



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 22, 2024

+ W.P.(C) 3032/2019

KUMAR RAJEEV

..... Petitioner

Through: Mr. M.C. Dhingra and
Mr. Gaurav Dhingra, Advs.

versus

ELECTION COMMISSION OF INDIA

..... Respondent

Through: Mr. Rajeev Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:

“It is, therefore/most respectfully prayed that this Hon'ble Court may graciously be pleased to issue writ of certiorari as also writ of mandamus and/or any other appropriate writ, order or directions and

(A) set aside the impugned order dated 27.9.2018 passed by the Central Administrative Tribunal, New Delhi in OA No.3010/2015;

(B) set aside (1) order dated 13.12.2004 passed by the Disciplinary Authority imposing penalties of (i) compulsory retirement, and (ii) recovery of Rs.74,269, (2) order dated 17.5.2005 passed by the Appellate Authority converting penalty 'compulsory retirement to 'withholding of future promotion for 5years' and treating the period



from 13.12.2004 to 17.5.2005 as dies non, while maintaining the penalty of recovery, and (3) order dated 27.8.2014, on petitioner's Revision, statedly passed by the "Competent Authority" deciding 'not to overturn the earlier decision taken in the matter' as communicated to the petitioner by Under Secretary of the respondent, all being based on illegal and vitiated Inquiry Report;
(C) grant all consequential benefits including seniority, promotion(s) by conducting review DPCs, arrears of salary and all other benefits as admissible to the petitioner by virtue of his service;
(D) award cost; and may also
(E) pass such other order(s) as this Hon'ble Court may find in favour of the petitioner and against the respondent."

2. In effect, the petitioner is challenging the order dated September 27, 2018, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.3010/2015 ('OA', for short) whereby the Tribunal has dismissed the OA filed by the petitioner herein.

3. The challenge of the petitioner before the Tribunal was with regard to the order dated December 13, 2004 passed by the Disciplinary Authority imposing penalty of compulsory retirement, order dated May 17, 2005 passed by the Appellate Authority imposing penalty of withholding of future promotion for five years and treating the period from December 13, 2004 to May 17, 2005 as *dies non* and the order dated August 27, 2014 passed by the Revisional Authority under Rule 29 of the CCS (CCA) Rules, 1965.

4. The Tribunal has dismissed the OA by stating in paragraphs 10 onwards as under:



“10. The charges against the applicant are in relation to the information furnished by him in the context of obtaining the CGHS Token Card. An employee of the government can include the name of his mother in the CGHS Card, if only the income of his father is below particular limits. In the concerned proforma, the applicant is said to have mentioned that the income of this father is less than Rs.1500/- per month. However, on verification it emerged that the father of the applicant was receiving much more.

11. After the charge sheet was issued, the applicant submitted his explanation and thereafter an Inquiry Officer was appointed. In the inquiry, the applicant admitted the mistake on his part. However, he pleaded that the reason for his ignorance about the actual income was that he was not visiting his native place, and was not conversant with the relevant facts. Before the Inquiry Officer, he offered to refund the amount which was claimed by him towards reimbursement. The Disciplinary Authority took these aspects into account, and after extensive discussion, imposed the penalty of compulsory retirement.

12. The Appellate Authority passed order through Memorandum dated 17.05.2005. The plea of the applicant that it is bereft of reasons is indeed, correct. The Memorandum reads as under:-

“Memorandum

Subject: Appeal to the Chief Election Commissioner of India under Rule 23 (ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 filed by Shri Kumar Rajeev, Assistant in the Election Commission of India.

On an appeal filed by Shri Kumar Rajeev, Assistant in the Election Commission of India before the Chief Election Commissioner under Rule 23 (ii) of the Central Civil Services (Classification, Control and Appeal)



Rules, 1965, against the Order of the disciplinary authority No.193/2/III(I)/2003, dated 13th December, 2004 ordering him to be compulsorily retired from government service with immediate effect under the provisions of Rule 11 (vii) of the aforesaid rules, the Appellate Authority has passed the following order:-

“Keeping in view all relevant facts and circumstances of the case, as an appellate authority and in exercise of powers vested under Rule 27 of CCS (CCA) Rules, I hereby order that the penalty imposed upon Shri Kumar Rajeev be reduced to withholding of his future promotion for five years. Further, a copy of the order should be placed on his CR dossier and placed before any and all Departmental Promotion Committees (DPC) that are held in future, for the DPC to take the appropriate view as and when cases of promotion/crossing of efficiency bar in the cadre are taken up. Further, the period for which he did not serve the Commission, i.e. from the date of his compulsory retirement in pursuance of the order of the disciplinary authority and till the date of his reinstatement in pursuance of the present order, shall be treated as “dies non”.

