

M.V. Bijlani vs Union Of India & Ors on 5 April, 2006

Author: S.B. Sinha

Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:

Appeal (civil) 8267 of 2004

PETITIONER:

M.V. Bijlani

RESPONDENT:

Union of India & Ors

DATE OF JUDGMENT: 05/04/2006

BENCH:

S.B. Sinha & P.P. Naolekar

JUDGMENT:

J U D G M E N T S.B. Sinha, J.

The Appellant was working as a Junior Engineer at Jagadapur in the year 1969-1970. He allegedly failed and/ or neglected to maintain a register known as ACE-8 Register. After he had handed over charge to his successor Shri K.C. Sariya, on or about 11.04.1975, a disciplinary proceeding was initiated against him on the following charges:

"(i) he had failed to maintain ACE-8 Register showing acquisition and utilisation of 4000 Kgs. of telegraph copper wire received from SDOT, Raipur, through Sub-Inspector, Kashiram and Badul Quadir on 22.10.1969, 30.10.1969 and

2.12.1969 for utilisation on Geedam-Bairagarh truck line against estimate No. 2162 duly approved;

(ii) that he had failed to supervise the working of the line and utilisation of copper wire while the rules require the personnel supervision and accountability of the said wire; and

(iii) that he also showed misleading entries on the bills of transportation for transportation of the material."

The disciplinary proceedings remained pending for a period of seven years. A report was submitted by the Enquiry Officer only in the year 1982. In the disciplinary proceeding, the first two charges were held to have been proved against the Appellant but the third charge was not proved. He was directed to be removed from service by the Disciplinary Authority by an order dated 21.12.1983. An appeal preferred thereagainst came to be dismissed by the appellate authority by an order dated

21.2.1991 i.e. after a period of seven years holding:

"The ACE-8 sheets were still not available in estimate files of 2160 D(a) and 2161 D(a) 69-70. If the statement of Shri Bijlani is taken to be correct that ACE-8 were prepared and kept in respective estimate files and were made over to Shri Sariya, then it should not have been necessary for Shri Bijlani to prepare ACE-8 again on 25.12.73. He could have mentioned that numerical account of 150 lbs copper wire can be made from ACE-8 slips kept in the respective estimate files. The statement of Shri Bijlani that he prepared ACE-8 of 150 lbs copper wire on 25.12.73 on the basis of limited records shown to him is also not acceptable. He could have demanded access to all the records for preparing numerical account of 150 lbs/ mile copper wire. The E.O. has therefore rightly recorded wire 150 lbs/ mile in ACE-8 (DOC.I). 150 mile copper wire was issued to east Jagdalpur on 22.10.69 (2204 lbs) 30.10.69 (2218 lbs) and 02.12.1989 (4398 lbs) by 20.10.1969 (2218 lbs/mile) copper wire received 8820 lbs. Of 150 lbs/ mile copper wire but he did not keep its numerical account in ACE-8 and could not prove its utilization property."

The appellate authority went into question of maintenance of muster roll and the diaries maintained on day to day basis although that was not the subject matter of charge. On the said basis, it was held:

"Thus the charge of failure to maintain ACE-8 and his failure to supervise the work of SIT and utilisation of copper wire is proved."

Attention of the appellate authority was also drawn towards a number of lapses committed by the Enquiry Officer, but it was opined:

"Opportunity was available to Shri Bijlani to point out all these in the defence brief, but he failed to submit the defence brief even upto 15.05.1983 although he himself requested the E.O. to permit him to file defence brief by 15.02.1983. Shri Bijlani also failed to point out the lapses being made in the Inquiry to the Disciplinary Authority."

The Appellant filed an original application before the Central Administrative Tribunal which was marked as O.A. No.200 of 1992 questioning the correctness of the orders passed by the disciplinary authority as well as the appellate authority. The said original application was dismissed by the Tribunal by an order dated 24.06.1999.

The Tribunal as regard the delay in conclusion of the proceedings held that charges were framed on the basis of the findings of the CBI (Anti Corruption Bureau) and, thus, the delay stands explained.

The Tribunal furthermore considered only the question as regard quantum of sentence. It did not go into other contentions raised on behalf of the Appellant.

A writ petition was filed thereagainst by the Appellant herein. A contention was raised before the High Court that the findings of the disciplinary authority are perverse.

