

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1636/2014

M.A. No.1422/2014

M.A. No.515/2019

Tuesday, this the 23rd day of July 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

S R Hussain, aged about 52 yeas
s/o late S Reyazat Hussain
Assistant Engineer (Civil) (Dismissed)
National Project Construction Corporation
r/o H.No.1C/104, NIT
Faridabad, Haryana – 121001

..Applicant

(Mr. S K Das and Mr. R R Dubey, Advocates)

Versus

1. Union of India through Secretary
Ministry of Water Resources
Shram Shakti Bhavan, Rafi Marg
New Delhi – 110 001
2. Board of Directors
National Project Construction Corporation
(A Govt. of India Enterprise)
Having its registered Head Office at
Raja House 30-31, Nehru Place
New Delhi – 110 019
3. Chairman-cum-Managing Director
National Project Construction Corporation
(A Govt. of India Enterprise)
Having its registered Head Office at
Raja House 30-31, Nehru Place
New Delhi – 110 019

..Respondents

(Mr. R K Sharma, Advocate for respondent No.1,
Mr. Naresh Kaushik and Mr. Lakshay Juneja, Advocates for
respondent Nos. 2 & 3)

O R D E R (ORAL)**Justice L. Narasimha Reddy:**

The applicant was working as Assistant Engineer (Civil) in the National Project Construction Corporation (NPCC), the 2nd respondent herein. He was acting as General Secretary of NPCC Staff Association. A charge sheet was issued to him on 26.12.2000. It was alleged that the applicant has made several false and frivolous complaints and allegations against the senior officials of the Corporation and thereby damaged its reputation, which, in turn, resulted in huge losses. The details of the representations so made were furnished in the statement of imputation. Two other charges were on the same lines. The applicant submitted his explanation denying the same. Not satisfied with that, the disciplinary authority appointed the inquiry officer (IO) on 28.12.2001. The applicant, however, raised several objections as to the appointment of IO, and various other aspects.

2. On 01.01.2003, the disciplinary authority passed order keeping the proceedings in abeyance. The proceedings were resumed after 5 years on 30.01.2008, and another IO was appointed. The applicant did not participate in the inquiry and he was set *ex parte*. A report was submitted by the IO on 29.09.2009 holding that all the three articles of charge framed against the applicant are proved. Copy of the same was

furnished to the applicant and he submitted a representation vis-à-vis report of the IO. Taking the report and representation into consideration, the disciplinary authority passed an order dated 08.08.2011, dismissing the applicant from service. Appeal preferred by the applicant was rejected on 11.03.2013. Review petition was also rejected on 20.02.2014. This O.A. is filed challenging the order dated 08.08.2011, as affirmed in appeal and review.

3. The applicant contends that he has exposed several irregularities and frauds, that were taking place in the NPCC, in his capacity as General Secretary of Staff Association, and on the basis of such complaints, action at various levels was initiated. He contends that the then Chairman-cum-Managing Director (CMD) was having grudge against him for this and initiated disciplinary proceedings. He submits that though at one stage, the proceedings were kept in abeyance, they were resumed after a gap of 5 years and the inquiry was conducted, by setting him *ex parte*. It is also pleaded that though no witnesses were examined by the Department in the inquiry, the articles of charge were proved. The applicant raised an objection as to the competence of CMD to initiate disciplinary proceedings and to pass order of punishment. Other contentions were also advanced.

4. On behalf of respondent No. 1 and respondent Nos. 2 & 3 separate counter affidavits are filed. It is stated that the applicant was in the habit of making false and frivolous complaints with the sole objective of tarnishing the image of organization and to get personal benefits. It is stated that almost all the complaints submitted by him, were verified with reference to the relevant records and facts, and they were found to be factually incorrect. It is also stated that the applicant went on persecuting the senior officers of the organization, employees and contractors for his personal gain and the entire organization had to suffer a lot, on account of indisciplined acts of the applicant.

