

(2014) 03 AHC CK 0202

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 35899 of 2008

Raj Nath Prasad

APPELLANT

Vs

Central Administrative Tribunal

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 ADJ 443 : (2015) 1 AWC 924

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Ramendra Asthana and A.K. Singh, Advocate for the Appellant; Abhinav Tripathi, Saurabh Srivastava and S.C, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. While petitioner was posted as Sub Post Master, post office Ram Nagar, Varanasi in 1995, departmental proceedings were initiated against him under Rule-14 of The Central Civil Services (Classification, Control 85 Appeal) Rules, 1965 (in short CCS. (CCA.) Rules, 1965) in connection with unauthorized payment of interest against bogus National Saving Certificates. Ultimately, he was removed from service by an order passed on 10.11.1998. Appeal preferred by the petitioner was also rejected on 25.7.1999. The revision filed against it came to be allowed on 3.11.1999. The revisional authority found that the enquiry was vitiated on various grounds and, therefore, by invoking the power vested under Rule-29, the matter was remitted back to the disciplinary authority for conducting denovo enquiry proceedings from the stage of issuance of charge-sheet after removing the defects therein. Consequential orders were passed on 22.11.1999, providing for (i) setting aside the order of removal from service; (ii) further enquiry to be proceeded against the petitioner in accordance with CCS. (CCA.) Rules, 1965 and; (iii) petitioner was deemed to have been placed under suspension under sub rule (3) 01 Rule-10 of the Rules of CCS. (CCA.) Rules, 1965 w.e.f. 10.11.1998. Thereafter, a fresh charge-sheet was issued to the

petitioner on 22.11.1999 which was served on 28.12.1999. The petitioner does not appear to have submitted any representation denying or admitting the charges. The enquiry proceedings continued and ultimately the charges against the petitioner were found to be proved in the enquiry report dated 15.12.2001. Since the matter related to the imposition of major penalty, the matter was referred to the Director, Postal Services, Allahabad. Petitioner was served with the copy of the enquiry report and was granted an opportunity to submit his reply. The petitioner submitted his reply on 9.5.2003 and again on 2.6.2003. The subsequent reply dated 2.6.2003 although was not considered by the disciplinary authority but was considered by the appellate authority. Ultimately, an order dated 25.9.2003 was passed, removing the petitioner from service. An appeal filed against the dismissal order was also rejected by a reasoned order of affirmance on 15.6.2004.

2. The petitioner challenged the orders dated 23.9.2003 and 15.6.2004, whereby the petitioner has been removed from service, as affirmed in appeal by approaching the Central Industrial Tribunal, Allahabad. The Tribunal considered the matter and found that the order of punishment inflicted upon the petitioner was after holding a valid and proper disciplinary proceedings in conformity with the principles of natural justice and that the order of punishment was passed in accordance with law. Thus, aggrieved, the petitioner has filed the present writ petition.

3. We have heard Sri A.K. Singh, learned counsel for the petitioner and Sri Saurabh Srivastava learned counsel, appearing on behalf of the respondents and have also perused the materials available on record.

4. The learned counsel for the petitioner has submitted that after the revision of the petitioner was allowed on 3.11.1999, he was entitled to be reinstated in service and all benefits of service including joining and payment of regular salary etc. was liable to be paid to him and it was not permissible for the respondents to have placed the petitioner under suspension w.e.f. 10.11.1998 i.e. first order of removal. It is submitted that as the petitioner has not been taken back in service, allowed joining and paid salary, as such the entire proceedings of enquiry conducted against the petitioner is bad in law. In reply, it is submitted by the learned counsel for the respondents that in view of the provisions contained under sub rule(3) of Rule-10 of CCS. (CCA.) Rules, 1965, it was open for the respondents to have place the petitioner under suspension w.e.f. date of previous removal order.

5. In order to consider this submission, it would be relevant to refer to the provisions of Sub Rule(3) of Rule-10 of CCS. (CCA.) Rules, 1965 which is reproduced below:

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action

or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

6. A bare perusal of sub rule (3) of Rule-10 leaves no room of doubt that the employers were well within their right to treat the petitioner under deemed suspension from the date of removal order when the punishment order is remitted back as per the direction contained in the order dated 3.11.1999.

