
(2019) 03 CAT CK 0105

In the Central Administrative Tribunal

Case No : Original Application No. 2068 Of 2015

Parshu Ram Prasad

APPELLANT

Vs

Union Of India Through Secretary

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(ii)(iii)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 CAT CK 0105

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Dr. Swati Jindal, Preeti Singh

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1. We have heard Mr.R.K.Jain, counsel for applicant and Dr.Swati Jindal for Ms Preeti Singh, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(i) Quash and set aside the order dated 5.05.2014 passed by Respondent, whereby applicant has been removed from service and the order dated 2.9.2014 vide which the appeal has been rejected.

(ii) Quash and set aside findings submitted by the enquiry officer, upto the extent that charge has been held to be partly proved against the applicant.

(iii) Direct the respondents to reinstatement the applicant in service and to grant the applicant all consequential benefits.

(iv) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the applicant.

(v) Cost of the proceedings be awarded in favour of the applicant and against the respondents."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant for having secured appointment to the post of Laundry Operator Grade-II on the basis of false Scheduled Tribe certificate. The details of article of charge are extracted below:-

"That the said Shri Parshu Ram Prasad while working as Laundry Operator Gr_II in All India Institute of Medical Science, New Delhi, secured employment in AIIMS as Laundry Operator Grade-II against the vacancy reserved for ST category on the basis of a forged and fabricated ST Certificate No.A/S-1/III 25.7.1988 purportedly issued by DM Siwan and also submitted forged and fabricated school leaving certificate/transfer certificate dated 13.12.86 issued by Prem Chand High School, Village Sarai, Post Gaia Kothi, Distt. Siwan, Bihar. This act of Sh. Parshu Ram Prasad is in violation of CCS (Conduct) Rule 1964 and he responsible for gross misconduct on his part. Shri Parshu Ram Prasad, Laundry Operator Grade-II (under suspension) is thus responsible for gross misconduct, failed to maintain absolute integrity, devotion to duty and has acted in a manner which is unbecoming of an employee of the Institute, thereby contravening Rule 3(1)(ii) (iii) of the CCS (Conduct) Rules, 1964 which is applicable to the employees of the Institute."

4. Alongwith the article of charge, statement of imputation of misconduct, list of witnesses and list of documents were served on the applicant. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The Inquiry Officer conducted the enquiry proceedings following the principles of natural justice and the relevant rules regarding holding of departmental enquiry and examined 7 witnesses on behalf of the Presenting Officer and 1 defence witness and taken on record the defence statement and analyzed the evidence deposed by the witnesses and came to the conclusion that the charge leveled against the applicant was partially proved vide his inquiry report dated 27.02.2014. The inquiry report was served on the applicant. The applicant submitted representation against the inquiry report. The disciplinary authority after perusing the inquiry report and the material brought on record in the inquiry report and taking into account the grounds raised in the representation passed an order of removal from service on the applicant vide order dated 5.05.2014. The applicant filed an appeal. The appellate authority also perusing the entire evidence and taking into account all the grounds raised by the applicant rejected the appeal filed by the applicant vide order dated 2.09.2014.

5. The counsel for the applicant vehemently and strenuously submitted that as the fraud and fabrication of school leaving certificate held to be not proved as the concerned witness, namely, the Head Master of the School did not appear in the departmental enquiry, the findings of the inquiry officer is not sustainable. In support of his contention, counsel for the applicant has relied upon the order of this Tribunal passed in the case of Vijay Kumar Vs. UOI & Others (OA No.

1816/2012). The counsel for the respondents equally vehemently contended that the inquiry officer has rightly come to the conclusion that the applicant does not belong to ST category but he belongs to other backward category on the basis of the evidence of Revenue Officer of the native place of the applicant. The counsel for the respondents further rightly submitted that the order passed in the above case of Vijay Kumar is not applicable to the present case.

6. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(1). In the case of K.L.Shinde Vs. State of Mysore (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the

proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of B.C.Chaturvedi Vs. UOI & Others (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

"12. 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 eye of the Court. When an inquiry is conducted on charges of a 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 be 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 on its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at the 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H. C. Goel* (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

Recently in the case of *Union of India and Others Vs. P.Gunasekaran* (2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence."

7. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice, the impugned orders do not

require to be interfered with.

8. Accordingly, OA is dismissed. No order as to costs.