Union of India (UOI) Vs R.C. Kohli

Court: Delhi High Court

Date of Decision: Sept. 19, 2002

Acts Referred: Administrative Tribunals Act, 1985 â€" Section 19
All India Services (Conduct) Rules, 1968 â€" Rule 3(1), 8(2)
Central Civil Services (Pension) Rules, 1972 â€" Rule 9

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: Jyoti Singh, for the Appellant; C. Hari Shankar, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.
An Order dated 28.05.2002 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter for

the sake of brevity referred to as, "the Tribunal") in O.A. No. 1656 of 2002 allowing an application u/s 19 of the Administrative Tribunals Act filed

by the respondent herein, is the subject matter of this writ petition.

2. The basic fact of the matter is not in dispute.

The respondent herein at all material times was the Deputy Director (Civil defense) in the Directorate of Home Guards/ Civil defense. The

Directorate was required to purchase a new EPABX System for which they approached the MTNL for their rates in March, 1990. MTNL in

June, 1990 intimated that 25 line EPABX was available at a cost of Rs. 48,000/-. Allegedly the Department in principle accepted the terms and

conditions of MTNL, but the respondent with a pre-meditated design shelved the proposal of MTNL and even before the composite notice

inviting tenders was issued sought for approval for purchase of a Meltron Equipment worth Rs. 8 lacs from M/s. Guru Sons. The matter was

allegedly investigated by the Anti Corruption Branch where after a prima facie case of financial irregularities in the said purchase causing loss of

over Rs. 3.5 lacs to the Government had bene made out. A regular departmental proceedings was initiated wherein a charge-sheet was issued to

the respondent herein, which is in the following terms:-

That Shri R.C. Kohli, IPC (AGMU : 66), while functioning in the Directorate of General of Home Guards and Civil defense, Delhi during the

period from 16.1.89 to 30.4.93 failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a member of the

Service in a much as he was instrumental in obtaining the approval of the competent authority to the purchase of EPABX System (MELTRON-

1236 and MELTRON-2464) supplied by M/S Guru sons Communications Pvt. Ltd. for installation in the Headquarters and the Civil defense

Control Room of the Directorate General of Home Guards and Civil defense, Delhi notwithstanding the fact that the offer made by the said private

firm for supply of this equipment was costliest amongst the offers received in response to an open advertisement. The purchase of this costlier

equipment was justified on the ground that the equipment offered by the said firm was of a superior technology without either indicating the reasons

because of which it was held that the equipment offered was actually of superior quality or making any technical assessment of the cheaper

equipment offered by other bidders.

Shri R.C. Kohli, the then Deputy Director General (Civil defense) in the Directorate General of Home Guards and Civil defense, Delhi thereby

contravened the provisions of Rule 3(1) of the AIS (Conduct) Rules, 1968.

The requisite documents were also supplied to the respondent herein vide office memorandum dated 23.10.2000. The respondent herein on or

about 29.11.2000 replied to the said charge sheet.

The Ministry of Home Affairs in exercise of its power conferred upon it under Sub-rule (2) of Rule 8 of the All India Service (Discipline and

Appeal) Rules appointed an Inquiry Officer. A Presenting Officer was also appointed. At that stage, the said Original Application was filed.

3. The learned Tribunal in its impugned judgment inter alia arrived at a finding that as the decision to purchase the said equipment had not been

taken by the respondent herein alone and the matter passed hands through several committees and ultimately cleared by the Director General on

the basis of the reports of the Committees, the respondent herein cannot be held to be guilty of the said charges.

It was found that the Meltron is a Government Undertaking and not a private company. It was held that M/s. Guru Sons had made the offer for

supply of the said equipment and the same was considered along with the offers of several other firms. It had further been found that the said

equipment is being used in several important governmental organizations or the institutions. It was held:-

The buyer department will be within its rights to look for the best equipment/system keeping in view its needs and requirements. There is nothing

wrong if during the course of evaluation of competing offers, regard is also had to the reputation enjoyed by a supplier. In the decision making

process, a large number of persons/officers are involved, on the finance side as well as on the technical side. There is nothing to show that the

applicant exercised undue influence on any of the Members of the aforesaid committees and teams to make a recommendation in favor of the

Meltron equipment. In such a situation, it is not possible, in our judgment, to doubt the integrity of the applicant. The prima facie conclusions to the

contrary arrived at by the respondents are, in our view, based on inadequate and improper appreciation of the facts and circumstances of the case,

and inasmuch as no rational person would have, on due application of mind, reached the conclusions about lack of integrity, we are also inclined to

hold that the aforesaid conclusion suffers from the vice of perversity.

4. The learned Tribunal further relying upon a decision of the Apex Court in The State of Madhya Pradesh Vs. Bani Singh and another, , inter alias

observed that there was no reason for initiation of a departmental proceeding after an unusual long delay of over eight years, particularly when such

a delay had not been properly explained.

5. Ms. Jyoti Singh, the learned counsel appearing on behalf of the petitioner, would submit that the respondent herein in his original application did

not question the legality or validity of the said charge on the ground of delay. Had such plea been taken, the learned counsel would contend, the

petitioner could have shown the reasons for issuance of the charge sheet after such a long period. The learned counsel would submit that the

Tribunal, Therefore, went wrong in allowing the respondent herein to raise such a plea. The learned counsel would submit that it was not a fit case

where the learned Tribunal could have exercised its jurisdiction inasmuch as the question as regards merit on the charges could be considered only

in the disciplinary proceedings, but not at that stage. The Tribunal, thus, went wrong, the learned counsel would contend, in entering into the merit

of the matter.

