,22,29,402/- Crores (Rupees eleven crores twenty two lakhs twenty nine thousand four hundred and two only) in the import of gold business with one of the PEC Ltd.'s Associate M/s. Paresh Exports Pvt. Ltd., Residency Road, Bangalore.

Article of Charge -II

The eight (8) Nos. FDRs issued in the name of PEC Ltd. by Federal Bank Ltd., Residency Road, Bangalore bearing No. 098885, 098906, 098907, 098942, 098951,

098918 and 099011 totalling to a principal amount of Rs. 8,10,00,000/- (Rupees eight crores ten lakhs only) submitted by M/s. Paresh Exports Pvt. Ltd. to PEC Ltd. against L/C No. 9363-N/04 were sent back by Head Office, PEC to Shri S.M. Dongarwar, the then Branch Manager of Bangalore Branch Office of PEC Ltd., on 28.1.2005 for submission to Federal Bank for realization of the proceeds of these FDRs. The said Shri S.M. Dongarwar did not keep track of the realization of the proceeds of these FDRs from Federal Bank to PEC. With the result, the said Mr. S.M. Dongarwar allowed Mohd. Parvez of M/s. Paresh Exports Pvt. Ltd. and the Federal Bank to misappropriate an amount of Rs. 5 crores out of the proceeds of these FDRs with the intention to cheat PEC, by issuing three fresh FDRs bearing No. 011932, 011933 and 011935 of Rs. 2 crores, Rs. 2 crores and Rs. 1 crore respectively totaling to Rs. 5 crores all dated 31.1.2005 of Federal Bank Ltd. favouring PEC Ltd. and remitted only Rs. 3,17,58,287/- by way of Demand Drafts out of the proceeds amounting to Rs. 8,17,58,287/- of the said FDRs on 31.1.2005.

Article of Charge -III

Shri S.M. Dongarwar, the then Branch Manager of Bangalore Branch Office of PEC Ltd. in collusion with Mohd. Parvez of M/s. Paresh Exports Pvt. Ltd. vide his letter dated 31.1.2005 misrepresented the facts to PEC, Head Office that he has received the original FDRs No. 099132, 099133 and 099135 with maturity value of Rs. 2,02,65,417/-, Rs. 2,02,65,417/- and Rs. 1,01,39,028/- respectively from M/s. Paresh Exports Pvt. Ltd. in collusion with the said Shri S.M. Dongarwar took delivery of additional gold worth Rs. 5 crores from PEC Ltd. against these FDRs which were issued in favour of PEC Ltd. by Federal Bank Ltd., Residency Road, Bangalore towards realization of the proceeds of the eight FDRs as stated under Article of Charge-II hereinabove and cheated PEC of a sum of Rs. 5 crores (Rupees five crores only).

Article of Charge -IV

Shri S.M. Dongarwar, while working as Branch Manager of Bangalore Branch office of PEC Ltd. issued two discharge letters one in respect of Fixed Deposit Receipts (FDRs) bearing Nos. 099011 and 099012 dated 13.12.2004 for Rs. 4 crores (Rupees four crores only) to the Manager, Federal Bank Ltd. Bangalore stating that we have received FDR amounting to Rs. 4 crores and that "we hereby state that we don't have any claim on the above such FDR in any manner" AND another in respect of Fixed Deposit Receipt (FDR) No. 99132 dated 31.1.2005 for Rs. 2 crores (Rupees two crores only) to the Manager, Federal Bank Ltd., Bangalore stating that we have received FDR amounting to Rs. 4 crores and that "we hereby state that we don't have any claim on the above such FDR in any matter Subsequently, the said Shri Dongarwar in his own handwriting noted down following on the face of the copy of the said respective discharge letter "Seen this document carefully, I confirmed that I had signed this letter and given to M/s. Paresh Export Pvt. Ltd. (Mr. Parvez) undated and without filling the above details about FDR"s";

As a result, the proceeds of the aforesaid FDRs were credited in the Current Bank Account with Federal Bank Ltd. of M/s. Paresh Exports Pvt. Ltd. Hence, the said Mr. S.M. Dongarwar in collusion with Mohd. Parvez, allowed M/s. Paresh Exports Pvt. Ltd. to cheat PEC Ltd. of the proceeds of the said FDRs, amounting to Rs. 6,00,96,000/- (Rupees six crores ninety six thousand only).

Article of Charge -V

Shri S.M. Dongarwar, the then Branch Manager of Bangalore Branch Office of PEC Ltd., did not keep track of realization of the proceeds of the Fixed Deposit Receipts (i) No. 672301 (CC-7775) for Rs. 1 crore having maturity date as 26.3.2005, (ii) No. 67230 (CC-7776) for Rs. 1 crore having maturity date as 26.3.2005 and (iii) No. 672307 (CC-7787) for Rs. 2 crores having maturity date as 30.3.2005 issued by Federal Bank Ltd., Residency Road, Bangalore in the name of PEC Limited and committed fraud with PEC Ltd. in collusion with Mr. K. Rajendran, the then Executive Assistant, PEC, Mohd. Parvez of M/s. Paresh Exports Pvt. Ltd. and the officials of the Federal Bank Ltd., Residency Road, Bangalore. Mr. S.M. Dongarwar thus caused PEC to a loss of Rs. 21,33,402/- and allowed undue and illegal benefit to M/s. Paresh Exports Pvt. Ltd. of the said amount due to PEC towards interest on these FDRs which has been credited to the Bank account of M/s. Paresh Exports Pvt. Ltd. with Federal Bank Ltd., Residency Road, Bangalore. Shri S.M. Dongarwar also got obtained a loan of Rs. 4 crores from Federal Bank Ltd. against these three FDRs to M/s. Paresh Exports Pvt. Ltd. by opening Loan account No. AAD-1497 in the name of PEC Ltd.

