

(2018) 05 CAT CK 0039

In the Central Administrative Tribunal

Case No : Original Application No. 1091 Of 2016

Sita Ram

APPELLANT

Vs

Delhi Development Authority And Ors

RESPONDENT

Date of Decision : 23-05-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3

Citation : (2018) 05 CAT CK 0039

Hon'ble Judges : Jasmine Ahmed, J;K.N. Shrivastava Member (A)

Bench : Division Bench

Advocate : Bonny Mehra, Satya Siddiqui, Arun Birbal

Final Decision : Dismissed

Judgement

Mr. K.N. Shrivastava, Member (A)

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief:-

"1. To quash the order of compulsory retirement dt. 14.06.2013 passed against the Petitioner and to reinstate the petitioner on the post of Machine man grade-I or any other post available as per his qualification in the office of DDA, Printing Press, Vikas Bhawan Delhi. The respondents may further be directed to pay the arrears of and other benefits of the applicant from the date of his illegal retirement."

2. This case has a chequered history. Succinctly, the factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant was appointed as a Machine Man (MM) Grade-I on 11.09.1989 at Delhi Development Authority (DDA) Press. On 25.04.1994, the post of Section Holder (SH), MM Section, which is a higher post than MM Grade-I, fell vacant. As

per the Recruitment Regulations (RRs) then prevailing, the post of SH was required to be filled up by way of transfer. However, for providing promotional avenues to the persons working at DDA Press, it was decided to amend RRs. In the meanwhile, Mr. S C Garg, who was also working as MM Grade I and who had joined DDA Press much prior to the applicant, was given look after charge of the post.

2.2 The applicant submitted a representation to the Vice Chairman, DDA that he should be considered for the post of SH as a reserved category candidate. He, however, was informed vide memo dated 08.10.1996 that the RRs for the post in question were under process of amendment and only after the RRs are amended, his request for promotion against the said post could be examined as per law.

2.3 On 22.08.1997, the RRs were amended and the post of SH was made as a promotional post. A Departmental Promotion Committee (DPC) held on 27.02.1998 recommended Mr. S C Garg for promotion to the post of SH. The applicant was also considered by the DPC but he was found unfit on account of adverse entries in his past ACRs. The post being isolated one was a general category post and the person recommended for promotion, namely, Mr. S C Garg, was also much senior to the applicant.

2.4 The competent authority re-distributed the work at DDA Press vide order dated 28.04.1995. The applicant refused to receive the work re-distribution order and was sitting idle. As a result, he was issued advisory memos dated 08.05.1995, 06.07.1995 and 13.07.2005. Presumably, the applicant started behaving that away as he was not promoted to the post of SH.

2.5 With a view to change his work environment, the authorities concerned transferred him to the office of Commissioner and Secretary, DDA vide order dated 31.07.1995. He, however, continued to remain sitting idle at the new office without any new work, which resulted in issuing of another memo dated 12.08.1996 to him.

2.6 Finally, a charge sheet was issued to the applicant, which was followed by departmental enquiry (DE) proceedings. He was punished with the penalty of "stoppage of one increment without cumulative effect" vide Annexure-A order dated 28.01.1998.

2.7 The applicant filed a criminal complaint under Section 3 of SC/ST (Prevention of Atrocities) Act, 1989 against six officers of DDA, including Mr. S C Garg and other administrative superiors. The Additional Sessions Judge, Delhi, vide order dated 28.05.1996, felt that there was no substance in the complaint, and that the complainant (applicant) had filed the complaint to counter administrative and disciplinary action against him.

2.8 Another complaint under the SC/ST Act, 1989 was filed by one Shankar Lal against some officers of DDA, in which the applicant was cited as a witness. After recording the evidence, the Metropolitan Magistrate committed the case to the

Special Court for further proceedings. The DDA filed a Criminal Misc. Case (Main) No.605/2005 before the Hon'ble High Court of Delhi against the complaint filed by Mr. Shankar Lal. It is stated that the Hon'ble High Court recorded the statement of Shankar Lal saying that the complaint was filed only to wreck vengeance to nurse grievances against the DDA. He further stated that he withdrew the complaint against the DDA officials filed before the Chief Metropolitan Magistrate on 07.05.1997. Accordingly, the Hon'ble High Court disposed of the ibid petition on the ground that it had become infructuous in view of the statement of Mr. Shankar Lal.

2.9 On 09.07.1997, the applicant made a complaint to the Manager, DDA Press that a machine, which was under use of applicant, had developed some defects and was not in working order. He had alleged, in his complaint, that the machine was damaged by Mr. S C Garg at the instance of Deputy Secretary and Press Manager to malign the applicant. The DDA constituted a fact-finding committee to inquire into the matter. The committee, in its report, concluded that the applicant himself was responsible for causing damage to machine in question.

2.10 A memorandum of charges dated 12.02.1998 was issued against the applicant, following which he was subjected to DE proceedings. The disciplinary authority, on the basis of the findings of inquiry officer (IO), imposed the punishment of compulsory retirement on the applicant.

