(2019) 02 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 2139 Of 2014

Sh. Dinesh Kumar APPELLANT

Vs

Union Of India RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 1(e), 13(ii), 13(2)
Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14, 19(i), 22, 23, 27
Constitution Of India, 1950 — Article 14

Citation : (2019) 02 CAT CK 0030

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Nilansh Gaur, Rajender Nischal

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. By filing this OA, the applicant is seeking the following reliefs:-

"8.1 To set aside the impugned orders at Annexure A-1 and Annexure A-2;

8.2 To direct the respondents to reinstate the applicant in service with all consequential benefits; and

8.3 Any other relief which this Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case."

2. Brief relevant facts of the case as stated in the OA are that the applicant was appointed as Lower Division Clerk on 31. 1.1984 and was thereafter promoted to the post of Upper Division Clerk in the year 1993 and thereafter he was promoted on ad hoc basis as Assistant in the year 2005 and was revered in 2006.

2. 1 Applicant further averred that on an allegation that the applicant allegedly demanded bribe from M/s Tabish Tours while working in the office of Protector of

Immigrants, RCDAI-2009-A-0030-DLI dated 10.6.2009 was registered against the applicant under Section 13 (ii) of the P.C. Act along with a case of alleged possession of disproportionate assets, as an amount of Rs.16 lakhs was recovered from the house of the applicant.

2. 3 Applicant was placed under deemed suspension w.e.f. 17. 2.2009. However, in the criminal case regarding alleged demand of bribe, an order passed by the learned Special Judge, Saket Court, New Delhi, that since the prosecution had failed to prove the case against the applicant, he was acquitted of the said offence vide judgment dated 21.12.2012. However, before that the learned Special Judge in the disproportionate case held the applicant guilty and convicted him by sentencing the applicant for rigorous imprisonment of four years with fine of Rs.1 lakh with confiscation of the cash amount vide judgment dated 27.3.2012. However, the respondents reinstated the applicant by revoking a suspension on 7.5.2013. The applicant filed Criminal Appeal No.423/2012 before the Hon'ble High Court of Delhi against the conviction. The Hon'ble High Court vide Order dated 3.7.2012 suspended the sentence and the said appeal is still sub-judice.

2.4 However, about more than two years from the date of conviction belatedly, the disciplinary authority issued a show cause notice to the applicant dated 19.3.2014 on the basis of conviction to propose a penalty of removal from service. The applicant preferred his detailed reply dated 1.4.2014 to the said show cause notice. But the disciplinary authority vide its order dated 21.4.2014, allegedly without going into the conduct leading to the conviction and without considering the grounds taken by the applicant and also without dealing with the proportionality of penalty by a non-speaking order confirmed the penalty of removal from service.

2.5 Being aggrieved by the said order of the disciplinary authority, the applicant preferred his appeal to the appellate authority, however, according to the applicant, the appellate authority without dealing with the grounds raised by the applicant in his appeal and also without dealing with the proportionality of penalty rejected the same by a non- speaking order without application of mind vide order dated 13.6.2014.

2.6 Being aggrieved by the aforesaid orders of the disciplinary and appellate authorities, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that in the present case, the applicant was convicted on a criminal charge under Section (1)(e) r/w Sec. 13(2) of PC Act, 1988 by the Court of Shri Sanjay Jain, Special Judge (PC Act), CBI-2 New Delhi district, Patiala House Court New Delhi, vide its judgment dated 24.3.2012 for possessing assets disproportionate to his known sources of income while working as a public servant and has been sentenced to undergo rigorous imprisonment for four weeks and to pay fine of Rs.One Lakh vide judgment dated 27.3.2012.

3. 1 Respondents further stated that on careful consideration of the gravity of the criminal charge indicated in the aforesaid judgment of the Court, the competent authority considered that the conduct of the applicant which has led to his conviction is such that he is not fit to be retained further in service and accordingly came to a tentative conclusion that a penalty of removal from service may be imposed on the applicant under Rule 19 (i) of the CCS (CCA) Rules, 1965.

3.2 A show cause notice vide Memo dated 19.3.2014 was served upon the applicant whereby he was given an opportunity of making the representation on the penalty proposed to be imposed on him. The applicant preferred his representation dated 1.4.2014 wherein he has raised a number of points/issues. The competent authority considered all the points raised by the applicant and addressed all those points through a speaking order dated 21.4.2014 whereby a penalty of removal from service has been imposed on the applicant.

3.3 The applicant submitted his appeal dated 28.4.2014 to the appellate authority under Rules 22, 23 and 27 of the CCS (CCA) Rules, 1965 against the order dated 21.4.2014 whereby a major penalty of removal from service has been imposed on him under Rule 19 (i) of the said CCS (CCA) Rules. The appellate authority after carefully considering all the points raised by the applicant and facts of the case found that there is no merit in his appeal and rejected the same through a speaking order dated 13.6.2014.

