

(2013) 11 KAR CK 0152

In the Karnataka High Court

Case No : Writ Petition No. 25846 of 2013 (S-KAT)

Union of India

APPELLANT

Vs

Smt. J. Revathi

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 11 KAR CK 0152

Hon'ble Judges : Mohan M. Shantanagoudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : M. Vasudeva Rao, for the Appellant; P.A. Kulkarni, for the Respondent

Final Decision : Partly Allowed

Judgement

K.N. Phaneendra, J.—The petitioner called in question the validity and correctness of the order dated 9.4.2013 in OA No. 238/2012 passed by the Central Administrative Tribunal, Bangalore Bench, in setting aside the order of the Disciplinary Authority dated 1.12.2011 and reinstating the respondent back into service with effect from 1.12.2011 with all consequential benefits. The brief factual matrix that emanate from the records is that respondent--Smt. J. Revathi was appointed as a Staff Nurse with effect from 6.1.1993 under the Ministry of Labour and Employment of Government of India. During the year 2010, she was transferred from Sira to Kannur vide order dated 27.10.2009 on the allegations that she has refused to receive the said transfer order and misbehaved with her superior official during the working hours in the office and shown willful disobedience. Due to her riotous and dis-orderly behavior during the office hours and unauthorized absence from duty, the petitioner No. 3 -Disciplinary Authority has issued the memorandum of articles of charges containing five articles of charge dated 30.4.2010 to the respondent. Thereafter, conducting disciplinary proceedings as per law against the respondent, she was removed from service vide order dated 1.12.2011. The respondent has preferred an appeal against the said order of the dismissal before the second petitioner and the said appeal also

came to be dismissed vide order dated 18.4.2012. Being aggrieved by the said order, the respondent herein challenged the said order of dismissal from service dated 1.12.2011 passed by the third respondent before the Central Administrative Tribunal, Bangalore Bench in OA No. 238/2012 and sought for reinstatement with all consequential benefits. The tribunal by its order impugned under this Writ Petition has allowed the Original Application and directed the petitioners to reinstate the respondent with all consequential benefits.

2. We have in detail heard the arguments of the learned counsel for the petitioners and as well the respondent. We have also carefully perused the orders passed by the Disciplinary Authority, appellate authority, as well the Central Administrative Tribunal. The contention of the learned counsel for the petitioner Sri. Vasudev Rao is that the Central Administrative Tribunal has virtually reevaluated the entire evidence recorded by the Inquiry Officer and totally upset the order of the Disciplinary Authority without there being any proper and reasonable ground for reinstating the respondent. The evidence recorded and findings given by the Inquiry Officer and as well as the factual appreciation by the Disciplinary Authority have been totally ignored by the Central Administrative Tribunal. Therefore, the same is liable to be interfered with by this court in exercising the powers conferred under article 226 of the Constitution of India.

3. Per contra, Sri P.A. Kulkarni, learned counsel for the respondent strenuously contends that the mis-conduct alleged against the respondent is false, and all consequent proceedings against the respondent emanate due to the illegal transfer order passed against the respondent in order to accommodate one Smt. Meenakshi, who was working at Konnur to provide place of her choice. It is also contended that the order passed by the Disciplinary Authority and the order passed by the appellate authority are tainted with bias. Therefore, considering all the materials on record, Central Administrative Tribunal has not re-appreciated the evidence, but it only corrected the abuse of the powers by the Disciplinary Authority.

4. Having heard the arguments of the learned counsels"; we have given our anxious considerations to the material on record and we have carefully perused the order passed by the Central Administrative Tribunal.

5. The records disclose that the articles of charges were provided to the delinquent respondent. There are as many as five articles of charges. Out of them, the Inquiry Officer has held that charge Nos. 1 to 4 have been proved and articles of charge No. 5 has not been proved. The main charge against respondent is that though she was transferred, she refused to receive the transfer order issued by the Welfare Commissioner and consequent relieving order issued by the Medical Officer. Instead, she gave Casual Leave letter dated 29.10.2009. It is also alleged that during the office hours, instead of receiving the transfer order and relieving order, she made sarcastic remarks against Sri N. Krishnamurthy, HCA on the assumption that he was instrumental for her transfer to Kannur. It is also alleged that her brother Jagannath was also present and

