
(2015) 10 DEL CK 0213
In the Delhi High Court
Case No : W.P. (C) 3993/2014

P.C. Garg

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Citation : (2015) 10 DEL CK 0213

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Ashwani Bhardwaj, Advocate, for the Appellant; Vikas Mahajan, CGSC, for the Respondent

Judgement

G.S. Sistani, J.—Challenge in this writ petition is to the Order dated 21.3.2014 passed by Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), whereby O.A. No.3906/2012 filed by petitioner herein was dismissed. The petitioner had approached the Tribunal seeking following reliefs:

"a. Order dated 11.06.2010 proposing to hold departmental enquiry against the applicant.

b. Enquiry Report dated 21.10.2011 whereby charges have been found partly proved against the applicant.

c. The order dated 25.06.2001 vide which a major penalty of reduction to a lower stage in the time scale of pay by one stage for a period not exceeding four years without cumulative effect and withholding of increments during the period and not adversely affecting his promotion."

2. The necessary facts, to be noticed for disposal of the present writ petition, are that the petitioner joined the services of the respondent as a Senior Research Assistant (SRA), Research and Development (R&D), in the month of May, 1998. The petitioner was promoted to the post of Assistant Research Officer on 11.5.1989 and thereafter as an under Secretary on 7.12.2000. The petitioner

had become eligible for promotion to the Post of Deputy Secretary on completion of five years of service in June, 2005-06. A DPC was convened in May, 2009 for the aforesaid post but the result of the petitioner was kept in a sealed cover. In the meanwhile a search was conducted by the CBI at the residence of the petitioner on 14.10.2009 and a criminal case, being RC No. 44/2009, for possessing disproportionate assets, was registered against him. The petitioner was also placed under suspension by an order dated 1.2.2010 under Rule 10 (1) of the CCS (CCA) Rules 1965. Simultaneously, a charge sheet was issued to the petitioner vide Office Memorandum dated 11.6.2010. A reply to the said Office Memorandum was submitted by the petitioner. Subsequently an Enquiry Officer and a Presenting Officer were appointed vide two separate orders dated 27.8.2010. In the meanwhile, the petitioner filed O.A. No. 957/2011 which was decided on 5.7.2011 directing the respondent to review his case of suspension. The respondent vide its order dated 23.8.2011 decided to continue the order of suspension. The Enquiry Officer submitted his report dated 21.10.2011 holding the charge as "partly proved" against the petitioner. A representation submitted by the petitioner was rejected. The disciplinary authority passed the impugned order of punishment on 25.6.2012 awarding major penalty of reduction to lower stage in the time-scale of pay by one stage for a period not exceeding four years without cumulative effect.

3. Dr.Bhardwaj, learned counsel for the petitioner, submits that meanwhile the CBI submitted a closure report in respect of the case instituted against the petitioner. Counsel further submits that the learned Tribunal dismissed the Original Application filed by the petitioner on two grounds i.e. (i) the petitioner had concealed and failed to intimate the Department with regard to the employment of his wife as early as in the year 2000; and (ii) the property purchased by his wife was not informed to the Department. Both these findings were held against the petitioner and no infirmity was found by the Tribunal in this regard.

4. Two primary arguments were raised by the counsel for the petitioner before the Tribunal and before this Court. Firstly, that it was not necessary for the petitioner to inform the Department with regard to employment of his wife in view of Rule 18 of the CCS Conduct Rules as his wife was working independently. This plea of the petitioner was negated by the Tribunal as the Tribunal reached a conclusion that payments for the purchase of the plot were also routed through the petitioner. As far as informing the Department is concerned the petitioner had raised a plea that he had informed the Department on 22.8.2000. The Enquiry Officer held that, firstly, such a document was not available in the record of the respondent and, secondly, assuming that such a document did exist there is no explanation as to why the petitioner did not inform the respondent for eleven years.

5. We have heard learned counsel for the parties, considered their rival submissions and also perused the impugned order passed by the Tribunal.

6. In the case of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, , in para 6 it was held by the Supreme Court as under:

"6. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B.C. Chaturvedi Vs. Union of India and others, , Union of India and another Vs. G. Ganayutham (Dead) by LRs., , and Bank of India and Another Vs. Degala Suryanarayana, , High Court of Judicature at Bombay v. Shahsi Kant S Patil - 2001 (1) SCC 416).

7. Similar view was expressed by the Supreme Court in the case of Bank of India and Another Vs. Degala Suryanarayana, .

8. We find no infirmity in the reasoning given by the Tribunal in the impugned order. The finding of the Disciplinary Authority, in our view, is not perverse which would require interference by this Court or by the Tribunal. Resultantly, the present petition is dismissed.

9. At this stage, learned counsel for the petitioner submits that leave may be granted to the petitioner to make a representation to the respondent for reconsideration of the quantum of punishment awarded to him considering that he has had an unblemished career, there has been a technical violation on his behalf without any mala fide intentions, all avenues of his promotion stands closed and persons junior to him have already been promoted. Counsel further submits that the enquiry has been triggered on account of a raid conducted by the CBI and registration of a case against the petitioner wherein a clean chit has been given to the petitioner and the case has been closed against him by the CBI, which factor should have been taken into consideration and the petitioner should have been awarded a lesser punishment.

10. In view of the legal position, as it stands, it is not for this Court to decide the quantum of punishment but while we find no infirmity in the impugned order passed by the Tribunal, in the interest of justice we grant leave to the petitioner to make a representation to the respondent within two weeks from today only on the limited ground with respect to the quantum of punishment. The disciplinary authority shall decide the representation of the petitioner sympathetically within

four weeks while considering all the factors including the past conduct of the petitioner and the fact that the CBI has rendered a closure report thereby giving a clean chit to the petitioner, as the petitioner submits that all avenues of his promotion stands closed and persons junior to him have already been promoted.

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11. Application stands dismissed in view of the order passed in the writ petition.