

(2011) 04 DEL CK 0201
In the Delhi High Court
Case No : WP. (C) No. 761 of 2005

Prahlad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(18)
Central Civil Services (Pension) Rules, 1972 — Rule 40
Constitution of India, 1950 — Article 226, 320(3)

Citation : (2011) 04 DEL CK 0201

Hon'ble Judges : Veena Birbal, J; Anil Kumar, J

Bench : Division Bench

Advocate : A.K. Behera, for the Appellant; Gayatri Verma, for UOI and Deepa Rai, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner has challenged the order dated 22nd April, 2004, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 2233/2003 titled as Prahlad Singh v. UOI and Ors. dismissing the original application filed by the Petitioner against the order dated 23rd April, 2002 passed against him imposing the penalty of compulsory retirement with reduction of pensioner benefits to 1/3rd of the family pension as well as modified appellate order dated 16th November, 2003 whereby along with compulsory retirement the amount of gratuity had been reduced to 1/3rd of the normal amount to the Petitioner.

2. Brief relevant facts are that the Petitioner was working as UDC in NCERT and was deputed to participate in the RIE/NIE Annual Sports Meet as a member of 18 members? Sports Team (including Team Manager Sh. Suman Kujur and Assistant Team Manager Sh. Benoy Banerjee) from NCERT Headquarter.

3. While en route to RIE, Ajmer by Ahmedabad Mail on 17th March, 2001, it was alleged that the Petitioner consumed alcohol in the train with Sh. Mahender

Singh Dagar, Bearer from 10:30 PM to 1:30 PM and thereafter, abused the family members of Sh. Rakesh Tiwari and other passengers who had been travelling in the same compartment. He also threatened that he along with others would kill Rakesh Tiwari's family members. The Petitioner also allegedly abused the women passengers in filthy and dirty language and even tried to outrage their modesty. On account of his misbehavior and using dirty and abusive language and trying to outrage the modesty of women passengers, Petitioner as well as Sh. Mohinder Singh Dagar were arrested and detained by GRPF Police. They were produced before the Court where they pleaded guilty.

4. The Respondents contended that on account of the acts of the Petitioner, it brought bad name and lowered the prestige of NCERT and he behaved in a manner unbecoming of govt. servant.

5. The Petitioner was, therefore, charged under Rule 14 of CCS(CCA) Rules and common proceedings against him and against Sh. Mohinder Singh Dagar were ordered under Rule 14 of CCS(CCA) Rules, 1965 by order dated 4th November, 2001. Prior to issuance of charge sheet, the Petitioner had been placed under suspension w.e.f. 21st March, 2001. The specific charge against the Petitioner was that as a part of sports team going to Ajmer he got totally drunk in the train and in the drunken state he used loud and abusive language and misbehaved with fellow passengers. The complainant during the inquiry had amplified the indecent remarks the Petitioner had made against his wife, mother in law in these words:

that he would fuck both of them in standing position.

He also raised the slogan in Hindi

Jab Tak Suraj Chand Rahega Jat Bable Ki Gand Rahega.

According to the Respondent the abusive and dirty language to the women passengers in the compartment amounted to outraging their modesty. The Petitioner was arrested by the GRPF Police and he had pleaded guilty before the Magistrate. 6. During the inquiry, the Petitioner though denied the charge, however, did not file any regular defense statement enumerating his side of story. The Petitioner also did not answer the questions put to him under Rule 14(18) of CCS (CCA) Rules by the Inquiry Officer. He only stated that his case has already been decided by the Court and there could not be any additional action against him for the alleged misconduct.

7. The department examined three witnesses Sh. Benoy Banerjee, Editor, Publication Division, NCERT, Sh. Suman Kujur, Store Keeper, Publication Department and Sh. Rakesh Tiwari, Sr. Additional Public Prosecutor, Govt. of Delhi.

8. Sh. Benoy Banerjee and Sh. Suman Kujur resoled from their statements made by them in the preliminary inquiry regarding the misconduct with which the Petitioner was charged. The Inquiry Officer declared both of them as unreliable

and based the case on the testimony of Sh. Rakesh Tiwari, who was a public prosecutor, who had categorically deposed that he was with his wife Monika and his mother-in-law Santosh and two young sons, Ambar and Alankar and his brother-in-law Ravi Sharma in the train, where the Petitioner after getting intoxicated, abused his wife and mother in law and also abused "Jat" Community's as Sh. Mohinder Singh Dagar, co-delinquent was a "Jat".

9. The Petitioner danced and sang obscene songs in Haryanvi language. On account of the behavior of the Petitioner the family members of Sh. Rakesh Tiwari and other co-passengers were extremely terrified and tormented. Sh. Tiwari even decided to discontinue his onward journey to Sh. Ajmer Sharif and he cancelled his trip and purchased the return tickets of the Shatabdi Train on the same date on 18th March, 2001.

