
(2007) 03 CAL CK 0077
In the Calcutta High Court
Case No : W.P.C.T. No. 120 of 2003

Sher Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
All India Services (Conduct) Rules, 1968 — Rule 16(2), 3(1), 5(1), 6(2), 7
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 4 CHN 183 : (2007) 114 FLR 197

Hon'ble Judges : Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : D.S. Mullick, Supratick Syamal, for the Appellant; Jayanta Banerjee and Asha G. Gutgutia for Respondent Nos. 1, 2 and 3, Mitali Bhattacharya, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This application under Article 226/227 of the Constitution of India is at the instance of an unsuccessful applicant u/s 19 of the Administrative Tribunals Act (hereinafter referred to as the Act) and is directed against the order dated December 10, 2002 passed by the Central Administrative Tribunal, Calcutta Bench by which the Tribunal rejected the application filed by the writ petitioner wherein he challenged the order of his dismissal from service.

2. The writ petitioner was a member of the Indian Administrative Service of 1976 Batch and belonged to the West Bengal Cadre.

3. The writ petitioner was served with a memorandum of chargesheet dated June 2, 1994 inter alia on the following allegations:

Article of Charge-I:

It appears that Shri Sher Singh while functioning as Director of Evaluation, Monitoring & Manpower, Deptt. of Development & Planning, Govt. of West Bengal, got a book titled "The Secular Emperor Babur" published without the

previous sanction of the Govt.

It further appears that in spite of having the knowledge of refusal of permission by the Govt. to publish the said book, Sri Sher Singh got it published deliberately violating the Govt. order.

Details are given in the statement of imputation.

Such conduct of Sri Sher Singh is prima facie improper and unbecoming of an officer of his status and as such, is violative of Rule 3(1) and 6(2)(a) of the All India Services (Conduct) Rules, 1968.

Article of Charge- II:

It appears that Shri Sher Singh while functioning as above communicated and ventilated in the "Statesman", dated 5th March, 1994 and other newspapers about the receipt of King Faisal Award by him along with his wife Smt. Surinder Kaur, or caused it to be done, although no such Award was received by him/her or jointly with his wife.

It further appears that Sri Sher Singh intentionally put the entire blame on State Govt. for not getting the said Award and also created an impression to the effect that the Govt. stood in his/her way to receive the Award although the State/ Central Govt. were not at all aware of the receipt of the said award by him/her or along with his wife in this regard.

Details are given in the statement of imputation.

Such conduct of Sri Sher Singh prima facie shows lack of integrity and is highly improper and unbecoming of an officer of his status and as such, is violative of Rule 3(1) and 7(i) of the All India Services (Conduct) Rules, 1968.

Article of Charge- III:

It appears that Shri Sher Singh while functioning as above, participated in a meeting on 26.1.94 in between 16.00 and 20.30 hrs. at Killkhana Play Ground, Metiabruz, organized by Evergreen Sporting Club and delivered speeches on the Biography of Babur and while making such speech defamed BJP a recognised political party for their alleged claim of Ram Janmabhumi at the Babri Mosque at Ayodhya and thereby incited a particular community in furtherance of generating communal disharmony in the State and also in the country.

It further appears that Shri Sher Singh participated in a meeting held on 18.3.94 at the adjacent school premises of Uinnat Mosque, Topsia 2nd Lane, organized by a particular religious group and delivered speeches on the highly sensitive topic i.e. demolition of Babri Mosque at Ayodhya and incited the audience by making comments on Ram Temple and also wilfully and vehemently criticised a recognised political party i.e. BJP for demolition of the said mosque in spite of having the knowledge that the entire matter is sub-judice and highly sensitive and as such, likely to cause communal disharmony among religious groups. Such

act of Sher Singh was highly prejudicial to the interest of the State and the country.

Details are given in the statement of imputation.

Such conduct of Sri Sher Singh is highly improper and unbecoming of an officer of his status and as such, is violative of Rule 3(1), 5(1) and 7(i) of the All India Services (Conduct) Rules, 1968.

Article of Charge.-IV:

It appears that Sri Sher Singh while functioning as above, squarely put the blame on State Govt. officials and political parties by his letter dated 29th March, 1994 and other letters and in his address to the public in the meetings, during his interview and discussions with the press for standing in the way of receipt of "King Faisal Award" from the King Faisal Foundation, Saudi Arabia.