3.4 They further stated that they have acted as prescribed in the rules and hence the OA is liable to be dismissed by this Tribunal.

4. Applicant has also filed rejoinder reiterating the contents of the OA and denying the contents of the counter reply filed by the respondents.

5. We have heard learned counsel for the parties and have perused the material placed on record.

6. Counsel for the applicant submitted that the impugned orders passed by both the disciplinary and appellate authorities are bald, non-speaking and contains no reasons as the contentions raised by the applicant in his representation as well as appeal have not been considered in true perspective.

6. 1 Counsel submitted that disciplinary authority despite conviction of the applicant had revoked the deemed suspension and reinstated the applicant in service. Later the authorities are stopped from imposing such a penalty later on, as the said conviction of the applicant vide order dated 27. 3.2012 was within the notice of the respondents yet no action has been taken under Rule 19(i) of the Rules for almost two years. As such the belated action, which is inordinately delayed, cannot be sustained.

6. 2 Counsel further contended that applicant has been arbitrarily discriminated, which is violation of Article 14 of the Constitution of India and one Assistant Shri Avinash Kumar, who was found to be equally involved by judicial fora has neither been made accused in the criminal case nor any disciplinary proceedings were

held against him despite the allegations of bribe have been proved against him rather than the applicant.

7. Counsel for the respondents submitted that orders passed by the disciplinary as well as appellate authorities are reasoned and speaking orders as the disciplinary authority has very carefully taken into consideration all the points of the applicant in its true perspective prior to their having arrived at a decision to impose the penalty on him. This fact is evidently clear from the penalty order wherein everything has been discussed and elaborated in the true spirit of a speaking order.

7. 1 Respondents' counsel further submitted that the applicant neither informed to Ministry of Overseas Indian Affairs nor his parent cadre, i.e., Ministry of Labour and Employment about his conviction in criminal case (RC 30(A)/2009) by the CBI trial court in its judgment dated 24. 3.2012 immediately on its occurrence. Even on his being relieved from Ministry of Overseas Indian Affairs on 7.5.2013 and subsequently joining Ministry of Labour and Employment he did not disclose the fact that he has been convicted in the said criminal case. He further submitted that applicant has suppressed the facts regarding his conviction in the criminal case. He also referred to Government's Decision No.(1) under sub-Rule 19 of the CCS (CCA) Rules, 1965, and submitted that it shall be the duty of a Government servant who may be convicted in a criminal case to inform his official superiors of the fact of his conviction and the circumstances connected therewith, as soon as it is possible from him to do so. Failure on the part of any Government servant to so inform his official superior will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the penalty called for on the basis of the offence on which his conviction was based. Thus the contention of the applicant that action was not taken against him immediately on his conviction happened because of act of suppressing the material information regarding his conviction by the applicant of this OA.

7.2 Counsel further submitted that the recovery of cash amount of Rs.16,34,500 from his residence could not be satisfactorily explained by the applicant. He further submitted that as per Govt. of India's decision No.(33) Reproduced under Rule 14 of CCS (CCA) Rules, 1965 under heading - Presumption of corruption reasonably arises if large accretion of wealth no satisfactorily accounted for - A Presumption of corruption fairly and reasonably arises against an officer who cannot account for large accretion of wealth which he could possibly have saved from his known sources of income. This principle has received statutory recognition in application in a departmental inquiry against an officer charged with corruption could not, therefore, be unjust or inequitable. Counsel in support of this contention referred to the judgment of the Hon'ble Supreme Court in the case of G.R. Mankar vs. Union of India (Civil Appeal No.160 of 963). He further submitted that the evidences produced by the applicant to prove his story that this money belongs to his relatives has been defeated in the Court of Law. In the case before the learned Trial Court, it has held that "recovery of cash amount of Rs.1634500/- could not satisfactorily explained by the accused, prosecution has been able to prove the material allegations of its case about disproportionate assets to the tune of Rs.15,81,727.49 which came to 213.54% of disproportionate assets". Therefore, the applicant is trying to mislead the facts, hence, his contention deserves to be rejected.

7.3 So far as contention of the applicant regarding discrimination, counsel for the respondents submitted that the name of one Assistant Shri Avanish Kumar, who he says was also guilty in a criminal case, has not even been mentioned in the judgments dated 24.3.2012/27.3.2012 whereby the applicant was held convicted/ sentenced to imprisonment.

7.4 Counsel further emphasized that the appellate authority had also very carefully considered every point raised by the applicant in his appeal which had also addressed them properly and in its right perspective vide order dated 13.6.2014.

