

(2014) 07 P&H CK 0858
In the Punjab And Haryana At Chandigarh
Case No : CWPNo. 7198-CAT of 2008

Union of India

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2014) LabIC 3920

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Ajay Tewari, J

Bench : Division Bench

Advocate : Namit Kumar, Advocate for the Appellant

Judgement

Ajay Tewari, J.—The respondent No. 1, who was working as Assistant Superintendent of Post Offices at the relevant time, was issued charge-sheet dated 29.11.2000 charging him for having wrongly appointed three persons. The inquiry officer held the charges to have been proved and the disciplinary authority awarded him punishment of compulsory retirement which was upheld in appeal and revision. He thereafter moved the Central Administrative Tribunal which set aside the order of compulsory retirement holding this to be disproportionate the charges and remanded the matter back to the competent authority for a fresh decision. Aggrieved therefrom the present petition has been filed. Learned counsel for the petitioners i.e. Union of India has argued that as regards first charge, the respondent No. 1 had appointed one Sukhdev Singh as EDDA Dorangla who had lesser marks in Matriculation. In this connection the relevant rule is as follows:--

"Educational Qualification ED Delivery Agents, ED Stamp Vendors and all other categories of EDAs.

VIII standard preference may be given to the candidates with Matriculation qualification. No weightage should be given for any qualification higher than matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to discharge their duties satisfactorily. Categories

such as ED messengers should also have enough working knowledge of English."

2. The Tribunal held that the essential qualification was 8th standard pass and since both the candidates were Matriculates, only the marks obtained in the 8th standard would be relevant. We find no error in this approach.

3. As regards second charge, it was alleged that respondent No. 1 while appointing one Sh. Harish Chander had not made a panel of at least three eligible candidates in contravention of instructions. The Tribunal found that this appointment was made against a post reserved for OBC and held that the omission to make select list of three candidates was not so serious since the appointed person was otherwise eligible and belonged to the relevant reserved category.

4. The third charge against respondent No. 1 was that he had made a provisional appointment without making a requisition to the employment exchange or advertising the same.

5. Learned counsel for the petitioner, even while assailing the finding of the Tribunal has fairly accepted that there was no allegation of extraneous consideration against respondent No. 1. It was in these circumstances that the Tribunal held that the charges against the respondent No. 1 could not be said to be so serious as to justify the punishment of compulsory retirement and, as mentioned above, holding the same to be disproportionate, set the same aside and remanded the case back to the competent authority for a fresh decision.

6. In our considered opinion the finding of the Tribunal cannot be faulted. Had it been a case where there were some allegations of extraneous consideration possibly a strict view may have been justified. As matters stand, however, the allegation against the respondent No. 1 at the most is misconstruing and misapplying Government instructions. He can thus be described as an inefficient and negligent person and for this charge the punishment has correctly been termed by the Tribunal as being disproportionate.

7. The matter does not end here. The Tribunal order had come more than six years ago when the respondent had not attained the age of superannuation. Had the petitioners reinstated him as per the order of the Tribunal, they would have been in a position to take further departmental action as mandated by the Tribunal. This was not done and now respondent No. 1 is stated to have attained the age of superannuation and we are at a point of time more than 11 years beyond the order of compulsory retirement. In the stark circumstances of the case we do not deem it in the interest of justice to now permit the petitioners to reinstitute punishment proceedings. In *Union of India (UOI) and Another Vs. S.S. Ahluwalia*, , the Hon"ble Supreme Court held as follows:--

".... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the

charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty....."

8. Consequently we direct that respondent I No. 1 will be deemed to have been reinstated with effect from the date of compulsory retirement and will be entitled to consequential benefits and the petitioners are ordered to compute all the monetary benefits now accruable to him and release the same within a period of three months from the date of receipt of a certified copy of this order. By way of punishment for his aforementioned delinquency, it is directed that he will not be entitled to any interest on the arrears. However, in case the due payment is not made within a period of three months as aforesaid, the effect of this punishment order will also abate and he would be held entitled to interest at the rate of 8% p.a. from the date/s the amount/s fell due till the date/s of payment. In the circumstances the petition is dismissed with the above directions leaving the parties to bear their own costs.