7. Even otherwise, the constitution Bench of Apex Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , while dealing with the issue of non supply of copy of the enquiry report, has been pleased to observe that where fresh enquiry is ordered, on account of defect in the enquiry, the proper course is to direct reinstatement by placing the delinquent employee under suspension. It is, therefore, clearly permissible for the respondents to have placed the petitioner under suspension while conducting fresh enquiry, pursuant to the order of the revisional authority and the contention of the petitioner, therefore, cannot be accepted on this count.

8. The second contention urged on behalf of the petitioner is that the enquiry itself was not conducted in accordance with the principles of natural justice, inasmuch as petitioner had been denied access to the relevant materials relied against him for the purposes of enquiry. It was stated that the National Saving Certificates, against which interest was paid under the petitioner's hand, were actually issued by other post offices and they had been transferred to Ram Nagar Branch. It is urged that the relevant guard-file, maintained for acknowledging receipt of National Saving Certificates on transfer, was not made available. It was also stated that other relevant materials were also not provided to the petitioner, which vitiated the enquiry. This argument has been controverted by the respondents, referring to the materials brought on record.

9. We have examined this submission. Attention of the Court was invited to Annexure-5 of the supplementary-affidavit, which contains a letter of petitioner to enquiry officer desiring various materials. Item-13 of this letter deals with the guard-file maintained for the National Saving Certificates, received upon transfer from other post offices. A perusal of the order-sheet of the enquiry proceedings dated 2.3.2001 clearly shows that the documents demanded at Item No. 13 aforesaid, was shown to the petitioner and the petitioner himself has acknowledged it by signing the order sheet; which is an Annexure to the supplementary-affidavit. It is, therefore, not correct for the petitioner to contend that the records relating to transfer of National Saving Certificates from other post offices, were not shown to the petitioner. No other instance of denial of relevant document has been substantiated, which may have any bearing upon the enquiry.

10. We find from the perusal of the enquiry report that the six National Saving Certificates, against which interest has been paid by the petitioner as Sub Post

Master, were neither issued from the branch nor it had been transferred from any other branch to the Ram Nagar Branch of the post office, where the petitioner was posted and the petitioner has not been able to justify the payment of interest.

11. The respondents have further brought on record details to show that the National Saving Certificates, against which interest was paid, had been issued from other branches and had been discharged much prior to the year 1995, when interest was paid against it. Specific details, in this regard, had been brought on record in Paragraph Nos. 19 to 22 of the counter-affidavit, which has not been effectively replied.

12. We, therefore, find that charge of payment of interest against bogus National Saving Certificates, was made out against the petitioner.

13. It was lastly submitted by the learned counsel for the petitioner that the punishment of removal from service was disproportionate to the charges proved against the petitioner. This plea of the petitioner is wholly untenable. The allegation of payment of interest against bogus National Saving Certificates is a serious allegation virtually amounting to corruption, and does not require any sympathy or leniency to be observed. The Apex Court in a recent decision delivered in the case of Rajasthan State Transport Corporations. Bajrang Lal, in Civil Appeal No. 4104 of 2007, decided on 14.3.2014, in para Nos. 19 and 20 held as Under :

19. As regards the question of disproportionate punishment is concerned, the issue is no more res-integra. In U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, , it was held as under:

22. In Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, , this Court held as under: (SCC p. 715, para 4)

4....In a case of such nature-- indeed, in cases involving corruption--there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.

Similar view has been reiterated by this Court in Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam, , Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourkara Sangha Etc., , Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, and Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC .

20. In view, of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service.

14. Therefore, we are of the considered view that the punishment imposed upon the petitioner is not disproportionate. No other point has been pressed. In view of the discussions made above, we find that there is no merit in the writ petition, which may require interference of this Court under Article 226 of the Constitution of India. Consequently, the writ petition fails and is hereby dismissed.