(2017) 01 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition (C) No. 3292 of 2012

Sri Upendra Nath Misra APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Central Civil Services (Classification, Conduct and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLR 357

Hon'ble Judges : Mr. Hrishikesh Roy and Mr. Nelson Sailo, JJ.

Bench : Division Bench

Advocate : Mr. H.K. Das, Advocate, for the Petitioner; Mr. S.P. Choudhury, Central Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.(Oral)—Heard Mr. H.K. Das, the learned counsel representing the petitioner. The respondents are represented by the learned Central Govt. lawyer Mr. S.P. Choudhury.

2. The matter pertains to a disciplinary proceeding for alleged misconduct of the respondent during his posting as Camp Officer in Arunachal Pradesh from December, 1996 to April, 1997. In the charge memo, drawn up on 17.1.2001 (Annexure-1), under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as ''the CCS Rules''), five charges were levelled and for the purpose of present discussion, it will suffice to extract the charges, under Article-I, IV and V, for ready reference:-

"Statement of Articles of charge framed against Shri U.N. Mishra, Superintending Surveyor, O.C. No.5 Party (NEC), Survey of India, Shillong.

ARTICLE-I

That the said Shri U.N. Mishra, Superintending Surveyor while posted as Deputy Superintending Surveyor, No.12 Party (NEC) was attached to No.29 Party (NEC) and appointed as Camp Officer of Camp No.1 during field season 1996-97.

While performing the duties of the Camp Officer in Arunachal Pradesh during the period December, 1996 to April, 1997, the said Shri U.N. Mishra with malafide intention prepared fictitious muster rolls of those porters who were not at all engaged and also prepared muster rolls for much longer period of those porters who were engaged for much shorter period and claimed false contingent bills on account of wages of these porters on various occasions during the period from 12-12-1996 to 09-04-1997. Thus the said Shri U.N. Mishra failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant and thereby violating Rule 3(1)(i) & (iii) of CCR (Conduct) Rules, 1964.

ARTICLE-II

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ARTICLE-III

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ARTICLE-IV

That the said Shri U.N. Mishra, Superintending Surveyor, O.C. No.5 Party (NEC), Survey of India, Shillong, while functioning as Camp Officer in the field Camp of No.29 Party (NEC) claimed in contingent bill bus fare paid to 37 porters from Tezu to Shillong on the close of the field, but the payment was made to 6 porters and no fare was paid at all to remaining 31 porters. Thus Shri U.N. Mishra failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant and thereby violating Rule 3(1)(i) & (iii) of CCR (Conduct) Rules, 1964.

ARTICLE-V

That the said Shri U.N. Mishra, Superintending Surveyor, O.C. No.5 Party (NEC), Survey of India, Shillong, while function as Camp Officer in the field Camp of No.29 Party (NEC) sold 246 Kgs of sugar in the open market at market rate for personal gain, whereas the sugar was purchased from Arunachal Pradesh Govt. Ration shop for distribution amongst camp personnel. Thus he failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant and thereby violating Rule 3(1)(i) & (iii) of CCR (Conduct) Rules, 1964".

3. The disciplinary authority proposed to prove the charge by placing reliance on the muster rolls for the concerned period submitted by the Camp Officer and the eight verifiers. The Superintending Surveyor who is higher in hierarchy above the delinquent and the Surveyor who is below him, were named amongst the list of witnesses to prove the charges.

4. In his written response given on 12.3.2001 (Annexure-2), the delinquent spoke about his inexperience as a new recruit and stated that he admitted to the Charge-I only because, he was assured by the Director, NEC that the entire matter will be closed, if the amount involved in the alleged irregular transaction

was made good. Similar advise was tendered by the Additional Surveyor General, East Zone and that is how the delinquent arranged for making good the alleged loss (Rs.79,126/-) to the organization. But in substance, all the charges were denied by the delinquent in his written response.

5. Dissatisfied with the reply, an Inquiry Officer was appointed by the disciplinary authority and before him, the delinquent specifically requested for a copy of the preliminary inquiry report and the statement of witness recorded during the preliminary inquiry, if they are to be considered in the regular departmental inquiry.

6. In order to prove the charge, six witnesses were presented together with some documentary evidence like the muster rolls and the acquaintance roll, etc.