2. Accordingly, Shri Kumar Rajeev is hereby reinstated in service as Assistant in the Election Commission from the date he reports for duty.

3. He would not be entitled to any pay and allowances or any other benefits for the period from the date of his compulsory retirement upto the date of his reinstatement in service.

*(STANDHOPE YUHLUNG)
UNDER SECRETARY”*

If the ordinary principles of adjudication are to be applied, the order is liable to be set aside. However, if the applicant is in service today, he owes it to this very Memorandum. Obviously for this reason, the applicant



did not press the relief vis-a-vis this memorandum during the course of the arguments. Ultimately the challenge is only to the order passed in the Revision.

13. It is fairly well settled that Revision is not as a matter of right, and unless it is conferred by specific provision of law, it cannot be either availed or entertained. The applicant filed his Revision before the President of India, seven years after the Appellate Authority passed the order. It is straightway addressed to the President of India. The language employed therein would indeed surprise any officer, not to speak of the office of President of India. For example, in the first page of the Revision, the applicant wrote as under:-

“Not only that the guilt verdict is erroneous but even the procedure for imposing punishment adopted by the Election Commission was not in consonance with the Rules.”

At one place, it is stated that his family belongs to lower middle class and asking the income of his father would have meant to demean him. No provision of law is mentioned in the revision. The revision seems to have been forwarded to the Election Commission by the President’s Secretariat. However, in its wisdom, the Election Commission thought it fit to appoint a committee, even while the OA challenging the order of punishment and order of appellate authority was pending before this Tribunal. The Committee, in turn, is said to have undertaken some exercise and made recommendations. The Legal Advisor, however, informed the respondents the steps to be taken in matters of this nature. Ultimately, the Revision was rejected through Memorandum dated 27.08.2014, which reads as under:-

“MEMORANDUM

With reference to his petition dated 12.07.2012 to Hon’ble President of India, which was forwarded to the Commission for appropriate action vide letter dated 24.07.2012, and representation dated



16.12.2013 to the Deputy Election Commissioner, Election Commissioner of India to treat the same as Revision Petition under Rule 29 (1) (v) of the CCS (CCA) Rules, 1965, Sh. Kumar Rajeev, Under Secretary is hereby informed that the Competent Authority has decided not to overturn the earlier decision taken in the matter.

*By Order
(B. C. Patra)
UNDER SECRETARY”*

Confronted with a specific question as to under which provision, the Revision was filed, learned counsel for the applicant submitted that it is referable to Rule 29 of CCS (CCA) Rules, 1965. A perusal of this Rule discloses that the remedy of revision is available only against an order from which an appeal is allowed, but from which no appeal has been preferred, or from which no appeal is allowed.

14. In the instant case, the remedy of appeal is allowed, and it was availed by the applicant. Therefore, the question of availing the remedy of Revision does not arise. The mandate under sub rule (3) of Rule 29 of CCS (CCA) Rules, 1965 that an Application for Revision shall be dealt with in the same manner as if it was an appeal under the rules, would become relevant, only when the revision as such is permissible.

15. At any rate, the Revision was filed seven years after the order of Appellate Authority. Though the rules are silent about the period within which the remedy can be availed, if otherwise available, the inordinate delay would certainly make it not maintainable, on the grounds of laches.

16. We do not find any merit in the OA, and is accordingly dismissed.”



5. The charge in the chargesheet against the petitioner was that he made a false declaration about the dependence and income of his parents in the context of getting the name of his mother included in the Central Government Health Scheme ('CGHS', for short) Token Card, and he claimed reimbursement of medical expenses amounting to ₹74,269/- fraudulently.

