

(2002) 07 DEL CK 0128
In the Delhi High Court
Case No : CWP No. 3019 of 1999

H.C. Dabral

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-07-2002

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)

Citation : (2002) 07 DEL CK 0128

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : O.P. Gehlot, for the Appellant; Ashok Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner herein, feeling aggrieved by punishment order dated 7.2.1997 passed by Disciplinary Authority as a result of departmental proceedings initiated against him, filed Original Application No. 1181/98. He challenged the disciplinary proceedings and the consequential penalty order on various grounds. However, his O.A. was dismissed by the learned Tribunal vide impugned judgment dated 18.12.98 which order is impugned by the petitioner in the instant writ petition.

2. The petitioner was issued charge-sheet dated 22.7.1985 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, relating to major penalty proceedings. The following charges were framed against him:

"Shri H.C. Dabral, while functioning as Asst. Chief Controller of Imports & Exports in the Office of Joint Chief Controller of Imports & Exports, Ahmedabad during 1980, dealt with the case of M/s. Economic Traders Gujarat Ltd., Rajkot, leading to the issue of Additional license dated 6.11.80 for Rs. 44,60,922/- to the firm, in violation of the Import Policy provisions,. In doing so Shri H.C. Dabral, ACCI&E did not maintain devotion to duty and violated Rule-3 (1) (ii) of the CCS

(Conduct) Rules, 1964".

3. Not only the petitioner, two other officers were also served with the same charges and common proceedings were held against all these officers. The Enquiry Officer, after concluding the enquiry, submitted his report holding that the charge against the petitioner stood proved. The copy of the report dated 18.2.93 of the Enquiry Officer was made available to the petitioner who submitted his representation. His case was referred to Union Public Service Commission for advice and the Commission vide its letter dated 9.5.1994 opined that the charge against him stood proved and ends of justice would be met if the petitioner is retired compulsory as a punishment with 2/3rd admissible pension. However, when the Disciplinary Authority considered the case of the petitioner on the basis of entire material on record and in the light of UPSC's advice, the Disciplinary Authority observed that UPSC in its advice had failed to notice the import of the charge against the petitioner, inasmuch as the petitioner was not charged for violating Rule 3(1)(i) but only Rule 3(1)(ii) and his integrity was not questioned in these proceedings. It found that the charge against him was of negligence resulting in failure to maintain devotion to duty. Therefore, according to the Disciplinary Authority UPSC had gone far beyond the charge and reached the conclusion that the petitioner acted with mala fide intent. In these circumstances, the Disciplinary Authority disagreed with the advice of UPSC on the punishment proposed by the Commission and having regard to the fact charge against the petitioner to the effect that he was negligent in discharging of duties only was established, he was of the view that the petitioner should be imposed minor punishment. Thus the Disciplinary Authority imposed the penalty of reduction to the next lower stage in the time scale of pay for a period of three years without cumulative effect on the petitioner by reason of the order dated 7.2.1997.

4. The petitioner, without making a formal appeal as provided under the rules, made a representation to the Appellate Authority submitting that it was not specified in the order as to what exact stage at which the pay had been fixed as a result of this penalty and he had also submitted that without prejudice to his right to seek any other remedy would make the request to the Appellate Authority to make the penalty effective from the date of occurrence and indicating the stage at which his pay had to be fixed as a consequence of this penalty. This was followed up by another detailed representation. The petitioner has referred to these representations as details of remedies exhausted in para 8 of the O.A. with details of which have been given in para 4.44. In reply to this, the respondents stated that the representation of the petitioner for giving retrospective effect to the penalty has been considered by the Ministry in consultation with the DOP&T and representations had been rejected.

5. After receiving the aforesaid rejection, the petitioner filed OA No. 1181/98 challenging the impugned orders of the respondent authorities on various grounds. The learned Tribunal in its judgment dated 18.12.1998 noted as many

as 9 grounds and after dealing with the same did not find any merit in any of these grounds. In its detailed judgment, after referring to various cases, the Tribunal dismissed the Original Application.

6. Before us, the learned counsel for the petitioner submitted that the motive or intentions of the petitioner were not disputed by the respondents in the charge memo and the only allegation was of negligence. However, the Disciplinary Authority failed to consider that such a solitary incident, when the petitioner had otherwise taken due care, could not be made subject matter of the charge. He also submitted that the penalty of rejection next lower stage for a period of three years was not in the list of penalties as on the date of incident and; Therefore, he could not be imposed such a penalty. He also challenged the enquiry on the ground of delay submitting that although the Disciplinary Authority was obliged to review the progress of the Disciplinary Authority ever six months and had it been done delay would not have occurred which has adversely affected the career progression of the petitioner. Thus, in substance, the enquiry was challenged on the following three grounds on which it was challenged before the learned Tribunal also:

1. The petitioner was charged for violating Rule 3(i)(ii) of the CCS (Conduct) Rules, 1964. It is enjoined in the aforesaid rule that one can be proceeded against under this rule only in respect of incidence/charge of lacking in devotion to duty when he habitually fails to perform the task assigned to him. Therefore, merely on the basis of a solitary incident, as given in the statement of imputations, he could not be charge sheeted .

2. The said penalty of reduction to next lower stage for a period of three years was not in the list of minor penalties enumerated under Rule 11 as it then existed. It was only by an amendment of the rule by Notification issued in July, 1990 that the aforesaid penalty was introduced and, Therefore, for the alleged misconduct the imposition of penalty which was not in existence at that time, was irregular and void.