7. The witness Ram Das Sao (SW.1), who was the Khalasi, P.K. Roy, Store keeper (SW.2) D.N. Dev, Plane Tabler Grade-II (SW.3) in their respective testimony, spoke about engagement of local porters since additional manpower was needed for the survey work, in the difficult terrain of Arunachal Pradesh. The Superintending Surveyor R.K. Meena (SW.4) in his deposition confirmed about the verification of the muster rolls and also wage payment to the porters, on the basis of such verification. As regards engagement of additional porters, the SW.4 as the boss of the delinquent stated that extra porters were allowed to be engaged, after inspection of the survey area on the assessment that the available porters will be inadequate to carry out the survey job. It was specifically stated by the Superintending Surveyor that the extra porters were engaged on his verbal order. The SW.4 also stated that he failed to obtain sanction of the Director for engagement of the additional porters and this was his own lapse as the Superintending Surveyor. He further testified that recruitment might have been done by the Assistant Camp Officer S.K. Sen and that the instructions for engagement of the additional porters were issued to both the Camp Officer and the Assistant Camp Officer. However in his deposition, S.K. Sen, the Assistant Camp Officer as the SW.5, while admitting the recruitment of the regular porters at Shillong, denied to have engaged the additional porters in the field. However this witness by virtue of his 19 years experience in survey work, felt that the difficult terrain in which the work was to be undertaken would require the assistance of additional porters. In the cross-examination, the SW.5 admitted that during his field visit he found the records of porters were correctly maintained at the work site. The witness J. Khanmujai, as a Plane Tabler Grade-II, gave evidence on how the porters were deployed in different kinds of duties and stated that wages were disbursed to the porters by the Assistant Camp Officer S.K. Sen, during his visit to the camp site.

8. During examination of the delinquent in the inquiry proceeding, he stated that the recruitment of the local porters were done mainly by the Assistant Camp Officer (S.K. Sen), as he was an experienced hand in the area. He further stated that the additional porters were engaged on the verbal approval of the Superintending Surveyor. It was also testified that the presence of the porters

were physically verified by the Assistant Camp Officer during his inspection at site and the cross verification of the muster rolls.

9. After purported consideration of the evidence on record, the Charge No. I, relating to preparation of fictitious muster rolls for the porters, was found to have been proved and the Charge No. V relating to sale of sugar in the open market were found to be partially proved. The other three charges were found to be not proved in the report given on 14.7.2003 (page-135), by the Inquiry Officer.

10. When the inquiry report was furnished to the delinquent, in his written response given on 10.11.2003 (Annexure-14) he contended that the concerned muster roll for the porters were prepared by the Plane Tablers, who were working in the Camp from 16.1.1997-28.2.1997 and although these Plane Tablers were co-accused under the same charges, they were exonerated. Thus the genuineness of the muster rolls is projected to be beyond question. It was further stated that the wages for the porters were paid on the basis of the acquaintance roll and although the concerned records of payment were available, the inquiry officer disregarded the vital evidence, to give a negative finding against the delinquent. Thus the bona fide of the finding in the inquiry is questioned on the ground that relevant evidence were ignored and finding was given by giving disproportionate weightage to the negative evidence of the Assistant Camp Officer S.K. Sen (SW.5), who denied to have made recruitment of the additional porters.

11. The disciplinary authority then considered the enquiry findings and under the impugned order of 16.05.2005 (Annexure-15) imposed the penalty of reduction of pay by 3 stages in the time scale of pay for a period of three years with further direction that during the period of such reduction, the charged officer will not earn increments and the penalty will not have the effect of postponing future increments of pay.

12. Aggrieved by the disciplinary action taken against him, the delinquent approached the Central Administrative Tribunal, Guwahati with prayer for quashing the disciplinary action. However, the learned Tribunal focused their scrutiny to the deposit of Rs.79,126/- made by the delinquent towards drawal of excess wages for hiring excess porters and on this basis the charges were found to have been correctly proved against the delinquent. Thus the Original Application No. 300/2005 was found to be without merit and the same was dismissed by the impugned Order dated 25.07.2008 (page 207).

13.1 Assailing the legality of the disciplinary proceeding and the verdict of the Tribunal, the learned counsel Mr. HK Das submits that the enquiry finding stands vitiated as relevant evidence was ignored and conclusions were arbitrarily drawn only on the basis of the evidence of the single witness, SK Sen, who denied to have made the recruitment of additional porters. But in the process, the relevant testimony of the Superintending Surveyor R.K. Meena (SW.4) on recruitment being made by the Assistant Camp Officer S.K. Sen with verbal approval of the boss (Mr. Meena) was ignored and thus he contends that a perverse finding was recorded against the delinquent.

13.2 Referring to documents such as acquaintance roll, muster rolls maintained by the verifiers, the petitioner''s counsel contends that these were vital and relevant documents but they were not taken into account by the enquiry officer, to render a perverse finding against the delinquent.

13.3 The petitioner''s counsel contends that the charge of maintenance of fictitious muster roll records in respect of the engaged porters cannot be held to be established on the criteria of preponderance of probability if the documentary and verbal evidence are taken into account and accordingly he argues that the delinquent is being victimized on the basis of unsubstantiated adverse finding, in the disciplinary enquiry.

14.1 On the other hand, Mr. SP Choudhury, the learned CGC submits that when the Assistant Camp Officer S.K. Sen (SW.5) has denied to have made the recruitment of any local porters, the finding in the enquiry stands supported by the evidence of the SW.4 and accordingly it is argued that the finding cannot be treated as unsubstantiated conclusion.

14.2 Referring to the limited scope of judicial review in disciplinary actions, Mr. Choudhury submits that unless perversity is writ large, interference is not called for and accordingly he argues that this is not a case where the Court should exercise its discretionary jurisdiction.

