

(2011) 06 DEL CK 0087

Delhi High Court

Case No: Regular Second Appeal No. 170 of 2002 and CM No. 461 of 2002

Shri Santosh Kumar Panwar

APPELLANT

Vs

New Delhi Municipal
Committee/Council

RESPONDENT

Date of Decision: June 1, 2011

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14, 4

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Vineit Malhotra, for the Appellant; Parag Chaudhary, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 09.09.2002, which has endorsed the finding of the trial Judge dated 11.10.2000 whereby the suit filed by the Plaintiff seeking a declaration to the effect that his termination order passed by the Defendant/New Delhi Municipal Council (NDMC) be declared null and void; he deemed to be in continuous service since 08.09.1981 with consequential relief of arrears of salary had been dismissed.

2. The Plaintiff was working as a junior clerk in the NDMC. On 05.09.1981 a theft was reported in the uniform store of the Department; when the Plaintiff reached the office he found that the window glass had been broken and 81 meters of turban cloth was missing; matter was reported; one Raghubir Singh was sitting outside; his hand was bandaged; said Ragubir Singh lodged a false complaint against the Plaintiff that the Plaintiff had taken bribe money from Raghubir Singh; enquiry was initiated pursuant to which the penalty of dismissal from service had been passed against the Plaintiff. Contention of the Plaintiff is that in the present case chargesheet had also not been filed; CBI had no material to prosecute the Plaintiff;

however a departmental enquiry was recommended against the Plaintiff although there was no material on record. The Enquiry Officer after framing charges had given a finding against the Plaintiff on 09.03.1984; this enquiry had been finalized without giving opportunity to the Plaintiff to defend his case by a lawyer; the enquiry was violative of the rules of natural justice; the order of enquiry officer was affirmed by the Disciplinary Authority and thereafter in appeal; contention of the Plaintiff is that his service was illegally terminated. Present suit was filed.

3. In the written statement it was contended that the Plaintiff has not come to the court with clean hands; it was pointed out that the Plaintiff was caught red handed while accepting a bribe; CBI did not prosecute the Plaintiff but had recommended a departmental enquiry and imposition of a major penalty against the Plaintiff.

4. On the pleadings of the parties, the following six issues were framed by the trial court:

1. Whether the suspension of the Plaintiff from services thereafter, departmental enquiry against him and after department enquiry the termination of the Plaintiff service was illegal, violative of rules and regulations? OPP

2. Whether the Plaintiff is entitled to salary and allowances from 08.09.1981 the date of his termination from services? OPP

3. Whether the Plaintiff is guilty of not coming to the court with clean hands, if so its effect? OPD

4. Whether the suit is bad for non-joinder of the necessary parties.

5. Whether the suit is barred by Rule 4 framed notification No. 282 education, dated 14.01.1976 amendment from time to time.

6. Relief.

5. Oral and documentary evidence was led. Both the fact finding courts have returned a fact finding against the Plaintiff holding that there was no violation of the rules of natural justice while conducting the enquiry. This has been dealt with while dealing with issue No. 1.

6. This is a second appeal. It is yet to be admitted. The substantial questions of law have been embodied on page 2 of the body of appeal.

7. On behalf of the Appellant, it has been urged that the finding of the two courts below is illegal for the reason that time and again the Plaintiff had made a request for the services of a lawyer; presenting officer before the Enquiry Officer was a CBI Inspector and he was well versed and experienced in legal field; Plaintiff not having been permitted to be defended by a lawyer has prejudicially affected his rights; this amounts to a violation of rules of natural justice. Attention has been drawn to Rule 14 of CCS (CCA) Rules, 1965. Reliance has also been placed upon [J.K. Aggarwal Vs.](#)

[Haryana Seeds Development Corporation Ltd. and others,](#) to substantiate this submission. It is pointed out that in this case where the department had been represented by a person who was experienced in the field of law and the services of a lawyer had not been granted to the Defendant; denial of the same had been held to be a violation of rules of natural justice.

