

(2010) 09 GUJ CK 0095

In the Gujarat High Court

Case No : Special Civil Application No. 7870 of 2010

Indian Council of Agricultural Research and Another	APPELLANT
Vs	
Ajaykumar Devjibhai Makwana and Others	RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Citation : (2010) 09 GUJ CK 0095

Hon'ble Judges : Bankim N. Mehta, J;A.L. Dave, J

Bench : Division Bench

Advocate : Mitul K. Shelat, for the Appellant; B.P. Tanna, for Tanna Associates, for the Respondent

Judgement

A.L. Dave, J.—The petition challenges the judgment and order rendered by the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in Application No. 265 of 2007 rendered on 19th February, 2010, whereby the Tribunal quashed and set aside charge sheet dated 16.4.2007, report of the Inquiry Officer dated 1.9.2007, office order of the ad hoc disciplinary authority dated 8.10.2007 and the Appellate Authority's order dated 25.1.2008, and remanded the matter to the disciplinary authority to proceed with the inquiry from the stage of considering the request of respondent No. 1 for appointment of Defence Assistant and for cross examination of prosecution witnesses.

1.1 The petitioners challenge the order mainly on the ground that it is passed in error of law and fact, that it is contrary to the evidence on record and therefore, is passed without application of mind.

2. The Tribunal, in its order in para 55, observed thus:

Therefore, the following elementary principles arise for consideration in the light of above discussion.

There cannot be any trespass as alleged in the charge sheet.

The alleged incident does not appear to be true judging from the past conduct of

parties and the circumstances of the case.

The alleged witnesses have only a post incident role.

The bias of the authority is self evident.

The methodology of conduct of inquiry was vitiated by illegality, irrationality and was improper and was the result of baseless assumptions.

The Appellate Authority relied on assumption without any legal validity and had not applied his mind.

The non-prosecution of the police case creates significant objectives against the fairness of authorities and also points out to covering of truth.

The prejudice of the 4th respondent towards the applicant is acknowledged as it is not denied.

The undue haste in the progress of inquiry even in the face of pendency of judicial proceedings and the expression of caution by the Tribunal was also not observed.

The appointment of ad hoc disciplinary authority de hors the circular, the actual bias exhibited by inquiry authority and the methodology adopted leaves much to be desired and it has vitiated the entire process.

The Tribunal ultimately passed the final order thus:

Therefore, the impugned charge sheet dated 16.4.2007, report of the Inquiry Officer dated 1.9.2007, office order of the ad hoc disciplinary authority dated 8.10.2007 and the Appellate Authority's order dated 25.1.2008, are hereby quashed and the applicant is directed to be reinstated in service with all consequential benefits.

3. Learned advocate Mr. Shelat for the petitioner and learned Senior Advocate Mr. Tanna with Mr. Bhavdutt H. Bhatt for Tanna Associates for respondent No. 1 are heard. Respondent Nos. 2 and 3 are formal parties being disciplinary authority and the Director of the petitioner Institute respectively.

4. Learned Senior Advocate Mr. Tanna concedes to a situation that the Tribunal, after what is observed in the body of the judgment, could not have quashed and set aside charge sheet dated 16.4.2007, particularly when the Tribunal's direction was of remanding the matter to the Inquiry Officer for inquiry de novo from the stage of considering the request of respondent No. 1 for appointment of Defence Assistant and for cross examination of prosecution witnesses.

5. On the other hand, the main grievance of the petitioners are that the observations made in respect of violation of principles of natural justice are not justified in facts of the case and the Tribunal could not have ordered reinstatement of the delinquent. In support of his submission, Mr. Shelat has relied on decision in case of Union of India v. Y.S. Sadhu (2008) 12 SCC 30 and

submitted that in every case, reinstatement is not necessary.

6. Having regard to the facts of the case, we find that the Tribunal has found that there were violations of principles of natural justice. We may not delve on it in detail, but we, certainly, find that on an occasion when the delinquent asked for copies of documents on the previous day of hearing, which were supplied to him forthwith, and when the delinquent asked for time on the next day of hearing, the time was not granted, is not a reasonable approach. It is true that the delinquent had asked for the copies, the previous day only, but then the grievance is not that the copies were supplied, the previous day, but he had received the copies, the previous day and hence, some time was granted to prepare himself for his defence. Grant of time would not have been unjustified.

7. The Tribunal has, however, while remanding the matter, quashed and set aside the charge sheet while directing inquiry to proceed from the stage of considering the request of applicant for appointment of Defence Assistant., this could not have been done. If the charge sheet is quashed, the entire proceedings go, which were not even the intention of the Tribunal and the Tribunal therefore, erred in quashing the charge sheet. We are therefore, of the view that, that part of the order cannot be permitted to stand. We find that there is an action on part of the petitioners, which cannot be considered to be perfectly in order with observance of principles of natural justice and the matter therefore, has to be remanded to the Inquiry Officer, as the inquiry itself is, to that extent, vitiated.

8. Now comes to the question whether the delinquent ? respondent No. 1 could or could not have been ordered to be reinstated in service with all consequential benefits, in our view, a domestic inquiry can proceed where there is a relationship of employer and employee and if the order of compulsory retirement continues to operate, that relationship ceased to exist. The remand of the matter for inquiry de novo from any particular stage would be therefore, of no consequence. If the inquiry has to proceed, that relationship of employer and employee has to be restored. When the matter is remanded to the Inquiry Officer, the situation, as to exist then, has to be restored. In this regard, we need refer to decision in case of U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, where the Lordship observed in para 26 as under:

26. In view of the above, we set aside the order of the learned single Judge as affirmed by the Division Bench by the impugned judgment and direct that within a period of four months, the enquiry shall be completed by starting from the stage of service of show-cause notice and consideration of the reply, if any, filed in accordance with the standing orders holding the field. Respondent No. 1 shall be reinstated to service but without any back wages and other service benefits and his reinstatement shall be solely for the purpose of completing the departmental proceedings. His entitlement, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.

The judgment, which is relied upon by Mr. Shelat, also observed thus, in para 7

after quoting the above portion.

Keeping in view the aforesaid position of law indicated in the aforesaid decisions, we are of the view that the course adopted in the two cases above, is to be violated.

9. In light of what is discussed herein above, we are of the view that the order of the Tribunal has to be partly set aside to the extent that it quashes charge sheet dated 16.4.2007 and orders reinstatement of respondent No. 1 in service with all consequential benefits.

10. While modifying the direction of reinstatement at the stage from which the inquiry has to proceed, we remand the proceedings to the Inquiry Officer to proceed with the departmental inquiry de novo, from the stage of recording of evidence. The Inquiry Officer shall conclude the inquiry within a period eight months from today. The order of the Inquiry Officer and the Appellate Authority would stand quashed and set aside, as ordered by the Tribunal. Respondent No. 1 would be reinstated in service without any back wages or other service benefits solely for the purpose of completing the departmental proceedings. His entitlement, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings. The Inquiry Officer shall take decision independent of observations made by the Tribunal on merits of the case and without being influenced by it. Rule is made absolute to the aforesaid extent. No costs.