3. The witnesses examined by the prosecution clearly and unambiguously stated in the enquiry that the applicant had enjoyed the reputation of an honest and efficient officer and had an unblemished and untarnished service record. They had also deposed that the responsibility of a comparison of the license as per the "C" sheet approved by the petitioner rested with the dealing hand. Prosecution witness SW-2 also deposed that the portion in the license for items not admissible having been typed can be a slip on the part of the office at the time of signing the license and there was no lack of ordinary prudence or negligence on the part of the applicant.

7. The petitioner also submitted that report/advice of the UPSC was not given to him which was against the principles of natural justice.

8. In support of his aforesaid submissions the petitioner also pressed into service certain judgments of the Supreme Court. He referred to case of B.N. Sharma Vs.

Commissioner of Income Tax, Orissa, and case of State Bank of India and others Vs. T.J. Paul, for the proposition that the punishment which could be given had to be one enforced at the time of alleged commission of misconduct. He also referred to the judgment in the case of Union of India and Ors. v. J. Ahmed, All India Service Law Journal 1979 SC 308 on the ground that not taking due care and caution could not be the subject of a charge-sheet.

9. Insofar as the contention of the petitioner for non-supply of the UPSC advice is concerned, it would not held the petitioner. As it is seen from the facts mentioned above, although UPSC had given the advice to the effect that the petitioner be imposed penalty of compulsory retirement with 2/3rd admissible pension. The Disciplinary Authority itself disagreed with the same and did not accept the said advice. According to Disciplinary Authority the nature of charges leveled against the petitioner warranted only minor penalty and by reason of impugned order dated 7.2.1997 minor penalty was imposed. Thus when UPSC's advice was not acted upon and the course of action adopted by the Disciplinary Authority was not prejudicial to the petitioner and rather in his favor, by non-supply of UPSC's report the petitioner does not suffer any prejudice. Since the Disciplinary Authority did not accept the recommendation of the UPSC and himself disagreed with the same, it was totally inconsequential whether copy of the UPSC's advice was given to the petitioner or not. That apart, the impugned judgment of the learned Tribunal would show Chair no such contention was raised before it.

10. Insofar as the contention of delay in holding and completing the enquiry is concerned the learned Tribunal has recorded the finding of fact to the effect that delay was duly explained by the respondents in their reply and the disciplinary enquiry could not be held to be vitiated on this ground. Learned counsel for the petitioner could not point out any infirmity in the aforesaid observations of the Tribunal.

11. Even otherwise, as per the judgment of the Apex Court in the case of State of Andhra Pradesh Vs. N. Radhakishan, itself, on which the reliance was placed by the petitioner, it is not possible to lay down any pre-determined principles applicable to all cases, and in all situations where there is delay in concluding the Disciplinary Authority, the delinquent employee challenging the enquiry on the ground of delay has to make out a case that delay has caused prejudice to him in defending the case before the Enquiry Officer/Disciplinary/Authority. The Supreme Court in this respect observed as under:

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is

abnormal and there is no Explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employees is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay on when there is proper Explanation for the delay in conducting disciplinary proceedings, Ultimately, the court is to balance these two diverse considerations".

12. As mentioned above, neither this point was raised before the Tribunal nor it was demonstrated before us, as to how delay has prejudiced the petitioner. Therefore, in the instant case such a ground would not be available to the petitioner in challenging the departmental proceedings.

13. This brings us to another submission of the petitioner, namely, whether the petitioner could be charged at all in respect of the incident in question. As noted above, the submission of the learned counsel for the petitioner was that he could be charged only if he habitually failed to perform the task and a solitary incident could not be subject matter of charge memo. His further submission was that the witnesses examined by the prosecution had clearly deposed to the effect that he enjoyed the reputation of an honest and efficient officer and had an unblemished and untarnished service record and act was merely a slip on his part which could happen to any human agency and there was no lack of prudence or negligence on his part. The learned Tribunal did not agree with this contention by observing as under:

"The applicant contends that only in a case of habitual failure to perform task assigned to him, he should be deemed to be lacking in devotion to duty within the meaning of Clause (i) of the CCS (Conduct) Rules, 1964. We are unable to accept this contention. Maintaining devotion to duty is cast upon every Government servant. Devotion to duty can be said to be lacking when the Government servant acts in a manner prejudicial to the interest of the Government either by a single act or series of acts. What is clarified is that a Government servant who has to perform a task within a specified time with certain standard and efficiency, habitually does not perform so, can be said to have not maintained devotion to duty. This does not preclude other instances where the applicant had by his conduct or by negligence, acted in a manner

prejudicial to the interests of the Government or acted against the policy of the Government. We, Therefore, reject this contention."

14. In the case of Union of India and Ors. v. J. Ahmed (*supra*) the Tribunal found that the said judgment was not applicable and observed thus:

"We have pointed out as a result of this misconduct, the applicant had acted prejudicially against the interest of the Government and in gross violation of the Import Policy duly approved by the legislature. This decision is, Therefore, not of any help of the applicant".

15. We are in agreement with the aforesaid reasoning of the Tribunal. A perusal of orders of the Disciplinary Authority and the findings of the enquiry clearly reveal that the charge of negligence was leveled and proved against the petitioner. The Disciplinary Authority categorically pointed out that had the petitioner exercised due care and acted with ordinary prudence, he by virtue of his knowledge and experience of the subject would have immediately discovered that the license being signed by him was not correct. Thus even when the imputation relates to negligence. It can be a matter of charge even if it is a solitary incidence.

16. Only other contention was in respect of penalty imposed which according to the petitioner was not enforced at the time with the misconduct was committed.

17. Therefore, we do not find any merit in this petition which is accordingly dismissed, No costs.