

(2007) 09 DEL CK 0157

In the Delhi High Court

Case No : Writ Petition (C) No. 14083 of 2006

Rishipal

APPELLANT

Vs

Administrative Civil Judge

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15(2)
Constitution of India, 1950 — Article 226

Citation : (2008) 147 DLT 343 : (2008) 2 SLJ 503

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Aeltemesh Rein, for the Appellant; Kamaldeep, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—With the consent of the counsels for both the parties, the matter is being heard and disposed of at the admission stage.

2. The present petition has been filed by the petitioner praying inter alias for a writ of certiorari for quashing the petitioner's termination order dated 7th April, 2006 and to direct his reinstatement with full salary and service benefits of back wages.

3. Facts of the case in brief are that while working as a Process Server in Civil Nazarat Branch, Tis Hazari Court, Delhi, two departmental enquiries were initiated against the petitioner for non-return of summons in two separate cases, being probate case Nos. 105/2001 and 363/1995. After framing of charge sheet, the inquiries in the matters were conducted by two enquiry officers, and in their separate inquiry reports dated 21st February, 2004 and 1st August, 2005, it was held that the charges against the petitioner stood wholly proved. A copy of the Inquiry Report was supplied to the petitioner as per Rule 15(2) of the CCS (CCA) Rules, 1965 (hereinafter referred to as "the Rules") requiring him to submit his representation/reply if any, against the Inquiry Report and he was afforded

several opportunities of personal hearing. Since the facts in both the matters were identical, Therefore both the enquiries were disposed of by the common order dated 7th April, 2006, wherein after hearing the petitioner and perusing his reply as also the inquiry files, the learned Administrative Civil Judge, respondent herein, came to the conclusion that the petitioner could not substantiate his claim that someone had broken open his locker and removed the summons there from. Accordingly it was held that the charges against the petitioner which were serious in nature, had been duly proved in the departmental inquiries and a penalty of dismissal from service was imposed on him. The said order dated 7th April, 2006 is under challenge in the present petition.

4. Learned Counsel for the petitioner assailed the impugned order on the grounds that said order was passed arbitrarily, with mala fide intentions and without following the principles of natural justice. It was stated that the services of the petitioner were terminated illegally without taking into consideration his submission that his locker was broken open and all summons kept therein were stolen by someone. Reliance was placed on letters dated 16th June, 2001 and 9th October, 2001 issued by the petitioner to the respondent to state that an information about the theft in his locker was given to the respondent as early as in June, 2001 and not for the first time on 27th March, 2006, as has been recorded in the impugned order. It was also submitted that the petitioner was not afforded a proper opportunity to lead evidence in his favor and to cross-examine the department witnesses.

5. It was argued on behalf of the petitioner that the petitioner duly appeared before the Enquiry Officer on all the dates, but the Reader of the Enquiry Officer used to send him away saying that the notice for the next date of hearing would be sent to him at his address. It was urged that the petitioner being a semi-literate person, holding a class IV post, was unaware of the enquiry procedure and for the said reason, often his presence was not marked and he was made to sit outside the room where the proceedings were held.

6. It was contended that assuming but not conceding that the petitioner was guilty of the charges leveled against him, still the punishment of dismissal from service as imposed on him was too harsh and disproportionate to the charges proved against him. No other pleas besides the aforementioned, were raised on behalf of the petitioner.

7. On the other hand, counsel for the respondent while countering the arguments advanced on behalf of the petitioner, stated that there was no infirmity in the impugned award and that the order of punishment was passed against the petitioner only after the charges against him were duly proved. It was submitted that there was no question of the enquiry proceedings being vitiated because of the breach of principles of natural justice as in both the enquiries the petitioner did not appear on most of the dated, and was ultimately proceeded ex-parte. Attention of the Court was drawn to the fact that even before the disciplinary authority, i.e. the respondent the petitioner failed to render any plausible

Explanation for his negligent conduct with regard to non- return of summons and that he could not substantiate his allegation that somebody had broken open his locker and had removed the summons there from.

8. I have heard the counsels for both the parties and have perused the original records produced by the counsel for the respondent as also documents placed on record including the impugned order and the Inquiry Report.

9. It is apparent from a perusal of the Inquiry Report with regard to the charge of non-return of summons in probate case No. 105/2001 that after much effort the petitioner could be served on 17th March, 2003 for proceedings dated 29th March, 2003. On the said date the petitioner appeared after the proceedings were adjourned but his signatures were obtained showing his attendance in the proceeding sheet, however on 25th April, 2003 again the petitioner failed to appear, on which date after waiting till the post lunch session, he was proceeded ex-parte. Thereafter three witnesses were examined on behalf of the department and arguments were advanced by the Presenting Officer of the department.

