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LPA-1549-2024 (O&M)

Date of decision: 11.07.2024

HARYANA SCHEDULED CASTES FINANCE AND DEVELOPMENT CORPORATION

...Appellant

VERSUS

AK SRIVASTAVA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Deepak Balyan, Advocate

for the appellant.

DEEPAK SIBAL, J.(ORAL)

- 1. The present intra-court appeal is directed against the judgment dated 01.02.2024 passed by a learned Single Judge of this Court allowing respondent No.1's writ petition through which he had challenged the order dismissing him from service. Also under challenge was the order rejecting his appeal filed by him against the order of his dismissal.
- 2. A few essential facts may be noticed.
- On 16.01.1986 respondent No.1 was appointed as a Project Officer in the Haryana Harijan Kalyan Nigam which is now known as the Haryana Scheduled Castes Finance and Development Corporation (for short the Corporation). In the year 1991 respondent No.1 was placed

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under suspension. He was then served a chargesheet through which 07 charges were levelled against him. A regular departmental enquiry ensued on the completion of which the Enquiry Officer submitted his enquiry report dated 11.03.1993 through which qua most of the charges respondent No.1 was not found solely responsible. Only 02 of the charges were proved against him. The enquiry report was duly forwarded to respondent No.1's disciplinary authority but for about 03 years no action was taken thereupon. On 22.02.1996, the Enquiry Officer submitted another report which contained substantial changes when compared to the earlier report dated 11.03.1993. Respondent No.1's disciplinary authority, after referring to the second report submitted by the Enquiry Officer, ordered respondent No.1's dismissal from service. Recovery of an amount of Rs.6,04,919/- was also ordered. Respondent No.1 appealed against his dismissal and the order of recovery before the Board of Directors of the appellant-Corporation on the dismissal of which he approached this Court through CWP No.3240 of 1998 - A.K. Srivastva Vs. State of Haryana and others which petition of his was disposed of vide order dated 17.08.1998. This Court set aside the order of the appellate authority with liberty to the said authority to pass a fresh order after grating opportunity of hearing to respondent No.1. In compliance with the order of this Court, the appellate authority granted opportunity of hearing to respondent No.1 and then passed a fresh order reiterating its earlier decision.

4. Respondent No.1 again knocked the doors of this Court through CWP-10143 of 2000 - A.K. *Srivastva Vs. State of Haryana and others* which petition was also disposed of by this Court on 08.05.2015. This time both the orders passed by the appellate authority as also the



disciplinary authority were set aside as this Court found that both of these orders had been passed without application of mind. The matter was remitted to the disciplinary authority to pass a fresh order, in accordance with law. In terms of the order passed by this Court, respondent No.1's disciplinary authority reconsidered the matter but the result remained the same as earlier as such reconsideration also ended with the passing of the order dismissing respondent No.1 from service as also for recovering an amount of Rs.6,04,919/- from him. This order then became the subject matter of challenge in the third round of litigation initiated at respondent No.1's behest. Such challenge was accepted by a learned Single Judge of this Court. The learned Single Judge concluded that respondent No.1's dismissal was illegal primarily on the ground that the same was based on a second enquiry report dated 22.02.1996 the submission of which was unheard of in service jurisprudence and because before making of which, respondent No.1 had neither been issued any notice nor granted any opportunity of hearing. The learned Single Judge further supported his decision on account of respondent No.1's acquittal in the criminal proceedings which had been lodged against him on the same set of facts as the disciplinary proceedings.

5. The prayer made on behalf of the appellant to grant liberty to the appellant to commence proceedings from the stage from which the procedure had been found by the learned Single Judge to be illegal was also rejected by the learned Single Judge on the ground that the proceedings in question were being litigated by respondent No.1 for more than 27 years and because respondent No.1 on the date of passing of the impugned judgment, was more than 75 years of age.



- 6. Learned counsel for the appellant assails the impugned judgment on a solitary ground which is that the learned Single Judge erred by considering the second report by the Enquiry Officer as the second enquiry report as through such report only additional information had been provided by the Enquiry Officer for consideration of respondent No.1's disciplinary authority and that such additional information could always be supplied by the Enquiry Officer which could also be considered by the disciplinary authority.
- 7. The afore sole contention raised on behalf of the appellant is required to be considered only to be rejected.
- 8. Through chargesheet dated 13.01.1992, 07 charges were levelled against respondent No.1 to which he filed a reply. The appellant did not find respondent No.1's reply to be satisfactory. Accordingly, a regular departmental enquiry ensued. What followed was is the submission of an enquiry report dated 11.03.1993 by the Enquiry Officer to respondent No.1's disciplinary authority. As per the said enquiry report qua 02 charges respondent No.1 was held solely responsible but qua the 05 other charges responsibility of other employees, along with respondent No.1, was also found. For nearly 03 years, no action on the enquiry report was taken by respondent No.1's disciplinary authority. On 22.02.1996 another report was submitted by the Enquiry Officer to respondent No.1's disciplinary authority on the basis whereof the respondent No.1's disciplinary authority ordered recovery from and respondent No.1's dismissal from service.
- 9. The following table, which was considered by the learned Single Judge, shows the distinction in the findings recorded in both the aforesaid two reports submitted by the Enquiry Officer:-



