

(2010) 04 DEL CK 0289

In the Delhi High Court

Case No : Writ Petition (C.) No. 2590 of 2010

Union of India (UOI) and Others

APPELLANT

Vs

A.K. Gupta

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (2010) 04 DEL CK 0289

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; None, for the Respondent

Judgement

Mool Chand Garg, J.—The respondent herein was initially appointed as Assistant Project Officer in the Central Social Welfare Board (for short "the CSWB"). He was promoted as Joint Director as per the recommendation of the DPC held on 28.8.2006. In the meanwhile, he was placed under suspension w.e.f. 5.11.2005 as he was found accepting illegal gratification of Rs. 11000/- and Rs. 4000/- from an employee of housekeeping contractor as was revealed by a TV program telecast by a TV Channel (Star News) on 3.11.2005 and 4.11.2005. However, the suspension order of the respondent was revoked w.e.f. 23.05.2006 and as was decided by the Executive Committee in its 152nd Meeting and a departmental enquiry was initiated against the respondent. Vide Memorandum No. F 22-1/78-Estt., a charge sheet dated 27.04.2006 under Rule 14 of CCS (CCA) Rules, 1965 for major penalty was issued to the respondent. Smt. Vinesh Lata, the then Joint Director, was appointed as Enquiry Officer. The Enquiry Officer in a report dated 9.1.2007 has opined:

In view of the statements recorded and on the basis of the records made available, it is concluded that there is no evidence to prove that Sh. A.K. Gupta has taken money for personal gratification. The charge is also not substantiated by statement of imputation, as it does not give any cause of action against the

charged officer as far as delay in payment to the contractor is concerned.

However as per the statement given by Sh. A.K. Gupta, he did receive the money to make payment to the House keeping employees. This action of charged officer does not fall into the normal jurisdiction of work as DD (Admn.). He has also not obtained approval of Competent Authority for such action in case he considered it as very special cases. Thus, he has violated procedure in the interest of service.

2. Against the enquiry report, the respondent made a representation stating that he had received the money for making due payment to the aggrieved labourers on humanitarian grounds and in future he shall keep the competent authority informed about all such matters. It was thereafter the respondent was promoted to the post of Joint Director as stated above. An agenda was circulated for the confirmation of the promotion of the respondent in the 157th Meeting of the Executive Committee which was held on 11.10.2007. However, the Executive Committee referred the matter to the Ministry of Woman and Child Development as per the decision taken on 19.10.2007.

3. The Ministry of Woman and Child Development in its reply dated 14.03.2008 suggested the following course of action:

1. A final decision on the inquiry report regarding the footage of taking gratification by Sh. A.K. Gupta should have been taken by the Executive Committee of CSWB because Chairperson is not the competent authority to take a final view on the inquiry report. Therefore, CSWB is directed that this matter be placed against before the Executive Committee for a final view.

2. As regarding filing of an FIR in the above case, it is for the CSWB to take a view. They are competent to lodge the FIR, if they think that a case is made out for the same. They do not require any guidelines from the Ministry on this point.

4. In view of the aforesaid, the promotion order of the respondent was withdrawn. It was also decided by the Executive Committee of the CSWB to impose the penalty of compulsory retirement on the respondent from the service of CSWB w.e.f. 31.05.2008. It is, however, a matter of record that neither any dissenting opinion was served upon the respondent by the Executive Committee nor any representation was heard on behalf of the respondent.

5. In view of the aforesaid, the respondent filed an appeal against the order of the Disciplinary Authority before the Appellate Authority. However, the Appellate Authority has dismissed the said appeal by passing the following order:

1. So far as his reinstatement in service is concerned, the Appellate Authority do not find sufficient ground for interfering with the order dated 16.05.2008 of the Disciplinary Authority.

2. So far as withdrawal of the promotion order dated 22.04.2008 and fixation of the pay w.e.f. 15.1.2007 are concerned the question will arise only if he is

reinstated in service and,....

6. It is against the aforesaid order, the respondent filed an OA bearing No. 930/2009 before the Principal bench of Central Administrative Tribunal (for short "the Tribunal"), which was decided by the Tribunal vide order dated 5.1.2010.

