

(2012) 07 AHC CK 0083

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39386 of 2007

Kamal Jeet Singh

APPELLANT

Vs

General Officer Commanding in Chief and Others

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Cantonments Act, 1924 — Section 280
Constitution of India, 1950 — Article 226

Citation : (2013) 6 ADJ 364

Hon'ble Judges : S.P. Mehrotra, J; Het Singh Yadav, J

Bench : Division Bench

Advocate : Siddhartha, for the Appellant; Isa Khan, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Shri Siddharth, learned counsel for the petitioner and Shri Mohd. Isa Khan, learned counsel for the respondents. The Affidavits have been exchanged between the parties, and with the consent of learned counsel for the parties, the Writ Petition is being disposed of at this stage. The petitioner has filed the present Writ Petition under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 14.6.2004 (Annexure 6 to the Writ Petition) passed by the respondent No. 2 (Cantonment Board, Meerut) and the Appellate Order dated 27.4.2007 (Annexure 8 to the Writ Petition) passed by the respondent No. 1 (General Officer, Commanding-In-Chief, Central Command, Lucknow Cantt).

2. As per the averments made in the Writ Petition, the petitioner was appointed on the post of Pound Keeper on 2.8.1976. The petitioner was promoted/appointed as Stenographer by Office Order dated 20.5.1983. Thereafter, the petitioner was further promoted in the Supervisory Grade by the Cantonment Board and was posted as Accountant and further on 10.12.1998, the petitioner was posted as Revenue Superintendent in the Cantonment Board, Meerut. While the petitioner was posted as Revenue Superintendent, Meerut, he was placed

under suspension on 7.11.2002, and an inquiry was ordered against the petitioner, and the Memorandum of Charge dated 4.12.2002 was served upon the petitioner. Copy of the Memorandum of Charge has been filed as Annexure CA-2 to the Counter-affidavit filed on behalf of the respondents.

3. Four charges were leveled against the petitioner in the said Memorandum, namely,

Article No. 1: Shri Kamal Jeet Singh while functioning as Revenue Superintendent during the period 3.12.1998 to 7.11.2002 has committed gross misconduct unbecoming of public servant; thus violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article No. 2: That during the aforesaid period and while functioning in the aforesaid office, the said Sri Kamal Jeet Singh has misused his official position for personal monetary gain in violation of the provisions of Cantonments Act, 1924.

Article No. 3: That during the aforesaid period and while functioning in the aforesaid office, the said Shri Kamal Jeet Singh has received illegal gratification for transfer of liquor shop which is in gross violation of conduct rules and his conduct is unbecoming of public servant.

Article No. 4: That during the aforesaid period and while functioning in the aforesaid Office, the said Shri Kamal Jeet Singh was found involved in allowing illegal hoardings in Cantt Area without permission of the Competent Authority and without deposit of revenue in Cantt Fund treasury. He thus committed gross misconduct and is guilty of misuse of official position for personal monetary gains in violation of provisions of CCS (Conduct) Rules, 1964.

4. The inquiry proceedings were thereafter conducted against the petitioner. The Inquiry Officer submitted his report, copy whereof has been filed as Annexure 3 to the Writ Petition.

As regards, the charge contained in Article No. 1, the Inquiry Officer found the petitioner guilty.

As regards, the charge contained in Article No. 2, the Inquiry Officer found the petitioner "guilty (to be partially blamed)."

As regards, the charge contained in Article No. 3, the Inquiry Officer dismissed the said charge.

As regards, the charge contained in Article No. 4, the Inquiry Officer held the petitioner "guilty (to be partially blamed)."

