
(2018) 03 CAT CK 0050
In the Central Administrative Tribunal
Case No : Original Application No. 131 Of 2015

Rakesh Tyagi

APPELLANT

Vs

GNCT Of Delhi And Ors

RESPONDENT

Date of Decision : 20-03-2018

Acts Referred:

Citation : (2018) 03 CAT CK 0050

Hon'ble Judges : Raj Vir Sharma, J; Praveen Mahajan, Member (A)

Bench : Division Bench

Advocate : Sourabh Ahuja, Swati Jain, Ruchira Gupta

Final Decision : Allowed

Judgement

Praveen Mahajan, Member (A)

1. Briefly stated, the facts of the current O.A. are that the applicant was appointed as Conductor in Delhi Transport Corporation (DTC) on 03.03.1983. On 02.07.2010, a vigilance team conducted a preventive check at Seema Puri Depot, where the applicant was posted and reportedly was on compensatory rest. On the basis of report of vigilance team, the applicant was suspended w.e.f. 09.07.2010. He was later reinstated on 15.11.2010. A preliminary inquiry was conducted in which the statement of the applicant was recorded. The applicant alleges that the respondents, while submitting their preliminary inquiry report dated 09.01.2012, ignored the statement of the applicant and served him with a charge sheet dated 28.08.2012. The applicant submitted his reply to the Charge Memo on 19.11.2012 denying the charges levelled against him. Rejecting the same, the respondents initiated a regular inquiry against him, where 2 PWs Mr. Rajbir Singh, Store Keeper and Mr. S.K. Yadav, ATI and 1DW Mr. Om Prakash, Conductor were examined. It is contended that the Inquiry Officer ignored the documentary evidence and only on the basis of the written statements of computer in-charge and of cash section, the charges levelled against the applicant were held as proved.

2. The applicant was issued a show cause notice dated 03.01.2014 calling upon him to show cause as to why he should not be imposed penalty of stoppage of his next two increments with cumulative effect. The applicant's response to the show cause notice, was not accepted and the Disciplinary Authority, on 28.01.2014 imposed upon him a penalty of stoppage of two increments with cumulative effect, treating the suspension period of the applicant from 09.07.2010 to 15.11.2010 as not spent on duty.

3. It is stated that the order of the Disciplinary Authority is cryptic, unreasoned and non-speaking. When the applicant requested the disciplinary authority to provide him a copy of the detailed final order of penalty, he was only provided with the note sheet signed by the depot manager instead of a detailed final order. In the absence of a detailed order he could not file a comprehensive appeal. Despite this handicap, the applicant filed an appeal since the time for filing the same was very short. The appeal of the applicant was rejected by a non-speaking and cryptic order on 02.04.2014, as was his review petition to the Chairman-cum-Managing Director on 10.07.2014. The applicant has relied upon the judgments of Hon'ble Supreme Court in the cases of Hardwari Lal Vs. State of U.P. and others, 2000 SCC(L&S) 85, Kranti Associates Private Limited Vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496 and M.B. Bijlani Vs. UOI & Ors., (2006) 5 SCC 88 in support of his averments.

4. Aggrieved, the applicant has approached this Tribunal seeking the following relief:-

"(a) Quash and set-aside the inquiry report (to limited extent) November/ December, 2013, penalty order dated 28.01.2014, appellate authority order dated 02.04.2014 and revisionary authority order dated 10.07.2014, and accord all consequential benefits viz. arrears, promotion, seniority, financial up-gradations etc. to the applicant.

(b) Direct the respondents to treat the suspension period of the Applicant as spent on duty for all intents and purposes with all consequential benefits viz. interest at the rate of 12% of the arrears.

(c) Award cost in favor of the Applicant and against the respondents.

(d) Any other order/orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

5. In their reply, the respondents submit that a surprise preventive check was carried out by the Vigilance Department in which the applicant was found guilty of the following charges:-

"(i) Of unauthorized absence while been deputed on duty with

(a) Computer Section (b) Ticket Section and (c) Cash Section.

(ii) Not being present on duties on several dates besides the CR rest dated 15.05.2010, 19.05.2010, 01.06.2010, 02.06.2010, 15.06.2010.

(iii) Having close relation with the Depot Manager and being benefitted by it.

(iv) Acting against the bye laws of the Corporation and causing financial loss to it."

An inquiry, following due process of law, was conducted. The applicant was given the opportunity to cross examine all the witnesses with liberty to summon them, if considered necessary. The applicant has been imposed minor and major penalties, having been found guilty on account of two of the charges having been proved against him, in the inquiry.

6. During the hearing, the learned counsel for the applicant Sh. Sourabh Ahuja reiterated the contents of the O.A. He vehemently argued that the entire inquiry proceedings are vitiated and the conclusion arrived at is based on conjectures, for which the applicant has been unfairly penalized. He also stated that the respondents did not produce material witnesses in the inquiry, which deprived the applicant of the opportunity to cross examine them. Also no personal hearing accorded to the applicant before inflicting the penalty on the applicant, violating the principles of natural justice. He drew attention of the Court to the impugned orders, demonstrating the cryptic manner in which these have been worded, being non-speaking in nature.

7. Relying upon the law laid down by the Apex Court in the case of Roop Singh Negi Vs. Punjab National Bank and Ors., (2009) 2 SCC 570, he submitted that it has been held that since the orders of Disciplinary Authority and Appellate Authority have severe civil consequences, hence appropriate reasons must be assigned and a decision must be arrived at based on evidence, which is legally admissible. He also cited the decision of Hon'ble Supreme Court in the case of Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496 wherein it has been held that the quasi judicial authority must record reasons in support of its conclusions. In view of the non-observance of these mandatory provisions, he prayed, that the impugned orders be struck down being bad in law.