10. The inquiry officer considered the testimonies of all the witnesses in detail and considered the documents. The Inquiry Officer also noted that the Petitioner had cross-examined the witnesses and could not extract anything from the witnesses which would reflect that their statements were incorrect. Relying on the cogent testimony of Sh. Rakesh Tiwari and other factors, the Inquiry Officer held that the charge against the Petitioner was fully proved and it had also been established that the Petitioner had started drinking session in the train and had sang obscene songs and danced leading to outrageous comments against the wife and mother-in-law of Sh. Rakesh Tiwari and outraged their modesty.

11. The Disciplinary Authority after giving a copy of the Inquiry report, and allowing an opportunity to the Petitioner to make a representation after considering the written representation of the Petitioner and also taking into consideration the long period of service of the Petitioner in the Council and that the Petitioner was due to retire, by order dated 23rd April, 2002 imposed the punishment of compulsory retirement and reduction of his pension by 1/3rd of the Normal Pensionary Benefits.

12. Aggrieved by the order of the Disciplinary Authority dated 23rd April, 2002, the Petitioner filed a statutory appeal, which was considered and disposed of by the Appellate Authority by order dated 6th November, 2002 modifying the order of punishment to reduction of his gratuity by 1/3rd of the normal amount and sustaining the order of compulsory retirement.

13. The Petitioner challenged the order of the Disciplinary Authority and the Appellate Authority by filing an original application being OA 2233/2003 titled Sh. Prahlad Singh v. UOI and Ors., which was dismissed by the Tribunal by order dated 22nd April, 2004.

14. Before the Tribunal, on behalf of the Petitioner, two grounds were raised i.e., non examination of the Petitioner and failure of the Inquiry Officer to put evidence against him in the form of question in consonance with Rule 14(18) of the CCS (CCA) Rules and that under Rule 40 of the CCS (Pension) Rules 1972 on compulsory retirement, the competent authority could withhold the pension only

on the orders of the President in consultation with UPSC. As the order had been passed by the Secretary as Disciplinary Authority and Joint Director as Appellate Authority, it was contended that the orders are without jurisdiction.

15. The Tribunal repelled the contentions raised on behalf of the Petitioner holding that evidence and circumstances appearing against the Petitioner were put to him in the form of questions but the Petitioner had refused to answer the questions put to him. Regarding Rule 40, it was held that Sub Rule 2 of Rule 40 applies only when the charged officer is a Group A Officer and the President had to pass an order on its original side and in cases where the President acts as an Appellate Authority under Rule 27 of the CCS(CCA) Rules, 1972. It was held that when a penalty of compulsory retirement is imposed on a Government servant, then the competent authority passing the order of penalty is also competent to impose pension or gratuity cut and in the circumstance, the consultation with UPSC was not necessary. In Para 11 of the judgment, the Tribunal held as under:

11....As regards Rule 40 is concerned, sub Rule (1) of Rule 40 and sub Rule (2) are two distinct provisions apply to different situations. Rule 40 applies when a government servant by way of penalty is compulsorily retired in that event the competent authority who has passed the order of penalty is competent to impose pension or gratuity cut, whereas the order passed by the President requires consultation with UPSC only while acting as an appointing authority of Group "A" officer or in case of an appeal the appellate authority or reviewing authority. This is in consonance with rules 17 and 32 of the CCS (CCA) Rules, 1965 where an order passed by the President as disciplinary authority is preceded by consultation with UPSC. Admittedly, applicant is not a Group "A" officer and the President is not his reviewing or appellate authority. In such an event pension or gratuity cut is to be imposed by the competent authority, which is the authority who passed the order of penalty. In the instant case undisputedly Secretary is the competent authority that passed the order of penalty is equally competent to impose pension/gratuity cut.

16. This Court has heard the learned Counsel for the parties. Mr. Behera, the learned Counsel for the Petitioner, has contended that the Petitioner had 38 years of unblemished service. He further contended that out of three witnesses examined by the department two had turned hostile and had resiled from their statements and on the basis of the deposition of one of the witnesses, the charge against the Petitioner is not established. The learned Counsel also contended that the consultation with the UPSC was mandatory and in absence of consultation with the UPSC, the entire disciplinary proceedings against the Petitioner were vitiated. This was also contended that even if consultation with UPSC was procedural, non-compliance of the procedure will be improper and the Petitioner shall be entitled to the consequential relief thereof.

17. According to the Petitioner's counsel, the acts complained against the Petitioner cannot be construed as grave misconduct considering his background, his age and rural background.

