(2014) 01 DEL CK 0070

In the Delhi High Court

Case No : Writ Petition (C) 98 of 2014

M.R. Ghai APPELLANT

Vs

District and Sessions Judge RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Citation : (2014) 2 AD 461 : (2014) 208 DLT 2 : (2015) 1 SLJ 152

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Daviender M. Grover and Mr. Suresh Kant, for the Appellant; Avnish Ahlawat and Ms. Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The petitioner was subjected to disciplinary proceedings pursuant to an order dated 23rd August, 2002 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 along with one Smt. Kanta Devi. The Inquiring authority found both of them guilty. Upon consideration of the Inquiry Report dated 22nd March, 2006, the Disciplinary Authority passed an order dated 7th August, 2006 affirming the findings. By the same order the Disciplinary Authority imposed the major penalty of dismissal from service against the petitioner while Smt. Kanta Devi was awarded the penalty of compulsory retirement. The charges against the petitioner and Smt. Kanta Devi relating to financial irregularities detected for the period when they worked as reader in the court of Shri S.K. Gautam, then Metropolitan Magistrate, Tis Hazari Courts, Delhi.

2. Mr. M.R. Ghai, the petitioner herein was working as a reader in that court while Smt. Kanta Devi was posted in his place vide office order dated 20th May, 1998. She is stated to have joined duties with effect from 22nd May, 1998.

3. So far as allegations against the petitioner are concerned, it was alleged that he was working with the Metropolitan Magistrate at the relevant time and was

dealing with the work of traffic challans. The traffic challans would ordinarily be disposed of summarily with proceedings being recorded in the Summary Trial Registrar (STR). As is the norm in the subordinate criminal courts, whenever fine is imposed and/or realized, it is the responsibility of the official posted as Reader to maintain proper accounts in such regard. The Reader collects the fine paid, prepares the fine receipt which is issued under the signatures of the Presiding Magistrate to the person making the payment. The account of the fine imposed and realized or remaining balance is maintained in formal register called "Fine Register", the entries wherein are made by the Reader but also authenticated by the Presiding Judge at the end of each day. A fine statement is separately required to be prepared with details of the transactions of that particular day and the amount collected is deposited in the office (Nazarat Branch) along with copy of the said fine statement prepared by the Reader and signed by the Presiding Officer. This fine statement must correspond to the entries in the fine register.

4. Pursuant to the order dated 2nd January, 1999 of the District and Sessions Judge, Delhi an audit was carried out by Mr. M.C. Aggarwal on 14th January, 1999 and 15th January, 1999 with the focus being on the period between 27th March, 1998 to 27th May, 1998.

5. Shri M.C. Aggarwal, an official on Special Duty while checking the record found various discrepancies in the account which resulted in further inquiry into the matter followed by the issuance of statement of article of charges by the authorities as the explanation given by the petitioner as well as Smt. Kanta Devi was not found to be satisfactory.

6. It is noteworthy that in the report dated 22nd March, 2006, the Inquiry Authority found both the petitioner as well as Smt. Kanta Devi guilty of financial irregularities. However, the role of Smt. Kanta Devi was restricted to only the last three audit observations.

7. The District and Sessions Judge as Disciplinary Authority considered the defence of both the delinquent officials, and thereafter passed the order dated 7th August, 2006 holding them guilty of the misconduct and awarded the punishments noted above.

8. The petitioner as well as Smt. Kanta Devi had filed two separate appeals against the order of the Disciplinary Authority. The same was considered by the Appellate Authority and by an order dated 22nd November, 2007 rejected the two appeals.

9. Learned counsel for the petitioner has drawn our attention to the fact that Smt. Kanta Devi had assailed the rejection of her appeal by way of WP(C) No. 5165/2008 which was allowed by the judgment dated 21st May, 2010. In this judgment the court had returned the finding that Smt. Kanta Devi''s conduct could at best be labelled only as a case of negligence and carelessness on her part arising from the factum of her having assumed duty. In this view of the matter and keeping in view the background of unblemished career of 26 years,

the court was of the view that the punishment of compulsory retirement imposed on her was excessively harsh, shocking the conscience of the court.

10. In this background, following the dicta of the Supreme Court in Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another, the court substituted the order of compulsory retirement in respect of Smt. Kanta Devi with an order of withholding of one increment including stoppage of efficiency bar. The court had however rejected the grant of back wages other than the suspension allowance, if any, already paid to her till the formal order was issued by the competent authority re-instating the petitioner in service subject to the condition that the petitioner rejoined the service.

11. Learned counsel for the present petitioner has contended that in view of the finding returned by the court in the judgment dated 21st May, 2010, the petitioner is entitled to be similarly considered and the punishment imposed upon him requires to be set aside. It is submitted that the petitioner is also entitled to the reinstatement in service as he is entitled to parity of treatment.

12. We have heard learned counsel for the petitioner and considered the records placed before us.

13. For the purpose of the present consideration, reference may usefully be made to the certain relevant extract of the order dated 22nd November, 2007 passed by the Appellate Authority rejecting the appeals filed by the petitioner and Smt. Kanta Rani.

