IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8751 OF 2014

Shri. Uchit N. Das ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. S.V. Marne for the Petitioner.
Mrs. Neeta V. Masurkar a/w. Mr. D.A. Dube for Respondent Nos.1 and 2/UOI. .

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE OF RESERVING THE JUDGMENT : 7th MARCH 2018
DATE OF PRONOUNCING THE JUDGMENT : 13th MARCH 2018.

JUDGEMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] This petition is directed against the judgment and order dated 4th October 2013 made by the Central Administrative Tribunal (CAT) in Original Application No. 417 of 2011 instituted by the petitioner seeking *inter alia* the following reliefs:

“a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned order dated 06.01.2011 with all consequential benefits.

b) This Hon'ble Tribunal may further be pleased to grant promotion to the Applicant to the post of Additional Commissioner of Customs and Excise w.e.f 21.11.2011 when the Applicant's immediate Junior Shri S.C. Rohtagi was promoted with all consequential benefits.

c) This Hon'ble Tribunal may further be pleased to direct the Respondents to pay to the Applicant interest @ 12% per annum on the amount of DCRG. Leave Encashment and Commutation of Pension w.e.f.01.02.2005 till the date of payment of retirement benefits.”

4] By the impugned judgment and order dated 4th October 2013, the CAT, has dismissed O.A.No.417 of 2011 after taking into consideration of all the contentions raised by and on behalf of the petitioner.

5] Mr.Marne, learned counsel for the petitioner, however, submits that in the present case, there was no material on record to support the charge levelled against the petitioner and therefore, the petitioner was required to be completely exonerated and awarded all consequential benefits in pursuance of such exoneration. He submits that the petitioner had offered documentary evidence explaining the possession of cash amount of Rs.71,000/- found in his office and the cash amount of Rs.40,000/- at his residence. He submits that even the CBI which was to prosecute the petitioner for charges of corruption on the same incident, did not find any material to launch the prosecution and the Special Judge also permitted closure of the case against the petitioner. In this circumstances, Mr. Marne submits that there was no ground to impose any penalty upon the petitioner and the impugned order dated 6th January 2011, by which, penalty of 15% cut in the petitioner's monthly pension is imposed upon him, is without jurisdiction and was required to be set aside by the CAT.

6] Mr. Marne submits that admittedly, during pendency of the departmental proceedings against the petitioner, the petitioner retired on 31st January 2005. He submits that the departmental proceedings can be continued post retirement only in case of gross or grave misconduct. He submits that penalties in the nature of pension cuts can be imposed only if it is established that any corresponding loss has occasioned the department. Mr. Marne submits that in the present case, the charges against the petitioner were neither gross nor grave. Further, this is not at all a case where any loss can be said to have occasioned the department. Therefore, the impugned order dated 6th January 2011 imposing penalty of 15% cut in the monthly pension is in excess of jurisdiction and was required to be interfered with by the CAT.

7] Mr. Marne submits that in the present case, the petitioner had in fact been exonerated by the inquiry officer. Even the UPSC had concurred with the findings of the inquiry officer. The disciplinary authority, by relying upon the report of the Joint Commissioner, which report was never a part of the inquiry proceeding, has unjustifiably disagreed with the findings of inquiry officer. The disciplinary authority has also unjustifiably ignored the advise of the UPSC and proceeded to impose penalty of 15% cut in monthly pension. Mr. Marne submits that all this is quite illegal and the impugned order dated 6th January 2011, therefore, warrants interference.

8] Mr. Marne submits that on account of pendency of the enquiry, the petitioner, was deprived of promotion to the post of Additional Commissioner of Customs and Excise with effect from 21st November 2001 when the immediate junior of the petitioner came to be promoted to the said post. Mr. Marne submits that since such denial of promotion was illegal and *ultra vires,* the petitioner was entitled to relief in terms of prayer clause (b) of the O.A., i.e., deemed promotion with all consequential benefits.

9] Mr. Marne, finally, submits that in case of similar charges imposed upon the petitioner's colleagues in the department, only minor penalties came to be imposed. Mr.Marne submits that the petitioner has been discriminated against by imposition of such harsh penalty and therefore, this is a matter where the respondents have infringed the guarantee of right to equality enshrined in Article 14 of the Constitution of India.

10] Mr. Marne submits that in any case the penalty imposed is grossly disproportionate and for this reason also there is infringement of Article 14 of the Constitution of India. For all these reasons, Mr. Marne submits that the impugned judgment and order made by the CAT be set aside and Original Application No. 417 of 2011 instituted by the petitioner be allowed.

11] Mrs. Neeta Masurkar, learned counsel for respondent Nos.1 and 2, submits that the charge levelled against the petitioner was very serious and the same stands established in the departmental proceeding. She submits that there was due compliance with the principles of natural justice and fair play before the disciplinary authority disagreed with the findings recorded by the inquiry officer. She submits that in the present case, the petitioner had virtually admitted his guilt before the C.B.I. Officer. However, after period of 8 days, the petitioner, sought to retract such admission by claiming that such admission was under duress or that the petitioner, who is a high ranking officer, had signed the statement without reading its contents. Mrs. Masurkar submits that despite all this, a quite light penalty was imposed upon the petitioner, taking into consideration the circumstance that he had retired in the meanwhile. She submits that there is absolutely nothing disproportionate in the penalty imposed upon the petitioner.

