

(2016) 02 MAD CK 0103
In the Madras High Court
Case No : W.P. No. 22638 of 2006

The Union of India and Others

APPELLANT

Vs

B. Saroja and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2016) 02 MAD CK 0103

Hon'ble Judges : R. Sudhakar and S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : B. Ramaratnam, SGSC, for the Appellant; V. Parthiban for Aiyar & Iyer, for the Respondent

Final Decision : Dismissed

Judgement

S. Vaidyanathan, J.—1. We have heard Mr. B. Ramaratnam, learned Standing counsel appearing for the petitioners/Defence Production & Supply Board and Mr. V. Parthiban, learned counsel appearing for Smt. B. Saroja/1st respondent, Wife of Late Shri. B. Bojan, deceased employee of Cordite Factory, Aruvankadu, Nilgiris.

2. This Writ Petition is filed seeking to quash the order dated 18.04.2006 made in O.A. No. 505 of 2005 on the file of the 2nd respondent-Central Administrative Tribunal, wherein, the 1st respondent/wife of the deceased employee, had challenged the impugned order of the 1st petitioner-Union of India, dated 03.03.2005 arising out of an order of the Appellate Authority/2nd petitioner, dated 10.06.2003, dismissing the appeal filed by the deceased employee viz., B. Bojan and the order of the 3rd petitioner, dated 23.09.2002, imposing penalty of compulsory retirement.

3. The facts of the case are that the first respondent's husband viz., B. Bojan was working as a Chemical Process Worker in Cordite Factory, Aruvankadu. By an order dated 02.08.2002, the 3rd petitioner, in exercise of powers conferred by

Sub Rule 1 of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called as CCS, CCA Rules, 1965), placed him under suspension with effect from 02.08.2002; thereafter, a charge memo was issued to him proposing to hold an inquiry under Rule 14 of the Rules for the misconduct in respect of the charge that while on duty time at Office, the said Shri. Bojan was found to be committing the offence of drunkenness. The deceased employee, by a reply dated 14.09.2002, submitted that he would accept all the charges against him and by stating his family circumstances, he tendered apology and requested the Officials to take a sympathetic view. He also forwarded another reply to the 3rd petitioner seeking to revoke his suspension, stating that he was forced to take drinks by his friends. However, the 1st petitioner, passed an order dated 23.09.2002, pointing out that as the delinquent committed acts of "Gross Misconduct", (i) being under the influence of alcohol; (ii) persistent in drunkenness while on duty, and he also admitted the charges, by taking a lenient view, he was imposed with the punishment of penalty of Compulsory Retirement from service w.e.f. 23.09.2002 (AN). As against the said order, the deceased employee/B. Bojan filed a Statutory Appeal on 23.10.2002 stating that pending inquiry and in the absence of corroborative evidence, imposition of punishment of compulsory retirement is arbitrary.

4. While the facts stood thus, the Appellate Authority/the 2nd petitioner, dismissed the said appeal filed by the deceased employee and as against the same, the deceased employee filed a Revision before the 1st petitioner. At that point of time, the 1st respondent,/Smt. B. Saroja, filed Diary No. 4204 of 2004 in O.A. No. 1156 of 2004 before the Central Administrative Tribunal/2nd respondent herein, stating that her husband/B. Bojan died on 20.09.2003 leaving behind her and her two daughters as legal heirs and sought to set aside the impugned order and prayed for a direction to pay backwages with all consequential benefits and to regulate pension. The said application was ordered. Thereafter, the 1st petitioner passed an order rejecting the revision filed by the delinquent. Subsequently, the Original Application was numbered as O.A. No. 505 of 2005.

5. The 2nd respondent/Central Administrative Tribunal, on considering the rival submissions before it, gave a finding that when the employee had asked for the inquiry report, failure to supply a copy of the same would tantamount to denial of reasonable opportunity and breach of natural justice. It was also pointed out that the orders of penalty, appeal and revision have been passed in a mechanical manner. Thus, the said Original Application was disposed of on the following terms:-

"16. The respondents are directed to treat the period of suspension from 02.08.2002 to the date of removal i.e. 23.09.2002 as duty. The orders of this Tribunal quashing the above impugned orders will have the effect of restoring Sri. B. Bojan (late) to service with all consequential benefits w.e.f. that date to till date of his death.

