

(2020) 02 CAT CK 0023

In the Central Administrative Tribunal

Case No : Original Application No. 3303 Of 2016

N.K. Yadav

APPELLANT

Vs

Joint Secretary And Ors

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules 1964 — Rule 3(1)(i), 3(1)(iii), 22(b)
Constitution Of India, 1950 — Article 309

Citation : (2020) 02 CAT CK 0023

Hon'ble Judges : S.N. Teral, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Ranbir Singh Sandhu, Gyanendra Singh

Final Decision : Dismissed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant is a driver working under the respondent No.1. He was working as Assistant Field Officer (Motor Transport) AFO (MT) and was

issued charge memorandum dated 06.02.2014 on the allegations that on 21.11.2013 while he was posted in New Delhi, he visited office of Ms. Sheetal

Kohli, PA to US (Pers.C) purposely, in a drunken state and made unwarranted statements including about her residence and other matters causing her

serious mental harassment. It is submitted that prior to charge sheet, vide Office Memorandum dated 05.12.2013, the applicant was directed to file

reply within 05 days to explain reasons for such unwarranted behaviour. The applicant vide letter dated 09.12.2013 denied the charges levelled by Ms.

Sheetal Kohli. Thereafter, respondent No.1 issued charge memorandum dated 06.02.2014 and instituted a departmental enquiry under Rule-14 of

CCS(CCA) Rules, 1965 wherein the applicant was charged with exhibiting lack of integrity and acting in a manner, which is highly unbecoming of a government servant and contravening Rule-3(1)(i) and (iii) and Rule-22(b) of CCS (Conduct) Rules, 1964. The basis of the charge sheet was the complaint filed by Ms. Sheetal Kohli on 21.11.2013. The Enquiry Officer (EO) was nominated and the enquiry report was submitted on 05.11.2014 concluding that charge levelled against the applicant stands proved. Applicant vide his representation dated 08.12.2014 against the findings of the EO submitted that the findings are not based on the facts and circumstances of the case. The Disciplinary Authority (DA) vide order dated 01.01.2015 agreeing with the findings of the EO imposed the penalty of reduction of pay by one stage in the time scale of pay (Rs.5200-20200/-) i.e. Rs. 16690/- for a period of 04 years without cumulative effect upon the applicant. The applicant submitted his appeal dated 12.01.2015 against these orders to the Appellate Authority (AA). AA vide order dated 22.04.2015 rejected the appeal upholding the penalty imposed by the DA. The applicant filed a review petition dated 07.05.2015, which was dismissed by the Revisioning Authority vide order dated 05.08.2015. The applicant subsequently filed a request dated 23.10.2015 to re- classify the documents marked as secret relating to the enquiry to enable him to present his case before the Tribunal. The respondents disallowed the application vide order dated 22.12.2015. In the first round of litigation, the applicant filed OA-979/2016 before the Tribunal, which was dismissed as withdrawn vide order dated 01.09.2016 with liberty to file afresh OA after removing the defects.

The present O.A. has been filed accordingly seeking the following relief (s):-

â??(i) Set aside and quash the impugned order dated 01.01.2015 and 16.03.2015 (Annexure-A-Colly) passed by the respondents whereby the penalty of reduction of pay by one stage in the time scale of pay (Rs.5200-202000/) for a period of four years was imposed.

(ii) Quash and set aside orders dated 22.04.2015 and 05.08.2015 passed by Additional Secretary (Pers), Appellate Authority and Secretary (R), Revision Authority, respectively.

(iii) Direct the respondents to release arrears of pay and allowances which the applicant did not get due to operation of the impugned orders dated 01.01.2015 and 16.03.2015.

(iv) To allow the present application with costs.â??

2. The applicant denies the charge of having misbehaved with Ms. Sheetal Kohli when he visited her office on 21.11.2013 and also that he was in a drunken state. He has also submitted that his request for re-classifying the documents marked as secret relating to the enquiry has been rejected, which is illegal. He contends that various issues raised by him on the merits and the infirmities in the enquiry proceedings have not been considered by the DA, AA and RA.

3. The respondents have filed a counter affidavit opposing the O.A. It is submitted that the applicant while working as AFO(MT) in respondent No.1's office, on 21.11.2013 visited Ms. Sheetal Kohli in her office and made unwarranted comments including about her residence and other matters causing her serious harassment and mental stress. Ms. Sheetal Kohli made a written complaint on 21.11.2013 stating that the applicant was in a drunken state when he visited her office and made these unwarranted statements about her residence and other matters. The applicant was directed to explain reasons for such unwarranted behaviour. As he denied the same, a charge sheet under Rule-14 of CCS(CCA) Rules, 1965 was issued. The applicant was afforded all required opportunities during the disciplinary proceedings. DA imposed penalty of reduction of pay by one stage in the time scale of pay (Rs.5200-20200/-) i.e. Rs. 16690/- for a period of 04 years without cumulative effect, upon the applicant. The punishment imposed by DA was confirmed by the AA and also by RA. It has been reiterated by the respondents that his request for re-classifying the documents has not been agreed to as these documents are marked as secret and cannot be re-classified as per the norms prescribed in the concerned office of the respondents. However, respondent No.1 produced the records including enquiry report etc. before the Bench, which were perused in the Court.