6. There is no dispute that the Inquiry Officer has proved the charge against the petitioner. The Disciplinary Authority on the basis of the inquiry record imposed the penalty of compulsory retirement. The Appellate Authority modified the punishment to the one of "*withholding future promotion for five years*", and directed that the CR Dossiers of the petitioner be placed before the Departmental Promotion Committees ('DPC', for short) that is to be held in future. The period between the date of his compulsory retirement and the date of reinstatement was directed to be treated as *dies non*.

7. The submission of Mr. M.C. Dhingra, learned counsel for the petitioner is only that withholding of promotion for a period of five years is an excessive punishment. In fact, during the course of hearing, it was put to the respondents whether they can reduce the period of five years to lesser period. However, it is an admitted position that the respondent did not accede to the same. Hence, this Court has no other alternative then to decide the only plea urged by Mr. Dhingra on the merit.

8. There is no dispute that the charge against the petitioner is to the effect that the petitioner by giving false declaration about the dependence and income of his parents in the context of getting the



name of his mother included in the CGHS Token Card, claimed reimbursement of medical expenses amounting to ₹74,269/- fraudulently. Considering the seriousness of the charge, initially, the penalty of compulsory retirement was passed.

9. It is noted that the Appellate Authority after taking the compassionate view reduced the same to stoppage of future promotion for a period of five years and the period between the order of compulsory retirement and the date of reinstatement was ordered to be treated as *dies non*. In fact, we find that the revision petition was filed after a period of seven years from the date of the order of the Appellate Authority. The Appellate Authority order is dated May 17, 2005, whereas the revision was filed only on July 12, 2012. In that sense, the petitioner has for all purposes accepted the penalty imposed on him by the Appellate Authority. In any case, the Revisional Authority upheld the view of the Appellate Authority and as such, not overturned the modified penalty imposed, given the charges which were framed against the petitioner.

10. Mr. Dhingra submitted that during the pendency of the OA before the Tribunal, a three members Committee was constituted on December 28, 2015 to look into the grievances of the petitioner and make suitable recommendations. The conclusion drawn by the Committee and its recommendations are the following:-

“CONCLUSIONS:

24. In view of the discussions supra, and taking into active and sentient consideration the totality of facts and circumstances in the present matter, the Committee has arrived at the following conclusions:



a. *The very genesis of the Departmental proceedings against the Petitioner was in clear and unambiguous contravention of the procedure and guidelines prescribed by the Central Vigilance Commission (CVC) and as such suffers from serious technical infirmity ab initio.*

b. *The Departmental Inquiry under the CCS (CCA) Rules, 1965, against the Petitioner was conducted in a highly cursory and perfunctory manner and suffered from significant errors, infirmities and lacunae vis-a-vis the procedure and manner prescribed in the said Rules, which renders the whole exercise farcical, irregular and unreliable. As an unremitting consequence, little credence can be attached to the findings thereof.*

c. *Consequently, any penal action imposed on the Petitioner which is rooted in the findings of the said Inquiry can be a subject of intense scrutiny, which unfortunately may not pass judicial muster.*

d. *The Petitioner has ceaselessly borne the burden of multiple penalties for more than a decade, which were imposed on him predicated on the conclusions of a prima facie superficial, hurried and slipshod Inquiry. While the pecuniary loss deemed to have been caused to the public exchequer has been long remitted by the Petitioner to the Commission, the scourge of 'dies non' will continue to haunt his entire career and ultimately precipitate in telling financial consequences at the time of his superannuation. Further, the penalty of withholding promotion for 5 years has already stalled his career progression for a considerable period and dealt him substantial personal and professional blows. The cumulative burden of these multiple penalties have inflicted severe mental, emotional, financial, civic and -professional hardships, besides heaping the inevitable social stigma, on the Petitioner, which prima facie,*



appear to be disproportionate to the alleged misconduct. The perpetuation of this accumulated yoke would certainly be excessively harsh and inordinately disproportionate. Further, the fact that these penalties suffered by the Petitioner, emanate from a defect-ridden Inquiry, only serves to tilt the balance of convenience and preponderance of probability in favour of the Petitioner.

