

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.18757 of 2015
Date of Decision: July 18, 2017

Union Territory Chandigarh & another

...Petitioners

Versus

B.R.Madan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Suvir Sehgal, Senior Standing Counsel with
Mr.Tarun Walia, Advocate,
for the petitioners.

Mr.J.R.Syal, Advocate,
for respondent No.1.

AMIT RAWAL, J.

The Union Territory, Chandigarh has assailed the order dated 11.3.2013 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT") in O.A.No.866-CH-2011 titled as "B.R.Madan Versus Union of India & others" wherein, challenge was to the order dated 8.11.2010 (Annexure A-10), whereby, punishing authority imposed a penalty of 5% cut in pension, with a further prayer of quashing the order of penalty and grant consequential relief.

Mr.Suvir Sehgal, learned counsel representing the petitioner submitted that respondent No.1, while functioning as Executive Engineer, Electrical Division No.2 in the Engineering Department, U.T.Chandigarh, was charge-sheeted, vide charge-sheet dated 9.9.2004 on various allegations contained therein and finding the reply to be unsuitable, a

retired IAS Officer was appointed as an Enquiry Officer, who, vide his report dated 10.1.2005 proved the charged against him. The Chief Engineer, U.T.Chandigarh, vide letter dated 18.8.2009, while enclosing the enquiry report aforementioned, in order to comply with the principle of natural justice, sought the comments of applicant-respondent No.1 to make representation or submission in support of his defence within a period of fifteen days. Respondent No.1 is stated to have submitted detailed reply raising certain points in order to belie the report of the Enquiry Officer. However, vide order dated 8.11.2010 (Annexure A-10), in exercise of powers conferred under Rule 2.2 (b) of the Punjab Civil Service Rules (Volume-II), Secretary Engineering, Chandigarh Administration, Chandigarh imposed 5% cut in pension. The CAT has allowed the Original Application by setting-aside the order on the premise that the points raised in the representation submitted by the applicant, have not been considered by the Department, resulting into quashing of the impugned order imposing 5% cut in pension.

He further submitted that if at all the points taken in the representation or in defence to belie the report of the Enquiry Officer had not been considered, the CAT ought not to have set-aside the order, but given a chance to reconsider. Respondent No.1 was not the only person charged, but other two officers also received major punishment, which was subsequently upheld by various Courts and, thus, urged this Court for allowing the writ petition.

Per contra, Mr.J.R.Syal, learned counsel representing respondent No.1 submitted that there is no illegality and perversity in the order under challenge. The CAT has passed the order by applying the

principle of natural justice, for, respondent-applicant before the CAT had given a detailed reply stating that the points raised by him in his representation have not been adverted to by the punishing authority and, therefore, the order of imposition of 5% cut in pension was wholly erroneous and illegal and liable to be set-aside on the grounds stated therein.

We have heard the learned counsel for the parties, gone through the records of the case and of the view that the order of the CAT is solely based on the ground of having not adverted to the points taken by respondent No.1 in the representation. If it is being so, the CAT ought not to have set-aside the order in toto, but should have remitted the matter to the authorities to deal with all the points raised by respondent No.1 for fair determination of the controversy involved. For the sake of brevity, the operative part of the impugned order reads thus:-

“10. In the impugned order, none of the issues raised by the applicant in his representation submitted on 15.10.2009 have been considered. It has been simply stated that after considering the facts and circumstances of the case and the representations made by the applicant, the disciplinary authority found that the then Administrator had rightly ordered the imposition of penalty of 5% cut in pension vide orders dated 28.5.2008. Thus, we are of the view that this is a case of non-application of mind on the part of the disciplinary authority and the impugned order is non speaking.”

Even respondent No.1 would not have been affected as on remand, perhaps he may succeed in supporting the defence taken in the representation submitted against the report of the Enquiry Officer.

Resultantly, the impugned order of the CAT is hereby set-aside with the observation that the matter is remitted back to the Secretary Engineering, Chandigarh Administration, Chandigarh with a direction to

consider the reply of respondent No.1 as indicated in the Original Application, afresh and pass a speaking order after affording opportunity of hearing to him. Let this exercise be done within a period of three months from the date of receipt of certified copy of this order.

With the aforementioned observations, the writ petition stands disposed of.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 18, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No