

(2018) 10 CAT CK 0003
In the Central Administrative Tribunal
Case No : Original Application No. 345 Of 2012

Deep Chand

APPELLANT

Vs

Union Of India Through The Secretary And Ors

RESPONDENT

Date of Decision : 11-10-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14(23),
11

Citation : (2018) 10 CAT CK 0003

Hon'ble Judges : K.N. Shrivastava, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Sachin Chauhan, V.S.R Krishna

Final Decision : Dismissed

Judgement

K.N. Shrivastava

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

"i) To set aside the impugned order whereby the department enquiry was initiated, order dated 1.7.11 whereby minor penalty under Rule 11 of CCS (CCA) Rules of withholding of one increment of pay for a period of one year without cumulative effect is imposed upon the applicant, order dated 31.10.11 whereby the statutory appeal against the order of Disciplinary Authority was rejected and to further direct the respondent to restore the deducted increment with all consequential benefits including seniority and promotion and pay and allowances.

ii) To set aside the findings of the inquiry officer.

iii) To set aside order dated 20.07.2010 issued by Director, Establishment Section, President's Secretariat whereby the request of the applicant for change the Enquiry Officer i.e. Sh. Karan Singh is rejected."

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant is working as Head Household Attendant in Rashtrapati Bhawan. A charge memo dated 25.02.2010 (Annexure A-4) came to be issued to him, containing an article of charge. The statement of imputation of misconduct or misbehavior in support of article of charge framed against the applicant reads as under:-

"Article I

Sqn. Ldr. Ankur Naik, ADC has made a complaint against Shri Deep Chand, Head Household Attendant mentioning that on 19th Dec. 2009, Shri Deep Chand was ordered to go to the reception to fetch the bouquets which were sent for the President by various dignitaries. He has stated that Shri Deep Chand initially refused to do the same in person refused to do so. He said that he would not go anywhere from here and would not do any other job. When asked further to give it in writing he argues and misbehaved. When being asked to leave the AsDC office, he again spoke in a very derogatory manner.

Another report has been received from DMSP against Shri Deep Chand and also other Household Staff. He complaint that on more than one occasion, acts of misdemeanor by the Household Staff deputed for duties in the ADC Room have been reported. On each of the previous occasion, the defaulting staff were verbally admonished or counseled by the Controlling Officer and case closed. DMSP further mentioned that ADC Room being the Control Room for major activities related with the Presidential Engagements and allied requirements of the President and Presidential Guests, it reflects the pride of Rashtrapati Bhavan. An act of insubordination cannot be overlooked in the ADC Room. DMSP recommended that the facts be ascertained by an independent Officer and the defaulting Staff should be given an exemplary punishment so as to deter such misconducts in future.

Shri Deep Chand was removed from the duties of ADC Room immediately. The Military Secretary to the President has suggested for utilising his services under the aegis of President's Secretariat or taking appropriate action as deemed fit."

2.2 Pursuant to the charge memo, a departmental enquiry (DE) was conducted against him. The enquiry officer (EO), namely, Mr. Karan Singh, submitted his Annexure A-5 report on 20.12.2010 to the disciplinary authority (DA), namely, the Director to President. The EO, in his report, inter alia, has noted as under:-

"The main complainant Sqn. Ldr. Ankur Naik statement was recorded on 07th September, 2010 which was not attended by D.A. and C.O. expressed inability to cross examine him. It is further stated that D.A. was late by 45 minutes and by that time the main complainant had left Page Nos.76 & 97. Therein he explained at length that how C.O. misbehaved and insubordinated.

Inquiry was initiated on 12th May, 2010 wherein C.O. requested for postponement of same on the ground to find out his D.A. which was allowed

Page Nos. 98 & 99.

Another dated 0th June, 2010 wherein D.A. cross examined Shri P.N. Sharma, Section Officer, Household wherein he told the Inquiry that how he received a personal telephonic call from the Military Secretary to the President that C.O. should be recalled immediately as he misbehaved with Sqn Ldr Ankur Naik, ADC to the President. Page Nos. 100 to 102.

Another date was fixed for 27th October, 2010 for the presentation of defense by the C.O. which was inadvertently left, therefore, proceedings could not take place. Immediately another dated 10th November, 2010 was given to DA and C.O. Page Nos. 103 & 104. DA/CO were given another dated 10th November, 2010 for their Defence to be presented in support of their case but DA did not again appear on the above said date as was told by C.O. but given only written statement dated 10th November, 2010 which is paged 81 to 81 & 105 & 106. The Inquiry was closed as C.O. showed his inability to present his case in the absence of his D.A.

There was a letter from the Director (Shri Faiz Ahmed Kidwai) to get cross examined the main complainant Sqn Ldr. Ankur Naik, ADC to the President. Therefore another date fixed was 14th December, 2010. D.A. cross examined the main complainant wherein he told the Inquiry that how C.O. misbehaved and subordinated in detail on 19th December 2009 which is the birthday of the President of India. Page Nos. 85 to 87. On the same date when Sqn Ldr. Ankur Naik, ADC to the President of India was fully cross examined by Defense Assistant, C.O. gave another application dated 14.12.2010 for giving him another opportunity of defense which was ignored and rejected. Page No.107.

