

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 20675 of 2018

Date of Decision: 15.10.2018

Union of India and another

.....Petitioners

Versus

Rakesh Mohan Gupta and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Namit Kumar, Advocate
for the petitioners.

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 20.11.2017 (Annexure P-6) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), whereby the Original Application (OA) No.060/00737/2016 filed by Rakesh Mohan Gupta, has been allowed.

2. Union of India through Secretary to Government of India, Ministry of Home Affairs and The Director, Intelligence Bureau, (Ministry of Home Affairs), Government of India, are petitioners No. 1 and 2 respectively. Rakesh Mohan Gupta, Assistant Director, Subsidiary Intelligence Bureau (Ministry of Home Affairs), Government of India, Chandigarh; Mohan Lal, ACIO-II/G, Intelligence Bureau, (Ministry of Home Affairs), Government of India, New Delhi and Central Administrative Tribunal, Chandigarh, have been arrayed as respondents No. 1 to 3 respectively in the writ petition.

3. Mohan Lal, JIO-II/G (hereinafter referred to as 'the complainant') was attached with JD/J. He was posted to 'JA' Branch, within the group on April

05, 2007. Prior to his posting with 'JA' Branch, he was sanctioned leave from 09.04.2007 to 27.04.2007. He joined the 'JA' Branch on 05.04.2007 and proceeded on leave from 09.04.2007. Respondent No.1 sent a letter dated 09.04.2007 asking the complainant to join the duty immediately. The letter was not delivered. Another letter dated 27.04.2007 was issued advising him to join the duty and his pay was also stopped. The complainant submitted an application for extension of leave from 28.04.2007 to 25.05.2007. The same was denied due to work pressure and non-availability of any other working hand in the Branch. The complainant's leave was sanctioned w.e.f. 20.05.2007 on medical ground. He finally joined duty on 23.09.2007. His absence was regularised by granting leave admissible except for the period from 28.04.2007 to 19.05.2007 and the same was treated as *dies-non*.

4. The complainant submitted two representations dated 01.10.2007 and 26.11.2007 before the National Commission for Scheduled Castes (NCSC) alleging caste based harassment by respondent No.1. On receipt of comments from the Deputy Director and the reply, the Commission vide letter dated 08.01.2008 stated that the allegations were not substantiated. Complainant submitted a rejoinder to NCSC and reiterated the allegations. The complainant submitted further representations on 10.04.2008 and 14.10.2008 and requested summoning of respondent No.1 before the Commission. As no new issue was raised in the representation and the allegations levelled were not substantiated, the complainant submitted another representation dated 05.01.2009. Reply to the same was filed reiterating that the allegations were not proved. Rejoinder was filed by the complainant on 13.04.2009. In the rejoinder apart from the issue of caste based harassment, he raised the issue of regularization of his absence from 28.04.2007 to 19.05.2007. On re-consideration, his absence was regularised as *earned leave* and information was sent to NCSC alongwith parawise reply to the

rejoinder. Thereafter the complainant made a fresh representation on 25.09.2009. On receiving the representation, Assistant Director/Welfare was directed to conduct preliminary enquiry into the allegations of caste based harassment. The Assistant Director/Welfare submitted report dated 27.04.2010 holding that the allegations were absolutely true and correct in nature. While submitting the report, independent witnesses were not examined, Joint Director was entrusted with the job of conducting fresh preliminary enquiry into the matter by recording statements of independent witnesses. Preliminary inquiry report dated 04.02.2011 was submitted stating that the allegations stood substantiated.

5. Memo dated 10.03.2011 was issued by the Disciplinary Authority under Rule 16 of the Central Civil Services (Classification, Control and Appeal), Rules 1965 (for brevity 'the Rules'). The charges were that respondent No.1 during the period April 2007 to February 2008 had harassed the complainant by passing caste denoting remarks in presence of other staff members of the Branch. Respondent No.1 filed a written statement on 23.03.2011 denying the charges and stating that the complainant has targeted him under the wrong impression that respondent No.1 recommended his absence as *dies-non*.

6. The Disciplinary Authority after considering the case and holding oral enquiry, issued a detailed charge-sheet dated 07.07.2011. After considering the reply submitted by respondent No.1, Assistant Director was appointed as Enquiry Officer. He submitted his enquiry report dated 20.09.2012 holding that the charges against respondent No.1 were not proved. The Disciplinary Authority dis-agreed with the findings of the Enquiry Officer and recorded dis-agreement note. The enquiry report alongwith dis-agreement note of the Disciplinary Authority were forwarded to respondent No.1. He submitted representation on 26.02.2013 and denied the charges. The Disciplinary Authority vide order dated

'reduction in pay by one stage for a period of three years' without cumulative effect.

7. Aggrieved of the order, respondent No.1 preferred an appeal. As per the procedure, the Appellate Authority sought advice of UPSC. Vide letter dated 17.09.2014. UPSC advised that charges stood proved and there is no merit in the appeal. The appeal was rejected vide order dated 06.06.2016.

