

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE MATTER

Judgment delivered on: November 6 ,2006

WRIT PETITION (C) No. 11784/2005

SHRI MASHKOOR AHMAD

..... Petitioner
Through Mr.V.Shekhar, Advocate

- versus -

UNION OF INDIA & OTHERS

.....Respondents
Through Ms.Shobha, Advocate.

Manju Goel, J.

1.Rule.

2.With the consent of the parties this writ petition is taken up for final disposal.

3.The petitioner, erstwhile Chairman-cum-Managing Director of the National Small Industries Corporation Ltd. (hereinafter referred to as `NSIC'), respondent No.3, was served with a charge-sheet dated 16.7.2002 and was eventually punished by forfeiture of 50% of gratuity and recovery of 50% of the leave encashment vide an order dated 5.2.2004. The petitioner is challenging the order dated 5.2.2004 as also the proceeding leading to it.

4.The extracts from the charge sheet will depict the nature of allegations against the petitioner, which reads as under:

“Article-I

That the said Shri Mashkooor Ahmad, while functioning as Chairman-cum-Managing Director, National Small Industries Corporation (NSIC), New Delhi during the year 1995-96 (after taking Charge of CMD, NSIC on 14.09.2005) sanctioned on 15.09.1995 financial assistance/credit facility of Rs.49.92 lakhs in favour of M/s. Sleek Comprint Forms (P) Ltd. (firm) for the purchase of continuous multipart computer forms and MICR under Equipment Leasing Scheme of the NSIC. Shri Ahmad overruled the conditions imposed by the High Power Committee, of which he was one of the Member. The machinery was supplied by M/s. Abcom Engineers, Bombay, an unregistered supplier of the NSIC. Subsequently, a reputed engineer assessed the machinery and opined that such machines would be available at maximum of Rs.22.00 lakhs. The seized machines could fetch around Rs.50,000/-. The machinery was not as per specifications. All the cheques issued by the said firm were dishonoured and all the letters dispatched by NSIC to their officially known addresses were received back undelivered. The said firm later on turned out to be fake and non-existing. By the above act of Shri Mashkooor Ahmad, Chairman-cum-Managing Director, NSIC in sanctioning financial assistance/credit facility in favour of the firm without observing the laid down procedures and guidelines of ELS has shown undue favour to the said firm.

Article-II

That the said Shri Mashkooor Ahmad, while functioning as Chairman-cum-Managing Director, National Small Industries Corporation (NSIC), New Delhi-110020, during the year 1995-96 approved on 28.05.96 the proposal to dispose of the machinery of M/s. Sleek Comprint Forms (P) Ltd. (firm) purchased with the financial assistance/credit facility granted by NSIC. The above act of Shri Ahmad was and (sic) attempt to

destroy the evidence as he himself was involved in the act of irregular sanctioning of financial assistance/credit facility I (sic) firm, which later on turned out to be fake and non-existing one.

Article-III

That the said Shri Mashkooor Ahmad, while functioning as Chairman-cum-Managing Director, National Small Industries Corporation (NSIC), New Delhi during the year 1995 onwards, upon the receipt of the advice of the Indian Audit and Accounts Department (IAAD) dated 29.08.1996 to conduct an in-house investigation at the appropriate level for the non observance of the prescribed procedure/probes, in sanctioning financial assistance/credit facility in faovur of M/s. Sleek Comprint Forms (P) Ltd., resulting in huge loss to NSIC, referred the matter for investigation to Chief Vigilance Officer, NSIC for the first time on 30.01.1997 i.e. after five months.

Article-IV

That the said Shri Mashkooor Ahmad, while functioning as Chairman-cum-Managing Director, National Small Industries Corporation (NSIC), New Delhi during the period 1995 onwards allowed Shri O.P.Sharma, the then Regional Manager, Noida and Shri S.K.Dhamija to retire on 31.10.96 and 31.05.97 respectively and permitted voluntary retirement to Shri H.Chakaravorti, the then Dy. Manager (Accounts) on 15.04.2002 gracefully and thereby let them go scot-free at his own level, as he himself was involved in the act of irregular sanctioning of financial assistance/credit facilities to the M/s. Sleek Comprint Forms (P) Ltd.

