
(2023) 05 CAT CK 0073

In the Central Administrative Tribunal

Case No : Original Application No. 268 Of 2009

Juma Mohd

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 31-05-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Central Civil (Clarification, Control And Appeal) Rules, 1965 — Rule 4

Citation : (2023) 05 CAT CK 0073

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Sameer Srivastava, Rajni Kant Rai

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. The present O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the prayer to quash the impugned order dated 31/7/2008 passed by the respondent No. 2 and appellate order dated 3.12.2008 and reinstate the applicant as Assistant Instructor with all consequential benefits.

2. The brief facts of the case is that applicant was selected as Assistant Craftsman on consolidated fixed salary of Rs. 400/- per month vide letter dated 10.10.1979. Applicant joined the post in the last week of October, 1979. In 1990, the name of Assistant Craftsman has been renamed as Assistant Instructor. Vide letter dated 24.4.1990, respondent No. 2 regularized the services of 251 Assistant Craftsman as Assistant Instructors along with the applicant w.e.f. 3.10.1985 in the pay scale of Rs. 900-1500/-. District Magistrate, Jaunpur after due verification from the Superintendent of Police, Jaunpur sent his confidential report dated 21.11.1990 in the office of respondent No. 2 and found that all the documents which have been filed by the applicant are correct. On 02.10.1998

after 21 years of service, Shri Jumai, the elder brother of the applicant has sent a complaint before respondent No. 2, alleging that his name is Juma Mohd and he was appointed as Assistant Craftsman in the year 1982 but his younger brother (applicant) of the complainant namely Moti alias Suleman has received the appointment letter and without informing him has obtained the service in his place and he is continue in service. Brother of the applicant filed a writ petition No. 33832 of 2004 (Juma Mohd.Vs. Development Commissioner (Handicraft). On the basis of aforesaid complaint, respondent No. 2 started a disciplinary proceeding against the applicant under Rule 4 of the Central Civil (Clarification, Control and Appeal)Rules 1965 and issued the charge sheet dated 23.3.2005 against the applicant. Applicant filed detailed reply dated 6.4.2005. Enquiry was initiated and during the enquiry proceeding, the prosecution produced only one witness namely Jumai, complainant who alleged himself as Juma Mohd. Prosecution has not produced any other witness before the inquiry officer. Applicant produced the witness of Pradhan of the village, Ashananadpur, namely Smt. Girija Devi. During the inquiry, applicant demanded 20 additional documents vide letter dated 29.8.2006 but inquiry officer allowed only 10 additional documents vide letter dated 1.9.2006. Six documents were provided by the Presenting Officer but 4 documents have not been provided to the applicant. After completing the inquiry, the inquiry officer directed the applicant as well as Presenting Officer to submit their written defence. Applicant submitted his written defence on 2.7.2007. Enquiry Officer submitted his report on 23.8.2007 and held that charge leveled against the applicant is not proved. After receiving the enquiry report, the disciplinary authority sent disagreement letter dated 15.4.2008 along with inquiry report to the applicant and directed applicant to submit written statement or defence within 15 days. Applicant submitted his defence statement on 25.5.2008. Thereafter, disciplinary authority passed the impugned order dated 31.7.2008 and dismissed the applicant from service. Applicant filed appeal against the impugned order but the appellate authority has not considered the objections raised by the applicant in his appeal, dismissed the appeal vide impugned order dated 3.12.2008.

3. Per contra, learned counsel for the respondents filed counter reply, stating therein that in 1979, respondent No. 2 has advertised several posts of Assistant Craftsman on consolidated wages. The applicant in the present O.A. has annexed the memorandum dated 10.10.1979 as Annexure No. 3 in support of his appointment as Assistant Craftsman in CWTC, Unchahar and on perusal of the same, it is observed that the said memo was issued in favour of Shri Mohd. Juma Ahmad, s/o Shri Shaikh Hafijllah, Village Samahi Naipura, P.O. Rampur, District-Jaunpur. The said memo was not issued in favour of the applicant. This clearly indicates that the applicant received the memo dated 10.10.1979. It is further stated that as per service book the name of the applicant is mentioned as Jumma Mohammad Sekh s/o Shri Faizulla but by manipulation, the applicant started serving in the department. As there was bulk appointment, the applicant was inadvertently and without verifying the offer of appointment, joined the

department. Department however, asked the applicant for submission of original and attested copy of the documents in the memo dated 22.5.1990 by 11.06.1990. It is further stated that complainant in his statement during the course of inquiry stated that the name of wife of Moti alias Suleman is Asma and the complainant for himself told that his name is Juma Mohd. s/o Shri Julla and also on being asked "Is Moti alias Suleman present" replied "yes" and indicated towards the charged officer i.e. the applicant.