By the above acts, Shri S.M. Dongarwar, DMM-1 failed to maintain absolute integrity, devotion to duty, do nothing which is unbecoming of a public servant, acted in a manner prejudicial to the interests of the Corporation, exhibited negligence in the performance of duty and commissioned acts which amount to fraud and dishonesty in connection with the business, a criminal offence involving moral turpitude, an abetment to an act which amounts to misconduct thus violating Rules 4(1)(i), (ii), (iii) Rule 5(1), Rule 5(5), Rule 5(9), Rule 5(17) & Rule 5(30) of PEC Employees' (Conduct, Discipline & Appeal) Rules, 1975.

8. Before I proceed further, one very important fact is required to be noted inasmuch as that because of the illegal actions which are stated by the respondent against the petitioner, the respondent-corporation has suffered a total loss of a huge amount of Rs. 11,22,29,402/-. The loss is caused because gold bars were delivered by the petitioner to one M/s. Paresh Exports Pvt. Ltd., Residency Road, Bangalore against the cheques which were not presented or against FDRs which were not encashed or the FDRs were allowed to be wrongly released causing undue and illegal benefit to the customer. Let us now examine the two arguments which have been urged on behalf of the petitioner before this Court.

9. The first argument is that issuing of statement of articles of charges dated 20.6.2011 is barred by the principle of res judicata as earlier similar statement of articles of charges was issued and which resulted in passing of the penalty order dated 3/4.4.2006 reducing the petitioner from the rank of Marketing Manager to Deputy Marketing Manager-I. I have already reproduced the first statement of articles of charges issued against the petitioner dated 24.8.2005. When we compare this statement of articles of charges to the impugned statement of articles of charges dated 20.6.2011, we find that articles of charges are totally separate. Whereas in the first statement of articles of charges there were limited averments with regard to non-presenting of certain other cheques or not keeping of the record of removal of gold in the stock register as also non-realization of the price with respect to 900 gold TT bars delivered on 19/20.3.2003 and 1000 gold TT bars on 3/4.4.2006 to M/s. Paresh Exports Pvt. Ltd., the subsequent article of charges dated 20.6.2011 pertains to totally separate gold bars and which were not the subject matter of the first statement of articles of charges dated 24.8.2005. Counsel appearing for the respondent confirms the fact that the gold bars which were in issue and the consequent charges as per the first statement of articles of charges dated 24.8.2005 will not be and are not the subject matter of the enquiry which is presently initiated against the petitioner in terms of subsequent statement of articles of charges dated 20.6.2011. Accordingly, in my opinion, there is no ground at all for the petitioner to state that there is identity of articles of charges as per the first statement of articles of charges dated 24.8.2005 and the present article of charges dated 20.6.2011, the subject matters of the two statements of articles of charges being different.

10. The second argument which is urged on behalf of the petitioner is that there is no provision for dropping the earlier statement of articles of charges and issuing a fresh statement of articles of charges inasmuch as the articles of charges dated 14.7.2006 cannot be replaced with the articles of charges dated 20.6.2011. It is argued that before dropping certain articles of charges and issuing fresh articles of charges, it is necessary that there should be appropriate powers in the respondent-corporation as per its rules for dropping of a chargesheet and issuing of a fresh chargesheet/articles of charges. In my opinion, even this argument is wholly without merit because really it is the petitioner who has to prove that there is a bar in the respondent-corporation to withdraw a chargesheet because it is not the law that the respondent cannot issue a fresh chargesheet by actually amending and adding to an earlier chargesheet. Actually, the action of the respondent in some way is equivalent to amending of a plaint containing the cause of action. Since there cannot be a bar upon the departmental authority altering the articles of charges, so that a clear cut chargesheet is thereafter made out, I do not find that petitioner is entitled to complain with regard to altering of article of charges. In fact even de hors the issue of amendment of articles of charges similar to amendment of a plaint there is no bar in law in initiating a new enquiry on new article of charges. The

petitioner will have a right in the departmental proceedings to contest the charges on all issues of facts and law, but the enquiry itself cannot be quashed. The petitioner can complain about altering of articles of charges, if the enquiry proceedings has already been completed and a penalty is proposed to be issued not on the basis of the old articles of charges for which enquiry was held but with respect to new articles of charges with respect to which there are no departmental proceedings, however, if departmental proceedings are still to take place i.e. both the parties have to lead evidence and the enquiry officer has to give a report, there is no prejudice in issuing of a fresh chargesheet once the corporation found that there was additional material or certain facts may have been left out and which were thereafter sought to be added in the new chargesheet dated 20.6.2011. There is no principle of estoppel with respect to articles of charges once the new articles of charges seek to add facts which in any case have yet to be enquired into and findings arrived at before the same can be the basis of an order by the disciplinary authority.

I may note that in this case enquiry proceedings were to be continued but no final order was to be passed as per the order of the learned Single Judge of this Court on 13.8.2012.

11. The aforesaid facts show that petitioner has been allegedly guilty of causing loss of crores of rupees to the respondent-corporation (of course, these are prima facie observations and the merits of the same will be seen during the enquiry proceedings). It is thus not possible to allow the petitioner to scuttle the enquiry proceedings on the basis of lack of articles of charges against him. On the one hand, loss has been caused to the respondent-corporation and on the other hand the corporation is being prevented from carrying out the departmental enquiry against the petitioner, and with respect to which there cannot be any allegation of any bias or non-following of the due process of law, and which is not even so alleged by the petitioner. In view of the above, the writ petition is dismissed with costs of Rs. 15,000/-. Costs can be recovered by the respondent-corporation in accordance with law.