

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

Date of hearing and Order: 04.03.2015

+ W.P.(C) 4546/2014

GOVERNMENT OF NCT OF DELHI & ORS. Petitioners
Through: Mr V.K Tandon & Mr. Yogesh
Saini, Advocates

versus

S.D. Sharma Respondents
Through: Mr. Tamali Wad & Mr. Vaibhav
Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S. MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

1. The instant petition has been filed under Article 226 of the Constitution of India, whereby the petitioners seek quashing of the Order dated 10.02.2014 passed by the learned Armed Forces Tribunal (Principal Bench), in O.A. No.1162/2012.

2. In brief, the facts of the case are as follows:

“Vide Memorandum No.F.8(38)/Vig./DNW/2K/119687, dated 06.11.2000 the Disciplinary Authority proposed to hold an enquiry against the Respondent under Rule 14 of the CCS (CCA) Rules, 1965. The statement of imputation of misconduct or misbehaviour in respect of which the enquiry was proposed to be held was as under:-That the said Shri S.D. Sharma, Grade-II (DASS)/HC did not report for duty in Directorate of

Education, Delhi and committed misconduct in as much as he failed to comply the order of his superior officers which reflects lack of devotion to duty and negligence and violation of the provisions contained in clause (i) (ii) & (iii) of sub-rule (1) of Rule-3 of CCS (Conduct) Rules, 1964.

Second charge against him was that he continued to remain absent from duty wilfully and unauthorisedly w.e.f. 23.12.93 to 01.02.2000 and thereby violated the provisions contained in clause (i) (ii) & (iii) of sub-rule (1) of Rule-3 of CCS (Conduct) Rules, 1964.

After holding an enquiry in the matter, the Enquiry Officer came to the conclusion that both the Articles of Charges have been proved.

Respondent made his representation dated 25.5.2005 against the aforesaid report. As the Disciplinary Authority has not considered the Enquiry Officer's report and his representation for a considerably long time, he approached this Tribunal, vide OA No.1635/2006 seeking a direction to the Petitioners to finalize the disciplinary proceedings, if any, pending against him within a reasonable time but not beyond three months.

Finally, the Disciplinary Authority issued the order dated 16.11.2007 imposing upon the Respondent the penalty of 30% cut in his monthly pension as aforesaid.

The aforesaid order was challenged before the Tribunal vide OA No. 2569/2008 and since the same was a bald order, without dealing with any of the contentions raised by the Respondent and without giving any reasons, this Tribunal set aside the aforesaid order of the President but with the liberty to pass a fresh order taking into consideration the various grounds and other contentions raised by the Respondent. In pursuance of the directions of the aforesaid order the Petitioners passed the fresh order dated 21.02.2011. Against the said Order the petitioners filed the O.A No. 1162/2012, wherein Learned CAT held that it is a case of no evidence."

3. Advancing the arguments on behalf of the petitioners, Mr. V.K Tandon, Advocate submits that the order passed by learned CAT is

erroneous, untenable and *interalia, ultravires* the provisions of Central Civil Services (Conduct) Rules, 1964 Central Civil Services Pension Rules, 1972 and is also against the law and principle of natural justice and public policy. He contends that the learned Tribunal failed to appreciate that the respondent was lawfully transferred, relieved from the previous place of posting but he didn't reported/ joined his new place of posting and instead chose to remain absent from duty unauthorisedly, without any intimation/leave request etc., for over 06 long years. He contends that learned Tribunal failed to appreciate the fact that upon submitting request for rejection of his services, the respondent submitted another representation, seeking posting for any in the Departments of GNCTD after around 13 months. He further stated that learned Tribunal failed to appreciate the fact that after holding a proper enquiry, the inquiring authority clearly held the charges as proved against the respondent. He further contends that the detailed speaking order of penalty was passed only after receiving advice from UPSC. He submitted that it is settled in law that a government servant cannot disobey a transfer order by not reporting at the place of posting and transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service necessary too in public interest and efficiency in public administration.

4. Opposing the present petition and the contentions raised by the learned counsel for the petitioners, Mr. Tamali Wad, the learned Counsel for respondent strenuously argued that admittedly there was not a single prosecution witness to prove the charge levelled against the Applicant. He contends that the impugned Memorandum of Charge dated 06.11.2000 was issued without the certified copies of the list of documents. In spite of his request dated 14.11.2000, they have not been supplied to him. Ignoring the aforesaid request and without giving him an opportunity to make his representation against the charge, the Disciplinary Authority appointed the Enquiry Officer vide order dated 21.07.2001 and thereafter appointed the Presenting Officer vide order dated 21.08.2001. Learned counsel for the respondent argued that the aforesaid procedure adopted by the Disciplinary Authority is in violation of Rule 14(5)(a) of the CCS (CCA) Rules, 1965 wherein it has been held that only on receipt of the written statement of defence or if no written statement of defence is submitted by the Government servant, any enquiry can be held. The learned counsel argued that the aforesaid procedure adopted by the authority amounts to unfairness and it also shows the predetermined mind of the Disciplinary Authority. He further submits that the impugned order may not be interfered with by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. We have heard the learned counsel for the parties at considerable

length and have given our thoughtful consideration to the arguments advanced by them.

