
(2022) 12 CAT CK 0022

In the Central Administrative Tribunal

Case No : Original Application No. 1507 Of 2014

Ram Mohan Srivastava

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:

Citation : (2022) 12 CAT CK 0022

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : O.P. Gupta, Raj Pal Singh

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. We have heard Shri O.P. Gupta, learned counsel for the applicant and Shri Raj Pal Singh, learned counsel for the respondents.

2. This OA has been filed seeking following main reliefs:-

"i.To quash the impugned order dated 08.06.2010 (Annexure A-1) and appellate order dated 03.04.2014 (Annexure A-2) as passed by respondent Nos. 2 and 3 with further directions to the competent authority to restore all consequential benefits to the applicant, treating as if no penalty order was passed against him.

ii. To direct the respondents to re-fix the pay of the applicant accordingly and to pay arrears of salary including the arrears of salary for the period of suspension w.e.f. 14.01.2007 to 15.10.2007.

iii. To revise and re-fix the pension and other retiring benefits and to pay arrears accordingly of pension and other retiring benefits including gratuity etc."

3. The case of the applicant is that while posted as Section Engineer PWI, he was suspended from service vide order dated 15.01.2009, and after 9 months his suspension was revoked vide order date 10.07.2008. Thereafter, the applicant

was served with major penalty charge sheet on 10.07.2008. On denial of the aforesaid charges by the applicant, an inquiry was instituted and all charges were proved by the Inquiry Officer (IO). Copy of the inquiry report was provided to the applicant on 03.03.2010 to submit his representation. The applicant submitted his representation on 21.05.2010 to the disciplinary authority. Thereafter, the applicant was punished with penalty of reduction of pay scale by two stages for six months with non cumulative effect vide order dated 08.06.2010. Against the aforesaid penalty the applicant preferred an appeal on 16.07.2010 but the same was not decided despite several reminders. The applicant came in OA No. 1731/201 on 14.02.2014. The said OA was disposed of with the direction to decide the appeal. The appeal was decided by rejecting the appeal. Being aggrieved by the rejection order, instant OA is being filed for challenging the impugned penalty order.

4. The grounds made by the applicant are that the findings of the IO are based only on assumption and presumptions. The IO committed serious error in relying upon those documents (RUD) which were not verified by the author of those documents. The report of the IO is prepared only on statements of PW 2 and PW 3 who are from the vigilance department and have prepared the case against the applicant who are the interested parties and their statements (Annexure A-9 to the OA) cannot be treated as independent evidence. The applicant further submits that work of loading ballast is not the part of his duties. It was an additional work for which he has no past experience, he pointed out in writing the same to his superior authority. Hence, he should not be subjected to this disciplinary proceeding, even though there was some error on his part in performing such additional work.

5. It is clear from the findings of the disciplinary authority that entrustment of these additional work for which he has not past experience, some mistake was possible from anyone. The disciplinary authority never came to the finding that there was any wilful gain to the applicant from the aforesaid shortage in ballast loading. At the most it was a case of negligence without any motive to get any benefit. He further argues that it is settled law that mere negligence does not construe any misconduct and does not come within the purview of misconduct and no disciplinary proceedings can be initiated for the same. He further submits that for such punishment awarded to him is disproportionate with the charges as it affected his pensionary benefits and the appellate order is not reasoned etc. He cited the following case law in his favour:-

a. (2007 3 UPLBEC 2239 – Inspector Prem Chand vs. Government of N.C.T. of Delhi and others.

b. 2005 (1) ATJ 40 – Shri Dilip Kumar Rabids vs. The Union of India and ors. In which the Guwahati Bench of this Tribunal has held as under:-

"....In this context the learned Counsel for the applicant placed reliance on the judgment of the Hyderabad Bench of the Tribunal in G. Buddappa v. Union of

India and Ors. (O.A. No. 198 of 2000) decided on 12.7.2001, wherein it was observed that mere negligence does not constitute misconduct and that no charge memo can be issued in absence of a misconduct. In this context we have also gone through the definition of misconduct in Stroud's judicial dictionary (1986 Fifth Edition) which is as under:

"misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistakes, do not constitute such misconduct."

