

(2012) 04 DEL CK 0430
In the Delhi High Court
Case No : Writ Petition (C) 2163 of 2012

Union of India and Ors

APPELLANT

Vs

Mahender Singh

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(20), 15, 16, 17

Citation : (2012) 04 DEL CK 0430

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rajinder Nischal, for the Appellant;

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J

CM 4665/2012 (exemption)

Allowed subject to all just exceptions.

WP(C) 2163/2012 & CM 4664/2012

1. This writ petition is directed against the order dated 05.08.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 951/2010, whereby the respondent's said Original Application has been allowed. The respondent was aggrieved by the order passed by the disciplinary authority on 08.04.2008, whereby he was awarded the punishment of dismissal from service. The appellate authority had also confirmed this by its order dated 30.06.2009. The respondent's revision petition was also rejected by the revisional authority on 20.10.2009.

2. The articles of charge against the respondent were - first of all, that he abstained from duty with effect from 19.04.2007 till the date of filing of the charge-sheet and secondly, that, in any event, he was a habitual absentee.

Consequently, inquiry proceedings were initiated under Rule 14 of the CCS (CCA) Rules, 1965. The respondent, after having received the charge-sheet, did not file any written defence. He, also, did not join duty despite repeated requests on the part of the petitioner. Faced with this situation, the disciplinary authority passed the order dated 08.04.2008, whereby he directed that the respondent be dismissed from service.

3. The grievance of the respondent before the Tribunal was that in the event a delinquent employee does not appear or does not file his written defence, the ex parte procedure prescribed under Rule 14 (20) of the CCS (CCA) Rules, 1965 (hereinafter referred to as "the said rules") ought to have been followed. The said sub-rule reads as under:-

If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this rule, the Inquiring Authority may hold the inquiry ex parte.

The Government of India also issued certain instructions with regard to holding of ex parte inquiries in such circumstances and the said instructions were also referred to by the Tribunal. After considering the said sub-rule (20) and the government instructions, the Tribunal arrived at the conclusion that the dismissal order dated 08.04.2008 and the subsequent orders of the appellate authority and the revisional authority were contrary to law inasmuch as the specific procedure for proceeding ex parte against a delinquent employee, as prescribed under sub-rule (20), had not been followed.

4. Before the Tribunal, as also before us, the learned counsel for the petitioner sought to take refuge under Rule 19 of the said Rules and in particular clause (ii) thereof. The same reads as under:

19. Special procedure in certain cases Notwithstanding anything contained in Rule 14 to Rule 18 -

(i) xxxx xxxx xxxx xxxx

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) xxxx xxxx xxxx xxxx

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

5. However, we feel that the Tribunal had rightly concluded that Rule 19(ii) of the said Rules was not at all applicable. This is so because of two reasons. First of all, Rule 19 (ii) would apply to a situation prior to the holding of an inquiry. In the present case, the inquiry had already been initiated and was dropped by the disciplinary authority midway, when the respondent did not submit his defence. Secondly, before Rule 19 (ii) can be said to be applicable, the disciplinary authority must be satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the said rules. It is an admitted position that no such satisfaction has been recorded by the disciplinary authority in writing and, therefore, Rule 19(ii) cannot be pressed into service by the petitioner. Consequently, we are in complete agreement with the conclusion arrived at by the Tribunal in quashing and setting aside the impugned orders dated 08.04.2008, 30.06.2009 and 20.10.2009. The Tribunal has appropriately directed that the respondent shall be permitted to rejoin duty, if he so desires, but without any back wages. Liberty was also given to the disciplinary authority to hold a fresh inquiry against the respondent strictly in accordance with the relevant provisions of the said Rules. It has also been indicated that since the respondent was already in possession of the memorandum dated 04.10.2007 proposing to hold the inquiry under Rule 14 of the said Rules, the inquiry may proceed from that stage and the respondent was also directed to cooperate with the inquiry fully so that the proceedings can be completed without further delay. No interference in these directions is called for. The writ petition is dismissed. There shall be no order as to costs.