7.4 Counsel also submitted that the conduct of a Government servant cannot be confined to the one aspect of his life of discharging the duties of a particular post as has been advocated. It covers wholesome conduct/acts of the Government servant, i.e., he shall maintain all the time absolute integrity, devotion to duty and do nothing which is unbecoming of a Government servant. He further submitted that applicant was admittedly convicted in a disproportionate assets case and even if the applicant has preferred an appeal before the Hon'ble High Court and the said sentence was suspended till the disposal of the said appeal by the Hon'ble Delhi High Court vide order dated 7.3.2012 in Criminal Appeal No.423/2012 but the fact is that the applicant has neither informed the respondents about his convection at the relevant time. And due to the aforesaid suppression of fact by the applicant, the appropriate proceedings at the relevant time could not have been initiated against the applicant. When the said facts came to the notice of the respondent, the show cause notice was issued under Rule 19(i) of the CCS (CCA) Rules on 19.3.2014 and after considering the representation submitted by the applicant to the said show cause notice, disciplinary authority passed the detailed reasoned and speaking order imposing the punishment of removal from service upon the applicant and the appeal was also carefully considered by the appellate authority and the same was also rejected by reasoned and speaking order. Lastly, counsel contended that the present OA deserves to be dismissed by this Tribunal.

8. After hearing the learned counsel for the parties and after carefully perusing the material placed on record, this Court observed that the applicant has himself annexed with his rejoinder, a copy of Office Order dated 28.5.2013 wherein it is stated that applicant, consequent upon being relieved from Office of the Protection of Emigrants (Delhi), Ministry of Overseas Indian Affairs vide Office Order dated 17.5.2013, had reported for duty in the Ministry of Labour & Employment on 17.5.2013 (FN) and was taken on the strength w.e.f. 17.5.2013.

Applicant also annexed a copy of Office Memorandum dated 12.12.2013 in the rejoinder only whereby the applicant was informed as under:-

"The undersigned is directed to say that it has been intimated by the CBI, Delhi that Shri Dinesh Kumar, UDC was convicted in Case RC No.DAI-2009-A-0030 by the Trial Court vide its judgment dated 24.03.2012 and subsequently Shri Dinesh Kumar has filed an appeal in the High Court, Delhi. However, Shri Dinesh Kumar has not intimated about his conviction to the concerned authorities.

2. In view of the above, Shri Dinesh Kumar, UDC, is hereby directed to explain in writing to the undersigned within 10 days from the receipt of this communication, as to why he did not intimate about his conviction to the concerned authorities immediately on its occurrence and also as to why his this act should not be regarded as suppression of material information and action initiated against him under the relevant Rule of the CCS (CCA) Rules 1965."

In the reply to the said letter dated 23.12.2013, the applicant had stated that "I was convicted in RC No.DAI-2009-A-0030 on 24.3.2013. In the said case I was granted bail the day the chargesheet was filed." However, the fact is that conviction order was passed on 24.3.2012 and sentence was awarded on 27.3.2012 and the applicant was taken into custody on 27.3.2012. But in an appeal preferred by the applicant against the said orders of the learned Trial Court dated 24.3.2012 and 27.3.2012 before the Hon'ble High Court of Delhi, the applicant was granted bail as also the sentence order dated 27.3.2012 was suspended vide Order dated 3.7.2012 by the Hon'ble High Court of Delhi. The said minimum facts prove that applicant was under judicial custody from 27.3.2012 to 3.7.2012, i.e, about more than 3 months. As such it is evidently quite clear that the applicant was in judicial custody as on 27.3.2012 and remained as such till 3.7.2012 when the applicant was on deputation in the Office of Protector of Emigrants (Delhi), Ministry of Overseas Indian Affairs and he was only repatriated on 17.5.2013 (FN). It is further relevant to mention that an affidavit, which was annexed with the said reply dated 23.12.2013, is dated 21.12.2013. However, the fact that the applicant was convicted on 27.3.2012 and the said affidavit was executed only after receipt of letter dated 12.12.2013. These minimum facts prove that the applicant has not reasonably taken any appropriate steps at the relevant time to inform the respondents about his conviction as also the fact that he was also taken into judicial custody on 27.3.2012 and remained as such till 3.7.2012.

9. In view of the above facts and circumstances of this case, we are not inclined to accept any of the contentions of the applicant in this case. We have also perused the impugned orders and found that the same are reasoned and speaking orders. Accordingly, this Court does not intend to interfere with the same. As such the present OA is dismissed.

10. However, before parting with this case, this Court would like to observe that the applicant had remained in judicial custody from 27.3.2012 till 3.7.2012 and

the action was taken by the parent department only after serving Office Memorandum dated 12.12.2013. It is therefore directed that Department of Overseas Indian Affairs may look into the matter and take appropriate action against the erring officials who may be responsible for not taking action against the applicant at the relevant time.

11. There shall be no order as to costs.