

(2023) 05 DEL CK 0097

In the Delhi High Court

Case No : Civil Writ Petition No. 2664 Of 2019

Union Of India

APPELLANT

Vs

Dr. Mohammed Saleem

RESPONDENT

Date of Decision : 11-05-2023

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(iii), 3(2)(i)
Central Industrial Security Force Rules, 2001 — Rule 52

Citation : (2023) 05 DEL CK 0097

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Anil Soni, Devvrat Yadav, Prateek Rana

Final Decision : Allowed

Judgement

V. Kameswar Rao, J

1. The challenge in this writ petition is to an order dated July 03, 2018 in O.A. 2723/2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, allowing the O.A. filed by the respondent herein by stating in paragraph 8 as under:-

"8. Keeping in view the aforementioned dicta of the Hon'ble Apex Court, we are of the view that ends of justice would meet if the penalty of reduction in the pay of the applicant by one stage instead of three stages in the time scale of pay and for a period of one year instead of three years is imposed upon applicant. Accordingly, we order modification in the Annexure A-1 penalty order passed by the DA."

2. On the last date of hearing, this Court had issued default notice to the respondent as the Court had found that there was no appearance for the respondent on March 07, 2022 and October 05, 2021. Today, Mr. S. M. Arif, Advocate, appears for respondent.

3. The case of the petitioner as contended by its counsel is that the respondent had joined petitioner No.2 as Technical Assistant (Bio) on August 20, 1981. He was later promoted to the post of Senior Technical Assistant (STA) (Bio) and was re-designated as Plant Protection Officer (PPO) (Bio Efficacy). He was further promoted as Assistant Director (Plant Protection) and was posted at National Plant Quarantine Station (NPQS) Rangpuri, New Delhi on April 28, 2018.

4. On May 26, 2010, the Central Bureau of Investigation ('CBI', in short) conducted a raid in the premises of NPQS, Rangpuri. Pursuant thereof it recommended departmental action against four officials including the respondent herein. As a consequence thereof, the four officials of NPQS, Rangpuri were issued charge sheet dated July 06, 2011. The charges framed against the respondent herein were the following:-

"On the basis the complaint received by the CBI, New Delhi and after its verification, a joint surprise check was conducted by a team of ACB, CBI, New Delhi in the office of NPQS, New Delhi on 26.05.2010.

At the time of joint surprise check conducted by CBI, the said Dr. Mohd. Salim, Asstt. Director (PP) while functioning as Asstt. Director, NPQS, Rangpuri, New Delhi was present in the office on 26.05.2010. Dr. Salim was present in the room of Shri Mahavir Sharma, SSA-III at the time of surprise check, wherefrom unclaimed cash for Rs.28,750/- (Rupees Twenty eight thousand seven hundred and fifty) and suspicious handwritten papers were recovered from the room of Shri Mahavir Sharma, SSA-III. Further, eleven sheets having handwritten date-wise details, name of some persons were recovered from the carry bag of Shri Mahavir Sharma, SSA-III.

Moreover, Shri Vijay Kumar, Mali who was attached with Shri Mahavir Sharma to assist him in processing the files, was present in the Office room of Shri Mahavir Sharma at the time of Joint Surprise Check, wherefrom unclaimed cash for Rs.5,350/- (Rupees Five thousand three hundred and fifty only) and some handwritten papers were recovered from the office carry bag of Shri Mahavir Sharma. Dr. Mohd. Salim failed to properly supervise the scrutiny of documents and deployment of Inspectors for inspection etc which led to corruption and malpractices in issue of Phytosanitary Certificates in NPQS, New Delhi.

By the above act the said Dr. Mohd. Salim, Asstt Director (PP) failed to maintain absolute integrity, failed to ensure the integrity and devotion to duty of his subordinates, failed to supervise effectively and also failed to prevent malpractices in issue of Phytosanitary Certificates in NPQS, New Delhi and acted in the manner which was unbecoming of a Government servant and thereby, violated Rule 3 (1) (i), 3 (1) (iii) and 3 (2)(i) of the Central Civil Services (Conduct) Rules, 1964."

