

(2018) 05 CAT CK 0045

In the Central Administrative Tribunal

Case No : Original Application No. 1818 Of 2018

Hukum Chand

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 14(3), 14(5)(a)
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii), 7, 20
Constitution Of India, 1950 — Article 226

Citation : (2018) 05 CAT CK 0045

Hon'ble Judges : Raj Vir Sharma, J; Praveen Mahajan, Member (A)

Bench : Division Bench

Advocate : R.K. Shukla

Final Decision : Dismissed

Judgement

Raj Vir Sharma, J

1. The applicant, while working as a Pump Operator in NCDC Campus, under the Executive Engineer, ED-III, CPWD, I.P.Bhawan, New Delhi, was issued memorandum dated 14.6.2017 (Annexure A/1), whereby the Disciplinary Authority, i.e., Superintending Engineer (E), Delhi Central Electrical Circle II (respondent no.3) proposed to hold an inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. Along with the memorandum dated 14.6.2017(ibid), the statements of articles of charge, and of imputations of misconduct in support of the articles of charge framed against the applicant, and the lists of documents by which, and of witnesses, by whom the articles of charge framed against the applicant were sought to be sustained, were also furnished to the applicant. By the memorandum dated 14.6.2017(ibid), the applicant was asked to submit written statement of his defence within 10 days of receipt of the same. The following charges were framed against the applicant:

"ARTICLE I:

Sh.Hukum Chand while working as a pump operator under Electrical Sub Division III/ED-III, CPWD, NCDC Campus, misbehaved with Sh.Virender Pandey EE(E), ED-III, CPWD and his subordinate staff Sh.Pooran Chand, AE(E) & Sh.Surender Kumar, JE(E) on 08.02.2016 and creating obstruction in performing the Govt. work by them.

ARTICLE II:

Sh.Hukum Chand, Pump Operator, along with some other WC staff involved in forcible wrongful restraint and confinement/gherao of Sh.Virender Pandey EE(E) and his subordinate staff Sh.Pooran Chand, AE(E) and Sh.Surender Kumar, JE(E) and shouted slogans and used indecent and abusing language against Sh.Virender Pandey, EE(E) ED-III and his family while they were on a site visit at NCDC Campus on 08.02.2016 (afternoon). Sh.Hukum Chand, Pump Operator, along with others blocked the way of Sh.Virendera Pandey, EE(E) and did not allow him to move. Sh.Hukum Chand, Pump Operator, instigated some other WC staff present there to misbehave with Sh.Virendera Pandey and his AE(E) and JE(E).

ARTICLE III:

Sh.Hukum Chand, Pump Operator, represented vide his letter dated 14.09.2016 directly to the Director General, CPWD and copy endorsed to Hon'ble Minister of Urban Development bypassing the prescribed channel of communication.

By committing above lapses, the said Sh.Hukum Chand, Pump Operator, has failed to maintain absolute integrity, exhibited lack of devotion to duty acted in a manner which was unbecoming of a Govt. servant, resorted to abet in physical duress of other Govt. servants by way of forcible wrongful restraint and wrongful confinement/gherao and tried to create outside influence other than the Govt. Servant thereby contravening Rules 3(1)(i), 3(1)(ii), 3(1)(iii), 7 and 20 of CCS (Conduct Rules), 1964."

Instead of submitting written statement of his defence within the stipulated time in response to the memorandum dated 14.6.2017(ibid), the applicant submitted representations on 11.10.2017 and 20.11.2017 requesting the respondent no.3 to supply him copies of documents referred to in the statement of imputations of misconduct and also mentioned in the list of documents appended to the charge memo, for the purpose of submitting written statement of his defence. Thereafter, the respondent no.3, by order dated 9.2.2018 (Annexure A/2), decided to hold inquiry under Rule 14 of the CCS (CCA) Rules, 1965, and appointed the Inquiring Authority to inquire into the charges framed against the applicant. Being aggrieved thereby, the applicant filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, on 3.5.2018 praying for quashing the charge memo dated 14.6.2017 (Annexure A/1) and the order dated 9.2.2018 (Annexure A/2), and for a direction to the respondent no.3

to supply him copies of the documents asked for by him. He has also prayed for staying the inquiry till the final disposal of the O.A.

2. We have carefully perused the materials available on record and have heard Mr.R.K.Shukla, learned counsel appearing for the applicant.

3. It has been contended by Mr.R.K.Shukla, learned counsel appearing for the applicant that the allegations on the basis of which the charge memo has been issued to the applicant are false, frivolous and fabricated, and, therefore, the impugned charge memo dated 14.6.2017(Annexure A/1) is liable to be quashed. It has also been contended by Mr.R.K.Shukla that the impugned order dated 9.2.2018 (Annexure A/2) issued by the respondent no.3 appointing the Inquiring Authority to conduct the inquiry into the charges framed against the applicant (vide charge memo dated 14.6.2017) is violative of Rule 14(5)(a) of the CCS (CCA) Rules, 1965, inasmuch as when no written statement of defence has been filed by the applicant due to non-supply of documents asked for by him, the said order dated 9.2.2018 ought not to have been passed by the respondent no.3.

Therefore, the impugned order dated 9.2.2018 is also liable to be quashed, and appropriate direction should be issued to the respondent no.3 to supply copies of the documents asked for by the applicant in order to file the written statement of his defence in response to the impugned charge memo.

