

(2010) 04 DEL CK 0157

In the Delhi High Court

Case No : Writ Petition (C) No. 2623 of 2010

Dr. Sahadeva Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3, 3(1)
Constitution of India, 1950 — Article 226
State Emblem of India (Prohibition of Improper Use) Act, 2005 — Section 3

Citation : (2010) 04 DEL CK 0157

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Sushil Dutt, Azhar Alam and Vikram Singh, for the Appellant; Jyoti Singh and Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 5th March, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 562 of 2010, titled as "Dr. Sahadeva Singh v. Union of India and Anr., dismissing the original application of the petitioner seeking quashing of charge sheet issued against him by the respondents.

2. Brief facts to comprehend the controversies are that a memorandum dated 16th January, 2009 proposing to hold an enquiry against the petitioner under Rule 14 of the CCS (CCA) Rules, 1965 was issued. Against the charge sheet issued against the petitioner dated 16th January, 2009, a representation dated 23rd November, 2009 was made by the petitioner for withdrawing the charge sheet, however, his representation was rejected.

3. The articles of charges framed against the petitioner are as follows:

ARTICLE OF CHARGE-1

1. That Dr.Sahadeva Singh, Deputy Commissioner (Crops), working in Horticulture Division of the Department of Agriculture & Cooperation in the Ministry of Agriculture was posted to Nation Rainfed Area Authority, NASC Complex, DPS Marg, Pusa, New Delhi on secondment basis vide Officer Order No. 44011/21/2008-E-II dated 30th June, 2008 with immediate effect (Annexure 1). But Dr.Sahadeva Singh did not join his duties in NRAA till 24.10.2008 and had been absenting from duty unauthorizedly with effect from 02.07.2008 to 23.10.2008.

2. Thus by the above act, Dr.Sahadeva Singh, Deputy Commissioner (Crops) appears to have acted in a manner unbecoming of Government servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964. (Annexure 2).

ARTICLE OF CHARGE-2

1. That in the original application No. 1363/2008 filed by Dr. Sahadeva Singh, Deputy Commissioner (Crops) the Central Administrative Tribunal, Principal Bench, New Delhi has made the following adverse observations against the Dr. Singh:

It is also settled law that postings and transfers are an incident of services. We do not find that there has been any violation of statutory rules or that any infirmity is noticeable in the action taken by the respondents. Even the plea of mala fide is not substantiated in the facts and circumstances of the case. It is observed that while on the one hand the applicant had gained experience and expertise over a period of time in the Crops Division of the Ministry, he had also worked for many years in the Rainfed Farming Systems Division, a fact that has been suppressed by him in the O.A." (Annexure-3)

2. It appears from the above adverse observations that Dr. Singh has acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-III

1. that in the original application No. 2182/2004 filed by Dr. Sahadeva Singh, Deputy Commissioner (Crops) the Central Administrative Tribunal, Principal Bench, New Delhi, has made the following observations against Dr. Singh:

...He is under the mistaken belief that he would invoke the powers of the Tribunal to accelerate his career prospect by claiming seniority in the post of AD? from the date prior to his joining the post, which is nothing but an attempt to mislead the Tribunal and derive underserved and unlawful benefit. This attitude on part of the applicant is to be deprecated.

2. It appears from the above adverse observations that Dr. Singh has acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-IV

1. Dr. Sahadeva Singh, DC (Crops) wrote a letter dated 04.07.2008 directly to Hon"ble Prime Minister of India (Annexure 5) with a copy endorsed to Union Home Minister, Cabinet Secretary and Commissioner of Police (Delhi Police) against Secretary (Agriculture & Cooperation), and other official/staff of Ministry of Agriculture DAC, New Delhi. Dr. Singh also wrote similar letters dated 11.8.2008 to Hon"ble Agriculture Minister, letter dated 19.09.2008 to Hon"ble PM of India and copies endorsed to Chief Minister of Bihar, Cabinet Secretary and Secretary (Department of Agriculture & Cooperation) by passing the prescribed channel of communications (Annexure 6 & 7), a conduct which appears to be unbecoming of a government servant.