5. It further appears that the matter was thereafter placed before the Cantonment Board. The Cantonment Board in its meeting held on 24.9.2003 resolved that the Inquiry Report be given to the petitioner to make his representation/submission in writing to the Disciplinary Authority, if the petitioner wished to do so. Copy of the Inquiry Report was accordingly sent to

the petitioner whereupon the petitioner made his representation dated 27.10.2003, copy whereof has been filed as Annexure 4 to the Writ Petition. After submission of the representation by the petitioner, the matter was placed before the Cantonment Board alongwith Office Note. Being Disciplinary Authority, the Cantonment Board on 14.6.2003 passed the resolution awarding punishment to the petitioner. The said resolution, as contained in Annexure 6 to the Writ Petition, is as under:

364. Considered in details. Resolved that Shri Kamal Jeet Singh be reverted one grade below in non-supervisory post alongwith withholding of 02 annual increments without commutative effect. The pay & allowances for the period of suspension be restricted to the subsistence allowance already paid and the period of suspension be treated as ECL. Further resolved that he be re-instated in the service with immediate effect.

6. The petitioner thereafter filed an appeal before the Appellate Authority as per the provisions contained in Rule 14 of the Cantonment Fund Servants Rules, 1937 (hereinafter also referred to as "the Rules, 1937"), framed in exercise of the powers conferred by Section 280 of the Cantonments Act, 1924. Copy of the Appeal has been Filed as Annexure 7 to the Writ Petition.

7. It appears that the Appeal submitted by the petitioner was processed by the Director, Defence Estates, Central Command, as well as the Principal Director, Defence Estates, Central Command, and they made recommendations that the Appeal submitted by the petitioner be allowed. It was specifically stated in the recommendations that the charges against the petitioner did not stand proved. The Appellate Authority, thereafter considered the matter and passed the order dated 27.4.2007 rejecting the Appeal submitted by the petitioner. In the said order, the Appellate Authority referred to recommendation made by the Principal Director, Defence Estates, Central Command and observed that: "As per the findings of PDDE CC vide note sheet No. 13 dated 6 September, 2005, the charges against the appellant do not stand proved fully, however, the seriousness of charges proves that case of Shri Kamaljeet Singh does not merit reversion to his earlier post or scale of pay."

(Emphasis supplied)

8. A perusal of the recommendation made by the Principal Director, Defence Estates, Central Command shows that the Principal Director, Defence Estates, Central Command was in agreement with the note/finding of the Director, Defence Estates, Central Command that "the charges against the charged official (i.e. the petitioner) do not stand proved."

(Emphasis supplied)

9. Thus, the Appellate Authority has not correctly appreciated the recommendation made by the Director, Defence Estates, Central Command which was agreed to by the Principal Director, Defence Estates, Central Command.

10. It is further relevant to note that the Appellate Authority has merely reproduced the charges against the petitioner and the gist of the Inquiry Report. The Appellate Authority has not dealt with the various grounds raised by the petitioner in his Appeal No. reason has been given by the Appellate Authority for agreeing with the order of the Disciplinary Authority and for differing from the recommendation made by the Principal Director, Defence Estates, Central Command. In our opinion, the order passed by the Appellate Authority is not a speaking order.

11. Learned counsel for the petitioner has placed reliance upon the Judgment in Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao, , wherein the Apex Court has held as under (paragraphs 19 and 20 of the said SCC):

19. Having considered the submissions made on behalf of the respective parties and also having regard to the detailed manner in which the Andhra Pradesh Administrative Tribunal had dealt with the matter, including the explanation given regarding the disbursement of the money received by the respondent, we see no reason to differ with the view taken by the Administrative Tribunal and endorsed by the High Court. No doubt, the Divisional Forest Officer dealt with the matter in detail, but it was also the duty of the appellate authority to give at least some reasons for rejecting the appeal preferred by the respondent. A similar duty was cast on the revisional authority being the highest authority in the Department of Forests in the State. Unfortunately, even the revisional authority has merely indicated that the decision of the Divisional Forest Officer had been examined by the Conservator of Forests, Khammam wherein the charge of misappropriation was clearly proved. He too did not consider the defence case as made out by the respondent herein and simply endorsed the punishment of dismissal though reducing it to removal from service.

20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum.