e. Further, the penalty of withholding promotion for 5 years, is essentially a Minor Penalty under the CCS (CCA) Rules, 1965 and is generally not envisaged to have cumulative and perpetual adverse effect on the entire career and overall profile of the government servant. However, the Committee observes that the cumulative effect of the said minor penalty has been extremely and excessively deleterious on the professional growth of the Petitioner herein, as more than 10 (ten) officials have already superseded the Petitioner in the next grade. Thus, the penalty has actually translated in permanently retarding the career progression of the Petitioner vis-a-vis his peers and left the Petitioner adversely affected in perpetuity, causing him interminable frustration, disgruntlement and embitterment, which is anathema to his productivity and output as a government servant. This aggravated state of affairs was plausibly not the intention of the Appellate Authority, neither does it run true to the reformatory and corrective responsibility of the Government vis-s-vis errant employees.

f. Before parting with the matter, the Committee also feels constrained to record that the disposal of the petitioner's Revision application by the authorities left much to be desired if tested on the litmus of extant provisions of CCS (CCA) Rules, 1965 and cannot be said to be in accordance with the legal and procedural requirements.



RECOMMENDATIONS:

25. *Based on the analysis above and paying diligent heed to the entire factual and circumstantial matrix of the instant matter, the Committee makes the following recommendations for the consideration of the Commission.*

a. *Considering the plethora of infirmities infesting the Inquiry conducted against the Petitioner, the imposition of multiple penalties based on the findings of this dubious and vitiated Inquiry and the prolonged suffering and mental, financial, professional and civic hardships endured by the Petitioner, a sympathetic and compassionate view in the matter is strongly recommended by the Committee. The Committee feels duty-bound to recommend that the case be revisited with a humanitarian approach, to align the punishment is consonance with the gravity of the purported misconduct, the veracity of which, is itself cloaked in doubt,*

b. *Since the balance of convenience tilts, unmistakably, in favour of the Petitioner, especially considering the fact of his bearing the onerous burden of multiple penalties for over a decade, including the disgrace and humiliation of supersession and seizure of commensurate career growth, the Committee has no hesitation in recommending that there is cogent and valid ground for reviewing the quantum of penalty imposed on the Petitioner and reducing it appropriately. This is essential to ensure that the unwarranted cumulative and compounding effect of the minor penalty simplicitor (withholding of promotion for 5 years) does not transform into a 'crushing Major penalty, resulting in permanent career retardation and irreparable scarring of his*



.professional growth and personal well-being forever, The conduct and performance of the Petitioner over the last 12 years may also be a relevant determinant during the review undertaken by the authorities.

c. The Committee also recommends that the powers of Revision available with the Appellate Authority under the CCS (CCA).Rules, 1965 can be considered to be invoked in the instant matter and exercised in a diligent, meticulous and judicious manner, as per the provisions and guidelines enshrined in the said Rules. In this regard, the Committee is constrained to record that the earlier so called revision carried out fell short of statutory and procedural expectations and cannot be termed as appropriate or conclusive. It can be, further, deemed-incumbent on the Appellate Authority to open the doors of its revisionary powers, since the very constitution of this Committee attests to the re-agitation and re-consideration of the Petitioner's case by the Department, especially in the light of the Orders dated 06.09.2016 of the Hon'ble CAT.

26. The Commission may like to consider the above and pass any order as deems fit and appropriate in the matter.

27. In submitting this Report, the Committee herein, discharges its assigned duties and responsibilities with absolute diligence, sincerity, integrity and due application of mind, without any fear or favour.

28. Hence, submitted."

11. Thereafter, as noted from the written submissions filed by the respondents, that on June 14, 2017, the Legal Adviser of the respondents observed that as the Commission/respondents have already



exercised its jurisdiction twice first as Appellate authority in 2005 and later as Revisionary authority in 2014, it was advised that having exercised the jurisdiction as Revisionary authority (apart from the appellate authority) under the CS(CCA) Rules, the Commission/respondents would not be competent authority to again sit in judgment over its own decision as Revisionary authority by way of any further revision and thus, the matter be referred back to Hon'ble President for his decision as the competent authority to intervene in the matter. It was also observed that DoP&T has also advised to the above effect.

12. As per the observation of the Legal Adviser, on June 23, 2017, the Commission decided to refer the matter back to Hon'ble President.

13. On November 15, 2017, the Ministry of Law & Justice informed that the respondents have forwarded the Revision Petition [under Rule 29 of CCS (CCA) Rules] of the petitioner and not the Review Petition under Rule 29A of the said Rules, as it was not the Review Petition on which the Hon'ble President had to take a decision.