Before the High Court, a contention was raised on behalf of the Respondents that it was a case where there had been misutilisation of substantial quantity of copper wire and not a case of lack of minor supervision. The High Court reproduced the following findings of the Enquiry Officer:

"The prosecution has verified through documents and witness that the above quantity of wire was certified as having been received by Shri M.V. Bijlani. In this context Bill No. A26, A27 dt. 11.11.1969 of Sriqarage Raipur (DOC-11) issue letter of store lineman Raipur dt. 30.10.1969 for 1000 Kgs. Of 150 lbs/ mile copper wire (sent through SIT Garage along with issue letter of store lineman dt. 02.12.1969 for 4398 lbs of Copper wire 150 lbs/ miles (Sent through SIT Kashiram in truck No. MPR 2700) and bill No. A-22 and 23 dt. 22.10.1969 of Shri Garage along with issue list of 100 kgs. of copper wire 150 lbs/ mile (Sent through, SIT, Kashiram in Truck No. MPR 2607), were produced in evidence on which Shri M.V. Bijlani has certified to have received the goods in good conditions. None of the vouchers show that goods were received for estimate No. 2161 D(a). It is thus only established that about 4000 kgs. of copper wire 150 lbs/ mile was received by EST Jagdalpur during the period October-December, 1969. These are not accounted for in ACE-8 of EST, Jagdalpur (Documents I).

Muster roll and work diaries of M/s. Kashiram SIT M/R No. 463/11539 (Sept. 69) No. 463/11532 (Sept. 69) MR 463/11547 (Oct. 69) MR 464/11556 (Nov. 69) M/s. Abdul Sattar SIT. MR 463/11537 (Sept. 69) MR 463/11459 (Oct. 69) MR 464/11557 (Nov. 69) and M/s. Daya Shankar Singh MR 463/11533 (Sept. 69) MR 463/11546 (Oct. 69) MR 464/11558 (Nov. 69) Dec. 69 and January, February, March, 1970, SIT. Abdul Sattar Diaries of September, October, November, December, 69 and January, February, March 1970 (vide document No. 216/D(A) viz. erection of 150 lbs/ mile work has been done on these muster rolls and diaries."

On the basis of the aforementioned findings of the Enquiry Officer, the High Court opined that there had been dereliction of duty which penetrates into the arena of misutilisation. The High Court rejected the contention of the Appellant that there had been a theft of copper wire, again relying upon the report of the Enquiry Officer.

The High Court, however, noticed that the Tribunal had not delved deep into the matter.

Mr. Kailash Vasudev, learned senior counsel appearing on behalf of the Appellant, has taken us through the report of the Enquiry Officer and submitted that on reading thereof in its entirety, it would appear that the Enquiry Officer misdirected himself in arriving at the finding of guilt against the Appellant without considering the nature of the charges levelled against the Appellant.

Mr. N.K. Verma, learned counsel appearing on behalf of the Respondents, however, supported the impugned judgment. It was pointed out that the witnesses examined on behalf of the department stated that ACE-8 register was not being maintained in a register and kept in loose sheet and kept in the estimate files separately. It was furthermore submitted that the Appellant had not been able to

prove theft of copper wire and as the allegation against the Appellant was that the copper wire 'amounting to 24 miles single wire' were missing and the entire onus was on him to prove the utilisation thereof.

From a perusal of the Enquiry Report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The Appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kgs. of telegraph copper wire or misutilization thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti Corruption Bureau). It was, therefore, expected that definite charges of misutilization/misappropriation of copper wire by the Appellant would have been framed. The Appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.

It will bear repetition to state that the charges which were framed related to only non-maintenance of ACE-8 Register and non-supervision of working of the line. In absence of any charge that he had in fact misappropriated copper wire for his own benefit out of the disposal thereof, the question as regard purported misconduct by way of misutilisation of 4000 kg. of copper wire could not have been gone into. Furthermore, it has not been shown that ACE-8 register was required to be maintained in an appropriate form or in a particular manner i.e. in bound form or in loose sheets.

So far as the second charge is concerned, it has not been shown as to what were the duties of the Appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the appellate authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the Appellant. The appellate authority in its order stated that the Appellant was not required to prepare the ACE-8 Register twice. The Appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer.

In *State of Madhya Pradesh v. Bani Singh & Anr.* [(1990) Supp. SCC 738], this Court has clearly held:

" The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the

officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

The appellate authority totally ignored the evidences adduced before the disciplinary authority and in particular the evidence of Shri K.C. Sariya in favour of the Appellant in this behalf. The appellate authority was required to apply its mind on the materials placed on records. It failed to take into consideration that the disciplinary authority purported to have relied upon the police report which was not proved.

It is really a matter of great surprise that a disciplinary proceeding was initiated five years after the Appellant handed over charge. At that time he was admittedly not having possession of any documents. The Enquiry Officer furthermore took a period of seven years to complete the enquiry. The appellate authority also took seven years in disposing the appeal. Even then, the appellate authority did not go into the question as to whether the procedures laid down for holding the disciplinary proceedings had been followed or not. He did not go into the contentions of the Appellant herein minutely. The memo of appeal filed before the Appellant was very elaborate. He raised a number of contentions therein. The Enquiry Officer was charged with bias. He was also charged with unfair conduct. He was said to have committed a large number of irregularities in the departmental proceeding. The memo of appeal of the Appellant was in about 65 typed pages. It was sub-divided into five parts. He made all endeavours to deal with each and every findings of the Enquiry Officer and dealt with almost all the documents relied upon by the department. He also dealt with the deposition of the witness examined on behalf of the parties.