5. The respondents stated that the disciplinary proceedings were conducted strictly in accordance with law and that since the applicant refused to participate therein, he was set *ex parte*. According to the respondents, the necessity to examine the witnesses did not arise since the applicant did not participate in the inquiry. The plea as to the competence of the CMD is denied and it is stated that under the relevant Rules, the CMD is conferred with the power of disciplinary authority for the post of Assistant Engineer (Civil).

6. We heard Mr. S K Das, learned counsel for applicant, Mr. R K Sharma, learned counsel for respondent No.1 and Mr.

Naresh Kaushik, learned counsel for respondent Nos. 2 & 3, at a considerable length, with reference to each and every aspect.

7. The charge sheet dated 26.12.2000 issued to the applicant contains three articles of charge. They read as under:-

“Article-I

Shri S.R. Husain, while functioning as Assistant Engineer (Civil) has made allegations/statements/information in the cover of General Secretary, NPCC Staff Association against CMD and other NPCC officials which are unsubstantiated, misplaced and without any evidence which tarnished the image of the NPCC and its officials which results in loss of prospective business of NPCC and such activities are not relating to NSA.

By this act, Shri S.R. Hussain has exhibited an act unbecoming of a public servant, an act prejudicial to the interest of the Corporation, an act subversive of discipline or of good behavior thereby violating Rules 3 (1) (iii), 4(5), (20) of NPCC Employees Service (Conduct) Rules, 1979.

Article-II

Shri S.R. Hussain, while functioning as Assistant Engineer (Civil) had made complaints/allegations in the cover of General Secretary, NSA against CMD and other officials of NPCC and has criticized the Corporation officials. Also Shri S.R. Hussain had made unauthorized communication of information directly with Minister of Water Resources and Members of Parliament and forwarded certain confidential official statements/information that were not connected with the activities of NSA.

By his above act, Shri S.R. Hussain has exhibited an act unbecoming of a public servant and act of involvement in the activities which have the effect of an adverse criticism of the policy of the Corporation and unauthorized communication of the misplaced and unsubstantiated information to the persons to whom he is not authorized to communicate such confidential statement/information thereby violating Rule 3 (1) (iii) Rules 9 and 11 of NPCC Employees Service (Conduct) Rules, 1979.

Article-III

Shri S.R. Hussain, while functioning as Assistant Engineer (Civil) had filed Writ Petition and Civil Contempt Petition in the Hon'ble High Court of Delhi in the cover of General Secretary, NSA whereby he had leveled baseless, unfounded and unsubstantiated charges/allegations and also criticized the functioning/policy of the Corporation and the Ministry of Water Resources without previous sanction of CMD thereby the exhibited vindication of the official act which has been the subject matter of adverse criticism and attach of defamatory character.

By his above act, he violated the Rule 3 (1) (iii), Rule 19 of NPCC Employees Service (Conduct) Rules, 1979.”

8. From the perusal of the same, it is evident that the allegation against the applicant is mostly about submission of complaints and making allegations in the cover of General Secretary of NPCC Staff Association against the CMD and other officers, and that, in turn, resulted in huge embarrassment and loss to the organization. The complaints, that are referable to article 1, are elaborated in the statement of imputations. Similar elaboration is made as regards other articles of charge also. The applicant submitted his explanation denying the charges and accordingly, the IO was appointed. Hardly before any progress was recorded in the inquiry, the applicant started raising objections one after the other. At one stage, the proceedings were kept in abeyance, but they were resumed in the year 2008 by appointing another IO.