12] Mrs. Masurkar submits that there is no question of awarding the petitioner any promotion or deemed promotion now that the charges levelled against him, which are of serious nature, stand proved.

13] Mrs. Masurkar submits that the charge of discrimination is quite baseless because penalties greater than those imposed upon the petitioner have been imposed upon his colleagues. Besides, the petitioner was high ranking officer and therefore, even if greater penalties were to be imposed upon the petitioner, as compared to his colleagues serving under him, no question of discrimination would arise.

14] Mrs. Masurkar submits that from the perusal of order dated 6th January 2011, it is quite clear that the disciplinary authority has neither made any reference nor has it relied upon the report of the Joint Commissioner. The disciplinary authority has independently applied its mind, both, to the opinion of the UPSC as well as the inquiry report and thereafter, made the order dated 6th January 2011 after due compliance with principles of natural justice and fair play. For all these reasons, Mrs. Masurkar submits that there is no merit in this petition which may be dismissed with costs.

15] The rival contentions now fall for our determination.

16] In this case, the charge of bribery/corruption was made upon the petitioner while functioning as Dy.Commissioner of Central Excise (Rebate) , Mumbai. This was on the basis of a raid in which the petitioner was found in possession of cash amount of Rs.71,000/- in his office and Rs.40,000/- at his residence, for which, the petitioner failed to offer any satisfactory explanation. The charge, *per se*, was indeed grave and serious and therefore, there is no merit in the contention of Mr. Marne that the charge was neither gross nor grave.

17] The inquiry officer has held that the charges against the petitioner cannot be said to have been proved. However, the disciplinary authority, after afford of opportunity to the petitioner upon due compliance with the natural justice and fair play has disagreed with the findings of the inquiry officer and held that the charge stands proved. Amongst other materials, the disciplinary authority has relied upon the statement of the petitioner himself before the CBI officers, who conducted the raid, in which, the petitioner, has virtually admitted his guilt. No doubt, the petitioner, sought to retract this statement after eight days. A disciplinary authority has, however, held that it is not possible to agree with the inquiry officer that the statement was given under duress or that the petitioner, who was holding the post of Dy. Commissioner of Central Excise, signed the statement without reading its contents. There is no perversity in the finding recorded by the disciplinary authority or approach of the disciplinary authority. The CAT has also entirely right in observing that it is normally not in the realm of its jurisdiction to reassess or reevaluate the evidence on record in departmental proceeding. As long as the findings do not suffer from perversity, normally, power of judicial review will not be exercised in such matters.

18] The inquiry officer in the present case, who exonerated the petitioner had perhaps failed to appreciate that the standard of proof required in the departmental proceeding is that of preponderance of probabilities and not proof beyond reasonable doubt. The inquiry officer has found faults with the panchanama and the panch witnesses. The inquiry officer has laid excessive emphasis on the circumstances that the CBI, ultimately, did not proceed with the criminal prosecution of the petitioner. The inquiry officer failed to appreciate that the parameters, applicable in a criminal prosecution and the departmental proceedings are quite different and distinct and therefore, the circumstance that the CBI did not deem it appropriate to proceed with the petitioner's criminal prosecution, does not mean that there was no sufficient evidence in the departmental proceeding.

19] In the aforesaid circumstances, the disciplinary authority, has quite correctly disagreed with the findings of the investigating officer. Further, the CAT has also upheld the findings and the approach of the disciplinary authority. There is neither any jurisdictional error nor perversity in the approach of the CAT, so as to warrant any interference with the impugned judgment and order.

20] Despite such a serious charge, by order dated 6th January 2011, penalty of only 15% cut in the petitioner's monthly pension came to be imposed. Such penalty is certainly not disproportionate, much less shockingly disproportionate to the charge established against the petitioner. There is also no merit in Mr.Marne's contention that no penalty can be imposed after retirement unless it is established that some loss was caused to the department. Taking into consideration that the charge of bribery or being in possession of unaccounted cash amount was held as proved, penalty, which is in fact on the lenient scale has been imposed upon the petitioner and the same warrants no interference.

21] There is no merit in the contention based upon discrimination in the matter of imposition of penalty. In the first place, the petitioner, seeks to compare himself with Inspectors, who were his subordinates and with whom as well, huge amount of cash were found on the date of raid. The CAT has drawn a distinction between the position of the petitioner and his subordinates. The CAT has rightly observed that in view of higher responsibility which a senior official like the petitioner was expected to discharge, the petitioner, had to set an example to his subordinates and further, ensure that his subordinate do not indulge in such activities. We find no error in such approach on the part of the CAT.

22] That apart, we fail to understand the basis of the petitioner's contention that the Inspectors were let off with a lesser penalty. In the affidavit-in-reply filed on behalf of the respondents, to which, there is no rejoinder, it is clearly stated that penalties of reduction of pay, which will have the effect of postponing further increments of pay, came to be imposed upon the Inspectors. In the affidavit, it is stated that such penalty will not only affect the Inspectors during their tenure in service, but will also have an effect of the pension and other pensionary benefits which they will draw after their retirement. As compared to such penalty, there is only a 15% cut in the petitioner's monthly pension. Therefore, there is no merit in the contention of either dis-proportionality or discrimination.

23] For all the aforesaid reasons, we find no good ground to interfere with the impugned judgment and order . Rule is therefore, discharged. There shall however, be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**