18. The pleas raised by the learned Counsel for the Petitioner are unsustainable and cannot be accepted in the facts and circumstances and on the basis of some of the facts which have been enumerated hereinafter. In any case in exercise of its jurisdiction under Article 226 of the Constitution of India, this Court does not have to re-appreciate the evidence and reach a finding different from the findings of the Inquiry Officer and Disciplinary Authority. Even if on considering all the evidence, this Court has a different inference, the view and the inferences drawn by the Inquiry Officer and the Disciplinary Authority are not to be substituted by another view, even if possible, in the facts and circumstances. In *M.V. Bijlani Vs. Union of India (UOI) and Others*, it was held by the Supreme Court that the judicial review is of the decision making process and not with re-appreciation of evidence. It was held by the Supreme Court at page 95 as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

In any case, considering the allegations made against the Petitioner, this Court has also perused the Inquiry report and the observations made by the Inquiry Officer regarding the deposition of the witness, Sh. Rakesh Tiwari about the conduct of the Petitioner. The findings of the Inquiry Officer can be interfered by this Court in exercise of its jurisdiction provided the findings are illegal or perverse in any manner and based on no evidence. The charges in a departmental proceeding are not required to be proved like a criminal trial, i.e., beyond all reasonable doubt, but it cannot be lost sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the evidence and documents must arrive at a conclusion that there had been a preponderance of probabilities to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot make his own assumptions. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

19. Perusal of the extracts of the deposition of Sh. Rakesh Tiwari, this Court is of

the view that there is no illegality or perversity in any manner in the findings of the inquiry officer. The inquiry officer has not taken into consideration irrelevant facts nor has he made his own assumptions nor has shifted the burden of proof. Nothing has been pointed out by the counsel for the Petitioner that relevant testimonies have been rejected.

20. In any case in exercise of its jurisdiction, it has always been in the discretion of the High Court to interfere or not depending upon the facts and circumstances of the case. In *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, the Supreme Court had held that "the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play."

21. Even if two of the witnesses had resoled from the their earlier statements made in the preliminary inquiry, so long as there was cogent and consistent testimony of PW-3 Sh. Rakesh Kumar, the findings of the Inquiry Officer that the charge had been established cannot be interfered with. In any case, this Court also concurs with the findings of the inquiry officer that the charge against the Petitioner is made out.

22. It will be apparent to note that this ground was not raised on behalf of the Petitioner before the Tribunal as the grounds raised were that the evidence and circumstances against the Petitioner were not put to him in compliance of Rule 14(18) of CCS(CCA) Rules and that consent of the President was required under Rule 40 of CCS(Pension) Rules, 1972 while imposing the punishment of reduction of gratuity.

23. The plea of learned Counsel that the UPSC was not consulted was given up when confronted with the decision of the Supreme Court i *Union of India (UOI) and Another Vs. T.V. Patel*, holding that provision of Article 320(3)(c) of the Constitution of India are not mandatory and do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or in furnishing a copy of advise tendered by UPSC afford any cause of action in Court of law to a delinquent Government servant.

24. Consequently, the plea on behalf of learned Counsel for the Petitioner that lack of consultation with UPSC is a procedural impropriator, cannot be accepted nor the inquiry proceeding and punishment imposed on the Petitioner can be vitiated on this ground in any manner.

25. The plea of the learned Counsel for the Petitioner that the Petitioner had a long unblemished service also had been taken into consideration while awarding the punishment as the Disciplinary Authority has categorically held that having regard to the long period of service of Petitioner in the Council and the fact that

he is due to retire shortly, the punishment of only compulsory retirement was imposed upon him along with reduction of his pensioner benefit by 1/3rd of normal pensioner benefit which was modified to reduction of a part of the gratuity.

26. The next plea by the learned Counsel for the Petitioner that the misconduct on the part of the Petitioner, cannot be construed to be grave is rejected without any further consideration. The plea is without any basis and cannot be substantiated in the facts and circumstances. In any case, the Petitioner cannot be allowed to raise the grounds which were not raised before the Tribunal. In any case, considering the filthy and abusive language used by the Petitioner against the women co passengers in a drunken stage, which led to cancellation of tickets by Sh. Rakesh Tiwari and returning on the same date and the conduct of the Petitioner tantamount to outraging the modesty of women, cannot be construed to be not very grave in the facts and circumstances to show any leniency to him.

27. In the totality of facts and circumstances, there is no ground to interfere with the order of the Disciplinary Authority and Appellate Authority imposing the punishment upon the Petitioner nor this Court finds any such illegality or unsustainably or perversity in the order of the Tribunal, which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of Constitution of India.

28. The writ petition is without any merit, and it is, therefore, dismissed. Parties are left to bear their own costs.