both of them have used un-parliamentary words against Sri N. Krishnamurthy. This incident has been witnessed by all the staff who were present in the office on that day. She has also forcibly taken the attendance register kept in the office and put her signature, further she remained absent for duty from 29.10.2009 to 28.1.2010 without proper sanction of the leave by the authorities. Lastly, apart from approaching the Director General, who is the appellate authority, she has also approached the SC/ST Commissioner for her remedies. It is evident from the records that the charge memo was provided, sufficient opportunity was granted and she made a detailed defense statement touching all the nook and corner of the charges leveled against her. The Inquiry report dated 1.10.2011 explicitly makes it clear that the Inquiry Officer has conducted the Inquiry in a fair and detailed manner strictly adhering to the principles of natural justice. Considering the documents marked at Exs. P-1 to P-15 on the side of the Disciplinary Authority and Exs. D-1 to D-7 on the side of the respondent and also the oral evidence adduced by both the parties, analyzing in detail, he has submitted a detailed Inquiry report holding that charge Nos. 1 to 4 have been proved and of charge No. 5 has not been proved.

6. The Disciplinary Authority after perusal of the Inquiry report issued a second Show Cause Notice on 12.10.2011 to the respondent and in fact the respondent herein has made a representation on 7.11.2011 to the second Show Cause Notice. The Disciplinary Authority considering the Inquiry Officer's report and also independently re-evaluating all the oral and documentary evidence adduced by the parties, ultimately passed the order removing the respondent from service, specifically observing that the said order shall not be a disqualification for her future employment in the Government, by exercising its power under Rule 11(viii) of CCS and CCA Rules in the public interest. The above said order has also been challenged by the respondent before the second petitioner herein and second petitioner vide order dated 18.4.2012 dismissed the said appeal.

7. Looking to the above said proceedings taken place before the Inquiry Officer, the Disciplinary Authority as well" before the appellate authority, it is clear that the factual matrix of the case have been meticulously considered in detail and on appreciation of the factual aspects of the case, both the authorities have come to the conclusion that the articles of charge Nos. 1 to 4 leveled against the respondent have been proved.

8. Now turning to the order passed by the Central Administrative Tribunal, the Central Administrative Tribunal has also perused the Inquiry Officer's report with regard to the factual appreciation of the facts. But, ultimately at paragraph-5 the Central Administrative Tribunal has re-appreciated the evidence of the witnesses examined and came to the conclusion that the transfer order against the applicant was un-solicited by the respondent but solicited by one Smt. Meenakshi. Taking into consideration that one Sri Krishnamurthy has put up the transfer note proceeded to comment that the transfer of respondent was made to accommodate Smt. Meenakshi. It is also observed that Smt. Meenakshi would

have been transferred to Kannur. Therefore, Central Administrative Tribunal observed that there appears to be a cloud of suspicion in the matter of transfer. The respondent who had just served in Sira, normally she could have been transferred only in extreme exigencies and the transfer of the applicant was made only to accommodate Smt. Meenakshi is crystal clear from Annexure-1. On such observation the Central Administrative Tribunal suspected the conduct of the Disciplinary Authority and set aside the orders of the Disciplinary Authority & appellate authority and consequently re-instated the respondent to her original position with all benefits.

9. On perusal of the observations made by the Central Administrative Tribunal, in our opinion, the said observations are totally un-warranted and un-called for, for the simple reason that the transfer order passed by the authorities concerned has not been challenged by the respondent. If at all, she was really aggrieved by the transfer order, instead of refusing to receive the transfer order, making hue and cry and abusing the concerned official superiors, she would have simply challenged the transfer order. But she ventured upon to quarrel with her higher ups and made sarcastic remarks against the higher ups which was the subject matter before the Inquiry Officer.

10. We have already discussed about the Inquiry report and Disciplinary Authority's order and observed that the inquiry conducted by the Inquiry Officer shows that all the witnesses who have been examined have supported and deposed against the respondent. At any stretch of imagination, it cannot be said that the Inquiry Officer was biased and witnesses who have deposed were also inimical towards the respondent. Therefore, their evidence could not have been easily brushed aside by the Central Administrative Tribunal. Likewise, the Disciplinary Authority also has made a thorough examination of the evidence recorded by the Inquiry Officer and passed a detailed order. The Disciplinary Authority also re-evaluated and appreciated the evidence on record and came to its independent conclusion after giving due weight to the statement of objections filed by the respondent to the second Show Cause Notice. Therefore, on facts when these two, authorities have given their anxious consideration and duly appreciated the facts and recorded their findings, their orders could not have been set at rest by the Central Administrative Tribunal only taking into consideration the transfer of respondent was premature and the transfer was under suspicious circumstance. Of course, even if it is said Sri Krishnamurthy HCA, who was the root-cause for transfer as per the allegations of the respondent, we cannot be unmindful of other facts to give a finding that all the witnesses examined, the Inquiry Officer, the Disciplinary Authority and the appellate authority were all biased in giving a finding against the respondent.