Charge	1st Enquiry Report	2nd Enquiry Report
No.		
1.	The Project Officer (P) placed an order for the	e The project officer
	supply of 5000 pairs of derby shoes vide No. N	il verified and
	dated 28.12.90 followed by another order of	of recommended the
	6000 pairs of derby shoes placed on M/s Ne	w payment of Rs. 10/- as
	Advance Shoe Factory, Sadar Bhatti, Agr	a. labour charges and Rs.
	Those orders were placed by the P.O (P) with	a 0.91/- as cartage per pair
	copy to Head Officers. Thereafter two mor	to the fabricator of Police
	orders were placed by the Head Office on 3.5.9	1 Derby shoes without the
	and 19.1.91 for the supply of 4000 pairs ar	d permission of Head
	4800 pairs of shoes on the firm following rates:	Office resulting in loss of
	i) Closed upper Rs.59.13	Rs. 191470.50. In the
	ii) Cut components Rs.39.96	findings it has been
	Rs.99.09	proved that payment of
		labour charges and
	In the order it was made clear that the tot	al cartage charges @ Rs.
	cost should not exceed the above amount an	d 10.91 made to M/s New
	request was made to supply these components	Advance Shoe Factory,
	our factory.	Agra without obtaining
	While checking the record 17550 pairs of shoot	es the approval
	were got manufactured through cut componen	ts of the Head office. As
	and the payment have been made to the firm	at regards the financial
	Rs.110/- per pair as detailed below:-	responsibility is
	i) Upper component (closed) Rs.59.13	concerned, Shri A.K.
	ii) Cut component Rs.39.96	Srivastava PO(P) is fully
	iii) Labour Rs.10.00	responsible for this loss
	iv) Cartage <u>Rs.00.91</u>	as he had recommended
	Rs.110,00	the payment without the
		approval of the Head of
	Shri A.K. Srivastava intimated that he	Department. Besides this,
	had sought approval to pay Rs.10/- as Labor	ir there was administrative
	charges vide his note dated 10.4.91 addressed	
	G.M. (P) but on checking the record and the	
	statement of the Presenting Officer no suc	h dealt this case without
	sanction to pay Rs. 10/- as labour charges ha	
	been issued by Head Office. Shri A.K. Srivastav	ra approval of competent



also took plea that cartage is essential and in the Authority, costing it comes to Rs.1.39 per pair but no responsibility of loss lies sanction was issued by Head Office to pay with Shri A.K. Srivastava cartage as the components were to be supplied to who was the Incharge our factory. The under signed tried to check the Project Officer of the details of payments in C.F.C. but these could not unit. be made available because all the connected documents have been taken by the vigilance Department. However, a copy of the register given to me in which it is clear that payment of 17550 pairs of derby shoes was made at Rs.111/per pair.

but

From the above facts it is clear that payment or labour charges and cartage charges as Rs. 10.91 per pair has been made to M/s New Advance Shoe Factory, Agra without obtaining the permission of the Head Office. The undersigned is also of the view that Shri A.K. Srivastava alone cannot be held responsible for this lapse because he had only verified and recommended the payment but it was the duty of the concerned officials working in C.F.C. at that time to pinpoint before making the payment that sanction of Rs.10.91 per pair is not available and payment could not be made. If this fact could have been brought to the notice of D.D.O of C.F.C. in the first instance the next payments could have not been released by him until either the sanction is obtained or necessary deductions on this account is made from the bills of the party.

2. In this charge it was alleged that Shri A.K. In this charge, it was Srivastava verified and recommended the alleged that Shri A. K. payment of heel at Rs.10.25/- per heel. From the Srivastava recommended record it has been established that 21550 heels the payment of heel @



