
(2014) 08 DEL CK 0300
In the Delhi High Court
Case No : W.P. (C) 3488/2012

Sangeeta Ashok

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0300

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, Advocate for the Appellant; S. Rajappa, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner questions the legality of an order dated 31-01- 2011 of the Principal Bench of the Central Administrative Tribunal (CAT) dismissing her application (OA No. 3462/2009). She had approached the CAT against an order of dismissal issued by her employer, the respondent Kendriya Vidyalaya Sangathan (hereafter "KVS").

2. The petitioner was working, at the relevant time, as Lower Division Clerk ("LDC") in one of the KVS schools. A memorandum dated 22/23.12.87 leveling allegations of misconduct was issued to her. Three charges specifying the relevant facts were made; the first pertained to her wrongful appropriation of the Group Insurance amount of Rs. 10,117/-, which were proceeds payable to Late Sh. P.S. Pathania, Lab. Attendant's dependents, by retaining it with her from October, 1984 to August, 1985. The second charge was that whilst working as ad-hoc UDC, she tampered with her service book and third, that she made an unauthorized visit to the Army Officers swimming pool at Kaluchak on 25.7.1987 and made false entries, representing herself as the daughter of a Colonel. The enquiry resulted in her exoneration in respect of the last charge; partial exoneration of the second charge and a finding of guilt in the first charge. The inquiry findings and report were furnished to the petitioner through a

memorandum dated 25.6.2008. This led to the disciplinary authority issuing the penalty of her dismissal from service, by an order dated 21.7.2008. The petitioner appealed against this order; the Appellate authority, by its order dated 28.11.2008 rejected the appeal.

3. The petitioner urged various contentions before the CAT. Firstly, it was urged that the enquiry was pursued with malicious intent, since there was enormous delay in its prosecution; it was argued next that there was no material in support of the first and second charge, for the enquiry officer to conclude that they had been proved. It was lastly urged that the petitioner had rendered more than 25 years' service and that the imposition of the penalty of dismissal was, in the circumstances of the case, too severe. The CAT negated these submissions. The substance of its reasoning is to be found in the following extract of the impugned order:

"14.....Out of the three charges framed against the applicant, one charge was proved while another was not proved and the third charge was proved partly. The charge that stood fully proved relates to embezzlement of the Group Insurance amount by the applicant which is of very serious nature. The thrust of the applicant's contentions has been that there is no proof of embezzlement and misappropriation by the applicant. Nevertheless, the fact remains that the Group Insurance amount was received from the Headquarters and the same was not paid to the legal heirs of late Shri P.S. Pathania as was required to be done. It has also come on record as a matter of fact that an amount equivalent to Group Insurance amount was paid by the Banker's cheque issued from the Savings Account No. 11877. Furthermore, it transpires that the payment was made consequent upon the receipt of complaint made by the daughter of late Shri P.S. Pathania. The applicant did not affirm if the said Savings Account No.11877 was belonging to her. As a matter of fact, she showed ignorance that she did not remember. It is also a matter of fact that the said account belonged to the applicant even before her marriage in the name of Sangeeta Sharma. The applicant has also affirmed, without admitting that even if the amount was paid from her account that would not tantamount to misconduct for one employee can make payment to another employee through cheque and there can be nothing wrong in it. Nonetheless, the applicant has not stated as to why and on what counts and by whom the said cheque was paid to Shri Pathania from her savings fund account. Whether it was by way of loan for repayment of a debt? Or, else, it was for purchase of something the, why the cheque was for an amount equivalent to the amount payable under the group insurance, remained unexplained. In the absence of any cogent explanation in this regard there is a complete chain of circumstances against the applicant as to the commission of the alleged misconduct by the applicant and the same being wholly inconsistent with any inference of innocence of the applicant. We are, therefore, unable to accede to the contention of the applicant that even if she had the amount from her bank account, that by itself would not amount to misconduct in the facts and circumstances of the case. Besides, as stated above, the strict rules of evidence