6. Mr. C. Hari Shankar, the learned counsel appearing on behalf of the respondent conceded that the plea of delay had not been raised in the

original application. The learned counsel, however, would submit that the respondent had been proceeded against at a point of time when he was

about to retire.

According to the learned counsel, the respondent was only a member of the technical committee. The matter relating to purchase of EPABX

system, however, was considered by two committees, namely, Technical Assistant Committee and Purchase Committee and ultimately the same

was approved by the Director General and, thus, no case was made out for initiating a departmental proceeding.

According to the learned counsel, as upon a perusal of the records, the Tribunal has come to a conclusion that no allegation of corruption has been

made nor was it a case where the respondent herein had been charged with some ulterior motive, this court may not interfere with the impugned

judgment.

According to the learned counsel, a bare perusal of the judgment of the Tribunal would clearly show that it satisfied itself even if an enquiry is held

against the respondent the respondent would have been exonerated.

7. It is trite that normally the Court and/or Tribunal would nt interfere at a stage of show-cause.

In State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, the Apex Court held:-

9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory

provision calling upon him to show cause, ordinarily the Govt. servant must place him case before the authority concerned by showing cause and

the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority

of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the

Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter

could be taken Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with

the show cause notice.

However, that is not to say that a charge sheet can never be assailed or subjected to judicial review. A charge sheet can be declared as invalid on

any of the following grounds:-

(i) If it is not in conformity with law.

(ii) If it discloses bias or pre-judgment of the guilt of the charged employee.

(iii) There is non-application of mind in issuing the charge-sheet.

(iv) If it does not disclose any misconduct.

(v) If it is vague.

(vi) If it is based on stale allegations.

(vii) If it is issued mala fide.

The case of the respondent herein at best would come within the purview of ground (iv) aforementioned. As noticed hereinbefore, it stands

admitted that issuance of the charge sheet was not questioned on the ground that the same had been based on stale allegations. Although the

question as to whether the charge sheet discloses a misconduct can be a ground for interference, but the same is possible when the charge sheet on

the face of it together with the statement of imputation even if it be given face value and taken to be correct in its entirety, does not disclose a

misconduct.

8. In Dy. Inspector General of Police Vs. K.S. Swaminathan, , the Apex Court held:-

It is settled law by a catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the

charges have been framed, the tribunal or the court would not be justified at that stage to go into whether the charges are true and could be gone

into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the

charge, the statement off facts and the charge-sheet supplied are required to be looked into by the court or the tribunal as to the nature of the

charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged

misconduct. The Tribunal, Therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the

statement of facts do not disclose any misconduct alleged against the charge memo. In similar circumstances, in respect of other persons involved

in the same transactions, this Court in appeals arising out of SLPs (C) Nos. 19453-63 of 1995 had on 9-2-1996 allowed the appeals, set aside

the order passed by the Tribunal and remitted the matter holding that:

This is not the stage at which the truth or otherwise of the charges ought to be looked into. This is the uniform view taken by this Court in such

matters.

9. In Union of India and Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180, the Apex Court clearly laid down the law in the following terms:-

4. Admittedly, the respondent has not yet submitted his reply to the chargesheet and the respondent rushed to the Central Administrative Tribunal

merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent''s application at that

premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned

counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the

points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the

stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the

respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may

be available to the respondent or which may have been raised by him.

It was held that when a charge sheet is issued upon a government employee, he should be given full opportunity to reply to the charge sheet and

raise all points available to him and as such that was not the stage at which the Tribunal should entertain an application filed by a delinquent

government servant. The appropriate course for him to adopt would be to file his reply to the charge sheet and invite the decision of the disciplinary

authority thereon. Prior to that, such an application for quashing of the charge sheet would be pre-mature.

10. Yet again in State of Punjab and Ors. v. Arjit Singh : (1997)11SCC368 , the Apex Court clearly held that the merit of the allegation on which

the charge sheet was based, even though the charges had yet to be proved by evidence to be adduced in a disciplinary proceeding cannot be

allowed.

11. Explanation offered by a delinquent employee is not a subject matter, which the Tribunal can advert to at that stage. When allegations are

based on documents, such a question must be considered by the Inquiry Officer, not by the Tribunal and/or the Court.

12. It is also relevant to note that in Union of India (UOI) and Others Vs. Upendra Singh, , the Apex Court clearly held that the charges framed in

a disciplinary proceeding can be interfered only if no misconduct or the irregularity can be said to have been made out there from or if the charges

framed are contrary to law.

13. The conspectus of decisions referred to hereinbefore leaves no manner of doubt that the scrutiny of administrative action is less intense at the

stage of issuing notice show-cause than at a stage where the proceeding is finally concluded by the disciplinary authority. The validity of a

proceeding at the time of issuance of charge sheet can be challenged on a very limited ground and the correctness or otherwise of the charges

cannot ordinarily be a subject matter of judicial review.

14. We have gone through the charge sheet as also the statement of imputation and we are satisfied that a prima facie case had been made out for

initiation of a disciplinary proceeding.

We are informed that the respondent had retired in the month of June, 2002, in this situation, it would be for the appropriate authority to consider

as to whether the respondent herein could be proceeded against in terms of Rule 9 of the CCS (Pension) Rules or otherwise.

In this view of the matter, the impugned judgment cannot be sustained, which is set aside accordingly. This writ petition is allowed without any

order as to costs.