Article – V

That the said Shri Mashkooor Ahmad, while functioning as Chairman-cum-Managing Director, National Small Industries Corporation (NSIC), New Delhi-110020 during the period 1995 onwards lodged an FIR only on 11.03.97 with Ghaziabad Police, UP against the Directors of M/s. Sleek Comprint Form (P) Limited and M/s. Abcom Engineers (the private persons only), whereas for the first time when NSIC had become aware in December, 1995 that the whereabouts of the firm were not known and secondly when the Audit observation regarding the irregular sanction of financial assistance/credit facilities to the firm was received on 29.08.96. Even the said FIR was lodged against the private persons only and not against the employees of NSIC, even though it was known that the sanctioning of financial assistance/credit facilities and the release of the payment was in connivance of the employees of NSIC. Thus, there has been deliberate delay in having the matter investigated. Shri Ahmad also deliberately neglected and avoided to launch criminal proceedings against the employees of NSIC.”

5.The petitioner replied to the charges. The disciplinary authority decided to initiate an inquiry. The petitioner participated in the inquiry. The Inquiry Officer submitted his report on 3.10.2002. The petitioner meanwhile retired on 31.8.2002. The Inquiry Officer came to the conclusion that except Charge II, all other charges were proved.

6.The Charge No.I was by far the most serious charge. The Inquiry Officer found that the High Power Committee (‘HPC’ in short) which included the petitioner had cleared the packages for the firm(M/s Sleek Comprint Forms(P) Limited) after putting six conditions but the then Regional Manager put up the note for approval mentioning only three conditions and the charged officer-petitioner who was a member of of the HPC and had taken over as the CMD only on the day before approved the proposal of the Regional Manager rather than asking the Regional Manager to mention all the six conditions. The Inquiry Officer observed that instead of 25% of the amount of assistance as FD only 20% was deposited. Further a relatively unknown supplier was accepted without any verification of credentials. Further the machinery was purchased for Rs.48 lacs without quotation. The Inquiry Officer concluded that the proposal was approved in haste and the order/payment etc. released on the very same day and which shows undue favour to the said firm. On Charge No.III, the Inquiry Officer found that although the Indian Audit and Accounts Department had advised the Chairman-cum-Managing Director (petitioner) on 29.8.96 to conduct an in-house investigation into the non-observance of the prescribed procedures resulting into huge loss to NSIC, the petitioner ordered investigation only on 30.1.97. On Charge No.IV, the Inquiry Officer found that the petitioner re-employed Shri O.P.Sharma after his retirement although it was Shri Sharma who had recommended that the supplier be accepted without verification. Further, the Inquiry Officer found that Mr.Dhamija who was responsible for unauthorised balance payment of Rs.4.99 lacs on 30.1.1996 inspite of knowing the facts in respect of the firm by then, was allowed to retire on 31.5.1997 with all terminal

benefits. Mr.H.Chakaravorti, the then Deputy Manager (Accounts) had concurred in the supply order and had agreed to release 90% payment without verification. The Inquiry Officer found that Mr.Chakaravorti was given a promotion to the post of Joint Manager and was thereafter relieved on VRS on 15.4.2002. The Inquiry Officer concluded that the petitioner had to share the blame of not taking proper action against the concerned officers and instead had given them promotion, VRS etc. On charge No. V the Inquiry Officer observed that balance payment was released to the firm on 30.1.1996 even after it was known that the firm had committed fraud on NSIC and that the FIR was lodged with Ghaziabad Police only on 11.3.1997. Further, the FIR named only the private parties and not the officers of NSIC involved. The Inquiry Officer concluded that the Chairman-cum-Managing Director could not absolve himself of the responsibility of not taking proper action at the proper time.

7.The Disciplinary Authority agreed with the findings of the Inquiry Officer on Articles I, III, IV and V and also held the Charge No.II to have been proved. On notice of show cause being issued to the petitioner, he filed a reply. The Disciplinary Authority after considering the report and the reply/objections of the petitioner came to the conclusion that the petitioner was directly responsible for loss of over Rs.49.92 lacs to the NSIC by acting in the manner as mentioned in the charges viz. that he had sanctioned the credit facilities without observing the procedure and guidelines laid down and had shown favour to the said firm and had further proceeded to destroy the evidence and had allowed the guilty officers to go scot free. The Disciplinary Authority viz. the President then passed the impugned order of punishment of recovery of 50% of leave encashment and forfeiture of 50% of the amount of gratuity due. The relevant part of the order is as under:-

“The President is of the view that ends of justice would be met if the penalty of recovery of 50% of Leave Encashment and forfeiture of 50% of the amount of Leave Encashment and forfeiture of 50% of the amount of gratuity due/admissible to Shri Ahmad, is imposed on Shri Mashkoor Ahmad, as laid down under Rule 39(3) of the Central Civil Services(Leave) Rules, 1972, as followed by NSIC, and Rule 5(x) of National Small Industries Corporation Limited (Control and Appeal) Rules, 1968 read with Sub-Section (6) of Section 4 of the Payment of Gratuity Act respectively.