The Enquiry Officer proceeded as if in the departmental proceedings the Appellant was charged with misappropriation of property. The witnesses not only spoke of theft of copper wire, but also stated about the existence of muster roll diaries. According to one Daya Shankar, the work shown in the diaries were correct. According to him, apart from erection of 300 lbs iron wire in section Geedam - Bijapur, 150 lbs was erected in entire section. He stated that broken pieces of wire found were sent to Jagdalpur through SIT diary. According to him, the work of erecting copper wire started from 5.11.1969 and continued upto March, 1970. One Shri R.C. Sariya who was the successor of the Appellant stated about the maintenance of the muster rolls and the ACE-8 register. According to him, stores pertaining to estimate were accounted for and the ACE-8 sheets attached to estimate file. He further stated that ACE-8 sheets were in the estimate file. One Shri K.D. Shrivastava had stated that there was report of copper wire theft by one Shri Kashiram.

While making the enquiry as against the Appellant, the Enquiry Officer made adverse comments about the correctness or otherwise of the statements made by the witnesses examined on behalf of the department without assigning any reasons therefor. They were examined by the department. If they deposed falsely, they should have been cross-examined. Only because their evidence was totally against the department, the same per se would not mean that they deposed falsely. The Enquiry

Officer opined:

"He did not maintain ACE-8 as if the ACE-8 were maintained there was no necessity of preparing document No. 1 viz. numerical account of EST Jagdalpur prepared by Shri M.V. Bijlani, JET Jagdalpur, on 25.12.1973. If there was any ACE-8 prepared earlier by Shri Bijlani, he would have definitely objected to submit another ACE-8 (DOC-1) which is alleged to have been prepared on the basis of document shown to him by JE (Vigilance). According to SDOT Raipur, ACE-8 (document 20) issue of copper wire 150 lbs/mile to EST Jagdalpur had been mentioned on 22.10.1969, 30.10.1969 and 02.12.1969 as 2204 lbs., 2218 lbs and 4398 lbs respectively. There are no entries of the above quantity of wire in ACE-8 (DOC-1) of EST Jagdalpur."

The said finding of the Enquiry Officer itself demonstrates that ACE- 8 sheets were being maintained and the quantity of copper wire mentioned therein existed 4000 lbs. He had furthermore noticed the muster rolls, work diaries and work orders of M/s. Kashiram. The ultimate finding of the Enquiry Officer was:

" As such there is nothing to establish that copper wires 4000 kg taken for copper wire theft replacement was utilised for erection on theft spots. Even if 175 spans are taken as erected out of 4000 kg of copper wire is not accounted for. In the requisition slip (DOC)-6 1000 kg of copper wire was issued by store linemen on 20.10.69 to SIT, Kashiram (purpose no mentioned) 4398 lbs/ 2000 kg) of copper wire was issued for shifting work Tumar river to Mari river) vide DOC-8) through SIT, Kashiram. 1000 kg of copper wire 150 lbs/mile was issued vide DOC 10 to SIT Abdul Quadir for transportation to Bijapur on 30.10.69. As such based on police report work orders and diaries produced in evidence there appears to be no case of copper wire theft and if any wire was received for the work has not been accounted for. Thus, if there was a copper wire theft and supervision effected properly. All the facts that remain unexplained would have been taken care of. Defence has also not come out with details of receipt utilisation and theft report in their defence statement and has also avoided to submit written brief to prove his innocence."

Evidently, the evidences recorded by the Enquiry Officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

Mr. Verma, when questioned, submitted that the Appellant might have utilised the same on unsanctioned works. If that be so, a specific charge to that effect should have been framed.

It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge.

Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

The report of the Enquiry Officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the appellate authority which are based on the said Enquiry Report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the Appellant. The Tribunal also, thus, failed to discharge its functions properly.

For the views we have taken, the impugned judgments are wholly unsustainable.

The appeal is, therefore, allowed. The consequence of the said order would have been to remit the matter back to the disciplinary authority. We, however, do not intend to do so as the charges relate to the year 1969-1970. The Appellant, due to pendency of these proceedings, has suffered a lot. He is, therefore, directed to be reinstated in service, if he has not reached the age of superannuation. However, keeping in view the fact that, he has not worked for a long time, we direct that he may only be paid 50% of the back wages. He is also entitled to costs of this appeal. Counsel's fee assessed at Rs.5000/-.

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