

(2009) 09 DEL CK 0414

Delhi High Court

Case No: Writ Petition (C) No. 7527 of 2009

Sushil Kumar and Yash Pal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 18, 2009

Acts Referred:

- Fertilizer Corporation of India Employees (Conduct, Discipline and Appeal) Rules, 1972 - Rule 32, 5, 5A, 6(1), 6(2)

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: M.N. Krishnamani, H.U. Chaudhary and Vinay Kumar Tripathi, for the Appellant; J.P. Sharma and G. Joshi, for the Respondent

Judgement

Sunil Gaur, J.

Petitioners-Sushil Kumar and Yash Pal are Deputy Manager (Marketing) and Supervisor (Marketing) respectively with respondent- National Fertilizers Ltd. (hereinafter referred to as the "respondent-Company") and in this petition, they are challenging Memorandums of 1st April, 2008 (Annexures- P-2 & P-3), vide which they have been called upon to submit written statement of their defence regarding the irregularities committed by them during the years 2002-2003 to 2005-2006, while they were working as Incharge and Supervisor respectively in the Area Office, at Moradabad, Uttar Pradesh. Memorandum of 28th August, 2008, (Annexure P-25) vide which Enquiry Officer was appointed and Memorandum of 24th October, 2008 (Annexure P-26), vide which there was a change of Enquiry Officer are also under challenge in this petition. There is a challenge to Order Sheet of 27th February, 2009, (Annexure P-29) of the Enquiry Officer whereby both the petitioners have been given last and final opportunity to appear before the Enquiry Officer on 20th March, 2009.

2. The challenge to the initiation of the departmental proceedings against the petitioners is on the ground that the Articles of Charges on which petitioners have

been called upon to face the departmental proceedings are vague and indefinite, which is in violation of Rule 32 of the National Fertilizers Limited Employees" (Conduct, Discipline and Appeal) Rules, which mandates that the Enquiry has to proceed on definite charges and relied upon documents are to be supplied to the delinquent officials. The grievance of the petitioners is that the action of the respondents in not supplying valid documents is intentional and deliberate. It is also the case of the petitioners that the departmental enquiry is being proceeded with, without supplying of valid documents, despite several reminders, which renders these proceedings to be null and void.

3. The grievance of the petitioners is that persons actually responsible, who were looking after the operation at the Area Office at Moradabad, have been left out and disciplinary proceedings have been initiated against the petitioners at the instance of Sh. K.B. Verma, Chief General Manager (HR) of the respondent- Company. It is also the case of petitioner No. 1 that respondent-Company fails to establish his presence at Moradabad in June, 2005. According to the petitioners, initiation of the departmental proceedings against them smacks of arbitrariness and lacks bona fide and deserves to be quashed.

4. Contesting respondent Nos. 2 to 5 in the counter- affidavit have denied the case of the petitioners and have stated that this writ petition is premature. It has been also denied that the petitioners have been proceeded ex parte. In the rejoinder filed, the stand taken by the petitioners in the writ petition has been reiterated.

5. Counsel for the parties have been heard and material on record has been perused.

6. Though allegations of mala fide have been leveled against Sh. K.B. Verma, Chief General Manager (HR) of the respondent-Company, but it has not been spelt out as to how and why Sh. K.B. Verma is ill-disposed towards the petitioners. Furthermore, Sh. K.B. Verma, has not been made a party in this petition. Thus, indeed it would be premature to entertain the plea of mala fide to scuttle the disciplinary proceedings against the petitioners, which is at its threshold.

7. It has been urged on behalf of the petitioners that basis of the imputation of charges is of the year 2003, whereas the enquiry proceeding has been initiated against the petitioners in the year 2008 and is thus highly belated. The question of delay in initiation of departmental proceedings has been considered by the Apex Court in the case of Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, and the pertinent observations made are as under:

It is not necessary to go into the merits and record any finding on the charge leveled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative

Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time remedied.

8. Tendency to scuttle the departmental proceedings at the threshold has been deprecated by the Apex Court in the above referred case of L. Srinivasan (Supra). Which of the relied upon documents have not been supplied, has not been spelt out. The defence of the delinquent officials is not required to be prejudged before the departmental proceedings actually begin. In any case, complaints regarding the petitioners were received in the year 2006 and after preliminary enquiry only, disciplinary proceedings have been initiated against the petitioners. Nothing more is required to be said at this stage.