attached. Shri V.V. Singh P.O (L) in his statement leather heel in the cut intimated that the cost of heel is available in cut component resulting in component of sole leather in the costing sheet in loss of Rs.179881.50. In which 180 gram sole leather per pair was kept for this connection, heel, toe and puff stiffener. Shri V.V. Singh also submitted that this charge argued that when the cost of heel is already had already been proved. inducted in the coating sheet separate coat of I am of the view that heel cannot be given. Moreover, the P.O. (P) has according to my findings not obtained the permission of Head Office to Shri allow payments of Rs.5.25 and Rs.10.25. At the A.K. time on 23.2.93 Shri A.K Srivastava intimated responsibility the Enquiry Officer that will produce the Lapse. sanction of Head office on or before 2.3.93, but submitted that Shri in another enquiry when he attended Head Office A.K. Srivastva is fully on 2.3.93 he could not produce any kind of such responsible sanction but he has given a photo copy of costing financial loss of in which heel word at Sr. No.4 of cut components 179887.50 whereas was delded. When the Enquiry Officer asked his other officers /officials to produce the same deletion in the office copy are he said that it could not be got done inadvertently administrative lapse. as such the contention of the PO(P) cannot be considered. Therefore, there is also loss of Rs.1,79,887.50. In this case also I am of the view that this aspect should have also been checked by the concerned person posted in C.F.C at that time before following payments. It is the duty of the accounts branch to check all terms and conditions /sanctions from the Competent Authority before making payments to

were purchased from M/s S.K. Enterprises, Agra Rs.10.25 while the at Rs.5.25 and Rs.10.25 as per statement Nigam had provided Srivastva is the the Rs. for responsible

the private parties. As such Shri A.K. Srivastava

alone cannot be held responsible for this lapse.

The other officials who were supposed to check

all these formalities should also be taken into

account in this shortage.



3.

In this charge it has been alleged that Shri A.K. This charge has already Srivastava placed order and issued raw material been proved.

for 5000 pairs to the party for the manufacture of Police derby shoes in the premises of C.F.C., Ambala Cantt. but the party had given 3000 pairs resulting loss of raw material for 2000 pairs. A statement showing the material issued to the party has been prepared by Shri V.V. Singh, P.O. (L) and enclosed herewith for reference. From the statement it transpired that crome leather worth Rs.1,03,367.00 issued excess to the party. Similarly 34782 cms split lining have been issued in excess to the party resulting loss of Rs.23,304/- besides this sole leather was issued 1995.300 Kg resulting loss of Rs.95714/- thus total loss occurred due to excess material issued comes to Rs.22,22,446/- for which details have been given in the enclosed statement. Shri A.K. Srivastava intimated that he was transferred to Head Office and relinquished his charge in the third week of April, 1991 and by that time M/s Unico foot-wear, Agra issued 3000 pair of shoes thereafter a new transfer sheet was opened which was used by the Supervisor before the material is issued to the Fabricators. I have checked the record but none of the Supervisor could produce me any documents which shows that the remaining 2000 shoes have been received or not whereas 3000 pair of shoes were shown as received on 4.2.92 in the Stock Register. It was essential for the Supervisor also to maintain separate record for the material issued to M/s Unico foot-wear and the details of Shoes received against those material which could easily show the factual

position. Since Shri A.K. Srivastava could not produce any authenticate documents any the



receipt remaining 2000 shoes nor he handed over of the remaining material to his next incharge before joining Headquarter nor any information is available in record, the entire responsibility for this shortage lies on his Shri A.K. Srivastava. 4. Shri A.K. Srivastava issued blank C.S.T. forms to This charge has already M/s Batra Leather Supply Co., Agra numbering | been proved the 293703 dated 14.12.90 and number 293702 dated Project officer issued 14.12.90 without assigning any bill no. and date blank **CST** without on the forms. Shri A.K. Srivastava in his mentioning bill No. and statement intimated that bill No.1544 and No. 85 date which forms could in which amount of Rs. 30,798.96 and Rs. 3812/- have been mis-utilised by were issued to M/s Batra Leather Supply Co., the firm. Agra against C.S.T. Form No.293703 and M/s Gulati Shoe Material against form No. 293702 respectively. He further intimated that he could not write these bill nos. in the office copy kept in the office. This is also a lapse on the part of Shri A. K. Srivastava as if he had issued blank C.S.T. forms to these firms, these could have been misutilised by them at the time of submission of their annual return. Since Shri A.K. Srivastava, P.O (P) has intimated the bill no. and date against which these forms were issued a lenient view needs to be taken against him. 5. In the charge no.5 has been alleged that Shri A.K. This charge has already Srivastava sold Peshori Chappals to P&T been proved. Department at reduced rate. Shri Suresh Chand, Supervisor intimated in his statement that 1715 pair of Chappal were sold at RS.75/- and 889 pair of Chappals at Rs.85/- per chappal. Therefore, there is loss of Rs.79875/- (1775×45) and similarly loss of Rs.31,115/- by selling Rs.85/ par chappal (889 x 35), thus there is loss of Rs.1,10,990/-. Shri A.K. Srivastava stated in

6.