ACCORDINGLY, the President in exercise of powers conferred under Rule 39(3) of the Central Civil Services (Leave) Rules, 1972, and Rule 5(x) of National Small Industries Corporation Limited(Control and Appeal) Rules, 1968 read with Sub-Section (6) of Section 4 of the Payment of Gratuity Act hereby orders imposition of above said penalty on Shri Mashkoor Ahmad, Chairman-cum-Managing Director(Retd.), National Small Industries Corporation Limited.

A copy of this order may be added to the Confidential Rolls of Shri Mashkoor Ahmad, Chairman-cum-Managing Director(Rtd.), National Small Industries Corporation Limited.”

8.The petitioner has drawn up a long list of grounds on which he challenges the inquiry proceedings and the punishment. In ground A he says that the Disciplinary Authority has imposed the penalty without application of mind. In ground B he says as he was exonerated of charge II, he should have been exonerated in respect of other charges also. In ground C he says that there is no material before the Disciplinary Authority to hold the petitioner guilty of charge No.II. In grounds listed as grounds D to P, the petitioner pleads his case on merit and challenges the finding of Inquiry Officer on merit. The ground at serial number R says that there was no evidence against the petitioner. The petitioner then says at ground S that he went by the notes and advices put up before him by the subordinates and ditto their opinion and, therefore, had no guilty intent. He concludes by ground T saying that the findings of Inquiry Officer are perverse.

9.From the above narration of facts, it is clear that there was no omission in following the procedure of domestic disciplinary inquiry. Nor was there any violation of the principles of natural justice. The petitioner does not claim that any part of the inquiry was vitiated for any reason whatsoever. This Court cannot enter into the merits of the charges framed against the petitioner. The scope of this writ petition goes only so far as an examination in the process of the inquiry and decision making can go. In B.C.Chaturvedi vs. Union of India and Others (1995) 6 Supreme Court Cases 749, the Supreme Court categorically laid down that the scope of judicial review relate only to the decision making process and where the findings of the disciplinary authority are based on some evidence the Court or the Tribunal cannot re-appreciate the evidence to substitute its finding. This opinion has been repeatedly followed by the Supreme Court. The cases in which the judgment of B.C.Chaturvedi (Supra) has been reiterated is that of Lalit Popli vs. Canara

Bank and Others (2003) 3 Supreme Court Cases 583 and Principal Secretary, Govt. of A.P. and Another vs. M. Adinarayana (2004) 12 Supreme Court Cases 579. The petitioner's objection to the finding of the Inquiry Officer's report so far as they relate to the merit need not to be considered by this court. This court is not an appellate authority over the Inquiry Officer. Therefore, this court can only examine whether the procedure adopted violated the principles of natural justice and caused any prejudice to the petitioner. Coming to the ground of absence of application of mind by the disciplinary authority the order itself has to be examined. The order dated 5.2.2004 briefly recalls the proceedings commencing from the service of articles of charge on the petitioner till the report of the inquiry. It then says that the representation of the petitioner dated 17.12.2002 was considered and a personal hearing was given to the petitioner. The disciplinary authority then says that on the basis of the observation of the Inquiry Officer together with the advice of the Central Vigilance Commission, the disciplinary authority has come to the conclusion that the Articles I, II, IV & v were proved and Article III was not proved. It then went on to say that the petitioner was found to have been directly responsible for loss of Rs.49.92 lakhs to the NSIC on account of sanction of facilities to the said firm to whom the petitioner had shown favour. It further narrates that it was the petitioner who approved the proposal to dispose of the machinery in order to destroy the evidence and also allowed the other key officials to retire or take voluntary retirement. The Disciplinary Authority further observed that the petitioner delayed the filing of the FIR in connivance with others in the deal and that these acts are inconsistent and incompatible with the due discharge of his duties. The President then proceeded to impose the penalty which has been extracted in the earlier part of the judgment.

