
(2019) 03 CAT CK 0163

In the Central Administrative Tribunal

Case No : Original Application No. 2277 Of 2013

Sh. Mahavir Vats

APPELLANT

Vs

Commissioner And Ors

RESPONDENT

Date of Decision : 20-03-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 3(1)(ii), 3(1)(iii), 15(1), 15(1)(a), 15(2)

Citation : (2019) 03 CAT CK 0163

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

Bench : Division Bench

Advocate : U. Srivastava, Sweena Nair, S. Rajappa

Final Decision : Dismissed

Judgement

1. We have heard Mr. U.Srivastava, counsel for applicant and Ms. Sweena Nair for Mr. S.Rajappa, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"In the above circumstances, it is respectfully prayed that the impugned order bearing No. F-9-8-97-KVS (Vig.)/III dated 28.02.2013 passed by the respondent of imposing a major penalty of compulsory retirement of the applicant from the permanent post of UDC may kindly be quashed and set aside and the respondents be directed to re-instate the applicant to the post of UDC retrospectively w.e.f. 18.02.1997 and the applicant be paid all the back wages with increments, which the applicant would have been entitled to (in case he had not been imposed the said major penalty of removal, now converted to compulsory retirement) and be further considered for promotion to the higher post in accordance with the service rules, which the applicant would have been entitled thereto.

It is further prayed that the respondents be further directed to consider the

applicant for promotion to the higher post in accordance with the service rules, which the applicant would have been entitled to in the absence of order dated 18.02.1997/03.12.2010."

3. This is a second round of litigation. The relevant facts of the case are that a departmental enquiry was held with respect to the applicant while functioning as UDC during the period 1992 to 1994 working as a Manager to Sevti Devi Memorial Vidyalaya, Mahavir Enclave, Palam, New Delhi and managed day-to day affairs of the said Vidyalaya at the cost of his official duties and also during the period 1988 to 1994, he was acting as proprietor of a Show Room/Sales Agency of Bata India Ltd and it was a source of income. The articles of charges are as under:-

Article-1

"That the said Shri Mahavir Vats while functioning as UDC at KVS (HQrs), New Delhi, during the years 1992 to 1994 simultaneously acted as Manager to Sevti Devi Memorial Vidyalaya, Mahavir Enclave, Palam, New Delhi, and managed day-to day affairs of the said Vidyalaya at the cost of his official duties. The said vidyalaya is also a source of income to said Shri Vats. This act of Sh. Vats constitutes misconduct and is violative of Rule 3(1)(ii) & (iii) and 15 (1) & (2) of CCS (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

Article-II

That the said Shri Mahavir Vats while functioning as UDC at KVS (Hqrs), New Delhi, during the period from 26.2.1988 to 3.8.1994 was proprietor of Show Room/Sales Agency of Bata India Ltd., at WZ-603, Palam Vill. Main Road, Palam Colony, New Delhi-45. The said agency was a source of income to said Shri Vats. This act of Shri Vats constitutes a misconduct in terms of Rule 3(1)(ii) & (iii) and 15 (1)(a) of CCS (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan."

4. Alongwith the article of charge, statement of imputation of misconduct, list of witnesses and list of documents were served on the applicant. As the applicant did not admit the charges, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and also all the relevant rules regarding holding of the departmental enquiry conducted the departmental enquiry and after recording the evidence held that the charges leveled against the applicant were proved. The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after perusing the entire evidence and taking into account all the grounds raised in the said representation imposed a penalty of removal from service vide order dated 18.02.1997. His appeal was also dismissed by the appellate authority vide order dated 15.10.1997. The applicant filed OA No. 1093/2011. This Tribunal vide its order dated 26.03.2012 dismissed the OA. The applicant filed Writ Petition (C) No. 4663/2012 before the Hon'ble High Court of Delhi. The Hon'ble

High Court vide its judgment dated 06.08.2012 after hearing the matter at length by a detailed judgment on the consent of both the parties set aside the appellate order dated 15.10.1997 and as well as the order of the Tribunal dated 26.03.2012 and remitted the matter back to the appellate authority to dispose of the appeal afresh. The relevant portion of judgment of the Hon'ble High Court is as follows:-

"6. We feel that the appropriate course of action to be adopted in the present case, and both the counsel agree to this, is to set aside the order of the Appellate Authority as well as that of the Tribunal and remit the matter to the Appellate Authority for consideration afresh both on the question of charges as well as on the question of penalty, if any. As a result, we set aside the said orders and remit the matter to the Appellate Authority. The Appellate Authority shall consider the matter as if the appeal has been filed before it for the first time against the Disciplinary Authority's order."