7. Some of the observations made by the Tribunal in the aforesaid order are as under:

8. We have heard the learned Counsel representing the parties and with their assistance examined the records of the case. Order dated 12.1.2007 has been passed by Sujata Saunik, Executive Director, wherein it is clearly recorded that the competent authority had accepted the findings of the enquiry officer. Insofar as, order dated 16.5.2008 is concerned, even though the same may have been passed in pursuance of the decision of the executive committee, the same too has been passed by the Executive Director, and incidentally, Sujata Saunik only. In the short reply filed on behalf of the respondents, whereas there is no dispute on the facts as projected in the Application and as has been mentioned above, all that has been stated is that exoneration of the applicant was not valid as the order in that regard had been issued by incompetent authority and not by the legitimate disciplinary authority. As to under what rules or administrative instructions the executive committee would be the competent or disciplinary authority as regards the applicant, has not been mentioned. During the course of arguments as well, the counsel representing the respondents are unable to refer to any rules which may show that it is the executive committee which would be the disciplinary authority of the applicant and not the Executive Director. It is interesting to note that even the order said to have been passed by the competent authority has been passed by the Executive Director, and, as mentioned above, incidentally by the same person, i.e., Sujata Saunik. Even in the impugned order dated 16.5.2008, it is mentioned that the then Chairperson, Central Social Welfare Board, who exonerated the applicant of all the charges, was not competent to take such decision in the capacity of disciplinary authority, whereas, as mentioned above, be it the order dated 16.5.2008 or order dated 12.1.2007, have been passed by the Executive Director. Under what rules or instructions the executive committee would be the competent authority, also finds no mention in the impugned order. The applicant has not filed any rejoinder, nor we find any ground taken by him in the memorandum of appeal filed by him against order dated 16.5.2008 wherein he might have mentioned as to who is the competent authority to take action against him in disciplinary matters. In view of the facts as mentioned above, and in particular that both the orders have been passed by the same authority, and that there is no mention of any rules from where it may appear that the executive committee only may be the competent authority to deal with the matter of the applicant, it is not possible to return any positive finding on this issue. There would be no need to go into this question at this stage. We leave the matter for debate if the occasion may arise. Insofar as, the second contention of the learned Counsel representing the

applicant, as referred to above, is concerned, there is absolutely no contest. The applicant was proceeded under CCS (CCA) Rules, 1965, which prescribe the procedure for departmental enquiries. We need not refer to the said procedure, as it is not in dispute that in case the disciplinary authority, whosoever it may be, may differ with the report of the enquiry officer, it has to record a note of dissent and send it to the concerned employee with the report of the enquiry officer, invite his representation and then, in consideration thereof, pass the orders. Even principles of natural justice require that when in regular departmental enquiry an employee has been exonerated by the enquiry officer, and, if a discordant view is to be laid by the disciplinary authority for reasons to be recorded therefore, the employee has to be given an opportunity. Further, if it was the view of the respondents that Executive Director was not the competent authority, they had no choice but to set aside the order, and that too, after putting the applicant to notice, and then to proceed in the matter as per procedure mentioned above. Admittedly, neither order dated 12.1.2007 was set aside nor the applicant was given any opportunity to be heard, nor could he be possibly heard as no dissent was ever recorded nor thus conveyed to him.

9. In view of the discussion made above, this Application is allowed. Impugned orders dated 16.5.2008 passed by the Executive Director and dated 20.3.2009 passed by the appellate authority are quashed and set aside. The respondents would, however, be at liberty to proceed against the applicant in accordance with law and in view of observations as made above, where the applicant would be given full opportunity to show that there is no justification for setting aside order dated 12.1.2007, as also that the same was passed by the competent authority. The applicant would be reinstated in service and be restored to his promotional post of Joint Director, as admittedly he was reverted only because of the outcome of the disciplinary proceedings against him. The applicant shall be entitled to his salary all this while and other consequential benefits that he may be entitled to under rules. There shall, however, be no order as to costs.

10. Before we may part with this order, we may mention that if the plea of the respondents is accepted that the order dated 12.1.2007 was not passed by the competent authority, the impugned order dated 16.5.2008 was also passed by the same authority, and, as mentioned above, incidentally by the same person, even though in consequence of recommendations of the executive committee, the same has also to be set aside.

8. In view of the aforesaid observations made by the Tribunal, the OA filed by the respondent was allowed and the impugned orders dated 16.05.2008 and 20.03.2009 were quashed and set aside. However, a liberty was granted to the petitioners to proceed against the respondent in accordance with law and in view of the observations made by the Tribunal in the aforesaid order, where the respondent would be given full opportunity to show that there is no justification for setting aside the order dated 12.1.2007 as also that the same was passed by the competent authority.

9. This is also the view taken by the Apex Court in the judgments delivered in the case of Ranjit Singh Vs. Union of India (UOI) and Others, and Lav Nigam v. MD, ITI Ltd. and Anr. (2006) 9 SCC 440.

10. We have heard the learned Counsel for the petitioners. We find no infirmity in the order passed by the Tribunal for the simple reason that even though the possibility of disagreement by the Disciplinary Authority cannot be ruled out, yet there is a procedure to be followed. In such a situation, it is incumbent upon the Disciplinary Authority, which again is not clear in this case as to whether it is Executive Committee or the Executive Director, to serve a copy of the dissenting note upon the employee who is sought to be proceeded against on the basis of a decision taken to enhance the punishment, which has not been done in the present case. The question of hearing any representation of the respondent, therefore, does not arise.

11. We are thus satisfied that there is no infirmity in the order passed by the Tribunal which calls for our interference under Article 226 of the Constitution of India when opportunity has been granted to the petitioners to proceed against the respondent in accordance with law and in view of the observations made by the Tribunal in the order dated 5.1.2010 and where the respondent has to be given full opportunity to show that there is no justification for setting aside order dated 12.1.2007 as also that the same was passed by the Competent Authority. The writ petition is accordingly dismissed.

CM No. 5171/2010 (Stay)

In view of the orders passed above, this application has become infructuous and is accordingly disposed of.