The Central Administrative Tribunal, Hyderabad Bench, in the said judgment, referred by the applicant, has also considered the judgment of the Hon'ble Supreme Court in the case of Union of India v. J. Ahmed, 1979 SLJ 308 (SC) in which the Hon'ble Supreme Court observed, inter alia as under:

"It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

8. In view of the above discussion and the contention of the learned Counsel for the applicant mentioned above and the judgments discussed above, we are of the view that there is nothing in the charge memo or in the findings of the Inquiry Officer or in the order of the Disciplinary Authority to hold that the applicant was guilty of any misconduct....".

6. The respondents have filed their counter affidavit, supplementary counter affidavit and written arguments. Their case is that the disciplinary authority passed the punishment order dated 08.06.2010 after going thoroughly into the matter and considering all the facts mentioned in the inquiry report. The applicant preferred departmental appeal before appellate authority and without waiting for appropriate time filed an OA No. 1731/2013, challenging punishment order dated 08.06.2010. The said OA was disposed of with direction to decide the pending appeal vide order dated 14.02.2014. In compliance of the order dated 14.02.2014 the departmental appeal was decided by a reasoned and speaking order dated 04.04.2014 after following due process of law. The appellate authority after perusing the entire evidence and after giving due opportunity of hearing as well as having recorded the witnesses submitted the inquiry report to the disciplinary authority. Where upon the disciplinary authority on perusal of evidences and inquiry report, passed the order of punishment. They further submits that the applicant himself has admitted in his explanation that the duty allotted to him, since was allotted for the first time, such work was not within his routine duties, hence some mistake / wrong may have happened. Since the applicant has admitted the lapses in his duty, the inquiry officer has fairly

concluded the inquiry report and the disciplinary authority has rightly passed the punishment order after giving due opportunity of hearing to the applicant.

7. We have perused the record of the OA, counter affidavit, rejoinder affidavit and the written arguments and heard the oral arguments of the parties.

8. From the circumstances of the case it is not denied that the lapses in duties for which disciplinary inquiry has been initiated were not the primary duty of the applicant. He was not so confident about the said work and through written request (Annexure A-9 to the OA) he had asked his supervisory authorities not to entrust him such work. It is also not disputed fact that the applicant was merely in supervisory role in additional duty. We find similarity to the misconduct in this case with that of CAT Guwahati Bench judgment dated 18.06.2004 in the case of Shri Dilip Kumar Rabidas (supra) wherein reliance of the judgment of CAT Hyderabad Bench of this Tribunal in the case of G. Buddappa vs. Union of India and ors – OA No. 198 of 2000 has been referred, which has been quoted above. They hold that there is nothing in the charge memo or in the findings of the Inquiry Officer or in the order of the Disciplinary Authority to hold that the applicant was guilty of any misconduct. Merely because the applicant has given in writing that some mistake may have happened by him, as he was not conversant with the new additional responsibility interest to him cannot constitute sufficient proof of guilt.

9. The arguments of the learned counsel for the applicant that except the officers from the vigilance wing no one else who were involved in the measurements of ballast were examined. So the evidence of the interested witnesses cannot be a convincing proof.

10. Considering the ratio of judgment in (2007 3 UPLBEC 2239 –Inspector Prem Chand vs. Government of N.C.T. of Delhi and others and 2005 (1) ATJ 40 – Shri Dilip Kumar Rabids vs. The Union of India and ors. we are of the considered view that in the instant case also the misconduct imputed is disproportionate to the actual happening for the purported negligence in applicant's additionally entrusted work which he voluntarily admits was not sufficient proof of intentional culpability or misconduct.

11. Considering these we pass the following orders:-

"The OA is allowed setting aside the punishment order dated 08.06.2010 and the appellate order dated 03.04.2014 giving the applicant all the consequential relief. As the applicant has already retired, no purpose will be served to hold any further inquiry."

12. There is no order as to costs.