9. For one reason or the other, the applicant did not participate in the inquiry after it was resumed, despite the

repeated efforts being made by the IO as well as disciplinary authority. The record discloses that they were finding it difficult even to serve the communication on the applicant. Left with no alternative, the IO set the applicant *ex parte*, under the relevant Rules. In his report, the IO observed as under:-

“Findings:

On the basis of documentary and oral evidence adduced during inquiry and as analyzed above, the findings are as under:-

Article – I Held as ‘proved’
 Article – II Held as ‘proved’
 Article – III Held as ‘proved’”

10. The IO dealt with each and every complaint submitted by the applicant against various officers of the Corporation and are mentioned in the statement of imputations. Not only the complaints, but also the report of verification thereon, were taken on record as exhibits. Similar discussion was undertaken with reference to articles 2 & 3 also. Ultimately, all the articles of charge were held as proved. The disciplinary authority has made available, the copy of report of IO to the applicant. A representation was made by the applicant, pointing out certain alleged defects in the inquiry. The disciplinary authority took the report of IO, the explanation offered by the applicant and other relevant factors into account, and passed the impugned order of punishment.

11. Rarely, we come across an order of punishment, wherein such a long discussion is undertaken, as in this case. Normally, the contents of charges, the findings of IO and the remarks of the charged employee are mentioned, and discussion in one or two paragraphs is undertaken. Thereafter, the conclusion is arrived at, and the punishment is indicated. The extent of suffering by the organization is reflected in the observations made by the disciplinary authority in the impugned order. Though it would have been beneficial to extract the entire discussion in this respect, we do not intend to do so, lest the order becomes unduly bulky. However, we feel it necessary to extract some portions of the said order. In paragraph 9 of the order of punishment, the disciplinary authority observed as under:-

“9..... I have therefore reached to the considered proposition that since the charges against the CO are very grave and serious having a direct bearing on the law & order and maintainability and amenability of the discipline in the Corporation after an objective and careful assessment of the facts and circumstances of the case, I have reached to the conclusion that since the Charged Officer throughout his service in the Corporation has acted in a manner to deliberately frustrate and undermine the policies of the Corporation and in the grab of disguise of union activities, the Charged Officer has grossly neglected and abstained from performing his official functions and responsibilities as an Engineer and all along has been abusing and misusing his position being the self proclaimed General Secretary of the NPCC Staff Association without holding any election for the governing body for years together, with a view to obtain benefits for himself by restoring to all coercive activities by way of extortions and blackmailing all senior officials and the Management's by making false and frivolous complaints and unauthorizedly and illegally highlighting

his unfounded allegations by publishing reports against Authorities in the Media, Newspapers and addressing VVIPs as well as bringing political and outside influence to bear upon his superior Authority to further his interest as also by restoring to make criticism of the Authorities of Corporation and the Government of India by restoring to character assassination, contrary to Rule 9, 19 & 20 of the NPCC Employees Service (Conduct) Rules, 1979 in a blatant manner in tandem and abetment with others as borne by the records in the Corporation.”

The IO further elaborated the various acts and omissions on the part of the applicant. Ultimately, the punishment of dismissal from service was imposed.

12. The first contention advanced on behalf of the applicant is that the inquiry was held in flagrant violation of the relevant Rules and prescribed procedure. One facet thereof is about his not being given opportunity and the second is about giving up of witnesses by the Corporation in the inquiry. The disciplinary proceedings against the applicant were spread over the period of 10 years. For half a decade, they were kept in abeyance, in view of the objections raised by the applicant. It was only in 2008, that they were resumed by appointing another IO and the applicant was put on notice. However, he did not choose to participate in the inquiry. The agony of IO on the behavior of applicant is evident from the preamble of his report.

13. Before the IO entered in the discussion with reference to articles of charge, he had to devote 11 pages to narrate as to what has happened at various stages and how his attempts to

procure the applicant in the inquiry have failed. It shocks anyone's conscience that the employee of Corporation has gone to such an extent and harassed the organization in such a manner. In paragraph 2.11, the IO has mentioned as to the nature of endorsement of letter dated 12.03.2009. The said paragraph reads as under:-