8. Respondent No.1 assailed the charge-sheet, UPSC advice note, penalty order and the appellate order before the Tribunal. The Tribunal accepted the OA filed by respondent No.1.

9. Aggrieved of the order of the Tribunal, the present writ petition has been filed.

10. Learned counsel for the petitioners argued that the order passed by the Tribunal is perverse. The Tribunal failed to appreciate the facts on record and has not appreciated the evidence in a proper prospective.

11. The contention raised by learned counsel for the petitioners lacks merit.

12. The basic issue raised in the writ petition is regarding perversity of findings of the Tribunal. From the perusal of order of the Tribunal, it is evident that the Tribunal has dealt with the issue in detail by passing a reasoned order. It reads thus:-

"13. As is evident from the record that the only charge framed against the applicant is that while he was posted as SO at Headquarters, New Delhi, during the period w.e.f. April, 2007 to February, 2008, he had harassed subordinate Mohan Lal (Respondent No.3, by passing caste based remarks against him, in the presence of staff members of his branch. Respondent No.3 was stated to have moved a complaint dated 25.9.2009 (Annexure A-15), which forms the basis of the charge sheet against the applicant, which (complaint) reads as under :-

“Sub : Calling of office memo. No. 26/JA/2008(15)-42 dated Jan. 14, 2009 for justice in case of Shri Mohan Lal, JIO-I.

Sir,

I was granted E.L. w.e.f. April 9 to 27, 2007 and due to urgent domestic circumstances I had applied for extension of leave w.e.f. April 30 to May 25, 2007. But on April 27, 2007, I was informed that since leave sanctioning order for my earlier application was not issued by the office, the whole leave would be treated as unauthorized absence with no salary. Consequently my salary for that period was also deducted which resulted in financial hardships for me.

Sir, this is a clear example of caste based harassment towards me as the Section Officer, JA granted leave to three branch members whose details are given below without issuance of leave sanction order.

Sl. No.	Name, Rank, & PIS No.	Kind and span of leave	Remarks
	S/Sh		
1.	J.P. Gupta, Asistant, 115200	HPL 26.12.2007 To 28.12.2007	Orders sanctioning Leave awaited.
2.	Rajinder Singh Negi, UDC, 103996	HPL 26.11.2007 to 20.12.2007	Orders sanctioning Leave awaited.
3.	Subhash Chander, PA, EL 7.1.2008 to 106764	11.1.2008	Orders sanctioning leave Awaited

It is requested that the aforesaid office memo may please be called as a proof of atrocity on the basis of caste based harassment”.

14. Thus, a perusal of the complaint would reveal that there is not an iota of allegation, with regard to the passing of the caste based remarks against the complainant, by the applicant. The contents of the charge are totally contrary to the allegation contained in the complaint. The main grievance of the complainant, appears to be non sanctioning of his leave application, by the applicant. It has been specifically pleaded in para 5 of the written statement by the respondents that the complainant joined the JA Branch under the applicant only on April 5, 2007 and proceeded on leave from April 9, 2007. He finally joined his duties on September 3, 2007. Not only that, it was duly acknowledged that the complainant Mohan Lal submitted representations on 1.10.2007 and 26.11.2007, to the Commission, alleging therein caste based harassment by the applicant. Having obtained the comments from the Deputy Director/J, a reply dated 8.1.2008, was sent to the Commission. However, these allegations of caste based harassment, could not be substantiated there. Thereafter, he was transferred from that Unit to some other Unit. Perhaps that is the reason that the IO has duly examined the relevant evidence and matter in right perspective and came to the definite conclusion that the charge alleged against the applicant was not proved, vide his report dated 20.9.2012 (Annexure A-5).

15. Such being the position on record, now the short and significant question, though important, arises for our consideration in this case is as to whether there is legal evidence to substantiate the contradictory impugned charge sheet & impugned disagreement note, in the given facts and circumstances of this case or not?

16. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the negative, in this regard.

17. As indicated hereinabove, the applicant was specifically charged for passing caste based remarks against the complainant Mohan Lal (Respondent No.3) between April 27, 2007 to February, 2008. In an unsuccessful attempt to substantiate the charge, against the applicant, the star/ main witnesses of the department was complainant Mohan Lal (Respondent No.3). He did not support the specific allegations contained in the impugned charge-sheet, while appearing before the IO on 27.3.2012. It has been specifically recorded in the Inquiry report that when IO asked complainant Mohan Lal, whether he wanted to give any statement during the hearing, he has stated that he has already given his statement on September 25, 2009 (Annexure A-15), which may be taken on record. He did not disclose (intimate) the day, time and venue of the alleged incidence. Rather, he has admitted that applicant never made such remarks in his presence. During the course of examination complainant Mohan Lal, was questioned, as to how he could know about the caste based remarks against him, as these were never passed in his presence, then he stated that PW-4 used to tell about it and only he could tell as he used to tell him before 5.4.2007 (which is not even subject matter of the charge sheet). As regards evidence of PW-3 and PW-4, no doubt they have vaguely stated (without any specific date, time and particulars), that the applicant used to pass castiest remarks against the Respondent No.3 (complainant) and he also used to abuse and threaten to spoil their ACRs. But no implicit reliance can be placed on oral evidence of the Department, being heir-say.