5. The respondent submitted reply to the memorandum on July 28, 2011. Not finding the reply satisfactory, the Disciplinary Authority decided to hold the departmental inquiry. The Inquiry Officer was appointed who conducted regular

proceedings. The I.O. submitted his report. The analysis/finding of the Inquiry Officer is the following:-

"Analysis and finding:

While carefully examining the records available on the file, self-contained note of CBI, examination of witnesses, reply to CVO, brief provided by the Presenting Officer and the reply provided by Defence Assistant, I found that the officer was not carrying extra ordinarily excess amount with him. No incriminating or objectionable document was received from him or was found in his room searched by the CBI team on 26.5.2010. It is a fact that he was present in the cabin of Shri Mahavir Sharma at the time of search where Rs.28,750/- was found. This is a general habit if not practice, that in offices Government officials do visit rooms of their subordinates while leaving offices to talk or to exchange pleasantries or to enquire about one's well being, etc. Being present in the room of his subordinate at the time of search is not leading me to draw inference that his integrity is under cloud. Therefore, violation of Rule 3 (I)(i) 85 3(i)(iii) of CCS (Conduct) Rules are not observed.

As per the CCS (Conduct) Rules, 1964 every Government servant holding a supervisory post is required to take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority. On this account also Dr. Mohd Salim has been charged to have failed to observe this Rule. In the instant case, it has not been brought out before the 10 that what could have been done to ensure devotion to duty and maintaining integrity of the subordinates in which Dr. Mohd. Salim failed, whether there were any checks and balances existing in the office for the purpose. It has also not been pointed out that how the above could have been executed which CO has failed to perform. It is indeed a rule to be observed and followed by every officer but is difficult also to ensure about integrity, devotion to duty of every subordinate. In our day to day work in the Government set up it is observed that maintaining absolute integrity and' devotion to duty has become a personal choice and decision and the superior officer is not in a position to ensure absolute integrity of the subordinates. There is lack of conclusive evidence to sustain this charge, therefore, violation of Rule 3 (2)(i) by Dr. Mohd. Salim is not proved.

Based on the above, facts available on the file and circumstantial evidences gathered during the inquiry, the charges against Dr. Mohd. Salim are not sustained."

6. Suffice to state, the Inquiry Officer did not sustain the charges against the respondent. The Disciplinary Authority disagreed with the findings of the Inquiry Officer and issued a disagreement note dated January 18, 2013. The grounds of the disagreement are the following:-

"(i) NPQS, Rangpuri, New Delhi is a very small office having a very limited number of staff. Hence, any supervisory officer, if duty vigilance and willing to

enforce discipline in such a small organization, can do it. The officer concerned should have devised or formulated certain ethics/culture to enforce the rule.

(ii) Nowhere any proof has been given as to how the CO tried at his level to follow/enforce the provisions of Rule 3(I)(i), 3 (I)(iii) and 3 (2)(i) of CCS (Conduct) Rules, 1964.

(iii) C.O. was physically present in the room from where cash was recovered from the dust bin and in which Shri Mahavir Sharma, though not on duty, was still conducting business transactions. As such it is difficult to accept that C.O. was unaware of the happenings in that room and was not involved or associated with the same."

7. The disagreement note was sent to the respondent for his comments and representation. Vide letter dated February 25, 2013, the respondent had submitted reply to the disagreement note. The Disciplinary Authority did not agree with the reply filed by the respondent and decide to seek UPSC advise in the matter.

8. The UPSC vide its letter dated January 24, 2014, advised the imposition of penalty of reduction of pay by three stages in the time scale of pay for a period of three years. Accordingly, the Disciplinary Authority imposed the penalty of reduction of pay by three stages in the time scale of pay for a period of three years. The respondent approached the Tribunal challenging the order of the Disciplinary Authority.