(Emphasis supplied)

12. Learned counsel for the petitioner further placed reliance upon the Judgment in Chairman, Disciplinary Authority, Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, , wherein the Apex Court has held as under (paragraph 5 of the said SCC):

5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, has itself stated that

the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

(Emphasis supplied)

13. It is, thus, evident that even if the Appellate Authority agrees with the order of the Disciplinary Authority, it (Appellate Authority) is required to give its reasons, though brief reasons, so that the delinquent officer may know that the Appellate Authority has applied its mind in dismissing his Appeal and in affirming the order of the Disciplinary Authority.

14. In the present case, we find that the Appellate Authority has rejected the Appeal filed by the petitioner and has upheld the order of the Disciplinary Authority dated 14.6.2004, despite the recommendations to the contrary made by the Principal Director, Defence Estates, Central Command and the Director, Defence Estates, Central Command. However, the Appellate Authority has not given any reason for agreeing with the order of the Disciplinary Authority and for differing from the said recommendations made by the Principal Director, Defence Estates, Central Command and the Director, Defence Estates, Central Command. The Appellate Authority has also not dealt with the various grounds raised in the Appeal submitted by the petitioner.

15. In view of the above, the order dated 27.4.2007 passed by the Appellate Authority is liable to be quashed.

16. Before parting with the case, we may refer to one submission made on behalf of the respondents that against the order dated 27.4.2007 passed by the Appellate Authority, the petitioner has got further remedy of filing revision under Rule 15 of the Rules, 1937, i.e. the Cantonment Fund Servants Rules, 1937, and therefore, the Writ Petition be dismissed on the ground of availability of alternative remedy.

17. We have considered the submission made by the learned counsel for the respondents.

Rules 14 and 15 of the Rules, 1937 are reproduced below:

14.(1) Any servant on whom any of the penalties specified in Rule 11 has been imposed by the Board shall, within thirty days of the date of delivery of the copy of the documents showing the grounds on which the penalty has been imposed, be entitled to appeal to the Officer Commanding-in-Chief, the Command, and the decision of the Officer Commanding-in-Chief, the Command shall, subject to the provision of Rule 15, be final.

(2) A copy of the order passed by the Officer Commanding-in Chief, the Command shall be delivered to him personally or by registered post.

15.(1) Any person on whom penalty has been imposed by the Board and who is aggrieved by the order of the Officer Commanding-in-Chief, the Command under Rule 14 may, within thirty days of the delivery to him of such order, submit an application to the Central Government which may, after inquiry as it deems fit, revise such order, if it is satisfied that the Board or the said Officer has acted illegally with material irregularly.

(2) Every such application shall be accompanied by a copy of the order of the Officer Commanding-in-Chief, the Command against which application is made and shall be submitted through the Board and the Officer Commanding-in-Chief, the Command. While forwarding the application, the Board shall attach thereto the whole proceedings together with the service book of the servant, if any.

18. Thus, a person aggrieved by an order passed in the appeal under Rule 14 of the Rules, 1937 may file revision under Rule 15 of the said Rules.

19. Hence, it was open to the petitioner to file Revision under Rule 15 of the Rules, 1937 against the order dated 27.4.2007 passed by the Appellate Authority.

20. However, the present Writ Petition is pending since 2007. Affidavits have been exchanged between the parties. In the circumstances, we are of the view that it will not be appropriate to dismiss the Writ Petition on the ground of availability of alternative remedy of filing revision under Rule 15 of the Rules, 1937, i.e. the Cantonment Fund Servants Rules 1937.

21. In view of the above discussion, the Writ Petition filed by the petitioner deserves to be allowed and the order dated 27.4.2007 passed by the Appellate Authority (Annexure 8 to the Writ Petition) is liable to be quashed, and the matter is liable to be remitted to the Appellate Authority for considering the Appeal of the petitioner afresh in accordance with law and keeping in view the observations made in this Judgment.

22. The Writ Petition filed by the petitioner is accordingly allowed. The order dated 27.4.2007 (Annexure 8 to the Writ Petition) passed by the Appellate Authority is quashed. The matter is remitted to the Appellate Authority for considering the Appeal submitted by the petitioner afresh in accordance with law and keeping in view the observations made in this Judgment. However, on the facts and in the circumstances of the case, there will be no order as to costs.