

(2011) 07 DEL CK 0478

In the Delhi High Court

Case No : Writ Petition (C) No. 4421 of 2000

S.K. Tyagi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 226, 227, 32

Citation : (2011) 181 DLT 521 : (2011) 4 ILR Delhi 439

Hon'ble Judges : Dipak Misra, C.J.;Sanjiv Khanna, J

Bench : Division Bench

Advocate : P.P. Khurana and Sunita Tiwari, for the Appellant; Ravinder Agarwal and Nitish Gupta for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—In this writ petition preferred under Articles 226 and 227 of the Constitution of India, the Petitioner has called in question the legal substantiality of the order dated 18.2.2000 passed by the Central Administrative Tribunal, Principal Bench (for short "the tribunal") in OA No. 1265/1995.

2. The Petitioner entered Indian Revenue Service (IRS) as a direct Class-I Officer in 1968. He was promoted as Inspecting Assistant Commissioner of Income Tax in 1979. A disciplinary proceeding was initiated against him and he was served with a charge sheet on 29.11.1988 for imposition of major penalty. A raid was also conducted by the CBI on 9.12.1988 at his office and the residential premises. The CBI did not think it appropriate to file the charge sheet and accordingly the seized documents were returned to him on 20.3.1992. As set forth in the petition in April 1988, the Departmental Promotion Committee (DPC) recommended his name for the post of Commissioner of Income Tax (CIT) but eventually he was not extended the benefit of promotion.

3. The disciplinary proceeding that was initiated vide charge memo dated 29.11.1988 continued. An additional charge memo was served on him on

26.7.1989. The Petitioner was found guilty in respect of the additional charge levelled against him and eventually the penalty of dismissal was imposed vide order dated 11.7.1994. Being dissatisfied with the order of penalty of dismissal, the Petitioner addressed a memorial dated 30.8.1994 to the President of India but there was no response to the same. The order of dismissal was assailed before the tribunal in the original application. It was contended before the tribunal that the Petitioner was not afforded adequate opportunity during the enquiry as a consequence of which the disciplinary proceeding is vitiated; that he was not allowed reasonable opportunity to examine the material defence witnesses; that the enquiry officer rejected the testimony of the defence witnesses in a most cryptic manner and further the enquiry officer did not consider the stand and stance put forth during his defence and, hence, the enquiry report did not deserve to be accepted; that the order passed by the disciplinary authority was based on conjectures and it was basically a case of no evidence; and that the expert evidence was accepted without following the due procedure of law.

4. The Respondents before the tribunal in support of the order of dismissal submitted that the charge had been properly proven and the findings recorded by the disciplinary authority do not suffer from any perversity of approach and the tribunal should not appreciate the material brought on record as an appellate authority. The tribunal referred to the charge sheet, the material brought on record and certain authorities in the field and analyzed the evidentiary value of the material and came to hold that there was no justification for interference in the order of punishment.

5. Mr. P.P. Khurana, learned senior counsel appearing for the Petitioner has submitted that the punishment has been imposed on the basis of the report given by the Union Public Service Commission (UPSC), the copy of which was not supplied to the Petitioner and, hence, the punishment is unsustainable in law. That apart, the authorities could not have pressed into service the report of the UPSC which is only a recommendatory one in view of the decision of the Apex Court in *State Bank of India and others Vs. D.C. Aggarwal and another*, It is his further submission that the allegation of interpolation has not been proven since the only witness in this regard is the expert witness who had not taken the admitted signatures or the writings of the Petitioner and, therefore, the opinion of the said expert does not deserve acceptance and, hence, the charge in entirety falls to the ground. Learned senior counsel would contend that the disciplinary authority had passed the order without considering the explanation / show cause submitted by the Petitioner in proper perspective and further the order being laconic is indefensible. It is urged that if the evidence of SW-1, SW-2 and SW3 are properly scrutinized nothing is reflected that the Petitioner had any role in the interpolation, as alleged in the charge sheet but the disciplinary authority has not taken pains to scrutinize the same and passed a very routine order. To buttress the said submission he has drawn inspiration from the decision in *Anil Kumar Vs. Presiding Officer and Others*, . It is the further submission of

learned senior counsel for the Petitioner that it is a case of no evidence and the findings are based on such material which cannot be conferred the status of evidence in law.