11. Looking from the above said facts and circumstances of the case, we are of the opinion, that the Central Administrative Tribunal has committed serious error in considering the extraneous material not borne out from the records in order to set aside the order of the Disciplinary Authority and the appellate authority.

Therefore, the order passed by the Central Administrative Tribunal is not in consonance with the materials on record. It is based on merely on assumptions.

12. We also find that the order of Central Administrative Tribunal in re-instating the appellant with all consequential benefits is also not happily recorded. When once the allegation made against the respondent is established and mis-conduct has been proved, viz., showing dis-obedience to the higher ups has been established, the Central Administrative Tribunal should have given due weightage to such findings on facts. The Central Administrative Tribunal has not imposed any punishment and has totally exonerated the respondent, which in our opinion is not commensurate with the proven facts against the respondent. On the other hand it should have made the respondent to feel the pinch of salt for the misconduct committed by her. The courts also should bear in mind the employees always keep the decorum and discipline in the department. Therefore the order requires to be modified.

13. Turning to the second limb of arguments of the learned counsel for the petitioners Sri. Vasudev Rao that the total exoneration of the respondent is unwarranted and courts have to see what is the proportionate punishment that has to be awarded to the delinquent employee on the proven facts. Though we concur with the order of the Central Administrative Tribunal in re-instating the respondent into service, we do not concur with the reasons assigned for such reinstatement. The order of re-instatement is however rightly passed on the ground of disproportionate imposition of penalty. As stated above, we are of the confirmed opinion that on the proven facts, the guilt of the respondent has been established. But the court has to see whether the punishment imposed by the Disciplinary Authority is commensurate with the misconduct of the respondent herein. What is the appropriate quantum of punishment to be awarded to a delinquent, of course is a matter primarily rests with the discretion of the Disciplinary Authority. However, the appellate court or an authority sitting in such place, is by all means entitled to examine the issue regarding the quantum of punishment in as much as, it is entitled to examine whether the charges have been satisfactorily proved. As we have observed, that the fact finding machineries i.e. the Inquiry Officer, Disciplinary Authority and appellate authority have rightly come to the conclusion that the mis-conduct of the respondent has been proved. We are also of the opinion that the said conclusion recorded by the Disciplinary Authority and the appellate authority is sound and proper. However, we find that the punishment imposed by the Disciplinary Authority is disproportionate to the mis-conduct proved against the respondent herein. In this background, it can be gainfully extracted the ruling of the Hon'ble Supreme Court reported in Jai Bhagwan Vs. Commr. of Police and Others, wherein the Supreme Court has held that:

disproportionate penalty-applicant was guilty of not being in proper uniform, not opening the door of his cabin, using intemperate language to superior etc., case law on disproportionate penalty discussed ? further held the penalty was harsh

on the type of charges and misconduct ? reduced to reduction in rank.

14. Applying the above said principle to the proven facts, the charge No. 1 to 4 are rightly held to be proved against the delinquent employee by the Administrative Tribunal i.e. non-receiving the transfer order and misbehaving with the official superiors by using harsh words. Consequently, we conclude that the Tribunal has erred in exonerating the respondent fully. However, for the proved charges removal of the respondent from the service, in our opinion is disproportionate. Therefore, we feel that penalty of withholding of three increments without cumulative effect, would be commensurate with the proven mis-conduct of the respondent. However, the respondent is not entitled to back wages for the period for which she has not worked. Accordingly, we propose to impose such punishment on the respondent. In the result, we proceed to pass the following:

ORDER

(a) The Writ Petition is allowed in part. The re-instatement order passed by the Central Administrative Tribunal is not disturbed.

(b) The respondent is held guilty of charges 1 to 4. The order of Disciplinary Authority in that regard is upheld. However, the order of the Central Administrative Tribunal, Bangalore, setting aside the order of removal of the respondent from service passed by the Disciplinary Authority and the order passed by the Appellate Authority stands confirmed.

(c) In respect of proved charges the respondent is imposed with penalty of withholding of three annual increments without cumulative effect. The Respondent is not entitled for the back wages from the date of dismissal till the date of re-instatement i.e. for the period she has not worked.

(d) The petitioners are directed to reinstate the respondent within one month from the date of receipt of the copy of this Order.