We may note that the petitioner herein was referred to as appellant no. 1 in this order while Smt. Kanta Rani was recorded as appellant no. 2. In para 7 of this order, the court had noted audit report (Ex. RW4/A) submitted by Mr. M.C. Aggarwal (RW-4 in the inquiry) after noting entries therein. In para 8, the appellate authority had observed as follows:-

8. Noticeably, the period to which the above observations relate can be split into two. The period 27.03.1998 to 13.05.1998 was the period when the appellant no. 1 was exclusively functioning as the Reader in the concerned court. This would mean the last 3 transactions i.e., the ones relating to 22.05.1998 to 27.05.1998 period to the period when appellant no. 2 had joined the posting as Reader but when both the appellants worked together. It must be mentioned at this stage that at the time of consideration of the Inquiry Report, the appellant no. 2 had pointed out to the Disciplinary Authority (on the strength of certified copies of the fine statements) that the amounts mentioned in the observations no. 9 and 10 of the Audit Report were duly accounted for. The Disciplinary Authority accepted her contention in this regard and, therefore, has restricted the finding of guilty against her only to the observations no. 11.

14. The above extract would show that so far as Smt. Kanta Rani was concerned, she was found guilty with regard to only observation no. 11. It is trite that challenge to disciplinary proceedings may be laid on a grounds of violation of

procedure as well as principles of natural justice. In the instant case, the Appellate Authority in para 23 has made the following further observations:-

23. The proceedings conducted by the Inquiry Officer show that full opportunity has been given to both the appellants to set up their defence not only by availing opportunity to cross-examine the witnesses produced by the department but also by adducing their own evidence. The procedure for the Inquiry as prescribed in Rule 14 of CCS (CCA) Rules only required the charged officials to be called upon to state their respective defence, orally or in writing. The Inquiry Officer rather went beyond the limited requirement of the provision contained in Rule 14(16) by putting each incriminating circumstance to the charged officials giving them an opportunity to explain the same. This was in tune with Rule 14(18), in the fact of the fact that the delinquent officials had not examined themselves in their own defence.

15. There can therefore be no challenge to the Appellate Authority''s consideration against the petitioner on the grounds of any provision of law or principles of natural justice being violated. So far as distinction between the case of Smt. Kanta Rani and the case of the present petitioner is concerned, the obvious fact is that Smt. Kanta Rani was found guilty of only one instance. In this regard, we may refer to the relevant extract of the judgment dated 21st May, 2010 in WP(C) No. 5165/2008 Smt. Kanta Rani v. The District & Sessions Judge which reads as follows:-

7. Having heard learned counsel for the parties, we find that there can be really be no dispute about the finding against the petitioner in respect of one of the charges out of the three charges in question i.e. of deposit of only Rs. 100/- with the Government account as against fine imposed of Rs. 1,000/-. This has, however, to be appreciated in the background of the conduct of the previous Reader Sh. M.R. Ghai against whom various irregularities were found. Two of the amounts in question detected as un-deposited were found to have actually been deposited by the petitioner. Thus, the delinquency of the petitioner is only in respect of one of the fine amounts. We find no reason why Sh. M.R. Ghai ought to have continued to work alongside the petitioner but for a direction by Sh. S.K. Gautam, MM (RW-5). This was possibly to facilitate the transition but the fact remains that both Sh. M.R. Ghai and the petitioner continued to handle accounts. The charges found against Sh. M.R. Ghai have resulted in penalty of dismissal from service while the punishment of only compulsory retirement has been imposed on the petitioner.

8. Learned counsel for the petitioner emphasized that the petitioner had a blemishless career of 26 years and the confusion had arisen because there were two persons doing the same job and the other person was found to be delinquent in respect of the various amounts collected as fine though not deposited with the Government account. The lack of care on the part of the petitioner thus must be considered within that parameter.

9. We cannot lose sight of the fact that the Trial Courts are loaded with work. The supporting staff is equally burdened. If the person from whom you are taking over charge, and who continues to work with you, has been involved in a continuous process of falsification of some accounts, the possibility of mistake is even greater. It has already been noticed above that the auditor detected the problem in respect of two periods of close proximity and the first period was when Sh. M.R. Ghai alone was working as a Reader. There were only three transactions for the subsequent period when both Sh. M.R. Ghai and the petitioner were working and in respect of two of the transactions, fine amounts were found to have actually been deposited with the Government account. The controversy thus revolves around only one fine amount of Rs. 1,000/- in respect of which only an amount of Rs. 100/- had been deposited with the Government account. The testimony of Sh. S.K. Gautam, MM (RW-5) shows that though he has not supported the petitioner on the issue of her working under Sh. M.R. Ghai, he has stated that both of them were working together. Thus, while the petitioner had taken over charge as a Reader, Sh. M.R. Ghai also continued to perform the duty simultaneously.

10. If we consider the aforesaid aspect, we find that it can at best be labeled only as a case of negligence and carelessness on the part of the petitioner arising from the factum of her having assumed duty. If this be so, the punishment of compulsory retirement in the background of blemishless career of 26 years seems to be excessively harsh, shocking the conscience of this Court...

16. The above narration amply illustrates that there is no parity between the case of Smt. Kanta Rani and the present petitioner. The court has clearly returned findings with regard to the distinction between the two cases. Even otherwise, given the facts brought out in the aforenoticed observations of the Appellate Authority as well as by this court in the previous judgment dated 21st May, 2010, we find no merit in the petitioner''s prayer that he is entitled to the same treatment as has been given to Smt. Kanta Rani. We find no merit in this writ petition which is hereby dismissed.