6. Mr. Ravinder Agarwal and Mr. Nitish Gupta, learned Counsel for Respondent Nos. 1 and 2 supporting the order passed by the tribunal contended that the same is absolutely impeccable and does not suffer from any infirmity since the charges levelled against him have been proven. It is urged by them that the nature of proof in a disciplinary proceeding and in a criminal trial are different and, therefore, the submission as regards the appreciation of evidence is totally sans substance.

7. To appreciate the submissions raised at the Bar, it is appropriate to mention that in the charge memo dated 29.11.1988 four articles of charge were mentioned. The first three articles of charges were held not proven and in respect of the fourth one a finding was returned that no malafides were established against him.

8. Be it noted, during the pendency of the first enquiry an additional charge memo dated 26.7.1989 containing one Article of charge was served on the Petitioner. It is as follows:

Major penalty proceedings were initiated against Shri S.K. Tyagi, D.C.I.T., now under suspension, by service of a Memorandum dated 29th November, 1988. Shri Tyagi was granted inspection of documents listed in the said charge sheet for enabling him to furnish his written statement of defence. On 14.2.1989 when Shri S.K. Tyagi was taking inspection of a folder marked "Angel Office File Super-de-Luxe" which was a part of assessment records for Asstt. Years 1981-82 and 1982-83 in the case of Kishore Kumar documents contained in the folder and inserted fresh document therein with an intention to get undue advantage in the disciplinary proceedings already instigated against him vide memorandum dated 29.11.1988. Thereby he failed to maintain absolute integrity and exhibited a conduct unbecoming of a Govt. Servant and accordingly he violated the provisions of rules 3(1)(i) & 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964.

9. At this stage, it is pertinent to refer to Article III of the original charge sheet as the additional charge memo pertains to it. The said Article of charge reads as follows:

Shri S.K. Tyagi while posted as Inspecting Assistant Commissioner of Income Tax, C-II, Range, Bombay during the year 1984-85, approved the assessment orders for the assessment years 1981-82 and 1982-83 in the case of Shri Kishor Kumar Bhimji Zaveri in an improper manner, ignoring the directions of the Commissioner of Income Tax directing full and proper investigation in this case and overlooking the material available on record. Shri Tyagi thereby failed to maintain absolute integrity and devotion to duty and exhibited a conduct, unbecoming of a Govt. servant. He, thus violated provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

10. After the said charge sheet was served on the Petitioner, an enquiry proceeding was initiated and the enquiry officer submitted the report dated 4.5.1992 holding that the charge leveled against him had been proved and on the basis of the said report the disciplinary authority vide order dated 11.7.1994 imposed the punishment of dismissal. At that stage the Petitioner preferred a petition before the Apex Court under Article 32 of the Constitution of India but the same was disposed of with the observation that the Petitioner may move the tribunal for redressal of his grievances.

11. To appreciate the submissions of learned Counsel for the Petitioner, it is essential to refer to the enquiry report. The enquiry officer has referred to the charge which dealt with the issue that the delinquent officer had tampered with the documents contained in the folder Ex.S.3(ii) and inserted fresh documents therein with an intention to get undue advantage in the disciplinary proceedings already instituted against him vide Memorandum dated 29.11.1988. The enquiry officer has taken note of the fact that on 14.2.1989 the Petitioner was allowed inspection of certain records in the office of SW-4. On a perusal of the enquiry report, it is demonstrable that the enquiry officer has referred to the evidence SW-1 to SW-4 and the insertion of the letters and in the enquiry report he has stated thus:

(III) From the depositions of witnesses it is seen that Shri S.D. Sabnis was produced and examined as SW-1 during the enquiry..