“2.11 However, instead of complying with the directions of the IO, the CO vide his endorsement of letter dated 12.3.2009 (addressed to the CMD, NPCC), requested not to proceed further in the matter as he has no faith in the inquiry being conducted by the undersigned. In his ibid letter the CO, inter alia, leveled allegation of demanding money from the CO for giving findings favourable to the CO, which the CO flatly refused. He has further added that in the past the undersigned had also demanded money from other charged officials of NPCC too, in case required he is prepared to give evidence/witnesses in this regard. In this regard vide order sheet dated 28.3.2009 it was stated that all the allegations were utterly false, concocted, devoid of any substance and just an effort to derail the inquiry proceedings. The CO was advised to refrain from making such frivolous and unwarranted allegations against the IO. As regards order sheet dated 7.3.2009, it was stated that the said order sheet was drawn on 7.3.2009 which was just a reminder of earlier order sheets, and as the fax machine was not found open on 7.3.2009 the same fixed to NPCC on 9.3.2009 (8.3.2009 being the holiday). The CO was also advised to refrain from making such things an issue, and instead he should utilize his energy, in right perspective, to defend his case. Relevant to mention that the PO vide her letter dated 12.3.2009 had requested the CO to inspect the documents available with her on 13.3.2009, but he did not avail this opportunity and instead sent the above referred letter, in order to delay the proceedings further. The CO was once again advised to complete the inspection of defence documents in his own interest, without further loss of time and send compliance latest by 6.4.2009 failing which it would be assumed that he is not interested at all, and the dates for regular bearing would be fixed, without giving any further opportunity to him in this regard.”

14. The reading of subsequent paragraphs of the report would indicate the state of affairs, which are totally objectionable and unfortunate. When the applicant did not choose to participate in the proceedings, he cannot complain that he was not given any opportunity. Even after he was set *ex parte*, he did not show any inclination to participate, let alone, challenging the same in a Court of law. His abstention was deliberate.

15. Coming to second facet, it is no doubt true that the NPCC has given up the examination of witnesses cited by them in the inquiry. That was solely on account of absence of the applicant in the proceedings. One of the important purposes of examining the witnesses in the inquiry is to enable the charged employee to cross examine them, so that the IO can arrive at a proper conclusion. When the employee himself has refused to participate in the proceedings, no useful purpose would be served by examining the witnesses. Added to that, the allegations contained in the charge sheet were borne out of record in the form of complaint submitted by him. No charge was framed based on the statements of any individuals, cited as witnesses. Therefore, the objections raised by the applicant in this regard cannot be sustained.

16. As regards the plea raised by the applicant that the CMD is not competent to initiate proceedings or to impose the punishment, we have specifically asked the learned counsel for

applicant as to whether the plea was raised in O.A. In all fairness, he stated that this plea was not raised in the O.A. Unless it is raised in the O.A., the respondents would have no opportunity to deal with the same. Even otherwise also, the applicant is referring to un-amended Rules. In the context of identifying the authorities conferred with the powers to initiate disciplinary proceedings or to impose the punishment, the Rules, which are in force as on the date of initiation of proceedings, become relevant. It is not in dispute that under the Rules, that were in force when the charge memo was issued, CMD is the disciplinary authority. Therefore, the plea of the applicant cannot be accepted.

17. Lastly, it is urged that the punishment imposed against the applicant is disproportionate and the lesser punishment ought to have been imposed. It is only when the punishment imposed by the disciplinary authority is severe, when compared to the nature of charges, that the Court/Tribunal may interfere. In the instant case, the allegation against the applicant is that he harassed the entire NPCC for a period of 20 years and that he did not spare anyone in the Corporation. To be precise, the applicant targeted the top management, middle management, employees, contractors and any other person connected with them, as long as he was not satisfied with them. The observation that the applicant indulged in extortion and blackmailing all the above, cannot be ignored. The appellate

authority has discussed the matter at length and refused to interfere with the order of punishment, so did the revisional authority. No other legal infirmity or factual inaccuracy is pointed in the entire proceedings.

18. We do not find any merit in this O.A. It is accordingly dismissed.

Pending M.As., if any, stand disposed of.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 23, 2019
/sunil/