10. It is also evident from the Inquiry Report dated 21st February, 2004 that while coming to the conclusion that petitioner was negligent and careless in performing his duty, the Inquiry Officer duly took note of the letter dated 22nd October, 2001 issued by the petitioner to the respondent in response to the notice dated 9th October, 2001, wherein he had stated that the summons were stolen from his locker, but since the petitioner failed to prove the averment made therein as he neither led any evidence nor did he cross- examine any witness of the department, Therefore the said letter served no purpose in the absence of being proved.

11. Even in the second enquiry proceeding, the petitioner could be served only on 4th September, 2004 after considerable efforts for appearing on 16th October, 2004 However despite waiting till post lunch, as none appeared on his behalf, he was proceeded ex-parte. In view of the above, this Court finds no invalidity or infirmity in the Inquiry Reports. The enquiry proceedings neither suffer from the vice of arbitrariness nor from the violation of principles of natural justice.

12. Having dealt with the validity of the enquiry proceedings, it is now for this Court to deal with the contentions of the petitioner as regards the validity and legality of the impugned order passed by the respondent. A perusal of the impugned order reveals that the same was passed by the respondent after taking into consideration the reply filed by the petitioner to the Memorandum issued to him under Rule 15(2) of the Rules and the enquiry files as also the facts and circumstances in both the cases. Both enquiries were disposed of together since the facts and the charges leveled in both the cases were identical. It was taken note of that while the factum of handing over of the summons to the petitioner stood proved in both the enquiry proceedings, the petitioner had failed to forward any satisfactory Explanation for the non-return of summons.

13. The plea of the petitioner that the respondent erred in not taking into

consideration the letter dated 16th June 2001, by which it is alleged that the petitioner had informed the respondent about the theft in his locker, cannot be sustained in view of the fact that the said letter does not form a part of the records of the respondent summoned by the Court. It is pertinent to mention that vide order dated 8th August, 2007, this Court had granted some time to the counsel for the respondent to obtain instructions as to whether the said letter was received by the respondent or not, and if so received whether the same was placed before the Enquiry Officers or not, to which the counsel for the petitioner answered in the negative. It is also to be noted that the seal of the office of the Administrative Civil Judge affixed on the said letter bears only a date but no diary number. The petitioner was called upon to produce the copy of the said letter filed by him on the record with an additional affidavit dated 9th August, 2007, but he failed to do so. The counsel for the petitioner was permitted to peruse the original records produced by the respondent but he could not point out the purported letter dated 16th June, 2001 from the said records. In this view of the matter, the same cannot be considered at this stage and the respondent or the enquiry officers cannot be faulted for not taking the same into account.

14. The plea of the petitioner that being a semi-literate person holding a class IV post, he could not comprehend the procedure of the enquiry and was prevented from attending the enquiry proceedings illegally and with malafide intentions is unpalatable and difficult to accept, more so when the petitioner was himself a court employee and expected to be well versed with court procedure and the consequences of non-appearance after proper service. He was holding the post of a process server in court and all his letters and replies are also in English. In fact the order sheets in both the enquiry proceedings reflect that the petitioner did not pursue the matter vigilantly and diligently in either case and consequently, had to be proceeded ex-parte in both the proceedings. He can Therefore ill afford to urge that he was not allowed to cross-examine the department witnesses or that he was not given adequate opportunity to defend himself, cannot stand.

15. So far the contention of the petitioner with regard to the quantum of punishment is concerned, the law in this respect is settled that the High Court ought to interfere with the quantum of punishment in exercise of its jurisdiction under Article 226 of the Constitution of India only when it finds that the punishment imposed is shockingly disproportionate to the charges proved. Reference may be made to the recent judgments of the Supreme Court in the cases of *The Managing Director The North East Karnataka Road Transport Corporation Vs. K. Maruti*, and *Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad*, .

16. In the present case, the charges that were proved against the petitioner were serious in nature, the job of serving processes being an important ingredient in the smooth and efficient functioning of the courts. It is also worth mentioning that, as recorded in the impugned order, the petitioner had been

charged earlier also for the same offence of non-return of summons and after the charges stood proved against him in separate enquiry proceedings, he was once "censured" and on the second occasion, three of his increments were stopped. Five other departmental proceedings were also pending against the petitioner for the same offence, the enquiry proceedings in which cases were adjourned sine die pursuant to the punishment of "dismissal from service" imposed on him by way of the impugned order. Therefore once it is found that neither the Inquiry Report or the impugned order passed by the disciplinary authority suffers from any perversity, illegality, infirmity, breach of the principles of natural justice or arbitrariness, there is no reason for this Court to interfere with the quantum of punishment, i.e., dismissal from service in the present case. This Court does not find the said punishment to be so shockingly disproportionate to the charges proved against the petitioner, so as to warrant any interference therewith.

17. In the light of the aforesaid discussion and for reasons stated hereinabove, the writ petition is dismissed being devoid of merits.