From the deposition of SW-1 it is seen that SW-1 has confirmed the contents of Ex.S.2 and has also clarified that numbering of pages of the files in Ex.S.2 was done by his staff and he had checked them before signing Ex.S.2.

(IV) From Ex.S.4 it is seen that the documents suspected to have been inserted by the CO i.e. the disputed documents were given to the Examiner of Questioned Documents (SW-2) for his "Expert Opinion".

It is also seen from Ex.S.4 read with the deposition of SW-2 (who prepared Ex.S.4) that SW-2 has given the following "expert opinions":

(a) The writers of the Standard encircled figures representing the page numbers 1 to 10 and the standard encircled figure in the page number "104" on the blank piece of paper of Ex.S.3(ii) have not written the disputed eight encircled figures in the page numbers 104 to 111 of Ex.S.3(ii).

It is seen that SW-2 has given 15 reasons for coming to the conclusion mentioned above.

(b) The CO has written the eight disputed encircled figures representing the page numbers 104 to 111 of Ex.S.3(ii).

It is seen that SW-2 has given 15 reasons for arriving at the conclusion mentioned above.

(c) The eight disputed statements of Account bearing hand written encircled

page numbers 104 to 111 are subsequently filed / inserted after a very long gap or interval of time after the filing of the documents bearing hand written encircled page numbers 1 to 103 and the blank paper showing hand written encircled page number "104? (having a long downward straight stroke going towards right edge of the said blank paper).

It is seen that SW-2 has given six reasons for arriving at the above conclusion.

In view of above, the allegation against the CO is held to be proved.

12. The learned senior counsel for the Petitioner has referred to the depositions of SW-1 to SW-3 but the enquiry officer has found them as self-contradictory on material points and, hence, not relied upon. He has held that the veracity of SW-4's letter dated 15.2.1989 to SW-5 in Ex.S.1 cannot be questioned on the basis of such statement which is self-contradictory. The enquiry officer has given adequate reasons to place reliance on the testimony of SW-4 and SW-5. He has also ascribed cogent reasons to discard the testimony of the defence witnesses as they were self-contradictory and further the testimony of one witness, namely, Kishore Kumar Bhimji Zaveri was totally inconsistent and contradictory. The disciplinary authority has taken note of the submissions of the Petitioner against the findings returned by the enquiry officer. The grounds that were raised before the disciplinary authority were that the enquiry proceedings were vitiated as the principles of natural justice had been violated; that the report was totally perverse as there had been no discussion of evidence; that the enquiry officer had not applied his mind to the charges leveled against the concerned officer; and that he had blindly relied on the expert evidence.

13. The principal ground that was raised in the explanation / show cause to the enquiry report before the disciplinary authority is as follows:

(ii) that he placed before the I.O. two reports of the private hand writing experts against the opinion of Sh. Gajjar, hand writing expert relied upon by the Department. As per the opinion of these two hand writing experts, the opinion of Shri Gajjar was based on grossly insufficient sample of disputed and standard writing and that the opinion was false and erroneous, but the I.O. totally ignored the opinion of these two experts.

14. The disciplinary authority has dealt with the same as follows:

(ii) It has been alleged by Shri Tyagi that the I.O. had not considered the admitted evidence in the form of two private hand writing experts opinion. From the enquiry records, it is evident that the I.O. admitted the opinion of the private hand-writing expert Mrs. R.K. Vij as exhibit D-2, while second opinion of Shri Mahesh Wagh was enclosed as Annexure "E" to C.O's brief submitted before the I.O.

(iv) It is alleged by the C.O. that the opinion of Shri Gajjar, departmental handwriting expert was wrong and based on insufficient sample and even this fact was accepted by Shri Gajjar in his cross-examination. A perusal of the

enquiry records show that Shri Gajjar was a witness as SW-II and a detailed examination was conducted. During examination, Shri Gajjar admitted that Sl. No. 1 to 103 could have been written by more than one person as against one person mentioned in his report but he was definite that the marking on the 8 pages from 104 to 111 was in the hand writing of the C.O.

