
(2014) 09 AHC CK 0248
In the Allahabad High Court
Case No : Writ-A No. -21413 of 2006

Union of India

APPELLANT

Vs

Sameer Kumar

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Citation : (2014) 10 ADJ 635 : (2015) 2 ALJ 392 : (2014) 107 ALR 471 : (2015) 1 ESC 303 : (2015) 144 FLR 249

Hon'ble Judges : Rakesh Tiwari, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : K.C. Sinha, A.S.G.I., Ajay Bhanot, Rakesh Sinha and Saurabh Srivastava, Advocate for the Appellant; Shyamal Narain, S.C, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. This writ petition has been preferred by the petitioners challenging the validity and correctness of the impugned judgment and order dated 18.8.2005 passed by the Central Administrative Tribunal, Allahabad (hereinafter referred to as "the Tribunal") in Original Application No. 846 of 2002, Sameer Kumar versus Union of India and another, whereby the aforesaid O.A. was allowed.

3. Brief facts of the case are that Sri Sameer Kumar, respondent no. 1 was working as a Senior Accounts Officer of CDA (CC), Allahabad and one Sri Hiraji Singh was working under him as a Senior Auditor. A complaint was made on 20.6.1995 to the Controller of Defence Accounts, Lucknow by Sri Hiraji Singh against respondent no. 1 mentioning therein that he had demanded a sum of Rs. 15,000/- as illegal gratification for transferring the complainant from ERE seat comprising of 162 Infantry Brigade Bangalore to Unit Task, Varanasi, out of which a sum of Rs. 13,000/- had been paid by the complainant to respondent no. 1. However, he had not paid balance amount of Rs. 2,000/-, hence he had again

been transferred to his original place of posting.

4. Upon receipt of the aforesaid complaint, the Controller of Defence Accounts, Lucknow called for an explanation from respondent no. 1 vide letter dated 4.1.1996 to which he submitted reply dated 9.1.1996. Thereafter, respondent no. 1, the competent authority issued a charge sheet under CCS (CCA) Rules, 1965 on 11.9.1997 levelling three charges against the delinquent employee which read thus:-

"Article of Charge No. I"

That the said Shri Sameer Kumar, Sr. Accounts Officer while functioning as in-charge of the office of the PAO (ORs) 39 GTC, Varanasi, during the period from 1.11.93 to 11.6.1996 had allegedly demanded Rs. 15,000/- from Shri Heeraji Singh, Sr. Auditor, A/C No. 8290092 serving in the said office for posting him to unit task in ledger Group-IV as customary advance and allegedly accepted Rs. 13,000/- as illegal gratification from the said Shri Heeraji Singh during Feb. 95.

He thus, displayed lack of integrity and also exhibited conduct unbecoming of government servant, thereby contravening the provisions of Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

"Article of Charge No. II"

That the said Shri Sameer Kumar, Sr. Accounts Officer while functioning as in-charge of the office of the PAO (ORs) 39 GTC, Varanasi, failed to forward representation dated 20.6.1995 preferred by Sri Heeraja Singh, Senior Auditor A/c No. 8290092, addressed to CDA, CC, Lucknow which contained allegations of acceptance of illegal gratification against him. The said representation to suppress his above misdemeanor.

He thus, displayed lack of integrity and also exhibited conduct unbecoming of a government servant (iii) of CCS (Conduct) Rules, 1964.

"Article of Charge No. III"

That the said Shri Sameer Kumar, Sr. Accounts Officer while functioning as in-charge of the office of the PAO (ORs) 39 GTC, Varanasi, has taken pre-emptive action by imposing penalty of "Censure" on Shri Hiraji Singh, Senior Auditor A/c No. 8290092 for causing deliberate over payment of Rs. 10,000/- each, in two final sett element cases, even though he misconduct on the part of the said Shri Heerja Singh Senior Auditor A/c No. 8290092 called for initiation of proceedings as for major penalty. He deliberately did not intimate the said penalty of "censure" to Main Office viz. CDA CC Lucknow, for publication of Part II order and thereby suppressed material information from the knowledge of CDA CC Lucknow, with a view to compromise the case locality.