Details are given in the statement of imputation.

Such conduct of Sri Sher Singh prima facie improper and unbecoming of an officer of his status and as such, is violative of Rule 3(1), 7(i) of the All India Services (Conduct) Rules, 1968.

Article of Charge- V:

Sri Sher Singh while functioning as above, did not submit his Declaration of Assets as they stood on 1989, 1990 and 1991 and thereby contravened Rule 16(2) of the All India Services (Conduct) Rules, 1968.

4. The writ petitioner replied to the said chargesheet vide letter dated June 22, 1994 thereby denying the charges levelled against him. By the order dated July 19, 1994, Shri R.N. Chakraborty and Shri P.K. Dutta were appointed as Inquiry Officer and Presiding Officer respectively. The writ petitioner was informed by the Home (P & AR) Secretary vide letter dated 22nd August, 1994 that he was chargesheeted not for the contents of the book named "Secular Emperor Babur" but for violation of various conduct rules and in the said letter it was further stated that a Commissioner of Departmental Enquiries was appointed as Inquiring Authority; but his prayer for revocation of the order of suspension was rejected.

5. Subsequently, due to retirement of Shri R.N. Chakraborty, one Shri Prokhat Kumar Majhi was appointed as I.O. by virtue of the order dated January 2, 1996 and since Shri Majhi was elevated as a Judge of the Tribunal, Shri A.K. Goswami was finally appointed as I.O. by the order dated January 8, 1997.

6. The writ petitioner again made a representation on 10th June, 1996 for revocation of the suspension order, enclosing therewith a copy of the office memorandum dated September 14, 1978 by which time-limit was fixed as regards suspension of Govt. employee; but no action was taken.

7. Being aggrieved by the supersession by his juniors and the suspension order,

the writ petitioner in the past filed an application u/s 19 of the Act being O.A. No. 1108 of 1994 on 9th September, 1994 wherein the Tribunal observed that the State Government authorities were not considering the case of the petitioner for promotion to super-time scale and the same was liable to be quashed. By the said order, the State Government was directed to hold a review DPC/screening committee, within two months from the date of communication of the order in respect of the petitioner including the candidates who were originally considered for promotion and were within the zone of consideration as on 6th May, 1994.

8. It was further ordered that if the petitioner was recommended by such review screening committee/DPC for promotion, the Govt. respondents should act appropriately for promotion as per rules.

9. The petitioner also filed another application u/s 19 of the Act being O.A. No. 48 of 1997 against the adverse remarks communicated to the writ petitioner through the letter dated 21st November, 1996.

10. The respondents having failed to complete the disciplinary proceedings which started on 29th July, 1994, the writ petitioner again filed an application u/s 19 of the Act being O.A. No. 1321 of 1997 before the learned Tribunal on 24th November, 1997 and the said matter appeared on 23rd December, 1998 when the Tribunal directed the respondents to consider the representation of the writ petitioner within a specified time holding that no further time would be given to the respondents to file reply.

11. Ultimately, by order dated 8th December, 1999, the Tribunal disposed of the proceedings by directing the respondent No. 3, namely, the State-respondent to complete the departmental proceedings and submit its report to the competent authority within three months from the date of communication of that order. It was further ordered that the competent authority should pass final order after giving opportunity of hearing to the petitioner in accordance with the rules within one month from the date of receiving such report. It was further ordered that in default of compliance of the said order, the entire proceedings against the applicant should stand quashed and the application u/s 19 of the Act being O.A. No. 1321 of 1997 was disposed of with the previously mentioned observations.

12. In the meantime, the O.A. No. 48 of 1997 appeared for hearing on 10th December, 1999 and was disposed of by the Tribunal by the order dated 21st December, 1999 by directing the respondents not to take any cognizance of the annual confidential report for the years 1991, 1992 and 1993 in any of the proceedings against the writ petitioner.

13. Subsequently, two miscellaneous applications being M.A. No. 202 of 2000 (OA No. 48 of 1997) and M.A. No. 203 of 2000 (OA No. 1321 of 1997) were filed by the respondents but no copy of those applications was served upon the writ petitioner. The petitioner also filed a contempt application being C.P. (C) No. 37 of 2000 on 27th April, 2000, for violation of the order dated 8th December, 1999, and 23rd December, 1998 in O.A. No. 1321 of 1997.