18. Possibly, no one can dispute that standard of proof in a domestic enquiry is not that heavy as is required to prove in criminal proceedings, but at the same time, in domestic enquiry, charge should be proved by preponderance of probability of legal evidence, which is totally lacking in this case. As mentioned hereinabove, that even the main witness complainant Mohan Lal did not utter a single word during the course of the enquiry that the applicant has ever passed castiest remarks against him. He has reiterated the allegations contained in his complaint, Annexure A-15, in which, the complainant has mainly demonstrated his grievance therein, that the applicant did not recommend his leave and

asked him to join his duties, and nothing more. The complainant, neither himself uttered a single word, of pointed castiest remarks before the IO, nor mentioned in his complaint, Annexure A-15. The oral evidence of PW-3 and PW-4, with regard to the passing of the caste remarks against Mohan Lal (Respondent No.3) are **hear-say** and not, at all, admissible in evidence as contemplated in sections 59 and 60 of the Indian Evidence Act, which postulates that all facts, except the contents of the documents, may be proved by oral evidence and **oral evidence**, must in all cases, **shall be direct**. Therefore, no legal direct evidence of passing castiest remarks, against the applicant, is forthcoming, on record. Rather, the allegation in the complaint are totally contrary to the contents of the impugned charge-sheet. Hence, no implicit reliance can be placed on the oral evidence of the department, being hear-say, in this relevant connection. That was the reason that the IO has rightly concluded that the charge framed against the applicant is not proved on record. Moreover, DA has not recorded cogent reasons, in this regard, while recording impugned disagreement note. Even the AA has relied upon the representation of the complainant of Aril 10, 2008, October 14, 2008, January 5, 2009 and April 13, 2009, made by him to the Commission, which were neither relevant or formed part of the impugned charge sheet. In other words, even AA has relied upon the foreign material to reject his appeal, which is not legally permissible.

19. Therefore, it is held that the inadmissible hear-say evidence, brought on record, by the Department before the IO, is totally falls short of, as is legally required, to prove the charge in a domestic enquiry. The IO has rightly concluded that the charge against the applicant was not proved. On the other end, the DA has slipped into deep legal error, in recording the impugned dis-agreement note, on the basis of the indicated inadmissible evidence, which cannot legally be sustained. The same very mistake was repeated by the AA as well.

20. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As mentioned hereinabove, the complainant has based his case on the basis of complaint, Annexure A-15, that the applicant did not recommend his leave and has asked him to join his duties. There is not even a whisper in it that the applicant has ever passed any castiest remarks against him, for which the applicant was charge sheeted. The allegation of charge sheet is as vague, as anything. It will not be out of place to mention here that the alleged occurrence is stated to be between April, 2007 to February, 2008, whereas the impugned charge-sheet was belatedly served on the applicant on 7.7.2011 (Annexure A-19), after a lapse of four years, without any cogent explanation. Even if, the applicant did not

recommend, his leave application and asked the complainant to join his (applicant"s) duties, in discharge of his official duties, indeed cannot possibly be termed to be a misconduct, warranting a departmental enquiry. If such officers, duly performing their duties, in their official capacity, are punished, in this manner, then there will be no end to it and it will hamper their functioning as a public servant."

13. At this stage, it would be appropriate to examine the scope of judicial review in writ petition under Article 226 of the Constitution of India relating to disciplinary proceeding.

14. The Supreme Court in **Union of India and others Versus P. Gunasekaran**, 2015(2) SCC 610 held that the High Court should not act as an Appellate Authority in disciplinary proceedings. It is not open to re-appreciate the evidence. The Supreme Court laid the principles relating to the issues which can be examined by the High Court and the issues which shall not be open to be scrutinized by the High Court in writ petition. The relevant portion of the judgment is reproduced below:

"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under [Article 226/227](#) of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience."

15. As held by the Apex Court, scope of interference in the writ petition is very limited in respect of disciplinary proceedings.

16. It would be important to note that the complainant kept on making complaints to NCSC for almost one and half years. Number of complaints were made and there was no specific allegation regarding caste based comments in any of the complaint. Rather from the perusal of complaint it is evident that the grievance was regarding non-sanctioning of leave thereby treating the complainant to be un-authorisedly absent with no salary. Complaint made was that leave was sanctioned to other three persons, but denied to complainant because of his caste. The complaints were rejected by NCSC. It was not a case of the complainant that the alleged utterance was made in his presence or he had

was respondent No.1 who was responsible for absence of the complainant being treated as *dies-non*. The Tribunal has dealt with the matter. It was considered that there was a delay of four years between the alleged occurrence and the impugned charge-sheet being issued to respondent No.1. The evidence cannot be re-appreciated in writ petition.

17. The view taken by the Tribunal is possible view, even the Enquiry Officer had taken a similar view, and therefore, in such circumstance, it cannot be held that the findings recorded by the Tribunal are perverse in any manner or legally not sustainable.

18. The writ petition is accordingly dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

15.10.2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No