
(2015) 02 GAU CK 0029
In the Gauhati High Court
Case No : Writ Petition (C) No. 65 of 2013

UDC Ganesh Thakur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) LabIC 1722

Hon'ble Judges : M.R. Pathak, J

Bench : Single Bench

Advocate : C. Lalramzauva, Senior Advocate, A.R. Malhotra, K. Laldinliana, Johny L. Tochhawng and Lalramsanzuali, for the Appellant; A.H. Barbhuiya, CGC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

M.R. Pathak, J.—Heard Mr. A.R. Malhotra, learned counsel with Mr. Johny L. Tochhawng, learned counsel appearing for the petitioner. Also heard Mr. A.H. Barbhuiya, learned CGC appearing for the respondents. The petitioner while serving as an Upper Division Clerk under the Chief Engineer, Project Pushpak, C/O. 99 APO, the respondent No. 3, on the basis of an adverse finding against him in a Court of Inquiry held under the provisions of the Army Act and Rules, with regard to his involvement in irregularities with regard to the payment of ACRs and PA/Imprest Account in respect of 510 SS and TC/36 BRTF (P) Pushpak, which caused a loss of Rs. 5,51,000/- by way of paying less amount to various employees of 510 SS and TC/36 BRTF than the amount actually debited to their respective IRLA accounts.

2. For the aforesaid reasons, the respondent No. 3 vide order No. 16603/36 TF/GT/69/E1E dated 28.02 2009 initiated a disciplinary proceeding against the petitioner and following the provisions of Rule 10(1) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, [CCS (CCA) Rules, in short] placed him under suspension.

3. That for his aforesaid misconduct or misbehaviour the respondent No. 3 vide Memorandum No. 16603/36 TF/GT/95/C of I dated 13.03.2009 initiated a departmental enquiry against the petitioner with 5(five) Articles of Charges against him. The said Memorandum along with the Articles of Charges, imputations of his misconduct/misbehaviour, list of documents and list of witnesses were duly serve upon him. The petitioner filed his written statement of defence denying all the charges framed against him.

4. After the completion of the departmental enquiry against the petitioner, the Inquiry Officer vide communication No. 2243/SCL/THU/Pers dated 19.04.2012 submitted his inquiry report on 19.04.2012, wherein all the 5 (five) Articles of Charges against the petitioner were proved. On the basis of said inquiry report dated 19.04.2012, the respondent No. 3, the disciplinary authority vide his communication dated 02.05.2012 to the Central Vigilance Commission, opined that major penalty under Rule 14 of the CCS (CCA) Rules 1965 be imposed on the charged officer, i.e. the petitioner herein and sought for necessary advice from the said commission. The Central Vigilance Commission vide Office Memorandum dated 11-09-2012 agreed with the decision of the disciplinary authority with regard to imposition of major penalty upon the petitioner.

5. Accordingly, the respondent No. 3, the disciplinary authority vide his order No. 16603/36 TF/GT/117/E1E dated 02.11.2012 imposed major penalty against the petitioner under Rule 11(viii) and Rule 15(4) of the CCS (CCA) Rules, 1965 ordering his removal from the Government service in Border Road Organisation with effect from the date of issuance of said the order.

6. Being aggrieved with the order of his removal from Government Service by the Disciplinary Authority vide order dated 01.11.2012, the petitioner on 05.11.2012 preferred an appeal before the respondent No. 2, the Director General of Border Roads Seema Sadak Bhawan, New Delhi. The respondent No. 2 vide order No. 17008/1263/DGBR/300/E1E dated 22.03.2013 dismissed the said appeal of the petitioner and confirmed the penalty of his removal from service. Hence, this writ petition.

7. The respondents have submitted their affidavit in the matter.

8. Though in the present petition, the petitioner has taken various grounds for setting aside the imposition of major penalty order dated 02.11.2012 against him as well as the appellate order dated 22.03.2013 by which his appeal was rejected, but during the course of hearing of the matter, Mr. A.R. Malhotra, learned counsel appearing for the petitioner has submitted that the impugned appellate order dated 22.03.2013 passed by the Director General, Border Roads Organisation dismissing the appeal preferred by the petitioner and confirming the major penalty of removal from service imposed upon him by the respondent No. 3 i.e. the Chief Engineer, Project Pushpak, C/O 99 APO is bad in law as the said appellate order dated 22.03.2013 is not in conformity with the Rule 27(2) of the CCS (CCA) Rules, 1965.