14. Ultimately, the Inquiry Officer, the respondent No. 7, submitted his report on 11th January, 2000, which was received by the petitioner on 16th February, 2000. In the said Inquiry Report, the officer found the petitioner guilty of the charges levelled against the petitioner when the petitioner made a detailed representation on 25th February, 2000 against such finding.

15. Subsequently, the miscellaneous applications filed by the respondents without serving copies upon the petitioner were heard and disposed of by the learned Tribunal on 4th May, 2000 by passing an observation that Govt. of West Bengal was delaying the matter without assigning any valid reason for completion of the enquiry as ordered by the judgment dated 21st December, 1999 in O.A. No. 48 of 1997. The Tribunal further observed that the Govt. of West Bengal did not explain the reason why they could not complete the enquiry. However, for the interest of justice, one-month time was granted to the Govt. of West Bengal for compliance of the earlier order as required under the rules with specific direction that no further extension of time for compliance of the order would be granted. By the said order, the Govt. of West Bengal was directed to send all papers and records to the Union of India for compliance of the earlier order within one month from that date and thereafter, the order proceeded, the Union of India and Union Public Service Commission should take action within two months from the date of receipt of the papers from the Govt. of West Bengal. With the aforesaid observations, the miscellaneous applications were disposed of.

16. In view of the disposal of those miscellaneous applications, the contempt application filed by the writ petitioner was disposed of on the ground that time earlier fixed had already been extended by the Tribunal on 4th May, 2000.

17. Subsequently, the respondents filed a miscellaneous application being M.A. No. 234 of 2000 before the Tribunal seeking further extension of time and the petitioner filed opposition. At the same time, the writ petitioner also filed an application being M.A. No. 386 of 2000 before the Tribunal for recalling the order dated 8th June, 2000 passed by the Tribunal in contempt application arising out of O.A. No. 1321 of 1997.

18. However, without getting any extension of the time-limit fixed by the Tribunal, the respondent authority by order dated 22nd November, 2000 issued an order of dismissal of service on the basis of recommendation of the U.P.S.C. dated 13th October, 2000.

19. Being dissatisfied with the order of dismissal, the writ petitioner filed the last application before the Tribunal u/s 19 of the Act being O.A. No. 1394 of 2000 thereby challenging the order of dismissal.

20. In the said application, apart from challenging the order of dismissal on merit, a preliminary point was taken by the writ petitioner that the respondent authority having failed to conclude the enquiry within the time-limit fixed by the order dated 8th December, 1999 nor having concluded the enquiry within the

extended time vide order dated 4th May, 2000, the proceedings had stood quashed and as such, the order of dismissal was liable to be quashed on that ground alone.

21. The application was contested by the respondent authority by filing reply but there was no denial of the fact that at least, after the order dated 4th May, 2000 by which the Tribunal extended the time earlier fixed for completion of the enquiry within a specified period, no further extension was granted.

22. The Tribunal by the order impugned herein has overruled all the objections taken by the writ petitioner u/s 19 of the Act and consequently, dismissed the application.

23. Being dissatisfied, the writ petitioner has come up with the present application under Article 226/227 of the Constitution of India.

24. Mr. Mullick, the learned Advocate appearing on behalf of the petitioner before entering into the merit of the matter has taken a preliminary point as regards the jurisdiction of the respondent authority in concluding the enquiry without seeking further extension of time from the Tribunal and submitted that by order dated December 8, 1999 the Tribunal having specifically directed that in default of conclusion of the enquiry within the time fixed by the said order the proceeding would stand quashed, the respondents could not pass the order of dismissal thereby concluding the proceedings in the month of November, 2000, long after the period even extended by the subsequent order dated May 4, 2000.

25. Mr. Mullick further contends that even if it is assumed for the sake of argument that an ex parte extension of time by order dated 4th May, 2000 was binding upon his client, it appears that even the said order of extension was not honoured. Mr. Mullick, therefore, prays for quashing of the order of dismissal simply on the said preliminary ground.