2. The Government of India's instructions issued vide DOPT's O.M No. 11013/7/99-Estt. (A) dated 01.11.1999 and No. 11013/6/94-Estt.(A) dated 27.5.1994 regarding representation from Govt. Servants on service matters are clear which clearly stipulates that submission of representation directly to higher authorities bypassing the prescribed channel of communication is a most objectionable practice contrary to official propriety and subversive of good discipline.

3. Thus by the above act, Dr. Sahadeva Singh, Deputy Commissioner (Crops) appears to have acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-V

1. That Dr. Sahadeva Singh, Deputy Commissioner (Crops), DAC, filed a complaint with the SHO, Police Station, R.K. Puram, New Delhi Annexure 10) against officials of DAC in a letter head containing his official designation of Deputy Commissioner, Government of India, Ministry of Agriculture, Department of Agriculture & Cooperation, Krishi Bhawan, New Delhi and the National Emblem, giving it colour of having been filed in his official capacity.

Thus on the one hand he used his official status and letter head to file a complaint against superior authorities without approval or order of the competent authority and on the other hand the same clearly appears to have been filed in his personal capacity. Section 3 of State Emblem of India (Prohibition of Improper Use)Act, 2005 (Annexure 11) prohibits specifically that notwithstanding anything contained in any other law for the time being in force, no person shall use the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government or, as the case may be the State Government, without the previous permission of the Central Government or of such officers of that Government as may be authorized by it in this behalf.

2. thus by the above act, Dr. Sahadeva Singh, Deputy Commissioner (Crops)

appears to have acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3 of the CCS (Conduct) Rules, 1964. By using the National Emblem in his letter, Dr. Singh has violated the provisions of Section 3 of State Emblem of India (Prohibition of Improper Use) Act, 2005.

ARTICLE OF CHARGE-VI

1. That Dr. Sahadeva Singh D.C (Crops) in his capacity as General Secretary, Technical Officers Association, Ministry of Agriculture has written a letter No. 2-TOA(CAS)/2008 dated 27.06.2008 to Hon''ble Prime Minister criticizing the functioning of the Department of Agriculture & Cooperation and seeking restructuring.

2. By the above act Dr.Sahadeva Singh has directly criticized the policy matter of the Government of India.

3. Thus by the above act, it appears that Dr.Sahadeva Singh, Deputy Commissioner (Crops) has violated the provisions of Rule 9 of CCS(Conduct) Rules, 1964 (Annexure 12A) and has acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964.

4. The petitioner filed an Original Application challenging the charge sheet, contending, inter-alia, that he is an outstanding scientist. The petitioner also alleged facts pertaining to various judicial proceedings initiated on his behalf, and the representations made by him to various authorities including the Prime Minister. The petitioner was transferred to the National Rainfed Area Authority (NRAA) on 30th June, 2008, which was challenged by him, however, relief was declined to him. The petitioner also alleged that some bad elements were sent by Sh.P.K.Basu, Special Secretary to his house who had threatened the petitioner with dire consequences and the matter was reported to the Police.

5. The petitioner's Original Application against the transfer order was dismissed by the Tribunal, and the writ petition filed by the petitioner was also dismissed. The petitioner also averred that a criminal complaint filed by him against the secretary of DOAC and the respondent No. 2, Sh.P.K.Basu which was not accepted by the concerned Magistrate and a revision petition against the order is pending. The petitioner on the basis of the various allegations about the various proceedings initiated by him, had contended that the respondents are motivated by mala fides to act against the petitioner and he was not unauthorizedly absent from the duty, as leave was sanctioned by the Horticulture Commissioner. Reliance was also placed by the petitioner on the certificate issued by the Doctors of Safdarjung Hospital.