10. Before the order of punishment was passed the petitioner was duly provided with a statement indicating the reasons for disagreement of the Disciplinary Authority with the finding of the Inquiry Officer. This is a detailed statement going into the evidence produced before the Inquiry Officer in respect of each charge. There is no dispute that the petitioner had received a copy of this statement for agreeing or differing with the report of the Inquiry Officer. The petitioner was duly granted time to file written submissions against this statement showing the reasons for agreement/ disagreement with the report of the Inquiry Officer. It is thus clear that sufficient application of mind was there by the Disciplinary Authority at the time of imposition of penalty. The plea that the petitioner while being discharged on charge II should also have been discharged of other charges is, in fact, a question regarding the merits of the case. The sufficient application of mind and the observance of rules of natural justice can only be subject matter of scrutiny of this court. Therefore, the ground for challenge that on charge No. II being dropped all the charges should have been dropped or that the petitioner was not guilty of charge No. II are also not the function of this Court to examine.

11. The petitioner's further case is that there was no evidence before the Inquiry Officer from which the Inquiry Officer could have arrived at the findings and, therefore, his report is perverse. There is no force in this submission inasmuch as the evidence required was entirely documentary. The petitioner himself has not denied the allegations of the events, namely, the petitioner's sanction for the facilities to the said firm only on three conditions instead of six and also the subsequent events of accepting a supplier without verification, sale of the machinery and the failure of the concerned firm to pay. The petitioner has also not disputed that there was delay in lodging the FIR and that the other officials who were involved in the sanction were also allowed to retire or take voluntary retirement without getting any punishment. The petitioner rather has attempted to justify all his actions and has attempted to explain the sanction of the package, non-fulfillment of the conditions as well as the delay in lodging the FIR, etc. Thus it is not a case of no evidence.

12. Finally the petitioner says that it was not the petitioner's own decision but the decisions were taken on the note put up before him by the subordinate staff and he may have dittoed. I do not see any strength in this ground since it was the petitioner who was the ultimate decision maker. He cannot avoid his responsibility by saying that he only dittoed the suggestions made by the subordinate officers/officials.

13. Finally the petitioner challenged the punishment order on a technical ground that the NSIC (Control & Appeal) Rules, 1968 did not provide for the penalty imposed inasmuch as the gratuity could be forfeited only when the punishment of termination from service was being awarded and not independently of such a punishment.

14.The relevant provisions of the NSIC (Control and Appeal) Rules, 1968 applicable to the petitioner are those available in Rule 5(x) which are as under:

“Rule 5 (x)

During the pendency of the disciplinary proceedings, the disciplinary authority, may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in a disciplinary proceedings or judicial proceeding to have been guilty of offences/misconduct as mentioned in sub-section(6) of section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the Company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated.”

15.Section 4 Sub-section 6 of The Payment of Gratuity Act, 1972 (' Act' for short) prescribes as under:-

“Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused:

(b) the gratuity payable to an employee may be wholly or partially forfeited

(i)if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, of

(ii)if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

Thus there are ample provisions for forfeiture of gratuity.

16.However, quoting the provision of the Act, it is submitted that gratuities can be forfeited only when an employee is terminated from service on account of his misconduct either covered by clause (a) or clause (b) of Sub-section 6 of Section 4 of the Act.

17.In the present case, the petitioner had already superannuated on 31st August, 2002. He did not suffer an order of termination of his service on account of the misconduct now proved against him. It is, thus, submitted that this order of forfeiture of gratuity is bad. The petitioner had already retired when the punishment order was made and, therefore, it was not necessary to pass further order terminating his service. It is true that an order technically/formally terminating petitioner's service with effect from the date of his retirement could be passed. But such an order would not have benefitted the petitioner in any way and might have deprived him of other benefits of the long service rendered by him with the respondent No.3. It has to be remembered that in view of the financial loss of crores of rupees suffered by the respondent No.3 on account of the 'misplaced generosity' of the petitioner, the respondent No.3 might as well have terminated the services of the petitioner. It cannot be said that the order of withholding of gratuity in the present case is bad because the petitioner had already retired by then and this order did not come along with an order terminating his service from the respondent No.3.

18.In view of the above, I see no reason why the impugned order should be interfered with. The writ petition is dismissed with costs.

Sd/-
(MANJU GOEL)
JUDGE