14. The Ministry observed that orders passed by Appellate Authority i.e. CEC on the Appeal, as well as on the Revision Petition preferred by petitioner, which are still in existence have not been quashed by any Competent Court. Thus the Ministry, made it clear that only the option of Review remained with the petitioner. The above stand of the Ministry was informed to the petitioner on November 22, 2017.

15. It is thereafter, the Tribunal vide order dated September 27, 2018, dismissed the OA of the petitioner.



16. Having noted so, as per Mr. Dhingra, unfortunately, the Tribunal has not looked into this aspect and summarily dismissed the OA, upholding the penalty of withholding of promotion for a period of five years including the period of *dies non* between December 13, 2004 to May 17, 2005.

17. Whereas, Mr. Rajeev Sharma, learned counsel appearing for the respondents submitted that the charge having framed against the petitioner being of serious nature, the penalty imposed is justified. Also, the Tribunal is justified in dismissing the OA.

18. Having heard the learned counsel for the parties, it is noted that during the pendency of the writ petition, Mr. Dhingra had confined his submission to the effect that the petitioner shall be satisfied if the penalty imposed be reduced from five years to two years. For that purpose, this Court had noted the submission of Mr. Dhingra in the order dated October 30, 2023, in the following manner:

“1. We have heard Mr. M.C. Dhingra, learned counsel for the petitioner and Mr. Rajeev Sharma, learned counsel for the respondent.

2. Mr. Dhingra on instructions states, though a penalty of stoppage of promotion for five years, ‘dies non’ and recovery of the amount incurred on the treatment of the mother, was imposed on the petitioner, he shall be satisfied if the penalty is reduced from five years to two years.

3. Mr. Sharma to take instructions on the submission made by Mr. Dhingra. At his request, re-notify on November 24, 2023.”

(emphasis supplied)

19. It was also noted that Mr. Sharma has to take instructions on



the submission made by Mr. Dhingra. On instructions, it has been pitched before us that the Election Commission/respondents did not agree with the proposal advanced by Mr. Dhingra. However, the fact remains that the perusal of the impugned order of the Tribunal reveals that the Tribunal has made reference to the Committee constituted by the respondents though no conclusion qua the same was arrived at. The same is evident from the perusal of the impugned order. The relevant paragraph in the impugned order, wherein, the Tribunal discussed about the constitution of the Committee and the advised rendered by the Legal Advisor is reproduced as under:-

“.....At one place, it is stated that his family belongs to lower middle class and asking the income of his father would have meant to demean him. No provision of law is mentioned in the revision. The revision seems to have been forwarded to the Election Commission by the President’s Secretariat. However, in its wisdom, the Election Commission thought it fit to appoint a committee, even while the OA challenging the order of punishment and order of appellate authority was pending before this Tribunal. The Committee, in turn, is said to have undertaken some exercise and made recommendations. The Legal Advisor, however, informed the respondents the steps to be taken in matters of this nature.....”

(emphasis supplied)

20. In any case, as noted in paragraph 18 above that during the pendency of this writ petition also, on the submission of Mr. Dhingra, the matter was referred back to the Election Commission/respondents to consider reducing the penalty imposed by the Disciplinary Authority. The same has also been turned down by the respondents / Election Commission.



21. The law in this regard is well settled inasmuch as this Court cannot substitute the penalty imposed by the Disciplinary Authority by a different penalty. Surely, this is not the scope of judicial review. The corollary thereof of the respondents not agreeing with the reduction of the penalty to a lesser one is that they are also not in agreement with the conclusion drawn by the Committee.

22. If that be so, the matter cannot even be remanded back to the Tribunal or to the Disciplinary Authority to consider the report of the Committee for it to decide as to whether a lesser penalty can be imposed on the petitioner.

23. In view of the above discussion, we are of the view that given the nature of charge framed against the petitioner and the penalty imposed, no interference can be called for to the penalty imposed by the Appellate Authority, i.e., reducing the penalty of compulsory retirement and modifying it to withholding of promotion for a period of five years and treating the period from December 13, 2004 to May 17, 2005, as *dies non*.

24. Resultantly, the Tribunal being justified in rejecting the OA and upholding the penalty imposed on the petitioner, the writ petition is liable to be dismissed. No Costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MARCH 22, 2024/aky