

(2013) 11 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (C) No. 4498 of 2012

Union of India

APPELLANT

Vs

Satya Nandan Kumar

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 GLT 442

Hon'ble Judges : Abhay Manohar Sapre, C.J.; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : M. Bhagabati and SC, CGC, for the Appellant; M.K. Choudhury, A. Barkataki and Mr. N. Baruah, for the Respondent

Judgement

Abhay Manohar Sapre, C.J.—This is a writ petition filed by the Union of India (Department of Communication and IT) - non applicant of OA No. 232 of 2011 under Article 227 of the Constitution of India against the order dated 01.05.2010 passed by the Central Administrative Tribunal (for short hereinafter called The Tribunal) in aforementioned original application. By impugned order, the Tribunal allowed the original application filed by the applicant (respondent herein) and quashed the penalty of withholding of one increment of the respondent for a period of one year without cumulative effect which was imposed on him by the appointing authority for committing one misconduct.

So, the short question which arises for consideration in this writ petition is whether Tribunal was justified in allowing the original application filed by the delinquent employee?

2. Facts of the case are short and simple. They, however, need mention in brief below.

The respondent is working as Senior Accounts Officer in the office of Director of Accounts (Posts) at Silpukhuri, Guwahati. He was at the relevant time posted at Patna. In the year 2006, he was transferred from Patna to Dibrugarh. He, therefore, submitted his transfer (TA) bill for the expenses incurred by him in this

transfer from Patna to Dibrugarh. In the bill, in addition to other claims, he claimed Rs. 32,467/- towards expenses which he claimed to have incurred for carrying his luggage from Patna to Dibrugarh by transport etc.

3. The question then arose as to whether an amount of Rs. 32,467/- claimed by the respondent in his TA bill was justified or not and whether it was permissible as per Rules. The department claimed that it was not justified because it was not as per Rules. Accordingly, the department issued a memorandum dated 17.02.2010 under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 containing a statement of imputations of misconduct and calling upon the respondent to submit his representation within 10 days. The basic allegation is that the respondent had claimed Rs. 13,198/- over and above his normal and actual entitlement on account of transportation of personal effects. The respondent submitted representation on 25.02.2010 against the said memorandum dated 17.02.2010 contesting the charges. It also appears from the said representation dated 25.02.2010 that on receipt of the memorandum dated 17.2.2010, the respondent had deposited the sum of Rs. 13,198/-. The department was, however, not satisfied with the reply and an Inquiry Officer was appointed to go into the charges. The Inquiry Officer found him guilty of the charge framed against the respondent and on that basis, the appointing authority, concurring with the finding of Inquiry Officer, imposed a penalty of withholding of one yearly increment without cumulative effect on the respondent. It is against this imposition of penalty order, the respondent felt aggrieved and filed the original application out of which this writ petition arises before the Tribunal. The Tribunal by impugned order allowed the original application and quashed the penalty order. It is against this order of the Tribunal, the Department (employer) felt aggrieved and filed this writ petition.

4. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this writ petition and hence, the impugned order passed by the Tribunal deserves to be upheld.

This is what Tribunal held in its operative Para while quashing the penalty order:

8. We have heard the rival submissions in the light of the material placed before us. There is no dispute over the fact that excess amount was claimed towards the transfer T.A. bill in connection with applicant's transfer from Patna to Dibrugarh.

9. We have noted the submissions made by Mr. Adil Ahmed, learned counsel for the applicant that transfer T.A. bill was prepared by dealing assistant. The said dealing assistant for transportation of personal effects showed truck rate in place of train tariff in the T.A. claim because the applicant had brought his personal effects by truck only. Applicant was told at the time of his transfer that Railway authorities had withdrawn the facility for carrying of personal effects by goods train. There was a facility of carrying of personal effects by luggage van but it was expensive and unsecured. As such, goods were carried by truck and the

applicant claimed only the actual amount paid to the transporter. This actual payment was considered to be exorbitant in terms of the rate charged by the goods train. As such, according to learned counsel, it was a case of bonafide mistake which was venial in nature. In the circumstances, penalty though minor in nature is unduly harsh, because it effects the promotion prospect of the applicant.

10. We find force in the argument of Mr. Adil Ahmed, learned counsel for the applicant. It is the accepted tenet of law canonized in the dictum - "DE NON MINIMIS CURAT LEX", law does not take into consideration trivialities. The explanation of the applicant is that the matter was entrusted to his subordinate for preparing the transfer T.A. bill while doing so, he claimed the actual expenses based on the rate applied by the transported. We also find force in the argument of Mr. M.U. Ahmed, learned Addl. CGSC for the respondents that even for the mistake of the subordinate, the applicant is vicariously liable. Mr. M.U. Ahmed also argued that the superior is always responsible for the acts and omissions of his subordinate. It is also important to note that the penalty proceedings are quasi criminal proceedings. As such, mens rea is an essential element for imposing penalty.

11. We find that in the facts of the present case, claim of excess transfer T.A. can only be construed to be bonafide error. Nothing was placed before us to demonstrate that error in question was intentional and willful. As such, we do not find any good reason to sustain the penalty, as such; we exonerate the applicant from the rigour of penalty.

12. In the result, O.A. stands allowed. There will be no order as to cost.

5. In our considered opinion, no fault can be noticed in the impugned reasoning and the conclusion arrived at by the Tribunal while allowing the original application which resulted in quashing the penalty imposed on the respondent (employee). It was held and indeed rightly that, firstly, the respondent (employee) had deposited the excess amount of Rs. 13,198/- in the treasury. Secondly, the question as to whether he was entitled to claim the said amount or not was a matter of interpretation of rules and due to some kind of ambiguity in the rule, this question had cropped up. Thirdly, the respondent had not claimed any excess amount and what was claimed was actually incurred by him and lastly, there was no malafide or dishonest intention on his part to claim the amount in question to defraud the State and to make any kind of illegal gain out of it. We are, therefore, completely in agreement with the aforesaid reasoning of the Tribunal, which in our opinion is just, legal and proper in the facts of this case and hence, it does not call for any interference.

In the light of foregoing discussion, which is more than sufficient to sustain the impugned order, we find no merit in this writ petition. The petition, thus, fails and is, accordingly, dismissed.

No cost.