8. Per contra, the learned counsel for the respondents Ms. Swati Jain argued that the IO found the applicant partially guilty and held charges (i) & (ii) of unauthorized absence of Memorandum of Charges as proved against him. Accordingly, penalty of stoppage of two increments with cumulative effect was imposed upon the applicant. She emphasized that there is no infirmity or arbitrariness in the impugned orders passed by the respondents, which have been issued after following the prescribed rules and regulations of the Corporation.

9. We have gone through the records of the case, and considered the rival contentions of both sides. The facts of the case not being in dispute, are not being discussed again to avoid repetition. Our main concern in this OA is not the outcome, but the manner, in which the inquiry proceedings have been conducted. We start by reproducing some of the relevant orders in this regard. The order

dated 27.12.2013 reads as under:-

"I agree with the findings of the inquiry officer after going through the complete case not readable punishment is proposed to him. Stoppage of next due "two increments with cumulative effect.

Please issue show cause notice.

Sd/-

Depot Manager"

9.1 This was followed by order dated 24.01.2014 of the Depot Manager (purportedly, in response to the reply of the applicant to the show cause notice issued to him) stating that:-

"I have gone through the reply submitted in response to show cause notice issued and the same has not been found satisfactory as nothing new has been brought which may result in reconsidering the punishment as already proposed to him.

Hence, the punishment "stoppage of his next two increments with cumulative" effect as already proposed to him is hereby confirmed.

Subsistence allowances as already paid to him during the period of suspension have been considered adequate.

Sd/-

Depot Manager"

9.2 On 28.01.2014, the Depot Manager after perusing the show cause notice issued to the applicant and the reply thereto passed the following order:-

"The show cause notice issued by this office against Sh. Rakesh Tyagi Conductor Badge No. 18986 vide notice No. IPD/TI/(TR)Disk-33/12/13/41 dated 03.2014 and the reply filed by him carefully perused and the said found insatisfactory, as such the punishment given to him for the stoppage of two increments of salary with immediate effect is verified.

The compensatory allowance provided him during the suspension period are sufficient."

9.3 On 02.04.2014, the applicant was informed about rejection of his appeal, by observing that:-

"In reference to your application No. IPD/1322/2014/1322 dated 01.03.2014 it is informed to you that after considering your appeal on humanitarian grounds by the competent officer, the competent officer has dismissed your appeal.

Sd/-

Depot Manager"

9.4 Similarly, on 10.07.2014 the order of Reviewing Authority has been conveyed to the applicant mentioning that:-

"In reference to your application dated 08.05.2014 it is informed to you that after considering your appeal on humanitarian grounds by the competent officer, the competent officer has dismissed your appeal.

Sd/-

Depot Manager"

10. The above excerpts of the Disciplinary Authority, Appellate Authority and the Reviewing Authority exhibit the perfunctory manner in which the case has been dealt with. The orders issued by the Disciplinary Authority, Appellate Authority and Revisionary Authority are required to refer to the alleged misconduct, defense of the applicant and then assign reasons for agreeing or disagreeing with the same by way of speaking orders. This is essential to show that there has been proper application of mind at each stage to ensure that no injustice has been meted out to anyone either deliberately, or even inadvertently.

11. The learned counsel for the applicant has correctly cited the case of Kranti Associates Private Limited and Anr. (supra) where Hon'ble Supreme Court has held that a quasi judicial authority must record reasons in support of its conclusions. The insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done. In para-47, it has been held that:-

"7. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts. h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that

reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

The inquiry proceedings as well as the impugned orders in the current O.A. miserably fail the above laid down parameters by the Apex Court.

12. Another allegation of the applicant is that he was not allowed to cross examine the witnesses. In the case of Roop Singh Negi (supra) Hon'ble Supreme Court has held that mere production of documents is not enough. The contents of documentary evidence has to be proved by examining witnesses. Para-23 of the said judgment reads as follows:-

"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the

enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof. "

The ratio of the principles laid down in the aforementioned judgment is squarely applicable on all fours to the current case.

13. During the course of hearing, learned counsel for the respondents drew attention of the Court to Annexure R-1 by which she tried to demonstrate that the past conduct of the applicant was not satisfactory and multiple cases of indiscipline and absence of duty were initiated against him. Be that as it may, this does not in any way absolve the respondents from the responsibility of conducting a fair inquiry, in conformity with law. Nor does it give a license to the Disciplinary Authority, Appellate Authority & Revisionary Authority of passing "rubber stamp reasons" while deciding the fate of the applicant.

14. Annexure R-2 is the purported record of the personal hearing of the applicant before the Appellate Authority on 21.03.2014. Here again, the order dated 25.03.2014 of Regional Manager (East) is just a brief note stating that:-

"I have gone through the complete case in detail. The plea submitted by the appellant Sh. Rakesh Tyagi, Conductor and B.No. 18986, P.T. No. 40866, is not convincing. He failed to prove himself innocent during the appeal proceeding. Hence appeal is rejected. He may be informed accordingly."

15. All these orders are glaring examples which go to show that the enquiry against the applicant has been conducted in a cursory manner, not duly supported by reasoning and hence are not sustainable under law..

16. In view of the foregoing, we set aside the impugned orders dated 28.01.2014 of the Disciplinary Authority, order dated 02.04.2014 of the Appellate Authority and the order dated 10.07.2014 of the Revisionary Authority. The respondents are directed to hold the enquiry afresh, as per law. This may be done within a period of four months from the date of receipt of a certified copy of this order. The O.A. is accordingly allowed. No costs.