He thus, displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant thereby contravening the provisions of Rule 2(1) (i),(ii) and (iii) of CCS (Conduct) Rules, 1964."

5. Respondent no. 1 denied the aforesaid charges. However, in the inquiry he was found guilty and was imposed penalty of reduction of pay by two stages till the date of his retirement with cumulative effect vide order dated 19.6.2000 by the Controller General of Defence Accounts, New Delhi. Aggrieved by the aforesaid order dated 19.6.2000 an appeal was preferred by him before the Secretary, Ministry of Defence (Defence Finance), Finance Division, New Delhi, who in exercise of his power under Rule 27(2) of CCS (CCA) Rules, 1965 issued notice dated 29.3.2001 to respondent no. 1 as to why his punishment should not be revised to that of dismissal from service. On receipt of reply/representation thereto petitioner no. 1 on consideration rejected the representation imposing penalty of dismissal from service vide order dated 21.8.2001. An appeal by respondent no. 1 was preferred before the President of India against the order dated 21.8.2001 which was also rejected vide order dated 17.5.2002. Respondent no. 1 then preferred Original Application No. 846 of 2002 before the Tribunal challenging the validity and correctness of order dated 17.5.2002, which was allowed vide judgment and order dated 18.8.2005 quashing the orders of punishment dated 19.6.2000, 21.8.2001 and 17.5.2002. The petitioners, Union of India and the Controller General of Defence Accounts, New Delhi in the aforesaid backdrop have filed this writ petition with the prayer aforesaid.

6. It appears from the record that Sri Hiraji Singh was also chargesheeted under Rule 14 of CCS (CCA) Rules, 1965 on 19.3.1996. He was put under suspension w.e.f. 30.11.1995. However, his suspension order was revoked on 20.5.1996. Thereafter, he attained the age of superannuation on 30.6.1996 and the departmental proceedings against him continued under the provisions of CCS (Pension) Rules, 1972. He filed a representation/reply against the inquiry proceedings. However, the Inquiry Officer found him guilty. Since Sri Hiraji Singh had retired from service, hence as per the procedure of CCS (Pension) Rules, 1972, copy of the disciplinary proceeding was sent to U.P.S.C. which while confirming the finding given by the Inquiry Officer, has recommended that in case the entire pension and gratuity admissible to Sri Hiraji Singh is forfeited, the justice would be met. The competent authority in the circumstances, communicated the order passed by the President vide his letter dated 30.5.2001 to Sri Hiraji Singh that a punishment of forfeiture of entire amount and gratuity admissible to him was imposed.

7. Aggrieved by the aforesaid order dated 30.5.2001 Sri Hiraji Singh preferred a Mercy Petition which was rejected as not maintainable by the Principal Controller of Defence Accounts (CC), Lucknow on the grounds that since his Mercy Petitions dated 15.5.2001 and 5.3.2002 have already been considered and rejected by the President and that no new point has been raised.

8. Learned counsel for the petitioners submits that the Tribunal while deciding the aforesaid O.A. has given finding that the petitioners have taken into account the only document i.e. written brief of Shri Heeraji Singh in disciplinary proceedings whereas perusal of inquiry report as well as the punishment order

would go to show that apart from aforesaid written brief dated 19.6.1998 there were several other circumstances which prove that respondent no. 1 has accepted the illegal gratification of Rs. 13,000/-; that respondent no. 1 has tried to prove himself innocent on the basis of concocted story that the complainant has withdrawn his complaint but the said story has been disbelieved by the Inquiry Officer as well as the petitioners; that the findings given by the Tribunal in the impugned judgment are perverse and in any case the impugned order betrays manifest error of law, hence the same is liable to be quashed.

9. Per contra, learned counsel for respondent no. 1 submits that the documents not mentioned in the charge sheet could not have been relied upon and have to be excluded in the departmental inquiry as has been held in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, that the very basis of the entire charge sheet being the complaint dated 20.6.1995, withdrawal of the same by letter dated 6.7.1995 removes the very foundational fabric of the charge sheet whereby the charge sheet simply sinks into oblivion; that respondent no. 1 had also brought the aforesaid withdrawal of letter dated 6.7.95 to the notice of the authorities at the earliest opportunity, hence treating the same as an after thought or procured only in 1998 is absolutely perverse and that assuming, without accepting, that the said letter was not at all in existence before 1998 even then the complainant who had been called as the prosecution witness had clearly stated that the contents of the complaint were incorrect as it was written in a state of emotion.