4. In Union of India vs. Upendra Singh, (1994)3 SCC 357, the Hon'ble Supreme Court has held thus:

"6. In the case of charges framed in a disciplinary enquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of their disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be"

5. In District Forest Officer Vs. R. Rajamanickam and another, 2000 SCC (L&S)1100, the Hon'ble Supreme Court, after placing reliance on its earlier decision in Upendra Singh (supra), annulled the Tribunal's decision which quashed the charge-sheet and held that the interference with the charge sheet is possible only where the charge-sheet read with its supporting imputations does not disclose any misconduct, and not on the ground that the alleged misconduct is not probable to have been committed by the delinquent. Truth or falsity of the charges does not give jurisdiction to interfere.

6. In *H.B.Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal vs. M/s Gopinath & Sons*, 1992 Supp.(2)SCC312, the Hon'ble Supreme Court highlighted the scope of judicial review of charge-sheet and held as under:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. 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 authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

7. In *Union of India and another Vrs. Kunisetty Satyanarayana*, A.I.R. 2007 SC 906, the Hon'ble Supreme Court, in paragraphs 14 and 15 of the judgment, has held as follows:

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge- sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause or charge sheet".

8. In *Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha*, AIR 2012 SC 2250, after having a survey of its earlier decisions, the Hon'ble Supreme Court held thus:

"9. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issued by filing a representation and wait for the decision of the disciplinary authority thereon....."

9. In *Secretary, Forest Department & Ors. v. Abdur Rasul Chowdhury*, (2009) 7 SCC 305 : (AIR 2009 SC 2925), the Hon'ble Supreme Court has held thus:

"11. Ordinarily, a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. 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/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court."

10. In *State of Orissa & Anr. v. Sangram Keshari Mishra & Anr.*, (2010) 13 SCC 311: (2010 AIR SCW 6948), the Hon'ble Supreme Court has held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority.

11. After going through the statements of articles of charges, and of imputations of misconduct served on the applicant, along with the charge memo dated 14.6.2017, we have found that the charges levelled against the applicant are not only grave but also have been framed by the Disciplinary Authority with material particulars. The list of documents by which the articles of charges framed against the applicant are sought to be proved also contain different statements and communications involving the applicant and delineating the role played by the applicant in the alleged incident. The charges levelled against the applicant are also sought to be proved through the witnesses cited in the list of witnesses which has been furnished to the applicant along with the charge memo. Therefore, it cannot be said that the imputations against the applicant are false, frivolous and fabricated and prima facie do not constitute any misconduct on the part of the applicant. In view of the principles laid down in the above referred cases, we are not inclined to entertain the O.A. filed by the applicant challenging the charge memo dated 14.6.2017(ibid).

12. As regards the applicant's contention that due to non-supply of copies of documents to him by the Disciplinary Authority, he was unable to submit the written statement of his defence in response to the charge memo dated 14.6.2017, the applicant has not brought to the notice of this Tribunal any rule or instructions issued by the Government of India that the Disciplinary Authority is bound to furnish copies of the documents mentioned in the list of documents appended to the charge memo, while proposing to hold inquiry and asking the delinquent employee to submit written statement of his defence, or to supply the same to the delinquent employee for the purpose of submitting the written statement of his defence in response to the charge memo. Sub-rule (3) of Rule 14 of the CCS (CCA) Rules, 1965, does not provide for supply of copies of documents by the Disciplinary Authority while issuing the charge memo along with the statements of articles of charges, and of imputation of misconduct, as well as the lists of documents and of witnesses. In cases where major penalty

proceedings are proposed to be initiated by the Disciplinary Authority, the delinquent employee is asked to submit his statement of defence within ten days from the receipt of the memorandum of articles of charge. The statement of defence to be submitted by the delinquent employee under Rule 14(5)(a) of the CCS (CCA) Rules, 1965, is limited to admitting or denying the charges communicated to him and, therefore, for such admission or denial, supply of documents is not necessary. If a delinquent employee does not submit his statement of defence within the prescribed time, the Disciplinary Authority has to go ahead with the appointment of Inquiring Authority. As per the scheme of the CCS (CCA) Rules, 1965, to enable the Inquiring Authority to hold the inquiry, the Disciplinary Authority is required to send copies of the documents to the Inquiring Authority. The original documents should normally be available with the Presenting Officer, and only if there is no Presiding Officer, should these be sent to the Inquiry Officer. Thereafter, the Inquiry Officer will send a notice to the charged officer asking him to present himself for a preliminary hearing at the appointed place or a date and time, within ten days, and to intimate the name of his defence assistant. At the preliminary hearing, the charged officer will be required to state categorically whether he pleads guilty to any of the articles of charge and if he has any defence to make. Thereafter the Inquiry Officer will also record an order that the charged officer may for the purpose of preparing his defence inspect within five days documents, a list of which was sent to him with the charges. On the date and at the time fixed for the inspection of documents, the delinquent employee will be given facilities to see them. The inspection will be in the presence of an officer deputed for the purpose, and it should be ensured that the documents are not tampered with during the course of inspection. The charged employee may keep notes or extracts, but will not be allowed to take photostat copies. The Inquiring Authority may, however, arrange to supply photostat copies of the documents to the charged officer. In the above view of the matter, we do not find any substance in the contention of the applicant that when the Disciplinary Authority failed to supply copies of the documents asked for by him to file the written statement of defence in response to the impugned charge memo, and when he did not file the written statement of defence in response to the impugned charge memo, the Disciplinary Authority ought not to have passed the impugned order dated 9.2.2018 appointing the Inquiring Authority to inquire into the charges levelled against him. Therefore, in our considered view, the impugned order dated 9.2.2018 issued by the Disciplinary Authority appointing the Inquiring Authority to inquire into the charges levelled against him remains unassailable.

13. In the light of our above discussions, we are not inclined to entertain this O.A. and dismiss the same at the stage of admission itself.