In view of the above it is confirmed that C.O. misbehaved and subordinated to the ADC, therefore, charge/s is/are substantiated."

2.3 The applicant submitted his Annexure A-8 representation dated 10.03.2011 against the EO's report.

2.4 Acting on the EO's report, the DA, vide the impugned Annexure A-1 order dated 01.07.2011, has imposed the minor penalty of "withholding of one increment of pay for a period of one year without cumulative effect" upon the applicant under Rule 11 of CCS (CCA) Rules, 1965, even though the DE proceedings were initiated for imposition of a major penalty.

Aggrieved by the penalty order, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. On completion of pleadings, the case was taken up for hearing the arguments of the parties on 16.08.2018. Arguments of Mr. Sachin Chauhan, learned counsel for applicant and that of Mr. V S R Krishna, learned counsel for respondents were heard.

4. Mr. Sachin Chauhan, learned counsel for applicant submitted that the EO's

report has not been prepared in accordance with Rule 14 (23) of CCS (CCA) Rules, 1965, in terms of which assessment of evidence in respect of each article of charge and findings thereon are clearly to be indicated in the EO's report.

5. To a query from the Tribunal as to why this point was not raised before the DA, Mr. Chauhan submitted that a legal point, like this, can be raised at any point of time. In this regard, he placed reliance on the order of this Tribunal dated 21.09.2010 in O.A. No.1237/2010 titled Darshana Devi v. Union of India & others.

6. Mr. Chauhan further submitted that the enquiry is vitiated, as the applicant was never given opportunity to submit his defence statement or even to produce the defence witnesses. The applicant had submitted Annexure A-8 representation dated 10.03.2011 in this regard, alleging violation of principles of natural justice, but arbitrarily the EO took that as his defence statement. Although the applicant was allowed to cross examine Sqn. Ldr. Ankur Naik, ADC (complainant) during the course of the enquiry but yet he wanted to adduce more evidence, which was denied.

7. Mr. Chauhan vehemently argued that the EO, in his report, has noted that the applicant had given an application dated 14.12.2010 for giving him another opportunity to defend himself, which was ignored and rejected, and abruptly the EO came to the conclusion that the charge against the applicant is proved. He further submitted that the applicant had submitted a detailed Annexure A-8 representation in reply to the findings of the EO, but the DA, in his penalty order, has not discussed the issues raised by the applicant in his Annexure A-8 representation.

8. Mr. Chauhan further submitted that the applicant was put on duty at library in his ceremonial dress and he could not have gone for any other work, as ordered by the ADC. He was not attached to the ADC, and as such he was not obliged to carry out the oral orders of ADC. He further argued that the alleged derogatory language used by the applicant against Sqn. Ldr. Ankur Naik has nowhere been mentioned in the charge memo.

9. Per contra, Mr. V S R Krishna, learned counsel for respondents submitted that the applicant was indeed working under the ADC and he was duty bound to follow and obey the orders of ADC. He further submitted that the enquiry proceedings against the applicant have been conducted in the prescribed manner and he has been given full opportunity to defend himself. He further submitted that the allegation the applicant that he was not allowed to submit his defence statement is not correct. A bare reading of his Annexure A-8 representation would indicate that it was nothing else but was his defence statement against the EO's report.

10. Concluding his arguments, Mr. Krishna submitted that the applicant, occupying the post of Head Household Attendant in the Rashtrapati Bhawan, was expected to exhibit exemplary discipline but he has failed to do so and as a consequence thereof, he has rightly been punished by the DA.

11. We have considered the rival arguments of the parties and have also perused the pleadings.

12. The scope of judicial review in the matter of DE proceedings is highly limited. Judicial review is normally resorted to only in following circumstances:

(a) Principles of natural justice have not been followed in the conduct of DE proceedings,

(b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,

(c) The penalty orders have been passed in violation of relevant laws/rules; and

(d) The punishment inflicted is disproportionate to the offence committed.

13. The above principles have been enshrined in the following judgments of Hon'ble Supreme Court:

(i) Union of India v. P. Gunasekaran, (2015) 2 SCC 610

(ii) Ranjit Thakur v. Union of India & others, (1987) 4 SCC 611; and

(iii) Kuldeep Singh v. Commissioner of Police & others, JT 1998 (8) SC 603.

14. In the instant case, we find that the applicant, as Head Household Attendant, was working under the ADC, i.e., Sqn. Ldr. Ankur Naik. He was only asked by the ADC to go to the reception to fetch the bouquets, which were sent for the President by various dignitaries, but he refused to obey the orders. Such a behavior on the part of the applicant definitely called for disciplinary action.

15. We notice that the DE has been conducted in accordance with the laid down procedures and principles of natural justice have been followed at every stage. We also observe that even though the DE proceedings were started against the applicant for imposition of major penalty, but the DA has taken a lenient view and has imposed a minor penalty of "withholding of one increment of pay for a period of one year without cumulative effect" upon the applicant and, that too, for just one year. This punishment is not at all disproportionate to misconduct of the applicant.

16. In the conspectus, we do not find any merit in this O.A. It is accordingly dismissed without any order as to costs.