6. The Tribunal considered the pleas and contentions of the petitioner seeking quashing of charge sheet issued against him, and held that the time was not ripe for the Tribunal to interfere in the matter and the reliance was placed on Union of India (UOI) and Others Vs. Upendra Singh, ; Union of India (UOI) and Another

Vs. Kunisetty Satyanarayana, 28 holding that at the Stage of issuance of the charge sheet, the Tribunal has no jurisdiction to go into the correctness or truth of the charges, as the Tribunal cannot take over the function of the disciplinary authority. It was also held that the truth or otherwise of the charges is a matter for the disciplinary authority to go into and in judicial review the Tribunal cannot examine the correctness or reasonableness of charges framed.

7. The Tribunal has dismissed the petition holding that on the basis of the allegations made by the petitioner, it cannot be held conclusively that the memorandum of charges had been issued with mala fide intention, on the basis of pendency of the police complaint. It was held that the charges may or may not be sustainable, but ex facie on the basis of the material relied on by the respondents for issuing the charge sheet, it cannot be inferred that charges are ex facie without any basis and jurisdiction as the merits of the case could not be gone into at this stage not correctness of the charges can be decided.

8. This Court has heard the learned Counsel for the petitioner who has very emphatically contended that though the complaint filed by the petitioner against the respondent No. 2 and another was not entertained by the Metropolitan Magistrate, however, a revision petition is pending. Learned Counsel referring to the charges has contended that the averments made against the parties in the litigation initiated against the petitioner or at the instance of the petitioner will not make the act of the petitioner amenable for disciplinary proceedings for misconduct. Learned Counsel has also referred to the order dated 6th April, 2009 passed in W.P.(C) No. 6267 of 2008 whereby the writ petition against the transfer order was dismissed. Review Application of the petitioner was dismissed and a SLP was filed which was also dismissed by order dated 24th July, 2009, however, liberty was given to the petitioner to make a representation before the concerned authorities which was to be decided in accordance with law.

9. The learned Counsel for the petitioner has not refuted that if a number of charges are made against any person, and even if, one or two charges are prima facie not made on the basis of material produced by the department, the entire charge sheet is not to be quashed or modified. The first charge against the petitioner is that he did not join his duty in NRAA till 24th October, 2008, and he had been absenting from duty unauthorizedly w.e.f. 2nd July, 2008 to 23rd October, 2008. This is not disputed that the petitioner was transferred to NRAA, however he did not join duty rather he challenged his transfer where he did not succeed and his original application was dismissed. The petitioner has contended that he was on leave on account of his medical condition which was granted by the Horticulture Commissioner. However, whether he was on leave or not is to be decided, as the plea of the respondent is that the petitioner remained absent from duty unauthorizedly. In the circumstances, on the basis of the allegations made by the petitioner, it cannot be held prima facie that the charges against the petitioner are ex-facie not made out. Similarly, on the basis of alleged malafide, it cannot be held that the other charges are ex facie not sustainable and such

charges will not be established after a detailed enquiry. The malafide alleged by the petitioner are the question of facts and are to be established and on the basis of allegations made by the petitioner which are not admitted by the respondent and are rather categorically denied, it cannot be held conclusively that the allegations made by the petitioner have been established conclusively. The allegations made by the petitioner can be established by a detailed enquiry and in the circumstances, the plea of the petitioner that the charges alleged against the petitioner are without any basis cannot be accepted.

10. On reading and perusal of the articles of charges, it cannot be held that on the basis of the articles of charges imputed against the petitioner no misconduct would be made out. On the basis of articles of charges, whether misconduct would be made out or not will depend on evidence produced before the enquiry officer and without considering the detailed evidence which may be led by the parties, it cannot be held that no misconduct is made out, nor it can be held that the charges framed by the respondents are contrary to facts and law.