are not applicable to the disciplinary proceedings and the decision in the disciplinary matter can be taken on preponderance of probabilities even in the absence of direct evidence having regard to the facts and circumstances of each case. While reviewing such a decision judicially, it is neither open to reappraise the evidence nor to substitute one's view for that of the disciplinary authority. We are unable to accede to the submissions of the learned counsel for the applicant insofar as seeking reappraisal of the evidence that has come on record during the inquiry. We also cannot go into the sufficiency and adequacy of the evidence. So long, there is some evidence to support the conclusion arrived at by the disciplinary authority as to the guilt of the delinquent employee to have committed the alleged misconduct, no inference in exercise of judicial review would be warranted.

15. Having bestowed our careful consideration to the facts and circumstances of the case, we are of the considered view that there is evidence on record to reach to the conclusion that the applicant has committed misconduct based on which a reasonable person can reach to the conclusion that the conclusion drawn by the respondent authorities are based on evidence on record that supports the respective findings."

4. It is argued on behalf of the petitioner that the CAT fell into clear error, because there was no material for it to concur with the disciplinary and appellate authorities' findings. It was argued that so far as the charge of embezzlement went, neither did the alleged complainant depose or record any statement (even though she was, like the petitioner, an employee of KVS) nor was it ever proved that the money which belonged to the deceased employee, Mr. Pathania ever found its way into any bank account of the petitioner. Furthermore, argued Mr. Bhardwaj, learned counsel for the petitioner, there was no statement in support of the KVS stand that the bank account was that of the petitioner. No statement or deposition of the bank manager or other responsible employee or officer was ever recorded to link that account with the petitioner. In fact, during the enquiry, the petitioner could not remember the number due to lapse of a long period of time. As regards the second charge, counsel submitted that the findings in the inquiry about the charge being "partly proved" are without basis. It was argued in this regard that the so called manipulation of the appointment letter, allegedly done by the petitioner, made no sense because the KVS was unable to produce the service record, or establish that she had drawn pay as a Upper Division Clerk, at the relevant time. All the documents showed that she was paid in accordance with her entitlement as LDC. The findings were absolutely baseless.

5. It was submitted that the entire basis of the departmental enquiry findings were a letter of the bank, stating that some banker's cheque for the amount alleged had been issued from a particular account. In the absence of the KVS letter to the bank, or any link with the said account, the enquiry findings in that regard were perverse. Counsel argued that besides, the person or persons who are supposed to have made allegations against the Petitioner were not examined.

Counsel submitted that the findings, unsupported by evidence were clearly untenable and ought to have been set aside. It was further emphasized that though the charge sheet was issued in 1987, the enquiry was started in 2001. Though the petitioner was unsuccessful in the previous round of litigation in her challenge to the delay in holding the inquiry, the practical effect of delay was to deprive her of an effective defence. It was also urged that, given the circumstances of the case, the imposition of penalty of removal is too severe and disproportionate.

6. Counsel for the KVS, Mr. Rajappa, urged the Court not to disturb the findings and order of the CAT in this case. It was submitted in this context, that the petitioner had no explanation in respect of the first charge. Counsel emphasized that there could be no controversy in view of the bank's letter that the petitioner's account was debited to pay the complainant. The petitioner had nothing to say on this aspect. Counsel also submitted that in departmental enquiries, the strict rules of evidence do not apply; the enquiry officer can arrive at conclusions based on appreciation of evidence and materials on record, based on a preponderance of probabilities, which is exactly what had happened in this case.

7. The following Articles of Charge were the subject matter of inquiry in the present case:

"ARTICLE-1

That the said Km. Sangeeta Sharma while working as adhoc UDC, K.V. No.2, Jammu Cantt. embezzled the amount of Rs.10,117/- towards payment of the amount of Group Insurance to Late Sh. P.S. Pathania, Lab. Attendent by retaining it with her from October, 1984 to Aug., 1985. She made the payment only after August 1985 when a complaint was lodged against her. She thus violated Rule 3.1 (i) of the CCS (Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan.