9. Rule 11 of the CCS (CCA) Rules prescribes the penalties, including major penalty of removal from service. Rule 27(2) of the CCS (CCA) Rules provides for Consideration of Appeal which reads as follows:

"27(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes impose is one of the penalties specified in clauses (v)(ix) of Rule 11 and enquiry under Rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty,

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

10. Learned counsel for the petitioner has brought to the notice of this Court with regard to the aforesaid appellate order dated 22.03.2013 passed by the respondent No. 2 i.e. the appellate authority, which is annexed to the present

petition and it shows that the appellate authority in the impugned order dated 22.03.2013 except narrating the previous facts, did not assign any reason for his conclusion mentioned in his said order dated 22.03.2013 and the reasons for confirming the penalty of "removal from service" imposed upon the petitioner. Evidently, the appellate authority by the impugned order dated 22.03.2001 did not give any reasons as required under Rule 27(2) of the CCS (CCA) Rules, 1965, while disposing of the petitioner's appeal dated 05.11.2012.

However, Mr. A.H. Barbhuiya, learned CGC appearing for the respondents submitted that the respondent No. 2 has duly considered the appeal of the petitioner and passed the impugned order dated 22.03.2001.

11. The Hon"ble Supreme Court in the case of Director (Marketing) Indian Oil Corpn. Ltd. and Another Vs. Santosh Kumar, (2006) 3 CTC 669 : (2006) 110 FLR 568 : (2006) 7 JT 31 : (2006) 2 LLJ 1043 : (2006) 6 SCALE 358 : (2006) 11 SCC 147 : (2007) 1 SCC(L&S) 388 : (2006) 2 SCR 880 Supp : (2007) 1 SLJ 46 has held that if the order passed by the appellate authority reveals non-application of mind then there is no other option except to set aside the order passed by the appellate authority and remit the matter for fresh disposal to the appellate authority.

12. The Apex Court in the case of Chairman, LIC of India and Others Vs. A. Masilamani, (2013) 136 FLR 81 : (2013) LLR 301 : (2012) 11 SCALE 413 : (2013) 6 SCC 530 : (2013) 2 SCT 283 has held that the word "considered" with regard to the consideration of appeal by postulate consideration of all relevant aspect of the matter that there must be an active application of mind and the formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record and the order of the appellate authority itself should reveal such application of mind and that the appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order.

13. From the impugned appellate order dated 22.03.2013 passed by the respondent No. 2, it is seen that the appellate authority narrated the facts of the case from paragraphs 1 to 17 in the order and at paragraph 18 of the said order, the appellate authority came to the conclusion, without application of his mind, without assigning any reasons as required under the CCS (CCA) Rules, 1965 and as settled by the Hon"ble Apex Court in its catena of decisions and at paragraph 19 of the said order, the appellate authority, exercised his power under Rule 27 of the said 1965 Rules and confirmed the penalty of "removal from service" imposed upon the petitioner by the disciplinary authority i.e. the respondent No. 3 vide its order dated 02.11.2012.

14. For the aforesaid reasons, the Court is of the view that the impugned order No. 17008/1263/DGBR/300/E1E dated 22.03.2013 passed by the respondent No. 2, i.e. the appellate authority lacks total non-application of mind and therefore cannot sustain in the eye of law and accordingly set aside and quashed.

15. The matter is remanded back to the concerned appellate authority enabling it to take a fresh decision taking into consideration of the gravity of the charges involved in the case as to whether it may still be required to hold a de novo inquiry from the stage that it stood vitiated such that after issuance of the charge-sheet since the petitioner's claim in the appeal was that the disciplinary authority did not allow him to have the defence assistant of his choice to participate in the proceeding as requested, who already defended the petitioner during the inquiry conducted by a the previous inquiry officer; directed for fresh appointment of defence assistant, though according to the petitioner the CCS (CCA) Rules, 1965 does not permit for change of defence assistant and completing the inquiry without allowing the petitioner to have his choice of defence assistant.

16. The petitioner shall submit the certified true copy of this order before the respondent No. 2, namely, the Director General, Border Roads Organization, Seema Sadak Bhawan, Ring Road, Delhi Cantt., New Delhi-110010 and the respondent No. 3, namely, the Chief Engineer, Project Pushpak, C/O. 99 APO, PIN-931711 on or before 31.03.2015 and in that event, the said respondents, more particularly, the respondent No. 2 shall consider the appeal preferred by the petitioner on 05.11.2012, a fresh and shall dispose of the same within 90 days thereafter i.e. on or before 30.06.2015, in accordance with law. The said respondents shall also communicate the petitioner about the outcome of his said appeal dated 05.11.2012. With the above observation and direction, this writ petition stands disposed of. No order as to cost.