9. The case of the respondent before the Tribunal was that the charge against the respondent was the failure on his part to perform his supervisory duties which charge was not proved in the inquiry. It was also his case that the Disciplinary Authority simply went ahead, on the basis of the recommendations of CBI, to institute a Regular Departmental Action against the respondent. It was also his case that the disagreement note given was based on assumptions and presumptions and not on any substantive evidence.

10. The Tribunal was of the view that the penalty imposed on the respondent is excessive/disproportionate to the alleged misconduct or mis-demur when the charges against the respondent have not been proved. The Tribunal also relied upon the judgment of the Supreme Court in *Ranjit Thakur v. Union of India & Others*, (1987) 4 SCC 611, to hold that the penalty imposed is highly disproportionate and had accordingly in paragraph 8 of the judgment reduced the penalty.

11. The submission of learned counsel for the petitioner are, the Tribunal has erred in interfering with the penalty imposed on the respondent inasmuch as the Tribunal could not have exercised the jurisdiction which otherwise is not conferred upon it.

12. That apart, it is his submission that when the charge has been proved on the basis of the disagreement note, the Tribunal even otherwise could not have

modified the penalty which has been imposed on the respondent.

13. Alternatively, he submits that at the most the Tribunal should have referred the matter back to the Disciplinary Authority for reconsideration of penalty which according to it was disproportionate.

14. Mr. Arif, learned counsel for the respondent would submit that the Tribunal was right in reducing the penalty imposed on the respondent as it had found that the penalty which has been imposed on the respondent was highly disproportionate more so, the charges were not proved by the I.O. He states in that regard the Tribunal has rightly relied upon the judgment of the Supreme Court in *Ranjit Thakur* (supra).

Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Tribunal is justified in modifying the penalty which has been imposed on the respondent. The answer to the same has to be in the negative. In fact, we are of the view that the only jurisdiction of the Tribunal is, if the penalty is disproportionate which shock the conscious to remand the matter back to the Disciplinary Authority for reconsidering the penalty which has been imposed against the respondent. That has not been done by the Tribunal rather it had modified the penalty itself which is impermissible in view of the judgment of the Supreme Court in the case of *Union of India (UOI) and Ors. v. Managobinda Samantaray*, MANU/SC/0292/2022 has in paragraph 9 held as under:-

"9. Impugned judgment by the Division Bench is difficult to sustain as it equates appellate power Under Rule 52 of the CISF Rules, 2001, with power of judicial review exercised by constitutional courts. Rule 523 of the CISF Rules, 2001 empowers the appellate authority to examine whether the penalty imposed is excessive, adequate or inadequate and pass consequential order confirming, enhancing, reducing or setting aside the penalty. In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters. In the context of quantum of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in

awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate.”

(emphasis supplied)

15. That apart, we find that the Tribunal had relied upon the judgment in the case Ranjit Thakur (supra) which we find is a case relatable to Army Act, 1950. The paragraph of the judgment which has been highlighted by the Tribunal, clearly depicts that the same is relatable to a Court Marshal and not departmental proceedings under CCS(CCA) Rules 1965. Hence, the judgment of Ranjit Thakur (supra) was clearly not applicable.

16. That apart, concedingly the respondent has not challenged the penalty which has been imposed by the Tribunal. It follows that the respondent is conceding that the charge has been proved.

17. Having said that, this Court is of the view that, appropriate shall be that the matter is remanded back to the Disciplinary Authority for considering, whether the penalty which has been imposed on the respondent need to be reconsidered/relooked by imposing a lesser penalty by taking into consideration the charge sheet/record of Enquiry.

18. The writ petition is allowed. The conclusion of the Tribunal in paragraph 8 of the Tribunal is set aside to the extent the penalty has been reduced by the Tribunal. The Disciplinary Authority shall reconsider/relook the penalty imposed in terms of our observation above and pass an order in that regard within a period of eight weeks from today.

19. It is made clear that the Disciplinary Authority while reconsidering the aspect of penalty shall not be influenced by any observation made by us in this judgment.

20. No costs.