10. He also submits that the prosecution which had cross-examined its own witness who has been declared as having turned hostile, could not elicit any information about the correctness of the complaint save that it contained the signature of the complainant; that this is a case of no evidence and the authorities have relied upon documents extraneous to the charge sheet without affording any opportunity to the delinquent employee which is in flagrant violation of principles of natural justice. He supported the findings recorded in the impugned judgment by the Tribunal and submits that there is no illegality or infirmity in it, hence no interference is required by this Court.

11. After hearing learned counsel for the parties and on perusal of the record we find that the complaint made by Sri Hiraji Singh was the genesis of the charge sheet which has not been withdrawn. It has also not been proved and corroborated by the witnesses. Even Sri Hiraji Singh has turned hostile. It appears that Sri Hiraji Singh vide his letter dated 6.7.95 also appears to have withdrawn the allegations made in his complaint regarding demand of illegal gratification made on 20.6.95. In the circumstances, the basic complaint made against him stood not proved. It further appears from perusal of the impugned judgment of the Tribunal that it has given cogent reasons for recording findings in paragraph nos. 12 to 14 of the judgment which read thus:-

" 12. The above goes to show that the authorities have entirely relied upon the letter written by Shri Hiraji Singh in his own disciplinary proceedings addressed

to his own Presiding Officer (who is the self same Officer who acted as the Presenting Officer in the case of the applicant) and admittedly, this document has not been exhibited in the proceedings conducted by the IO. The mere making available of the copy of the same during the course of inquiry has no meaning. Thus, as this document, which according to the respondents is the spinal document to prove the case against the applicant is the sole document to prove the contents of complaint dated 20.6.1995, the same having not been a listed document, much less an exhibited one, reliance placed by the respondents is thoroughly illegal. Thus, the case is of "NO EVIDENCE."

13. The tenor of the appellate order as well as the revisional order go to show that the respondents have come to the conclusion that the applicant has been found guilty of the misconduct levelled against him not on the basis of a positive proof by the prosecution but on holding that the applicant failed to prove his innocence on the basis of any positive evidence, and the same is evident from their own words stated in para 22 of the counter. This conclusion is align to the settled law nor does such a requirement find place in the pharmacopoeia of service jurisprudence.

14. Thus, there is full-fledged violation of the principles of natural justice and the penalty imposed upon the applicant cannot be legally sustainable. As such, the O.A. succeeds. The orders dated 19.6.2000 of the Disciplinary Authority, 21.8.2001 of the appellate authority and 17.5.2002 of the Revisional Authority are hereby quashed and set aside. The applicant is entitled to the consequential benefits such as pension, gratuity, leave encashment etc., the respondents shall work out the same and process the case for payment of such terminal benefits which drill, subject to the applicant's filing necessary documents, shall be completed within a period of six months from the date of communication of this order."

12. A perusal of the aforesaid findings goes to show that neither there was any material duly proved for proving the guilt of the delinquent employee nor inquiry had proceeded in accordance with law. The documents relied upon by the department in the inquiry proceedings had neither been supplied to the delinquent employee to defend himself nor exhibited. Even if some documents were made available during the course of inquiry, the same would be meaningless unless the documents are proved in accordance with law. Thus, the Tribunal has rightly come to the conclusion on the basis of these illegalities that the employer's case was a case of no evidence. The question before the Tribunal then was as to whose case would fall if no evidence was led from either side. The Tribunal answering the question has said that the case of employer would fall if no evidence is led in the departmental inquiry.

13. For all the reasons stated above, we do not find any illegality or infirmity in the impugned judgment of the Tribunal. The Tribunal has rightly come to the conclusion that respondent no. 1 is entitled to all consequential benefits of his service on his retirement.

14. Accordingly, the writ petition is dismissed. The petitioners are directed to comply with the directions given in paragraph 14 of the judgment and order dated 18.8.2005 of the Tribunal within a period of two months from the date of production of a certified copy of this order. No order as to costs.