ARTICLE-II

That while working as ad-hoc UDC in K.V.No.2, Jammu Cantt. Km. Sangeeta Sharma tampered with her service records by making false entries in the Service Book and by altering the entries in the office copy of her appointment offer as LDC. She thus violated Rule 3.1 (i) of the CCS (Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan. Tampering in the Service Book has resulted in overpayment which needs to be recovered.

ARTICLE-III

That while working as adhoc UDC in K.V.No.2, Jammu Cantt. Km. Sangeeta Sharma visited the swimming pool of Army Officers at Kaluchak on 25.7.1987 and made false entries about her in the swimming pool register by showing herself to be a daughter of Colonel. She thus violated Rule 3.1 (i) of the CCS (Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya

Sangathan."

8. The findings of the Inquiry Officer were that the first charge was held proved; the second charge was held to be proved "to the extent of tempering of Office Copy of her appointment offer as LDC" whilst the third charge was not established.

9. During the proceedings before this Court, the records of inquiry containing the documents were called for and seen. The document relied by the KVS and perhaps what triggered the inquiry was a complaint dated 10.4.87 lodged by Ms Rita Pathania with the Principal K.V.No.2 Jammu Cantt. It alleged the misuse of a cheque sent in respect of Late P.S. Pathania by the petitioner. The complainant said that a cheque of Rs. 10,117.00/- towards Group Insurance Claim of her father late Mr. P.S. Pathania was issued in October 1984; the cheque was not given to the deceased's family. It was alleged, "it was bought to your kind notice verbally. Consequent upon that Miss Sangeeta Sharma UDC deposited some cheque in our account No.6828 in State Bank of India Gandhinagar Jammu on 17 Oct., 85... That in the present case the cheque which was issued in Oct., 84 was deposited on 17 Nov 85. However it has been learnt that she has deposited some other cheque of the same amount."

10. Another document relied on by KVS was a letter written to the Principal, K.V. No.2, Jammu Cantt. by the Manager Punjab National Bank, Gandhi Nagar, Jammu on 13.5.1987 in response to the KVS letter dated 25.4.1987. The Bank had informed about issuance of a banker's cheque for the said amount in favour of Mrs. Y.D. Pathania on 31.8.1985 debited from Saving Fund Account no.11877. The petitioner's contention is that Article No.1 i.e. embezzlement of Rs. 10,117/- has not been proved in the inquiry; the inference is based only on presumptions. Great emphasis was placed on the inability during inquiry to have the complaint verified by its author. It was argued before the CAT that so far as the making of payment by way of cheque is concerned, the giving money to another employee cannot be said to be misconduct. The petitioner had argued that the Punjab National Bank too did not give any evidence to prove that the said Account Number was of the applicant and so, there was no proof to show that she had credited the cheque to her account.

11. The materials produced during inquiry included SNE-2, the school's acquittance rolls. This was marked with consent of the petitioner; it contains entries which show that the Account No.11877 was indeed the petitioner's account; as against the amounts disbursed to that account, she had even signed at various points, denoting the receipt of salary for various months. In these circumstances, the petitioner, in this Court's opinion, owed an explanation as to why she issued a cheque to Mrs. Y.D. Pathania on 31.8.1985, for the exact amount which was payable to the latter's late husband after his death in 1984. This fact assumes importance, because it proves with certainty that the amount was indeed paid out of the petitioner's account. The question to be answered by the petitioner is why she had to issue a cheque from her account, for the amount

payable to another employee's dependents and heirs after his death?, There was nothing on this before the Enquiry Officer or before CAT. Yet another defence of the petitioner, advanced during the hearing of the writ petition, was that the deceased employee was an alcoholic and that after his death, the widow did not want to keep the amount. Consequently, she encashed the cheque and paid over the proceeds to the petitioner, which the latter returned to Mr. Pathania's widow, by a cheque. This explanation seems fantastical and illogical. There can be no question of a deceased employee's widow handing over an amount received by her, for safekeeping, to another employee and then complaining of embezzlement or wrongdoing after receiving the cheque. Moreover, this explanation was never advanced during the enquiry or appellate proceedings. In these circumstances, this Court is of opinion that the finding of the enquiry officer, that the first charge had been established by a preponderance of probabilities, is reasonable and tenable.