his statement that the order of Peshori chappal was accepted by the P.O. (L) at Rs.65/- per chappal which was later on enhanced to Rs.75/but Shri Suresh Chand, Supervisor has given cost of analysis in which the cost works out to be Rs. 120/-. When this fact was brought to the notice of Shri A.K. Srivastava he intimated that this rate was out for applying similar Chappals to Gujrat Circle, but this order was not materialized. Shri A.K Srivastava could not produce any document in which rate of Rs. 65/- was accepted by the Nigam. This loss is also due to negligence on the part of P.O. (P). Besides above, Shri Suresh Chand also brought out that material of Rs.17,784/- is still lying unused with him nor it can be used anywhere. Therefore, there is also loss of Rs.17,784/- for the material lying unused.

record has not been maintained by the P.O. (P) non-maintenance Shri A.K. Srivastava intimated that it is the duty proper record. It is a of the Supervisor to complete the job books and serious lapse on the part to put up the same to the P.O. (P). Moreover it of Shri A.K. Srivastava was also the duty of the staff posted in C.F.C.. not to get the proper The undersigned is of the view that although it is record maintained. The a serious matter, not to maintain the record undersigned properly which could lead excess payments but recommended that the the entire responsibility cannot be put on Shri entire Srivastava. Moreover, the accountant General cannot be put on Shri (Audit) has already completed their audit of A.K.

C.F.C. up to 1991-92.

In this charge it has been mentioned that proper This charge pertains to responsibility Srivastava with the contention that the other staff is also responsible the for maintenance of record. Moreover, the audit of Accountant General have



been completed upto the year 1991-92, as such, it was not recommended to the entire put responsibility the on project officer alone.

7. been found negligent in performing his duty as established due to nonhe did not inform the Head Office regarding availability of record.

In this charge Shri A.K. Srivastava, P.O. (P) has This charge could not be missing of electrical motor. Shri A.K. Srivastava intimated that he has left the charge on 25.4.91 and he had no knowledge for the missing of electric motor. Moreover, the report of the missing of said motor were sent to Head Office by the P.O. (L) on 16.10.91. The record of C.F.C. does not indicate the cost of motor, even they have not having the cost of original machinery from which these Motors have been removed. However Shri Suraj Parkash enquired from the market and given the rates of motors a Rs.1932/-, Rs.1650/- and Rs.3275/- for different quality of Motors. The loss due to remove of the motor cannot be as curtained at this belated stage but it can be presumed that there is loss of about Rs.4000/- if we take the cost of the motor at the prevailing market rate. Therefore, this charge could not be established. In addition to above, it is submitted that most of the relevant record could not be produced to me for reference. This enquiry has been completed on the bases of relevant record available with the Presenting Officer, as most of the record could not be produced by the Presenting Officer, due to nonavailability of record in the office or most of the records have been taken by the Vigilance Department as initiated by the incharge of C.F.C.

The above report is submitted to the worthy
M.D. for further orders please.

- 10. The second report dated 22.02.1996 was substantially different from the earlier report by the same Enquiry Officer. The second report also greatly prejudices respondent No.1 as several charges levelled against him for which he was not solely found responsible in the earlier enquiry report were found proved against him in the second report. It is not disputed that between the submission of the first report and the second report, the Enquiry Officer neither issued to the respondent any notice nor granted to him any opportunity of hearing. Thus, the respondent's dismissal from service based on the second report dated 22.02.1996 was in gross violation of the principles of natural justice.
- 11. A perusal of the afore table further reveals that through the report dated 22.02.1996, the same Enquiry Officer has virtually substituted his earlier report dated 11.03.1993. Such a procedure is unheard of in service jurisprudence. It is also not backed by any Rule or instruction etc.
- 12. Terming the second report as additional information to the respondent No.1's disciplinary authority would not help the appellant's case as the afore quoted table clearly reveals that it in fact such report was a fresh enquiry report containing distinct findings.
- 13. In the afore circumstances, normally, after setting aside respondent No.1's dismissal order, we would have permitted the appellant to continue the proceedings from the stage of submission of the first enquiry report but considering the peculiar facts of this case that from the issuance of the chargesheet till date 32 years have elapsed; this is the third round of

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litigation by respondent No.1; had respondent No.1 continued in service, he would have superannuated in the year 2006 and that presently, respondent No.1 would be over 76 years of age, we refrain from interfering in the findings returned in this regard by the learned Single Judge of not granting

- 14. In the light of the discussion, we find no error, in the impugned judgment.
- 15. Dismissed.

such permission to the appellant.

16. All pending miscellaneous application(s) also stand disposed of.

(DEEPAK SIBAL) JUDGE

(DEEPAK MANCHANDA) JUDGE

July 11, 2024

Nisha Yadav

Whether reasoned/speaking? Whether reportable?

Yes/No Yes/No