15. The tribunal took note of the fact that there was no reason to discard the evidence of Mr. Gajjar, the handwriting expert and further Mr. R.K. Vij, the private handwriting expert, who was examined as a defence witness. Learned senior counsel for the Petitioner would submit that the enquiry officer did not allow the second hand writing expert Shri Wagh to adduce defence evidence and further his admitted signatures were not taken. The tribunal has analyzed the material on record to return a finding that there was no specific prayer to examine Mr. Wagh. A part of the letter that was written by the Petitioner seeking permission to examine Mr. Wagh, reads as follows:

I would also request you to permit either Mr. Mahesh Wagh if he is being permitted as a Defence Witness or Mrs. R.K. Vij B.A.L.L.B., Examiner of Questioned Documents, New Delhi (who has already been admitted as Defence Witness) to cross-examine the handwriting expert engaged by the Disciplinary Authority namely Shri H.T. Gajjar. This request is being made because neither I nor my Defence Assistant would be in a position to cross-examine a hand writing expert effectively.

16. Relying on the same, the tribunal has opined that no specific request was made. That apart, Mr. Wagh was also not included in the list of defence witnesses. Had he been examined as a defence witness, the department could have cross-examined him. Be that as it may, it cannot be regarded as a violation of principles of natural justice as the Petitioner had cross-examined Mr. Gajjar at length and Mr. Vij was permitted to be cited as a defence witness.

17. It is well settled in law that the tribunal does not sit in appeal on the findings recorded by an enquiry officer in a departmental proceeding but under certain circumstances a judicial review of fact is permissible.

18. In *H. B. Gandhi v. Gopi Nath and Sons* wherein it has been held as follows:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

Similar view has been reiterated by their Lordships in *B.C. Chaturvedi Vs. Union of India* and others,

19. In *Moni Shankar Vs. Union of India (UOI)* and Another, it has been held thus:

17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural

justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded there from. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. [See State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, and Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another,

18. We must also place on record that on certain, aspects even judicial review of fact is permissible. (E v. Secy. of State for the Home Deptt., 2004 QB 1044)

20. In State of U.P. and Another Vs. Johri Mal, it has been held as follows:

It is well settled that while exercising the power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact-finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision-maker's opinion on facts is final. But while examining and scrutinizing the decision-making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the court with special reference to a given case. This position is well settled in the Indian administrative law. Therefore, to a limited extent of scrutinizing the decision-making process, it is always open to the court to review the evaluation of facts by the decision-maker.

21. Similar principle has been reiterated in Noble Resources Ltd. Vs. State of Orissa and Another,

22. On a perusal of the report of the enquiry officer and the order passed by the disciplinary authority, it cannot be treated as perverse or unreasonable.

23. Though, the learned senior counsel for the Petitioner has raised with immense vehemence that principles of natural justice have been violated by not examining Mr. Wagh but, the same leaves us unimpressed as, we have indicated hereinbefore, that Mr. Gajjar, the handwriting expert was cross-examined at length by the defence and Mr. Vij, the private handwriting expert was permitted to be cited as a defence witness. Thus, it can be said with certitude that there has been substantial compliance of principles of natural justice. That apart, the tribunal has also ascribed cogent reasons that the Petitioner had really not sought permission to examine Mr. Wagh. In any case, no prejudice has been caused to the Petitioner.

24. The learned senior counsel would further submit that the report of the enquiry officer should be a reasoned one and to buttress the said submission he has commended us to the decision rendered in Anil Kumar (supra). In the said case the Apex court has held thus:

It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the Appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the Appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons.

25. On a studied scrutiny of the enquiry report, we are of the considered view that the ratio of the aforesaid decision is not applicable inasmuch as the enquiry officer at hand has given cogent and germane reasons and, in fact, scrutinized in detail the depositions of the witnesses and appreciated them. Thus, the said contention is without any substance and is hereby repelled.

26. In view of the aforesaid analysis, we do not perceive any merit in this writ petition and accordingly the same is dismissed without any order as to costs.