12. As regards Article No.II, neither was the Handwriting Expert called nor was the service book produced during the enquiry proceedings. It was contended that while the petitioner was serving as Upper Division Clerk, she tendered her resignation by a letter dated 3.9.87 to the Principal, KV, No.2, Jammu Cantt. with a request to accept it, at once, by condoning the notice period. This was done just as a ploy to deviate the attention of the authorities. Being an ad hoc employee, her resignation was accepted. On 24.11.1987, she submitted an application for cancellation of her resignation which was acceded to. While taking her into service back on 3.12.1987, the respondent issued a charge sheet against her to inquire into the complaints received against her.

13. This Court notices that while at the places alleged, there is overwriting of "LDC" to "UDC" and the needle of suspicion, therefore, would point to the petitioner, the fact remains that the service book was not produced during the course of inquiry. The charge was that the petitioner had manipulated the service book. But without any allegation of her having drawn a higher pay scale, the charge cannot be said to have been established. It is also noteworthy that the alleged manipulation of date in the appointment letter is inconsequential; though the date of receipt of the letter is overwritten, at the same time the letter itself contains discrepancies. For instance, the letter directed the petitioner to report for duty by 2nd November; however the signature of the Principal, who issued it, bears the date 6th November. In the light of these facts, the Court is of the opinion that the second charge cannot be said to have been established.

14. Out of the three charges framed against the Petitioner, one charge was held proved while another was not proved and the third charge was proved partly. The charge that stood fully proved related to the petitioner's misappropriation of Group Insurance amount, a serious enough misconduct. The petitioner had to explain why she paid the exact amount to the deceased's heirs, either by way of loan repayment, or for some other reason. The circumstantial evidence, in the absence of explanation leads to a probable conclusion that she committed the

misconduct alleged against her. This Court notes that its powers of judicial review permit it to determine or review whether the findings of the disciplinary authority were based on evidence, or not. This view was outlined by the Supreme Court in High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, :

"It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal, when the conclusion reached by the authority is based on evidence. Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence"

15. As observed earlier, this Court finds that there was material for an inference to be drawn about her culpability. The lower threshold of proof i.e. working out the balance of probabilities in the case, meant that the enquiry officer acted correctly in deducing her to be guilty of the charge. The other charge, as noted earlier, cannot be said to have been proved.

16. The next question is on the proportionality of the penalty. This Court notices that the CAT relied on Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, ; Ruston and Hornsby (I) Ltd. Vs. T.B. Kadam, ; U.P. State Road Transport Corporation Vs. Basudeo Chaudhary & Anr., (1997) 11 SCC 370; Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noykarara Sangha Etc., ; Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, ; and Regional Manager, R.S.R.T.C. Vs. Ghanshyam Sharma, (2002) 10 SCC 330, to say that dismissal was warranted. The context of the CAT's reliance on these judgments was the first charge. The exoneration in respect of the charge of forgery or manipulation, in this Court's opinion, does not in any manner lower the seriousness of the charge which stood established. Moreover, it is settled law that the Court does not interfere with the punishment imposed by the disciplinary authority unless it is such that it shocks the conscience of the Court. Refer B.C. Chaturvedi Vs. Union of India and others, ; Ranjit Thakur Vs. Union of India (UOI) and Others, . In the

circumstances, the order of dismissal cannot be said to be disproportionate or excessive.

17. This Court is of opinion that even though the petition cannot succeed, at the same time the respondent KVS should consider the petitioner's case for compassionate allowance in accordance with Rule 41 of the CCS (Pension) Rules, or any corresponding service condition, considering that she had worked for over 20 years, and the fact that she lost her husband in tragic circumstances. Such application, if made, should be considered on its merits, and in accordance with law. For these reasons, the Court is of opinion that the petition lacks in merit; it is therefore dismissed without any order as to costs.