26. Mr. Banerjee, the learned Advocate appearing on behalf of the Union of India vehemently contended before us that his client on 20th July, 2000, three days prior to the expiry of the time-limit fixed by the Tribunal prayed for further extension of time but such application was not disposed of before passing of the order of dismissal dated November 22, 2000 and as such, the proceedings never stood quashed. Mr. Banerjee submits that the said application was erroneously dismissed by the Tribunal on March 13, 2003 by holding that the said application had become infructuous as the final order had already been passed in the proceeding. At any rate, Mr. Banerjee contends that his client having already prayed for extension of time before its expiry, it should be presumed that his client had the authority to conclude the proceedings in the month of November, 2000.

27. Ms. Bhattacharya, the learned Advocate appearing on behalf of the State Government had adopted the submissions of Mr. Banerjee.

28. After hearing the learned Counsel for the parties and after going through the

materials on record we find that by the order dated 8th December, 1999, specific time-limit was fixed for concluding the enquiry and it was further ordered that in default of compliance of the time-limit fixed by the order, the departmental proceeding would stand quashed.

29. It is true that on the application of the respondents, the Tribunal by order dated 4th May, 2000 ex parte extended the time-limit by giving one month to the State-respondent and further two months to the Central Government and U.P.S.C. to conclude the proceedings.

30. It further appears from the record that the respondents were quite alive to the position that they were not in a position to conclude the proceedings and that is why, filed an application on July 20, 2000 for further extension of five months but no order was passed on such application before the passing of the order of dismissal dated November 22, 2000 and in spite of that, the respondents proceeded with the enquiry beyond the period fixed by the order dated 4th May, 2000.

31. We find that the Tribunal ultimately dismissed the application for extension of time filed by the respondent long thereafter on March 13, 2003 on the ground that the matter had become infructuous as already departmental proceedings had been concluded and the final order passed therein was the subject-matter of challenge in the present proceedings. The respondents did not challenge the said order of the Tribunal dated March, 13, 2003 and as such, the said order attained finality.

32. In such circumstances, we are of the opinion that Mr. Mullick is right in his contention that in view of the judicial order passed against the respondents fixing a time-limit for conclusion of the proceedings and undisputedly such time-limit not having extended, the respondents could not proceed further with the enquiry and conclude the same by passing an order of dismissal. We are unable to accept the contention of Mr. Banerjee that because his client filed an application for extension of time it should be presumed that the Tribunal impliedly granted such application though, in fact no such extension was given and the said application was subsequently dismissed in the year 2003. We have already noted that in the order dated 4th May, 2000, it was specifically stated that no further time would be extended in future.

33. The respondents have also not challenged the subsequent order dated March 13, 2003 by which the Tribunal dismissed the application for extension as infructuous. Therefore the said order was very much binding on the respondents.

34. It appears from the order impugned that the learned Tribunal in paragraphs 11 to 14 of the judgment found that the time-limit fixed by the orders dated December 8, 1999 and December 21, 1999 were extended by the order dated May 4, 2000 but totally overlooked that even the time-limit refixed by the order dated May 4, 2000 to conclude the departmental proceeding was not complied with.

35. On consideration of the entire materials on record, we, thus, find that the continuation of the departmental proceedings beyond 24th July, 2000 was without jurisdiction as the proceedings stood quashed by virtue of the conjoined effect of the orders dated December 8, 1999, December 21, 1999 and May 4, 2000.

36. We, accordingly, set aside the order of dismissal on the ground that the orders of the Tribunal dated 8th December, 1999, and 4th May, 2000, are binding upon the respondents and by virtue of those orders, the entire proceedings initiated against the petitioner stood quashed.

37. We, consequently, direct the respondents to reinstate the petitioner to the service with all service benefits maintaining his seniority, if by this time, he has not crossed the normal age of superannuation; during the period of suspension, the petitioner should get full salary less the subsistence allowance already paid during the period of suspension as the entire proceedings stood quashed by the order of the Tribunal. The respondents are directed to reinstate the petitioner within one month from today and to pay all arrears within that period.

38. If the petitioner, has in the meantime crossed the age of superannuation, the respondents will pay all his retiral dues including the benefit of pension within two months, as if, he, in usual course, retired from the service on attaining the age of superannuation.

39 In the facts and circumstances, there will be, however, no order as to costs. In view of our order on the preliminary point raised by Mr. Mullick, we have not gone into the merit of the allegations contained in the chargesheet.

Kishore Kumar Prasad, J.

40. I agree.