5. Having regard to the respective contentions, the question that arises for consideration is whether the order passed by the Disciplinary Authority dated 16.11.2007 imposing upon the Respondent the penalty of 30% cut in his monthly pension is sustainable in law. The power of judicial review of this Court under Article 226 of the Constitution of India, is a limited power and this Court would not normally interfere with the findings recorded at the departmental inquiry by the Disciplinary Authority or the Inquiry Officer as a matter of course. The Court cannot sit in appeal over these findings and assume the role of an Appellate Authority. However, this would not mean that the Court will not interfere in such cases where the order of the Inquiry Officer is inconsistent with the rules of natural justice, where the order is in violation of statutory rules prescribing the mode of inquiry or where the conclusion/finding reached by him is based on lack of evidence. The Supreme Court in ***Kuldeep Singh v. The Commissioner of Police & Ors., (1999) 2 SCC 10 held:***

“6..... The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic inquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or

the findings were perverse or made at the dictates of the superior authority."

6. A three Judge Bench of the Hon'ble Supreme Court has considered the scope of judicial review in ***B.C. Chaturvedi v. Union of India & Ors.*** [(1995) 6 SCC 749] and that:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding to fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceeding against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the findings and mould the relief so as to make it appropriate to the facts of each case.

7. In ***Nand Kishore Prasad v. State of Bihar and Ors.***, AIR 1978 SC

1277, it was held by the Hon'ble Supreme Court that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character; therefore, it is necessary for the tribunal to arrive at its conclusions on the basis of some evidence. Such evidence should with some degree of definiteness, point towards the guilt of the delinquent and not leave the matter in a state of suspicion as mere suspicion does not replace the need for proof in domestic enquiries as well. If there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty and in such an event, the findings recorded by the Inquiry Officer would be perverse.

8. Further, in *State of Andhra Pradesh v. Sree Ram Rao (1964) 111 LLJ 150 SC* the question was whether the High Court, under Article 226 could interfere with the findings recorded at the departmental inquiry, the Supreme Court held that the findings, recorded in a domestic inquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

9. As per the case of the prosecution, the Respondent continued to remain absent from duty wilfully and unauthorisedly w.e.f. 23.12.93 to

01.02.2000. Under Section 101 read with Section 103, Indian Evidence Act, 1872, the burden of proof to prove the absence of the respondent lies on the petitioner. It is a settled legal position that preponderance of the evidence, also known as balance of probabilities is the standard of proof required in most civil cases, unlike criminal cases where the prosecution is required to prove the case beyond reasonable doubt. The standard is met if the proposition is more likely to be true than untrue. Effectively, when there is a chance greater than 50 percent for the proposition to be true. **(Ref. Lord Denning, in *Miller v. Minister of Pensions* 1947 (2 All ER 372).)** Admittedly, there was not a single prosecution witness brought by the petitioners to prove the document relied upon by them. Thus the petitioners have clearly failed to discharge their burden of proof.

10. The only reason, according to the Enquiry Officer that the charges levelled against the Respondent were proved was that the Respondent did not provide any documentary proof that he was not absent from 23.12.1993 to 01.02.2000. We find ourself in conformity with the observation of the learned CAT that instead of proving the charge by adducing the evidence on behalf of the prosecution, the Enquiry Officer has left the onus of disproving the charge on the Respondent, which is not permissible. Further, it is seen that the Disciplinary Authority did not furnish the listed documents to the

Respondent in spite of his representation dated 24.12.2004 and then took four years to submit a report which does not contain any defence of the Respondent, assessment of evidence and findings on each charge. Thus the learned CAT is right in taking the view that neither the Enquiry Officer nor the Disciplinary Authority was serious in holding the proceeding against the Respondent. They held it as an empty formality. Even the UPSC did not bother to see whether the enquiry was held in accordance with the Rules. They, without any application of mind, recommended cut of 30% pension and the Disciplinary Authority faithfully followed it.. In light of these facts and circumstances, the story narrated by PW-2 seems highly unbelievable and concocted.

11. In the light of the aforesaid facts, we do not find any reason to interfere with the findings of learned CAT.

Finding no merit in the petition, the same is dismissed.

KAILASH GAMBHIR, J.

I.S. MEHTA, J.

MARCH 04, 2015

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