2.11 The applicant challenged the dismissal order before the Hon'ble High Court in W.P. (C) No.2677/1999. During the pendency of the said W.P., the DDA was brought on the jurisdiction of this Tribunal, and accordingly, the said W.P. was transferred to this Tribunal for adjudication and renumbered as T.A. No.69/2007. The Tribunal, vide its judgment dated 04.12.2007, set aside the order of compulsory retirement of the applicant and directed DDA to reinstate him. The DDA, however, challenged the ibid order of the Tribunal before Hon'ble High Court in W.P. (C) No.3305/2008, who, vide order dated 04.11.2008, modified the Tribunal's order and permitted the DDA to hold a fresh inquiry in the matter. In R.P. No.276/2009 in the said W.P. filed by the DDA, the Hon'ble High Court clarified that the applicant would be deemed to be under suspension from the date of his compulsory retirement and shall continue to remain so. Accordingly, the applicant was placed under deemed suspension vide order dated 01.07.2010 w.e.f. 17.11.1998. The applicant challenged the order of the Hon'ble High Court by filing SLP (CC) No.18594/2009, which was dismissed by the Hon'ble Supreme Court on 04.12.2009.

2.12 Pursuant to the order of the Hon'ble High Court, the DDA ordered fresh inquiry by issuing charge memorandum dated 08.07.2009. The applicant challenged the fresh inquiry before the Tribunal by filing O.A. No.2728/2010, which was dismissed by vide order dated 05.05.2011. Thereafter, he challenged the ibid order of the Tribunal before the Hon'ble High Court in W.P. (C) No.5454/2011, which was dismissed vide order dated 02.08.2011. In the meanwhile, fresh inquiry ordered against the applicant moved forward. The IO

submitted his report dated 25.11.2012 holding that the charges levelled against the applicant were proved. The disciplinary authority, vide order dated 26.03.2012, after accepting the IO's report, again imposed the penalty of compulsory retirement.

2.13 The applicant challenged the penalty order dated 26.03.2012 passed by the disciplinary authority before the Tribunal in O.A. No.655/2012. During the adjudication of the O.A., the Tribunal noticed that the statutory appeal of the applicant was still pending and accordingly disposed of the said O.A. vide order dated 16.01.2013 with a direction to the DDA to decide his statutory appeal within two months. The appellate authority dismissed the appeal vide order dated 14.06.2013.

2.14 The applicant had also approached the National Commission for SC/ST, who did not find any merit and accordingly, vide order dated 31.07.2015, rejected the case of the applicant and ordered closure of his petition.

Through the instant O.A., the applicant has challenged the order of the appellate authority dated 14.06.2013 re-confirming the penalty of compulsory retirement imposed on him by the disciplinary authority, with the relief mentioned in paragraph (1) above.

3. The applicant has not mentioned any substantial ground for invoking the judicial review against the punishment order. He has merely reiterated the sequence of events in the disciplinary proceedings against him.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply. They too have enumerated, in chronological order, the sequence of events, which ultimately led to the imposition of penalty of compulsory retirement on the applicant.

5. On completion of pleadings, the case was taken up for hearing the arguments on 08.05.2018. Arguments of Mr. Bonny Mehra, appeared as proxy for Ms. Satya Siddiqui, learned counsel for applicant and that of Mr. Arun Birbal, learned counsel for respondents were heard.

6. The main contention of learned proxy counsel for applicant was that the inquiry has not been completed within the prescribed period of 6 months and that the punishment inflicted is disproportionate to the offence committed and the applicant at least could be sanctioned pension.

7. Learned counsel for the respondents, on the other hand, stated that the delay in the accomplishment of DE proceedings is completely attributable to the applicant, as he was not cooperating. He also submitted that the applicant is not eligible for pension since he has not completed 10 years of regular service considering the fact that he joined DDA on 11. 09.1989 and stands terminated from DDA w.e.f. 17.11.1998.

8. Learned counsel for respondents has relied upon the judgment of Hon'ble

Supreme Court in *Chairman-cum-Managing Director, Coal India Limited & others v. Ananta Saha & others* (2011) 5 SCC 142, wherein it has been held as under:-

"46....Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the Service Rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry."

9. Learned counsel for respondents argued that the disciplinary authority has already determined the question of back wages and as such, no order with regard to back wages is required to be passed in the instant O.A.

10. We have considered the arguments of learned counsel for the parties and perused the pleadings.

11. It is trite law that the scope of judicial review in DE proceedings is highly limited. Judicial review is normally resorted to only in following circumstances:

(a) Principles of natural justice have not been followed in the conduct of DE proceedings,

(b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,

(c) The penalty orders have been passed in violation of relevant laws/rules; and

(d) The punishment inflicted is disproportionate to the offence committed.

12. The above principles have been enshrined in the following judgments of Hon'ble Supreme Court:

(i) *Union of India v. P. Gunasekaran*, (2015) 2 SCC 610

(ii) *Ranjit Thakur v. Union of India & others*, (1987) 4 SCC 611; and

(iii) *Kuldeep Singh v. Commissioner of Police & others*, JT 1998 (8) SC 603.

13. As regards the applicant's claim for sanctioning him the pension, the respondents have pointed out that as per the extant Rules of DDA, an employee is entitled to pension only on completion of 10 years of regular service and in view of the fact that the applicant joined DDA on 11.09.1989 and has been compulsory retired from service on 17.11.1998, he is not entitled for pension, as he has not completed the requisite qualifying years of service. Hence, we do not find any fault in the action of the DDA in not granting pension to the applicant.

14. In the conspectus, we do not find any merit in this O.A. Accordingly, it is dismissed. No order as to costs.