

(2015) 09 AHC CK 0203

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24014 of 2015

Union of India and Others

APPELLANT

Vs

Ajai Kumar Arora and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2015) 8 ADJ 621 : (2016) 1 AWC 217 : (2016) 1 UPLBEC 243

Hon'ble Judges : Arun Tandon and Shashi Kant, JJ.

Bench : Division Bench

Advocate : B.K. Singh Raghuvarshi, for the Appellant; Shambhu Chopra, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition is directed against the judgment and order of the Central Administrative Tribunal, Delhi passed in Original Application No. 1343 of 2012 dated 15.10.2014. Facts in short leading to the writ petition are as follows:

Ajai Kumar Arora, respondent No. 1 to the writ petition was employed as Superintendent, Custom and Central Excise at Inland Container Depot (ICD), Moradabad. He was proceeded with departmentally for various acts and omissions, which according the department amounted to misconduct by issuance of a charge-sheet dated 29.8.2005. Assistant Commissioner, who conducted the departmental enquiry after following the procedure prescribed in the matter of conduct of such enquiry, submitted his enquiry report to the Disciplinary Authority on 16.6.2009. Four charges were levelled against the petitioner and in respect of charges No. 1, 3 and 4, the Enquiry Officer found that the charges have not been brought home but so far as charge No. 2 is concerned, the finding returned by the Enquiry Officer reads as follows:

"Second Charge (para 2 of Annexure-II) is that Shri A.K. Arora, Superintendent had in an unauthorized manner allowed the factory stuffing in respect of the

questioned Shipping bills because as per Public Notice No. 15/95 dt. 15.11.95 as well as Exim Policy 1997-2002, the factory stuffing was not permissible in the said case.

As per Public Notice No. 15/95 dated 15.11.95, the stuffing is to be allowed in the factory of production or in a Customs area. Further, in the said Public Notice, it has been clarified as to the types of cases which merit permissions for Factory Stuffing. However, the fact remains that in this case, the said power has been exercised by Shri A.K. Arora, Superintendent beyond his authority.

Public Notice No. 15/95 dated 15.11.95 does not specify that Assistant/Deputy Commissioner is empowered to allow said factory stuffing as the said Public Notice specifies only type of cases which shall merit for permitting factory stuffing. However, there is precedence that factory stuffing permission is being allowed by the Deputy/Assistant Commissioner and Shri A.K. Arora, Superintendent in his submission dt. 18.10.10 has submitted copies factory stuffing permission granted by the Assistant Commissioner in respect of other units. He has insisted that the factory stuffing permission in this case was also given by the Assistant Commissioner although no copy of such permission could be furnished by him. However, the facts remain that Shri A.K. Arora, Superintendent had overlooked as to how a factory engaged in the manufacture of chemical products, can do manufacturing of garments 85 watches in the same premises and thereby gave orders for factory stuffing. Thus there is lapse on the part of the charged officer."

2. It may be noticed that the Enquiry Officer specifically pointed that there has been a lapse of the post of the charged officer and that he had exceeded his authority in permitting the stuffing. The Enquiry Officer also took note of the fact that the petitioner had contended that the orders for such stuffing were issued by the Assistant Commissioner but in fact, he failed to produce any document in support thereof.

3. The enquiry report was forwarded by the disciplinary authority to the petitioner for his comments and similarly a copy of the enquiry report alongwith the comments of the disciplinary authority were also forwarded to the Director General of Vigilance for his comments. The Director General of Vigilance vide the order dated 22.5.2010 found that it was a case for major penalty. The representation made by the employee alongwith the report of the Director General of Vigilance was taken note by the disciplinary authority. After affording opportunity of personal hearing, he decided to impose the penalty of reduction of his pay by two stages for a period of three years and one month without the effect of postponing his future increments of pay vide order dated 29th October 2010.

4. The employee being not satisfied, filed an appeal against the order of disciplinary authority before the next higher authority, the appeal came to be rejected vide order dated 26.7.2011 and the order of the disciplinary authority

was maintained. The employee approached the Central Administrative Tribunal by means of an application under Section 19 of the Administrative Tribunal Act, 2005 being application No. 1343 of 2012. The Tribunal has been pleased to allow the Original Application and to set aside the order of punishment vide order dated 15.10.2014. The department has approached this Court by means of the present writ petition.

It is submitted by Sri B.K. Singh Raghuvanshi, Counsel for the department that the order of the Tribunal records two reasons for setting aside the order of the disciplinary authority appellate authority which are as follows:

(a) That no oral evidence was laid to bring home the documents proposed to be relied upon by the department, therefore, in absence of oral evidence to prove the documents during enquiry, the charge could be said to have been brought home. For the said proposition, the Tribunal has relied upon the judgments of the Apex Court in the case of Roop Singh Negi Vs. Punjab National Bank and Others, , Kuldeep Singh v. The Commissioner of Police and others, JT 1998 (8) SC 603 , as well as upon the judgment in the case of L.I.C. of India and Another Vs. Ram Pal Singh Bisen, , reference has also been made to CCA Rule 1965 with regard to the furnishing of the statement of article of charge alongwith the list of documents and list of witnesses to sustain the charges.