8. Arguments have been countered. It is pointed out that this argument of learned Counsel for the Appellant has been dealt with by the two fact finding courts below while dealing with issue No. 1 and does in no manner call for any interference.

9. The impugned judgment in this context had returned the finding as follows:

11. The other contention of the learned Counsel for the Appellant is that the Appellant was denied opportunity to engage or provide counsel by the inquiry officer and therefore the inquiry is vitiated. This contention of the Id. counsel also cannot be accepted. This contention was also raised by the Appellant before the trial court which has been repelled and rightly so because the contention that the prosecuting officer was a person from the CBI is no ground to allow the services of a lawyer to the Appellant. There is no allegation that the prosecuting officer was a lawyer. It is only in case the prosecuting officer is a lawyer that the Appellant could claim right to be represented by a lawyer. A perusal of the record will show that the Appellant has not even requested the inquiry officer for the services of a lawyer. In fact he had written letter to the Administrator for providing him the services of a lawyer. Even in the grounds of the appeal before disciplinary authority this plea was not taken. If the Appellant wanted the services of a lawyer, he could have requested the inquiry officer and not the administrator for providing the same and it was only then for the inquiry officer to consider whether in the circumstances the services of lawyers could be provided or not. As discussed above that there is no assertion either before the inquiry officer or before the appellate authority or before the civil Court that the inquiry officer was requested to provide a lawyer to represent the case of the Appellant and therefore this arguments will not be available to the Appellant. Even if the Appellant had requested the inquiry officer to provide the services of the lawyers, it was a discretion with the inquiry officer to provide the services of lawyer or not and the inquiry officer could not be compelled to provide the services of lawyer. The only thing is to be seen is that he had exercised his discretion reasonable. In similar circumstances, it was held in (1985) SLR 710 (713) and 1985 Ker LJ 194 (DB) that refusal of permission to be represented by a lawyer does not amount to violation of principles of natural justice. In this case also, the domestic inquiry was conducted in which presenting officer was Inspector of Police in CBI. The delinquent had service of a senior officer of the company for his defence. It was held that the inquiry officer was under no obligation to accede to the request of delinquent for engaging a lawyer. Further there is no rule pointed out by the Id. counsel for the Appellant which allows the engagement of a lawyer in departmental inquiry and in the absence of specific Rule requiring permission to be given to a civil

servant to engage counsel to defend him in domestic enquiry refusal to grant such permission will not be a denial of reasonable opportunity. Same view had been taken in [Karuppa Udayar Vs. State of Madras and Others](#), [Bishambar Lal Daya Chand Vs. State of Punjab](#), and [Krishna Chandra Tandon Vs. The Union of India \(UOI\)](#),. Thus the finding of the inquiry officer and the procedure followed by him also cannot be faulted with on this ground also. Thus, I am entirely in agreement with the finding of the trial Judge.

10. This finding in no manner calls for any interference. Admittedly the Enquiry Officer was not a legal man; contention of Appellant was that the presenting officer was an Inspector of the CBI; it is not in dispute that the presenting officer although an Inspector was not a person qualified in law; moreover both the courts below had noted that the request for the service of a lawyer had been made by the Plaintiff to the Administrator and not to the Enquiry Officer; it is also not his case that the services of a lawyer are bound to be given to an employee; it is a discretionary power depending upon the factual matrix of each case; presenting officer not being a legal man and he not being possessed with a legal degree; the judgment relied upon by learned Counsel for the Appellant in J.K. Aggarwal (Supra) does not come to his aid. Appellant even on specific query has not been able to answer the query as to how his client suffered prejudice; all witnesses of the Department had been duly cross-examined.

11. The fact findings arrived at by the two fact finding courts below call for no interference. The law is well settled; a civil Court is not an appellate court; it is not sitting as an appellate tribunal over the findings of the Enquiry Officer. This Court is sitting in second appeal. Its jurisdiction is further curtailed; only when a substantial question of law arises, interference is called for. No such substantial question of law having arisen; appeal as also pending application are dismissed in limine.