(2008) 06 AP CK 0085

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13142 of 2006

Union of India (UOI) and Another APPELLANT

Vs

T. Subba Rao RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 1 ALD 1 : (2008) 4 ALT 262

Hon'ble Judges : K.C. Bhanu, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : C.V. Vinitha Reddy, for the Appellant; K. Siva Reddy, for the Respondent

Final Decision : Allowed

Judgement

K.C. Bhanu, J.—This Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue writ of Certiorari, calling for the records pertaining to the order, dated 7-7-2005, passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, (for brevity ''the Tribunal'') in O.A. No. 1277 of 2004 and quash the same as it is contrary to law.

2. Petitioners herein are the respondents, whereas the respondent herein is the applicant, in the O.A., before the Tribunal.

3. Brief facts, that are necessary for disposal of the present Writ Petition, may be stated as follows:

The respondent herein filed the above O.A. before the Tribunal inter alia stating that while he was working as Chief Office Superintendent, he was transferred to Chilakalaguda Stores Department as Office Superintendent, which is under the control of Senior DSTE (Construction). When he was transferred, he was directed to take the charge of stores from M. Bhagawandas, Office Superintendent II, in whose place the respondent was transferred. The respondent reported for duty on 16-10-1997 and requested the said Bhagawandas to hand over the stores.

However, the said Bhagawandas did not handover the stores. Therefore, the respondent reported the same on 16-11-1997 to the 1st petitioner herein regarding non-handing over of the stores to him. But, no action has been taken by the petitioners. Thereafter, the respondent again informed the 1st petitioner regarding non-handing over of the stores to him. Subsequently, on direction of the 1st petitioner, Bhagawandas handed over 20 items of Mechanical to the respondent and the same was intimated to the 1st petitioner on 20-2-1998. Bhagawandas died in the month of February, 1998 without handing over the full charge of stores to the respondent. The respondent was subsequently promoted as Chief Office Superintendent on 1-4-1999 and transferred to another section in 2nd petitioner''s office. The 1st petitioner vide proceedings, dated 7-9-2004, advised the 2nd petitioner to recover an amount of Rs. 2,62.670/- from the salary of the respondent towards shortage of stores while he was working as Office Superintendent Gr. 1 in the year 1998-99. The 2nd petitioner in his turn vide proceedings, dated 14-9-2004 directed the office to effect recovery. Hence, the O.A.

4. The petitioners filed counter stating that stock verification was conducted in the year 1998-99 by the Assistant Stock Verifier while the respondent worked in the Stores Depot from 16-10-1997 to 3-3-1999. The stock verification was done in the presence of the respondent and he signed in the stock verification sheet, dated 5-7-1999. During the stock verification, it was found that some materials were short and some materials were excess in quantity. The value of the materials which were found short is Rs. 3,09,731/- and the value of excess materials is Rs. 2,46,464/-. The respondent was transferred back to the office of the 1st petitioner vide office order, dated 3-3-1999. The 1st petitioner addressed a letter to the respondent, dated 13-8-1999, directing him to furnish the details of shortage/excess found by the stock verifier during the stock verification. But, the respondent has not given his explanation. The 1st petitioner again addressed a letter, dated 5-10-1999, to the respondent directing him to submit item-wise remarks of the stock sheet, but no remarks have been received. Then finally the petitioners addressed a letter, dated 14-12-1999 to the respondent stating that if no reply has been received from him, it is presumed that he accepted the discrepancies mentioned in the stock sheet. It was also made clear that recoveries from the salary will be effected without further intimation as per rules. The petitioners again addressed a letter, dated 7-1-2000, to the respondent intimating that the department is proposed to take appropriate action against him. In response to the above letter, the respondent addressed a letter, dated 1-2-2000, stating that the stock verification was completed in the month of August, 1999 and received the stock sheet from the office on 16-8-1999 and stated that due to sudden sickness of his mother, he did not attend the office for a period of 45 days. He further stated that a thorough search was conducted by him for the material, which were found short at the time of stock verification and was able to find the same from the depot itself. After his promotion, he never made any request for departmental stock verification. When he was asked to

give a reply to the stock sheet, he addressed several letters seeking extension of time. In spite of extension of time to give para-wise remarks, he did not submit any remarks. Finally, he addressed a letter, dated 26-12-2000, stating that he want to hand over the materials purchased from outside to meet the shortages shown in the stock verification sheet. Thereupon, the respondent wanted to return 21 items out of 61 shortage items. Hence, the impugned proceedings have been issued.

5. The Tribunal on appreciation of material available on record, held that in view of the discrepancies pointed out by the learned Counsel appearing for the respondent herein and in view of the fact that the reliever Bhagawandas did not hand over the entire stores at the time of handing over and taking over of the charge, the petitioners are not justified in taking a decision to recover the amount from the respondent without following the DAR Rules and accordingly, quashed the impugned proceedings, dated 14-9-2004 with liberty to the petitioners to decide the recovery of pecuniary loss caused to the department by following D & A Rules. Challenging the same, the present Writ Petition has been filed.