5. In compliance with the order of the Hon'ble High Court, the appellate authority passed the order dated 28.02.2013 which is challenged in this OA. The counsel for the applicant vehemently and strenuously contended that it is a case of no evidence, the impugned order is not in consonance with the above extracted judgment of the Hon'ble High Court and the order is perverse and that the punishment imposed is very harsh. The counsel for the respondents equally vehemently and strenuously contended that the impugned order is well considered, reasoned and speaking order and he has taken us through the entire impugned order, in the impugned order the appellate authority has given logical and tenable reasons for imposing a penalty of compulsory retirement on the applicant with effect from 18.2.1997. The relevant portion of the order is extracted below:-

"4. Whereas in his appeal he submitted that he had committed nothing nefarious prejudicial to the functioning of KVS and that he is living in a Joint Family and the parents have run a school in a genuine spirit of providing education to the students as genuine gesture towards society. He stated that he was made Honorary Manager of the School and he gained nothing in terms of kind and finance. He worked there only on holidays or in spare time and never given any opportunity to affect his official duties. He also informed the KVS about his function as Honorary Manager. The KVS did not object of his becoming the Honorary Manager as stated by him. The orders on offer of appointment issued to Shri Umesh Chandra and his promotion were signed by him in the morning of 20.10.1992 and 23.12.1992 before his office time and hence he has not neglected his official duties. The receipt of Rs.4000/- was not signed by him. The charge in regard to Bata Agency, he stated that the Agency is controlled by his elder brother who is not educated and his father involved Shri Vats in securing the Agency in Shri Vats name. His elder brother is the de-facto owner of the Agency. He was an agent on paper only. The agency has already been closed before issue of this charge sheet. He did not draw any income from the Agency

as the commission was credited to the Joint Account, which was being withdrawn by his elder brother. He did not manage the agency at all at the cost of his official duties. These acts were recorded in his letter dated 08.01.1996 in reply to the Written Brief of the P.O and also in his submissions dated 28.08.1996 in reply to the inquiry report. His assertion that the charges are not provided during the inquiry is not correct. In fact, he has mentioned in his representation that his admission to the extent of his innocence of involvement in alleged two activities, have been proved by the Inquiry Officer but the above extenuating circumstances were not considered and not taken into account while awarding the extreme and severest penalty of removal from KVS service. He has stated that he already discontinued as Honorary Manager of the School and given an undertaking that in future he would not associate himself with the affairs of the Vidyalaya in any capacity.

5. Whereas it is a fact accepted by the Appellant that he has been working as Honorary Manager in Smt. Sevti Dei Memorial Vidyalaya since 1992 and signed the letters of appointment and promotion orders in respect of employees working there and also looked after the discipline of the said Vidyalaya. All these activities involved lot of work and naturally affected his functioning as KVS (HQrs) employee. Further it has been proved beyond doubt that he has been an Agent of Bata India Ltd. From 26.02.1988 to 03.08.1994 during the period when he was serving in KVS (HQrs) as the Agency was in his name. His getting profits/dividends from both the organizations by way of running Bata Agency and by working as Honorary Manager of Smt. Sevti Devi Vidyalaya can not altogether be ruled out as the assets/establishment was the property of the combined Hindu family headed by his father. His contention that he was ignorant of rules due to which he did not objected to his father to run Bata Agency in his name, is not acceptable. The appellant failed to obtain prior permission of KVS before engaging himself in business so far as the Agency in his name in Bata India Ltd.is concerned. These acts of Shri Mahavir Vats, Ex-UDC constitute serious misconducts.

6. Whereas it is found that the procedure laid down in CCS (CCA) Rules 1965, has been properly followed during the course of the inquiry.

7. An whereas the undersigned, after taking into account the evidences on record, all facts of the case and findings of the Inquiry Officer and the submissions made by the Appellant in his appeals after careful consideration, held that the charges framed against Shri Vats by the Disciplinary Authority are found to be correct and that the penalty of removal from service imposed by the Disciplinary Authority was however, not proportionate to the extent of charges proved. Accordingly the undersigned here-by considers that the end of justice would be met in this case by imposing the penalty of compulsory retirement upon the appellant with effect from 18/2/1997. Other benefits will be decided in accordance with law. The appeals are accordingly disposed of."

The counsel for the respondents further submitted that in so far as the

punishment is concerned, unless the punishment is shockingly disproportionate, the Tribunal shall not interfere with the quantum of punishment imposed by the competent authority. In support of his contention, he relied upon the law laid down by the Hon'ble Supreme Court in the case of The Lift Insurance Corporation of India and Others Vs. S. Vasanthi (Special Appeal No. 7714/2014) and relevant portion of which is extracted below:-

"6. When the charge proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Appellate Authority departmentally is ordinarily not available to the Court or a Tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts.(See: Union Territory of Dadra & Nagar Haveli vs. Gulabhia M.Lad (2010) 5 SCC 775) In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities."

6. We have gone through the reasoning given by the appellate authority, we are of the view that there is sufficient evidence before the appellate authority and that the said order is in consonance with the order passed by the Hon'ble High Court and that it is not a perverse order and, therefore, there is no ground for interfering with the said order. Also in view of the facts and circumstances narrated above and in view of the detailed, reasoned and speaking order passed by the appellate authority, this OA is filed on frivolous grounds as such to discourage such frivolous litigation this OA is dismissed with exemplary costs of Rs.30,000/- to be paid to the CAT Bar Association (Library) Fund.

7. Accordingly, the OA is dismissed.