17. The respondents will determine the terminal benefits of late Shri. B. Bojan in

terms of the above directions and disburse the same to the legal heirs in terms of the applicable rules/procedures.

18. The above exercise shall be carried out within a period of 8 weeks from the date of receipt of copy of the order."

Against the above order of the 2nd respondent/Central Administrative Tribunal, this Writ Petition is filed.

6. It is the contention of the learned Standing Counsel appearing for the petitioners that since the delinquent himself had admitted his guilt, taking note of his family circumstances, a lenient view has been taken by the Officials for the misconduct committed by him and as such, the imposition of penalty of compulsory retirement from service will, in no way affect the delinquent's family.

7. In reply to the said submission, learned counsel appearing for 1st respondent/ wife of the delinquent, submitted that in view of lack of observance of the basic principles of natural justice, the impugned order of imposition of penalty viz., compulsory retirement, passed by the 2nd petitioner is vitiated.

8. We have considered the rival submissions and perused the charge memorandum, appeal, revision as well as the order of the Central Administrative Tribunal.

9. In the case of Managing Director (ECIL), Hyderabad v. B. Karunakar (, JT 1993 (6) SC 1), a Constitution Bench of the Hon"ble Supreme Court has held that wherever the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority, the delinquent employee will have the right to receive the enquiry officer's report, notwithstanding the nature of the punishment. Applying the above said principles of the Apex Court to the facts and circumstances of this case and also referring to Part VI Procedure for imposing Penalties of the CCS (CCA) Rules, this Court is of the view that imputation of charges have to be proved in an enquiry; explanation on the Enquiry Report should be called for and only thereafter, a final decision has to be taken. For better understanding, Rule 14(2) of CCS (CCA) Rules, is extracted hereunder:

"Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government Servant, it may itself inquire into, or appoint under this Rule or under the provisions of the Public Servants (Inquiries) Act, 1850m as the case may be, an authority to inquire into the truth itself."

10. By the Constitution (15th Amendment) Act of 1963, the scope of "reasonable opportunity" was explained. The provisions of Article 311(2) were further amended by the Constitution (42nd Amendment) Act, 1976. Ultimately the Supreme Court held that even according to the decision rendered in Mohammed Ramzan's case as approved by the Constitution Bench in B. Karunakar's case, denial of the Enquiry Officer's report would amount to denial of equal

opportunity to the employee within the meaning of Article 311(2) of the Constitution and breach of principles of natural justice.

11. Apart from the above, this Court in the case of S.K. Raman v. The Management of Kundah Rural Cooperative Agricultural Society Ltd., rep. by its Special Officer and another [, 1987 (1) LLJ 487], which arises out of Tamil Nadu Shops and Establishment Act, 1947, held that termination of service of an employee on the charge of "misconduct", since the employee had admitted the charge in the interview and gave a statement to that effect, is violative of the mandatory requirement of an enquiry. This court further held as under:-

"A mere interview where a self incriminating statement was taken from an employee is not a substitute for an enquiry into the charge of misconduct where evidence should be recorded. To hold so, would be making a mockery of the statutory requirement that the services of an employee cannot be dispensed with on a charge of misconduct. Holding of an enquiry into those charges is a mandatory requirement of the Tamil Nadu Shops and Establishment Act. When a statute requires that a particular thing should be done in a particular manner it impliedly prohibits the doing of the same in any other manner. When the charges levelled against an employee are elaborate, they must be substantiated by evidence to be recorded at any enquiry."

12. From the above narrated facts and the decisions of this Court as also Hon"ble Supreme Court, we are of the opinion that the Tribunal has properly followed the judgment of the Supreme Court referred to above and passed the order dated 18.04.2006, quashing the impugned order. We find that the reasons given by the Central Administrative Tribunal are germane and moreover, the impugned order is in consonance with the CCS (CCA) Rules. Thus, the order of the Tribunal requires no interference and accordingly, the same is confirmed. Petitioners/ Defence Production & Supply Board are directed to comply with the order dated 18.04.2006 of the Central Administrative Tribunal, in letter and spirit, making it clear that the arrears shall be paid to the 1st respondent herein within two months from the date of receipt of a copy of this order.

In the result, this Writ Petition is dismissed. No costs.