

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on July 18, 2013

Judgment Delivered on August 19, 2013

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W.P.(C) 1317/2011

UOI

..... Petitioner

Represented by: Ms.Geeta Sharma, Advocate
with Ms.Sadhvi Shahi and
Ms.Mithu Jain, Advocates

versus

P.N.PANDEY AND ANR.

..... Respondents

Represented by: Dr.Sumant Bhardwaj, Advocate
with Ms.Ankita Chaudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition by the Union of India is to the order dated November 16, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in Original Application No.1785/2010, whereby the Tribunal allowed the Original Application and while reinstating the respondent No.1 giving liberty to the petitioner to resume the proceedings by curing the procedural irregularity with a further direction to pay the arrears and provisional pension within 2 months from the receipt of copy of the order.

2. The respondent No.1 had joined the petitioner organization as a skilled worker on February 20, 1975. In December 1979 a complaint

was lodged by one Mr.Ram Prasad against the respondent to the Deputy Director, RDTDC, Okhla alleging that the respondent No.1 had submitted a forged High School Certificate to get the job.

3. On January 02, 1987 an FIR under Section 420/468/471 IPC was lodged by Mr.S.K.Kunwar who was working as Deputy Director, RDTDC, in the Police Station Kalkaji, New Delhi. The respondent No.1 was put under suspension. The respondent No.1 was acquitted by the Metropolitan Magistrate, New Delhi vide his order dated December 04, 1995. The following are the conclusions of the Criminal Court acquitting the respondent No.1:

“I have carefully gone through the submissions of both the counsels. The alleged forged certificate is mark A whose original is not produced by prosecution during examination of PW1 of PW4. It is pertinent to mention here that the handwriting written on certificate mark A and signature of the issuing authority alleged to have been forged by accused to substantiate the allegations. The investigation officer did not obtained the specimen signature of the issuing authority at time and of accused. The investigation officer further did not sent any of the signature or handwriting specimen for laboratory test. It is further pertinent to mention here that in the year 1987 a person who is appearing 10th Class board examination must be around 15/17 years old or believing further that in the remote rural states pupil attend the schools late then the age must be around 18/20 years. However the mark A shows date of birth of the accused 26.2.1945. It means that accused must be the 22 years old. By no stretch of imagination one can write his age 22 years in certificate which is he forged for employment purpose. That person must write the believable age that 16/17 not 22 years.

It is further pertinent to mention here that the original source of information is a complainant received by PW1 but the investigation agency failed to trace the original complaint and complainant. No document has been produced of departmental enquiry which shows that this complaint is in existence. The absence of this complaint is in existence. The absence of this material witness further creates doubt and prosecution case has further darkened by the clouds of doubt.”

4. On his acquittal the respondent No.1 was reinstated in service and the period of suspension was also treated as on duty.

5. In the year 1997 when the respondent No.1 was posted at RDTDC, Bangalore, he had applied for LTC and taken an advance of ₹4,200/- for visiting his home town. Later on he submitted his final LTC adjustment bill for ₹4,222/-, on inquiries it was found that the respondent No.1 had not travelled in the First Class either side as shown by him in the said LTC Bill. The entire LTC advance was recovered with penal interest.

6. On September 26, 2001/October 03, 2001, a Memorandum of Charges was issued to the respondent No.1 under Rule 14 of the CCS (CCA) Rules, 1965 relating to his appointment as a skilled worker and fraudulent claim of LTC Bill.

7. The respondent No.1 filed an Original Application No.731/2002 before the Tribunal challenging the validity of the action of the petitioner in issuing memorandum dated September 26, 2001/October 03, 2001 and memorandum dated November 29, 2001, appointing an Inquiry Officer to inquire into the charges. The Original Application was dismissed vide order dated October 23, 2002.

8. On February 28, 2005 the respondent No.1 retired.

9. The proceedings continued under Rule 9 of CCS Pension Rules. The Inquiry Officer gave his report holding Article II with respect to fraudulent claim of LTC as ‘proved’ and Article I in so far as submission of forged/fabricated High School Pass Educational and Technical Certificate at the time of joining as ‘not proved’.