6. Now the point for consideration is whether the order of the Tribunal is correct, legal and proper?

7. This Court while exercising the power under Article 226 of the Constitution of India, can interfere with the Subordinate Courts and Tribunals where, (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear mis-reading or utter disregard to the provisions of law and (2) a grave injustice or gross failure of justice as occasioned thereby. The factual matrix is not in dispute. The respondent worked as Office Superintendent in the Stores Depot from 16-10-1997 to 3-3-1999 for a period of one year six months. While he was working as Office Superintendent in the stores, stock verification was conducted during the year 1998-99 by the Assistant Stock Verifier. It is not in dispute that stock verification will be conducted every year regularly. It is also not in dispute that stock verification was done in the presence of the respondent and the respondent signed in the stock verification sheet, dated 5-7-1999. During the stock verification, it was found that some of the materials were short and some of the materials were excess in quantity. The Tribunal held that Bhagawandas who died subsequently did not hand over the stores at the time of respondent joining the stores and the said fact was intimated to the petitioners and therefore, without conducting thorough enquiry, the petitioners cannot make the respondent responsible for the shortage of stocks. After verification of stock, it was found that 61 items were short and the value of those items worth about Rs. 3,09,731/-, for which the respondent did not give any explanation. He was also asked to give para-wise remarks by office letter, dated 5-10-1999, but the petitioners have not received any para-wise remarks from the respondent. It is not in dispute that the respondent herein addressed a letter, dated 26-12-2000, stating that he want to hand over the materials purchased from outside to meet

the shortages shown in the stock verification sheet, for which a reply was given stating that material statement may be submitted at an early date, but the respondent has not submitted the said material statement. Again the respondent addressed a letter, dated 3-4-2001, to the 2nd petitioner stating that he was ready and willing to return the material, which were shown in the referred stock sheets. Thereupon, the 1st petitioner vide letter, dated 11-4-2001, addressed to the Chief Signal and Telecommunication Engineer (Construction), South Central Railway, Secunderabad, requested him to accord administrative approval for accepting the material for which the respondent wanted to return 21 items out of 61 items shown as shortage in the stock sheet. The 2nd petitioner vide letter, dated 26-4-2001, addressed to the respondent informed that the competent authority has taken a decision to accept the material subject to giving the proof of source of the material and quality of material. In response to it, the respondent addressed a letter, dated 26-6-2001, stating that he was willing to produce the material before the competent authority for acceptance and closure of stock verification sheet. Thereafter, the respondent handed over only 11 items out of 61 items and seeks time for production of other materials. Therefore, from the correspondence, it is clear that the respondent as custodian of the stock, on many occasions accepted shortage of stocks and requested time to return the shortage of stocks. The correspondence made by the respondent amounts to admitting the shortage of stocks. When he admitted the shortage of stocks, there is no need to conduct any further departmental verification. The stock was verified in the presence of the respondent and sufficient opportunity was given to him to give explanation to the various letters addressed by the petitioners and also para-wise remarks.

8. The plea of the respondent is that his reliever Bhagawandas did not hand over the stocks at the time of his joining the stores. When he himself stated that he purchased 21 items from the open market, it shows that he is admitting his lapses. Various letters were addressed by the respondent, particularly the letter, dated 3-4-2001, wherein he stated that he was ready and willing to return the material in respect of the stock sheet and the letter, dated 26-6-2001, wherein he stated that he could not produce the material as undertaken by him because of his family difficulties. In all the correspondence, the respondent seeks extension of time to produce the materials, which were found short during the verification. Now he cannot turn down (sic. round) and say that his reliever did not hand over the charge. Though, it is stated that Bhagawandas failed to handover the stores and the respondent reported the same regarding non-handing over the stores to him, copies of the letters said to have been addressed by him have not been filed as part of record though the same were referred to in the impugned order. If really, Bhagawandas did not handy over the stores to him, he would have objected for the verification of stocks by the Assistant Stock Verifier on 5-7-1999 stating that full charge of materials have not been handed over to him.

9. Learned Counsel appearing for the petitioners relied on a decision reported in

Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, wherein it was held thus:

Giving of opportunity or an enquiry of course is a check and balance concept'' that no one''s right be taken away without giving him/her opportunity or without enquiry in a given case or where, the statute requires. But this cannot be in a case where allegation and charges are admitted and no possible defence is placed before the authority concerned.

In the present case also, when the Assistant Stock Verifier had verified the stock, he found shortage of stock and prepared the list. The respondent himself signed in the list without any protest and no plausible explanation was given in all the letters said to have been addressed by him stating that the entire charge of stores have not been handed over to him by Bhagawandas.

10. He also relief on another decision reported in Delhi Transport Corporation Vs. Shyam Lal, , wherein it was held thus:

Additionally, the effect of the admission regarding guilt as contained in the letters dated 13-1-1989 and 24-2-1989 have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission.

11. Therefore, without adverting to these aspects, the Tribunal simply gave a finding that Bhagawandas did not hand over the full charge and set aside the impugned proceedings. When such a plea has not been taken by the respondent herein at the earliest opportunity or at the later point of time when he made correspondence to the petitioners, the same cannot be accepted. Therefore, the impugned order of the Tribunal is liable to be set aside.

12. Accordingly, the Writ Petition is allowed setting aside the order of the Tribunal, dated 7-7-2005, in O.A. No. 1277 of 2004. However, there shall be no order as to costs.