15. The scope of judicial review on departmental action may no doubt be limited but at the same time, it would be necessary to examine whether the principles of natural justice has been complied with by the disciplinary authority. The Court is also entitled to consider whether relevant evidence had been taken into account and that inference is drawn based upon such relevant evidence and whether the pre ponderance would justify the conclusion reached against a delinquent. [See: Mani Shankar v. Union of India reported in (2008)3 SCC 484]

16. In State of U.P. v. Shatrughan Lal and Another, reported in (1998) 6 SCC 651, the non-supply of the requested documents relating to the preliminary enquiry which were relied upon in the regular enquiry, was found to result in vitiation of the enquiry proceeding. In the same line in the present case, the Court is required to consider whether the non-supply of the records pertaining to the preliminary enquiry would vitiate the departmental proceeding. Both the Superintending Surveyor R.K. Meena (SW.4) and the Assistant Camp Officer S.K. Sen had deposed in the preliminary enquiry that the proceeding of this enquiry was very much relied upon in the regular departmental enquiry. A specific request was made by the delinquent for a copy of the preliminary enquiry report but the same was not furnished to him. Therefore, applying the ratio laid down in Shatrughan Lal (supra), the same itself is a ground for declaring the departmental proceeding to be vitiated in law.

17. Furthermore had the records of the preliminary enquiry containing the deposition of the Superintending Surveyor R.K. Meena and the Assistant Camp Officer S.K. Sen which was relied upon during the regular enquiry been available with the delinquent, he would have had the opportunity to effectively cross examine the same two witnesses who again participated in the regular enquiry. But since the request for the records of the preliminary enquiry was not acceded to, the denial of natural justice complained of by the delinquent, is found to have substance.

18. The vital evidence of the Superintending Surveyor R.K. Meena, who verbally approved the engagement the additional porters after assessing the requirement of additional man power on account of the difficult terrain was wholly ignored to render the adverse finding against the delinquent only on the basis of the solitary testimony of the Assistant Camp Officer S.K. Sen (SW.5), who denied to have recruited local porters. But the testimony of this witness materially contradicts the testimony of the Superintending Surveyor R.K. Meena (SW.4). Yet the contradiction in the evidence was never resolved and an adverse finding was recorded by giving one sided weightage to the testimony of SW.5. This according to us has resulted to a perverse finding for non-consideration of the relevant evidence and non-reconciliation of the contradictory evidence adduced in the departmental enquiry.

19. It cannot also be overlooked that the delinquent was a recent recruit and was on probation during the concerned period of 5 (five) months, when he was deployed for the survey work in Lohit district of Arunachal Pradesh. He explained the circumstance under which he arranged for refund of Rs. 79,126/-alleged to have been misappropriated through maintenance of incorrect muster roll records. But the possibility of an inexperienced employee being forced to make good the loss at the nascent stage of his career on being prompted by the seniors in the organization, was totally ignored. Instead this act of refund of the amount was found to be an act of admission of guilt by the delinquent. In a disciplinary proceeding, it is the obligation of the authorities to prove the guilt by presenting cogent evidence on the principle of preponderance of probability and in the absence of any evidence to show that the delinquent had manipulated the muster rolls, an adverse finding cannot be given against the Charge No. I on the basis of inference drawn on account of the deposit of the money by the delinquent. If the acquaintance roll and the muster roll (Exhibit-52) maintained by the 8 (eight) verifiers reflect that extra labours were engaged as was corroborated by the oral evidence of the witnesses, it is not logical to conclude that the delinquent had produced fictitious records to show payment of wages to non-existence porters. In fact no reasonable evidence is seen here to connect the delinquent with the allegation under Charge No. I.

20. In so far as the Charge No. V which is partially proved, the material clearly shows that there is no evidence to show that sugar was sold in the open market at a higher rate by the delinquent. But what was held to be proved was that the

delinquent had failed to exercise sufficient control over the sale, by the Khalasi. But want of supervision was not the charge levelled against the delinquent in the Memo dated 17.01.2001 and therefore, the finding that the Charge No. V is proved is an irrelevant conclusion which has no relevance to the charge and is thus misconceived.

21. As regard the Order of the Tribunal, challenged in this proceeding, what is noticed is that the Tribunal failed to examine the case on merit and took a shortcut. The learned Tribunal was prompted to reach a quick conclusion on account of the deposit of the excess wages/reimbursement by the petitioner for hiring excess porters. There was no examination and appreciation of the evidences led against the charges or whether finding in the disciplinary enquiry was based on cogent and relevant evidence. Therefore in our assessment, the learned Tribunal as noted earlier has failed to examine the merit of the challenge in accordance with the legal duty and therefore we declare that the impugned order dated 25.07.2008 in the Original Application No. 300/2005, is unsustainable and the same is quashed.

22. In view of the above discussion and having noted the infirmities in the disciplinary proceeding, we declare the same to have been vitiated in law and accordingly we quash the disciplinary action taken against the delinquent in pursuant to the Charge Memo dated 17.01.2001 (Annexure-I). Thus, the petition stands allowed with this declaration by leaving the parties to bear their respective costs.