10. The Disciplinary Authority did not agree with the finding of the Inquiry Officer in relation to Article I is concerned. The Authority after giving a disagreement note vide its order dated December 05, 2005 remitted the matter back to the Inquiry Officer to hold a further inquiry into Article I of the Charge. The disagreement by the Disciplinary Authority is as under:

“AND WHEREAS the undersigned, having carefully gone through the records of Inquiry, finds that the Inquiry against Shri P.N.Pandey has not been held properly due to the fact that the Presenting Officer did not ensure production of original letter No.4280 dated 8.12.86 from “Sahayak Sachiv (Abhilekha), Madhyamik Shiksha Parishad”(SSMSP), Uttar Pradesh, Allahabad to prove that the High School Certificate submitted by Shri P.N.Pandey at the time of joining the service was forged. In case the original letter received in this regard was not traceable, the Presenting Officer should have obtained another original testimony for the authenticity of the certificate from the same authority again or would have summoned the “Sahayak Sachiv (Abhilekha) Madhyamik Shiksha Parishad”(SSMSP), Uttar Pradesh, Allahabad as one of the prosecution witness. However, this has not been done. The required testimony has been made available from Sachiv, Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad in original again and therefore, the Article of Charge-I now requires re-examination by the Inquiry Officer.”

11. The respondent No.1 filed an appeal against the order dated December 05, 2005 of the Disciplinary Authority remitting the matter back to the Inquiry Officer. The same was rejected as no appeal lies against an interim order in terms of Rule 22 of the CCS (CCA) Rules, 1965.

12. The Inquiry Officer submitted his report holding Article I of the Charge as proved. The respondent gave his representation on the findings of the Inquiry Officer in his report and the proposed penalty of withholding of pension and gratuity permanently on him. The petitioner wrote to the UPSC to seek its advice on the proposed penalty of withholding of pension and gratuity permanently.

13. The UPSC in its communication dated June 24, 2009 was of the view that since the charges constitute grave misconduct, end of justice would be met if penalty of forfeiture of the entire pension and gratuity permanently is imposed on the officer.

14. On a further reference the Department of Personnel and Training, Government of India was of the view that submitting a false High School Certificate and a fake certificate to have completed 3 years National Apprenticeship Course, the respondent No.1 secured a job and served 30 years and that he deprived some other qualified person of a job and earned salary for 30 years, concurred with the advice of respondent No.2 UPSC.

15. Accordingly vide order dated April 05, 2010, a penalty of forfeiture of the entire pension and gratuity permanently effective from the date of issue was imposed on the respondent.

16. The respondent filed a Review Application under Rule 29 of CCS (CCA) Rules 1965 against order dated April 05, 2010 with a

prayer to exonerate him of the charges framed against him. The same was rejected.

17. Ms.Geeta Sharma, Advocate would submit that the Tribunal has erred in interfering with the findings of the Inquiry Officer and the subsequent orders of the Disciplinary Authority and Appellate Authority. According to her the charges against the respondent No.1 are very serious in nature and the Tribunal could not have re-appreciated the evidence and come to a different conclusion from that of the Inquiry Officer.

18. On the other hand, Dr.Sumant Bhardwaj, Advocate appearing for the respondent No.1 would support the order of the Tribunal and submit that the Tribunal has rightly come to a conclusion that the Article I has not been proved. He would not challenge the conclusion of the Inquiry Officer with respect to Article II.

19. Before we pen down our findings on the issue arises for our consideration, suffice would it be to state that the parties proceed on a premise that the Article II stands proved and the findings of the Inquiry Officer with respect to that are accepted. We reiterate that the issue which falls for our consideration is only with respect to Article I whether the same stands proved or not. The Tribunal has held that the conclusion of the Inquiry Officer is not sustainable as the documents relating to the same have not been proved by oral evidence. On that ground it has set aside the impugned orders and remanded the matter back to the Authorities to proceed after curing the illegality.

20. It is noted that the Disciplinary Authority while remitting the matter to the Inquiry Officer vide its order dated December 05, 2005, (note of disagreement) was of the view that the Article I could not be

proved as the Presenting Officer did not ensure production of the original letter No.4280 dated December 08, 1986 from the Sachiv, Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad to prove that the High School Certificate submitted by the respondent No.1 at the time of joining of service was forged. According to the Disciplinary Authority, in case the original letter received was not traceable the Presenting Officer should have obtained another original testimony for the authentication of the certificate from the said authority and since the required testimony has been made available from the Sachiv, Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad in original again, therefore, the Article I now requires to be re-examined. The Inquiry Officer in his report on Article I has relied upon a letter dated October 06, 2005 from Sachiv, Madhyamik Shiksha Parishad wherein it is clearly stated that one Mr.Akhilesh Kumar, s/o Mr.Lalji Sahay appeared against Roll No.208539 and the Certificate No.99652 has been issued to him and not in the name of Mr.Prasidh Nath Pandey, respondent herein. According to the Inquiry Officer, the respondent No.1 could not produce any evidence which proves that the contents of the documents are wrong except that he argued that the document has been procured after the departmental proceedings and submission of the inquiry report by the Inquiry Officer to the Disciplinary Authority and is not listed in original charge-sheet and the author of the letter has not been mentioned as prosecution witness to prove the correctness of the document.