5. The other reason on which the original application has been allowed is that in the case of Manoj Kumar Sharma similarly situate the Tribunal has found that the departmental enquiry against the officer concerned was vitiated and accordingly the order of the disciplinary authority and appellate authority was set aside. There was no reason to take any different view in the case of the present applicant also.

6. Sri B.K. Singh Raghuvanshi submitted before us that the Tribunal has failed to take into consideration that so far as the charge No. 2 is concerned, it was based more on an admission of the employee concerned to the effect that an order for stuffing was made but according to him such an order was made by the Assistant Commissioner and not by the employee. This defence could not be established by any material evidence. Therefore, the principle of oral evidence being led in support of the documentary evidence had no application. The Tribunal has misdirected itself in refusing to examine the correctness or otherwise of the finding returned on charge No. 2 on general principle as noticed above.

7. So far as the second ground is concerned, it is stated that in the case of Manoj Kumar Sharma, none of the charges were found proved by the Enquiry officer nor by the disciplinary authority and it was on the asking of the Vigilance Department that the order of punishment was made. Against Ajay Kumar Arora, charge No. 2 was found proved by the Enquiry Officer as well as by the disciplinary authority, which aspect of the matter has been completely lost sight by the Tribunal.

8. Counsel for the respondent No. 1 made an attempt before the Court to take

the Court though the entire departmental proceedings for suggesting that charge No. 2 was also not established. He also made an attempt to suggest that the said aspect had not been examined by the Tribunal. He then submitted that the finding returned by the Tribunal qua oral evidence having not been led to proving the documents proposed to be relied upon, is well established under the judgments of the Apex Court. Therefore, there is no reason for this Court to take any contrary view. He further submitted that the case of Sri Manoj Kumar Sharma is more or less identical to the case of the applicant before the Tribunal and therefore, the Tribunal was justified in touching what had been laid down in the cases of Manoj Kumar Sharma.

9. We have heard counsel for the parties and perused the records of the present writ petition.

10. We find that charge No. 2 was found proved by the Enquiry Officer. It may be noticed that issuance of order of stuffing is not under question. According to the employee, the order in that regard had been issued by the Assistant Commissioner and not by the employee concerned. From the report of the Enquiry Officer, it is established that he could lead no evidence to establish the said facts/plea. Once the employee takes such a stand that the order had been issued by the higher authority and not by him, it was obligatory upon him to prove with cogent evidence that such order in fact was issued by the higher authority, mere statement may not suffice. From the records, we find neither the date nor the number of the order of stuffing issued by the Assistant Commissioner was referred to by the employee concerned in his defence nor any documentary evidence was brought on record.

11. The Tribunal was not correct in holding that the finding returned on charge No. 2 as the department had not laid any oral evidence to prove the documents. We are of the considered opinion that so far as the charge No. 2 is concerned, it required no oral evidence to be led for being brought home for the reasons, which have been recorded hereinabove. We however, leave it open to the Tribunal to examine as to whether there was sufficient denial by the employee concerned of the charge and as to whether there was any illegality in the finding of the Enquiry Officer on the said charge as accepted by the disciplinary authority on the basis of material on record. The Tribunal, in our opinion has failed to examine the charge No. 2 in its true prospective, while passing the order impugned. The law laid down by the Apex Court in the matter of oral evidence being laid to prove the document sought to be relied upon against the employee is well established but as already noticed above, there being no denial to the issuance of stuffing order no oral evidence was required to be led for bringing home the charge No. 2.

12. We may record that in the case of Manoj Kumar Sharma, the Enquiry Officer as well as the disciplinary authority had specifically recorded that none of the charges levelled against the employee could be brought home. Therefore, it was held by the Tribunal that no penalty could be levied upon the employee

concerned only at the direction of the Vigilance Officer.

13. The facts in the case of Mr. Arora, are entirely different. Charge No. 2 has been brought home during departmental enquiry as per the report of the Enquiry Officer and the order of the disciplinary authority. Therefore, the principle, which had been applied in the case of Manoj Kumar Sharma may not be strictly applicable in the case in hand.

14. We may record that the Apex Court has specifically held that a little difference in the facts, will make a law of difference in the preconditional value of the judgments.

15. Counsel for the petitioner has placed reliance upon a Division Bench judgment of the Delhi High Court in the case of Union of India and another v. Bhupendra Singh Suhag, for the proposition that if three persons are charged for same set of mis-endavor pertaining to the same period, there cannot be different destinations when against one, it has attained finality. But the judgment in our opinion is distinguishable on facts.

16. For all the aforesaid reasons, we find that the order of the Tribunal cannot be legally sustained and is hereby quashed. The original application is restored to its original number with a direction to the respondent No. 2 to examine the merits of the original application as fresh specifically with records of charge No. 2 preferably within three months from the date of production of a certified copy of this order. The writ petition is allowed.