9. So far as the vagueness of the "Article of Charges" is concerned, the imputation of "Article of Charges" (Annexure -1) needs to be referred to and it reads as under:

Article-I

Shri Sushil Kumar, Dy. Manager (Marketing), E. No. 6225, while working as Incharge, Area Office, Moradabad, in connivance with Shri Yash Pal, Supervisor (Marketing) SG-II, E. No. 8353 has committed the following irregularities:

- a) Short supply of 130 MT of Urea to M/s Om Prakash Vishnu Kumar, issued vide D.O. No. 16906 dated 5.6.05.
- b) Short supply of 141.90 MT of Urea to M/s Radhesh Kumar and Bros. out of the Urea issued to the party during the year 2002-03 to 2005-06 which came to the notice of the party only in May, 2006.
- c) The Urea was directly sold from Moradabad rake point on behalf of M/s Harmohan Singh Enterprise, Bilaspur to M/s Varshey Trading Company at Moradabad and the false claims for H&T charges towards handling/ transportation of the said Urea from Moradabad to Bilaspur were allowed. In addition, false CSS claims for the said Urea shown in the CSS godown of M/s Harmohan Singh, were also allowed.
- d) Short supply of 32.5 MT of Urea to M/s Goyal Cement Agency out of 160 MT of urea issued from SWC, Moradabad vide D.O. Nos. 15593 dt. 13.8.03 for 60 MT, 16329 dt. 30.09.03 for 50 MT and 16392 dt. 23.12.03 for 50 MT.
- e) Shri Sushil Kumar, thus committed the irregularities by deviating from the laid down procedure with regard to:

- Issuing instructions through letters instead of D.Os to the Manager, UP SWC, Bilaspur to issue of Urea to various parties.
- Failed to ensure the preparation of Rake disposal statements in accordance with the actual dispatches/ supplies.
- Non-issuance of Dos to the concerned parties in time.
- Selling of Urea on the account of one dealer to another dealer without knowledge of former and deposit of payment on their behalf.

f) Accounts of M/s Om Prakash Vishnu Kumar, Agarwal Trading Co., R.A. Trading Co., Raj Trading Co., Radhesh Kumar & Bros, M/s Goyal Cement Agency, S.L. Kohli & Co. and M/s Harmohan Singh could not be reconciled and settled for the years 2002-03 to 2005-06 because of the reason that Delivery Orders and statement of accounts were not given in time to the parties.

Article-II

The Urea which was short supplied to M/S Om Prakash Vishnu Kumar and M/s Radhesh Kumar & Bros. was kept in Lalpur godown at Moradabad, owned by M/s Vishal Hind Transport Co. illegally/ unauthorizedly because the said godown was already de hired by NFL on 30.11.2002. The said godown was used for manipulating the dispatches of Urea to various retailers directly.

Article-III

Shri Sushil Kumar has indulged himself into financial transactions with a party, namely M/s Varshney Trading Company with whom he was having official dealings, by getting favour from them as the party has incurred an expenditure of Rs. 19,950/- on the birthday celebration of his son on 15.6.2000 and also took an amount of Rs. 50,000/- in cash.

Article-IV

Shri Sushil Kumar, being Incharge of Area Office, Moradabad was responsible for wrongly depositing the cheque No. 3984542 dated 13.5.03 for Rs. 3.9 lacs from M/s Raj Trading Co., into the account of M/s R.A. Trading Co. vide CRV No. 19079 through his subordinate, Mrs. Kavita Kapai, even though there was a clear stamp (seal) of M/s Raj Trading Co. on the cheque.

Article-V

Shri Sushil Kumar has committed following irregularities:

- a) An amount of Rs. 6.92 lacs as on 31.3.06 was outstanding against M/s R.A. Trading Co. and after adjusting CSS security of Rs. 1.5 lacs, the outstanding works out to Rs. 5.42 lacs. The amount of Rs. 3.0 lacs of M/s Raj Trading Co. which was wrongly deposited in their account, which was subsequently credited to M/s Raj Trading Co.

Thus the total outstanding works out to approximately Rs. 8.72 lacs approx., after adjustment of security deposit of Rs. 1.5 lac.

b) M/s Agarwal Trading Co. have been issued Urea worth Rs. 5.75 lacs on 30.09.06 while the credit limit of the party was Rs. 2.50 lacs and party had only deposited Rs. 15,000/- on 13.11.06. As such an amount of Rs. 3.12 lacs is outstanding against the party.

Thus, Shri Sushil Kumar, the then Incharge, Area Office, Moradabad by his above acts, failed to maintain absolute integrity, devotion to duty, confirm to and abide by the Rules of the Company, comply with & obey all lawful orders and directions from seniors under whose jurisdiction, superintendence or control he was, in the course of his official duties. He has also failed in his supervisory role to take all possible steps to ensure the integrity and devotion to duty of employees under his control. Shri Sushil Kumar acted dishonestly in a manner unbecoming of a public servant, abused his official position to give undue favour in financial form to dealers, acted in a manner prejudicial to the interest of the Company and attempted to abet an act which amounts to misconduct, thereby violated following Clauses/ Rules of NFL Employees" (CDA) Rules. Rule 5(i) (a), 5(i)(b), 5(i)(c), 5(i)(d), 5(ii),5(A)(ii) and 5(A)(v) Rule 6(1),(2),(5),(6) & (21)

10. To say the least, the aforesaid "Article of Charges" do not appear to be vague or indefinite. The challenge to the contents to the Articles - IV and V. of Annexure-1 relate to the merits of the case, which are not required to be gone into at this stage and to do so, would be premature.

11. In view of the aforesaid, this petition is clearly premature and is hereby dismissed.

12. This petition is disposed of with the observation that anything stated herein shall not be construed as an opinion on merits in the disciplinary enquiry proceedings.

13. No costs.