21. The Tribunal while analysing the conclusion of the Inquiry Officer with respect to Article I was of the following view:

“In the instant case the EO has recorded a finding of

not guilty against the applicant on article-I of charge and admittedly the original documents were not available on record, the DA remanded back the case for further enquiry and in that course directed admission of documents, i.e., report from the educational authorities, i.e., Madhyamik Shiksha Parishad's letter dated 05.12.2005, which has not been served upon applicant and his request for examining witnesses to authenticate the documents having not been acceded, the further enquiry and the finding recorded on which applicant has been held guilty and punished cannot be sustained. The Apex Court in State of U.P. v. Saroj Kumar Sinha, 2010 (2) SCALE 42 held that when charges are based on documents, which are relied upon to hold one guilty, if the documents are not proved by oral evidence, the penalty imposed cannot be sustained. The aforesaid has been reiterated by the Apex Court in LIC v. Ram Pal Bishan, 2010 (3) SCALE 121. On that basis also while the document was taken on record to record a finding in the second enquiry without supplying the document and without calling the witnesses, the enquiry and the consequent orders are vitiated."

22. We note that the Article I has two components. Submitting forged (i) High School Certificate and (ii) National Apprenticeship Course Trade Certificate from National Small Industries Corporation Limited. It is alleged that on the basis of these two certificates he got entered in the service. We may also note here that the High School Certificate is of the year 1967 and the Trade Certificate is of the year 1964.

23. In his earlier report dated July 07, 2005 the Inquiry Officer after noting that the Presenting Officer had only produced photocopies of the listed documents, which includes document at serial no.2 of list of documents, letter from Sachiv, Madhyamik Shiksha Parishad and by further observing that *in absence of original document, verification of*

document by the CO could not be done which is his right and held that Article I is not proved.

24. After the report dated July 07, 2005 the Disciplinary Authority realizing that Article I could not be proved because of non production of the original letter dated December 08, 1986, a fresh letter dated October 06, 2005 was called for from the Sachiv, Madhyamik Shiksha Parishad. The same was produced by the Presenting Officer during the inquiry after it was remitted back by the Disciplinary Authority. The proceedings were held on November 29, 2006, when the Inquiry Officer also recorded the following:

'Presenting Officer informed that letter dated 07.10.2005 send by Sachiv, Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad received from Vigilance Section has been shown to the Charged Officer and copy of the same was given to Charged Officer on 03.08.2006 during the hearing.

During the hearing, Presenting Officer asked Charged Officer/Defence Assistant whether he has to say something against the aforesaid letter or to produce any document/certificate in support of his defence or he admits the contents of the above letter.

In response to this Defence Assistant clarified that the date of document (07.10.2005) itself indicates that same has been procured after the conclusion of the departmental proceedings and submission of the inquiry report by the Inquiry officer to the Disciplinary Authority. Being not listed document in the charge sheet, it cannot be now added to revalidate, the Photostat copies of earlier letter/documents listed in the charge sheet. The original of these letters however, could not be produced by the Presenting Officer till the completion of the proceedings."

25. From the perusal of the proceedings, it is noted that the

authenticity of the letter dated October 06, 2005 is not challenged. Still the contents of the same have to be proved. We are conscious of the fact that the respondent No.1 has retired. Remand at this stage to the Inquiry Officer would further delay the outcome of the inquiry. It appears that the respondent No.1 is not getting pension after April 05, 2010 i.e. the date of order of Disciplinary Authority. At the same time, the allegations which constitute Article I can't be overlooked. They are serious in nature. The findings on Article I would have a bearing on the penalty. We are of the view that this Court should not interfere with the conclusion arrived at by the Tribunal, except to the extent that:

- (i) The Inquiry Officer shall complete the inquiry within two months time by holding the inquiry in short intervals.
- (ii) The Disciplinary Authority shall pass final orders within 3 months after the receipt of the report from the Inquiry Officer.
- (iii) The respondent would not be entitled to arrears of pension, which would be determined by the Disciplinary Authority at the time of passing the final order.

26. It is expected that the parties to the inquiry shall cooperate and ensure completing the same within the period fixed by us. We dispose of the writ petition in terms of the above.

27. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 19, 2013
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