4. Learned counsel of the applicant relies upon the following judgments regarding conduct of enquiry:-

- (i) State of M.P. Vs. Chintaman Sadashiv Waishampayan, (1961) AIR (SC) 1623.
- (ii) Ministry of Finance & Anr. Vs. S.B. Ramesh, JT 1998(1)SC 319.

5. Heard Sh. Ranbir Singh Sandhu, learned counsel for the applicant and Sh. Gyanendra Singh, learned counsel for the respondents.

6. The applicant has stated that he was well known to Ms. Sheetal Kohli when he

was posted in Mumbai office during the period August, 2004 to August, 2005. The applicant contends that he became acquainted with Ms. Sheetal Kohli, who also assisted him in his official work etc. After many years in 2013 during his posting in Delhi, he came to know that Ms. Sheetal Kohli is also working in the same office and, therefore, he visited her on 21.11.2013 to talk to her and as he claims exchanged only pleasantries. He has also stated that Ms. Sheetal Kohli did not recognize him and when he reminded her of their posting in Mumbai office, she acknowledged knowing him and stated that she is busy and, therefore, he should leave. The claim of the applicant that he knew Ms. Sheetal Kohli very well having worked in Mumbai office is not tenable as the applicant and Ms. Sheetal Kohli stated to have worked in Mumbai office only for four months and that too in different capacities. The very fact that Ms. Sheetal Kohli made a complaint in writing about his misbehaviour to the superiors the same day is proof enough that she was obviously disturbed with the presence and behaviour of the applicant, who also appeared to be in a drunken state during the office hours. The explanation of the applicant was asked for. As he denied the alleged misbehaviour and being in a drunken state, the competent authority decided to issue him a charge sheet. The applicant has also submitted that he was not given a copy of the letter of the complaint dated 21.11.2013 written by Ms. Sheetal Kohli and other documents. It has been clarified that copy of the complaint letter of Ms. Sheetal Kohli was one of the listed documents in the enquiry. From the enquiry report dated 05.11.2014, it is clear that the applicant had been specifically asked whether he would like to inspect any document in connection with the departmental enquiry including the written document dated 21.11.2013. The applicant refused by answering in negative. Copies of documents were not handed over to the applicant as these have been classified as secret by the department. The enquiry report was perused by us and it was evident that the applicant was asked whether he would like to inspect any document but he had refused the same. The enquiry was conducted as per procedure laid down under Rule-14 of CCS(CCA) Rules, 1965 holding that the applicant visited the office of Ms. Sheetal Kohli, tried to establish acquaintance based on previous posing in Mumbai and mentioned inappropriately about other matter including to see her at her residential address. The charge that the applicant was under the

influence of liquor could not be established in the absence of medical examination. However, the circumstantial evidence established that the applicant entered the office of Ms. Sheetal Kohli and tried to establish acquaintance with her and asked for residential address and other matters have been established. The enquiry report was given to the applicant for making representation. It has also been submitted by the applicant that additional prosecution witnesses were examined by the EO. The Rules permit examination of additional prosecution witnesses and defence witnesses as the case may be. All these aspects have been duly represented by the applicant post the enquiry. His representation dated 08.12.2014 has also been considered and DA vide order dated 01.01.2015 agreed with the findings of the EO and through a reasoned speaking order imposed the penalty of reduction of pay by one stage in the time scale of pay (Rs.5200-20200/-) i.e. Rs. 16690/- for a period of 04 years without cumulative effect upon the applicant. His appeal was considered by the AA, which considered the facts and circumstances of the case, connected record of the enquiry, the plea taken by the applicant and rejected his appeal. His review appeal was also considered and rejected by Revisioning Authority vide order dated 05.08.2015. As far as the conduct of enquiry is concerned, the records produced by the department were perused by us and we do not find any infirmity and illegality in the enquiry proceedings. Due opportunities have been extended to the applicant during the enquiry and also post enquiry. His submissions have been duly considered by the DA, AA and RA.

7. It is settled law that the judicial intervention and review by the Tribunal/Court in disciplinary proceedings is limited. This has been ruled in catena of judgments of the Apex Court. Apex Court in the case of *Parma Nanda Vs. State of Haryana and others* reported in 1989 (2) SCC 177 had held as under:-

“The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the

rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.â??

8. In view of the above, we do not find any grounds for judicial review in the present O.A. The same is devoid of merit and is accordingly dismissed.

No order as to costs.