11. The learned Counsel for the petitioner has relied on a decision of this Court in Writ Petition (Civil) No. 6499 of 2008, titled as *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, to contend that no charges are made out against the petitioner, and the memorandum of charges is liable to be set aside. Perusal of *Homi Rajvansh (Supra)* reveals that the charge sheet issued to the employee in that case by the Central Board of Direct Taxes was challenged. The employee in that case was on deputation and the authorities in NAFED had sought his repatriation to his parent department, and they also initiated disciplinary proceedings. The dispute in the matter was whether the proceedings could be initiated on the advice of the Central Vigilance Commission addressed to NAFED by the Central Board of Direct Taxes. Relying on *Upendra Singh (Supra)*, it was held that if a charge sheet is issued without jurisdiction, or if it is, otherwise illegal, or has been issued for mala fides reasons, then the Tribunal or Court can interdict the departmental proceedings. Since the charge sheet was issued by the Central Board of Direct Taxes and no malafide was imputed against the Central Board of Direct Taxes. In the circumstances, it was held that the allegations of mala fides made against the Upendra Singh could not be extended to the officers of the Central Board of Direct Taxes, and consequently, the petition was dismissed. Apparently, the case of the petitioner is distinguishable. Similarly in "*Zunjarrao Bhikaji Nagarkar v. Union of India and Ors.*", it was held by the Supreme Court that the disciplinary proceedings cannot be initiated on the basis of suspension and there must exist reasonable basis for disciplinary authority to proceed against an employee. It was further held that wrong application/interpretation of law is itself, is not a misconduct because wrong decision is subject to a judicial supervision in appeal. In this case a disciplinary proceeding for major penalty was issued on the ground that while working as Collector/Commissioner, Central Excise, he passed an original order in which he had favored a party by not imposing any penalty on the said party even though the alleged party had clandestinely manufactured and cleared the excisable goods

and evaded the excise duty willfully. In these circumstances, it was held by the Supreme Court that a wrong interpretation of law cannot be a ground for misconduct. It was further held that it will be a different matter altogether, if it is deliberate and actuated by mala fides. Apparently, the case of the petitioner is distinguishable. The petitioner had remained absent unauthorizedly, and in the circumstances, it cannot be said that all the articles of charges framed against the petitioners are ex facie illegal or charge sheet has been issued without jurisdiction. On the basis of the allegations made by the petitioner, it cannot be held that the allegations made by the petitioner prima facie constitute malafide and the memorandum of charges has been issued on account of alleged mala fides.

12. The first charge against the petitioner is about unauthorized absence with effect from 2nd July, 2008 to 23.10.2008. The writ petition filed by the petitioner against his transfer had been dismissed and even the SLP was dismissed. The second charge is about the suppression of facts by the petitioner before the Tribunal in his application filed by him against his transfer order and the third charge is also about the observation of the Tribunal that the attitude on the part of the petitioner was depreciable. The fourth charge against the petitioner is violation of instruction issued vide DOPT's O.M No. 11013/7/99-Estt.(A) dated 1.11.1999 & No. 11013/6/94 Estt.(A) dated 27.5.1994 contemplating that by passing the concerned authorities and channel of communication is a most objectionable practice contrary to official propriety and subversive of good discipline. The fifth charge against the petitioner is that he used his official status and letter head of file a private complaint against the superior authorities without approval or order of the competent authority. The allegation is also of violation of Section 3 of the State Emblem of India (Prohibition of Improper use) Act, 2005. The last charge is about directly criticizing the policy matter of Government of India to the Prime Minister.

13. The learned Counsel for the petitioner has not been able to show as to how the charges framed are contrary to any law. The charges framed against the petitioner and the irregularity alleged against him do not show prime facie that they are not made out and are the result of the alleged malafide alleged by the petitioner. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. A mere charge sheet does not give rise to any substantial cause of action, because it does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction to do so. In the case of petitioner it cannot be held conclusively at this stage that the charge sheet is issued on account of malafide alleged by him. His complaint with the Police is pending. But these facts are not sufficient to quash the charge

sheet. This is not the plea of the petitioner that the charge sheet has been issued by a person who is not authorized or is contrary to any law or without jurisdiction. Merits of case cannot be gone into by this Court at this stage.

14. In the circumstances, we do not find any illegality or irregularity in the order of the Tribunal, which would entail any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

15. The writ petition, in the facts and circumstances, without any merit, and it is, therefore, dismissed.