4. Heard the learned counsel for the parties.

5. Submission of the learned counsel for the applicant is that inquiry officer has not found the charge proved against the applicant. Inquiry officer in his inquiry report has stated that complainant has mentioned in his complaint that he has applied for the post of Assistant Craftsman in 1982, therefore, appointment letter should be issued in favour of the complainant in 1982 or thereafter but in the instant case, applicant has been appointed in the year 1979 which is much before 1982. In the enquiry report, it is mentioned that presenting officer has not produced the District Magistrate as witness who has verified the documents of the applicant and found correct. It is further contended that disciplinary authority and appellate authority have relied upon the documents which have not been supplied by the presenting officer to the applicant, in spite of specific demand. Therefore, the applicant could not cross examine them before the enquiry officer. Applicant applied for the Post of Assistant Craftsman in the year 1979 and appeared before the Interview board and accordingly the department had issued appointment letter to the applicant on 10.10.1979. No written submission has been filed by the learned counsel for the applicant.

6. Learned counsel for respondents argued that applicant fraudulently manipulated in the offer of appointment dated 10.10.1979 and entered in the department. The aforesaid memo of appointment was issued in favour of Mohd. Jumma Ahmad son of Shri Shaikh Hafijllah and not in favour of the applicant. Applicant's real name is Moti alias Suleman and after conducting departmental enquiry, it is proved that the applicant fraudulently entered in the department. During the enquiry, applicant failed to produce any documents which shows that the is actually Juma Mohammad. The complainant in his statement stated that name of wife of Moti alias Suleman is Asma and his name is Juma Mohd.

7. Written statement has also been filed by the learned counsel for the respondents, in which he has reiterated the facts as stated in the counter reply.

8. We have considered the rival submissions of the parties and have gone through the entire record.

9. From perusal of record it is evident that inquiry officer during the enquiry has found that complainant in his complaint has stated that he has applied for the vacancy in the year 1982, whereas the charged officer is working in the department since 1979. It is also mentioned in the enquiry report that C.O. who is Moti alias Soleman is working in the department in the name of Juma

Mohammad his brother whereas the document DE-2 containing attestation form in respect of the C.O. having his photograph at the top of the said form bears the remarks of Naib Tehsildar that the character antecedents of the C.O. are verified and he knows him for the last one year. Smt. Girija Devi (DW-5) in her deposition has not recognized the C.O. as Juma Mohammad but also did not depose that he is not Juma Mohammad. FIR against the applicant has also been lodged in which applicant has not been found guilty till date. Accordingly, Inquiry officer was of the opinion that the charge against the C.O. is not proved. In the counter reply, it is stated that documents sought by the applicant were provided by the Inquiry Officer. Presenting Officer could only made available those documents, which were in his custodian. Letter dated 29.01.1999 issued by the District Magistrate, Jaunpur listed as SE-5 in the enquiry proceeding clearly indicates that the applicant is Moti alias Suleman working in the name of Juma Mohammad fraudulently. The said letter dated 29.1.1999 issued by the District Magistrate, Jaunpur supersedes all previous documents issued by the District Authorities, Jaunpur regarding identity of the C.O. Complainant was examined during the course of enquiry. Vide letter dated 15.4.2008, disciplinary authority sent inquiry report along with disagreement note to the applicant and after receiving the written statement of defence, disciplinary authority passed the impugned order dated 31.7.2008 and dismiss the service of the applicant. Principles of natural justice have been followed. Proper opportunity was given to the applicant during the enquiry proceeding.

10. So far as scope of judicial review of this Court is concerned, the legal position is well settled. The scope of judicial review in disciplinary matters are very limited. The Court or Tribunal can interfere only if there is violation of principles of natural justice and only if there is violation of statutory rules or it is a case of no evidence. The Tribunal or the Court cannot sit as an appellate authority.

11. The Hon'ble Apex Court in the case of B.C.Chaturvedi v. Union of India & Ors. Reported in 1995 (6) SCC 749 again has been pleased to observe that the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence . In this regard, Hon'ble Apex Court has been pleased to observe as under:-

"The Enquiry Officer submitted his report holding the charges against the appellant to have been proved. After consultation with the UPSC, the appellant was dismissed from service by an order dated 29.10.1986. The Tribunal after appreciating the evidence, upheld all the charges as having been proved but converted the order of dismissal into one of compulsory retirement. The delinquent filed an appeal challenging the finding on merits, and the Union filed an appeal canvassing the jurisdiction of the Tribunal to interfere with the punishment imposed by it. Allowing the appeal of the Union of India and dismissing that of the delinquent.

Per Ramaswamy and Jeevan Reddy, JJ

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

12. In another case the Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3)SCC 357 has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

"In the case of charges framed in a disciplinary inquiry 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 charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the 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."

13. Complainant on whose complaint enquiry was conducted by the competent authority as well as District Magistrate concerned have not been arrayed as respondents in the O.A., who are the necessary parties but for the reason that O.A. is being dismissed, court does not find necessary at this stage to direct the

applicant to add complainant as respondent in the O.A. O.A. is decided in absence of the complainant.

14. Considering the observations of the Hon'ble Apex Court as well as facts and circumstances of the case, the full-fledged enquiry was conducted, proper opportunity was afforded to the applicant. Charge leveled against the applicant was grave in nature of taking appointment fraudulently, as such, we are not inclined to interfere in the impugned orders and O.A. lacks merit and deserves to be dismissed.

15. Accordingly, O.A. is dismissed.

16. There shall be no order as to costs.

17. All associated M.As are disposed of accordingly.