

(2007) 11 DEL CK 0090
In the Delhi High Court
Case No : WP (C) No. 742/07

Union of India (UOI) and Others

APPELLANT

Vs

Anokhey Lal

RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 8

Citation : (2007) 11 DEL CK 0090

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Manish Kr. Saran, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The respondent herein, while working as Extra Departmental Delivery Agent, was served with a charge sheet for a major penalty alleging that he had misappropriated Rs. 4,200/-, being the value of seven money orders. The Inquiry Officer was appointed who submitted his report holding that charges were not proved. The disciplinary authority disagreed with the said finding and passed the order of removal. However, before doing so, the respondent had not been given any opportunity to make his representation. In the statutory appeal preferred by the respondent herein, the appellate authority set aside the order of removal on that ground and directed disciplinary authority to furnish "Note of Disagreement" to the respondent and pass appropriate orders after giving him an opportunity to make representation there against. The disciplinary authority thereafter sent a "Note of Disagreement" to which the respondent replied. However, the disciplinary authority held that the charges were proved and imposed penalty of removal upon the respondent. The respondent attempted to get the said order set aside by preferring a statutory appeal. His attempt in the said appeal having failed, the respondent approached the Central Administrative Tribunal. The Central Administrative Tribunal, vide impugned judgment dated

05-07-2006, has allowed the OA preferred by the respondent herein. Following two reasons are given by the Tribunal in support of its conclusion:

(a) The respondent was a removed employee and since he was not in employment, de novo proceedings were not legally sustainable and were without jurisdiction;

(b) In the "Note of Disagreement", final conclusion was recorded which showed that disciplinary authority had already made up its mind, and the entire action was pre-determined.

2. In this backdrop, in the present writ petition, preferred against the said judgment, we have to examine as to whether or not the impugned judgment calls for any interference by us.

3. Though we have the flavour of factual basis in which issue arises for determination, it would be necessary to restate the facts in some detail to appreciate and consider the clash of opposing views.

4. The respondent is governed by Extra Departmental Agents (Conduct & Service) Rules, 1964 (now called EDCS rules). Under Rule 8 of EDCS rules, the respondent herein was served with a charge sheet. Allegation was that he had misappropriated a sum of Rs. 4,200/- being the value of seven money orders.

5. After completion of the disciplinary proceedings, a report dated 10-09-94 was submitted by the Inquiry Officer, holding that the charges were not proved. The disciplinary authority, i.e., SDI, Mainpuri sent a copy of the inquiry report to the respondent vide letter dated 19-09-94 for submitting representation, if any, against the inquiry report. It was not mentioned that Disciplinary Authority was differing from the findings and, obviously points of disagreement were also not sent with the inquiry report. Since the respondent was exonerated by the Inquiry Officer, as far as he is concerned, he had no comments to offer. Welcoming such a report the respondent vide his application dated 05-01-95, requested the disciplinary authority to take him back on duty as the allegations had not been proved by the Inquiry Officer. We may note that the charged officer was under suspension at that time.

6. The disciplinary authority, however, vide its memo dated 14/21-01-95, inflicted the punishment of removal against the respondent for the first time putting his discordant note. In his appeal dated 20-04-95 preferred against this punishment, the appellate authority rightly set aside such a punishment order which was passed without affording any opportunity to the respondent to represent against the "Note of Disagreement".

7. The operative portion of the order of the appellate authority dated 31-08-95 reads as under:

As the disciplinary authority, has failed to point out the reasons/points for disagreeing with the findings of the Inquiry Officer, there was no point to the

charged officer for submitting his representation as desired by the disciplinary authority under his letter dt. 19.9.94. Under these circumstances, as per demand of justice, I remit the case back to disciplinary authority order for de novo proceedings of the case from the sending copy of enquiry report to the charged officer with reasons/points of disagreement with the findings of enquiry officer, if any.

8. After remand of the case, the disciplinary authority, vide its memo dated 09-12-95, sent to the respondent a copy of the inquiry report along with a note showing "reasons/points of disagreement". The respondent submitted its representation dated 27-12-95. After consideration, the same disciplinary authority vide memo dated 29-03-96, awarded punishment of removal from service to the respondent. The respondent preferred an appeal dated 15-05-96 which was rejected vide orders dated 06-03-97. However, as per the respondent he was not communicated this order.

9. The respondent after waiting for the outcome of his appeal preferred an OA No. 298/02 before the learned Tribunal alleging that his appeal dated 15-05-96 was pending and had not been decided. The Tribunal disposed of the said OA on 18-11-2002, without notice to the petitioner herein, with the direction to the petitioner to dispose of the appeal of the respondent. On coming to know of this order, the petitioners filed MA 740/03 bringing to the notice of the Tribunal that the appeal had already been disposed of vide order dated 06-03-92. The Tribunal passed an order dated 04-04-03 on this application clarifying that if the appeal had already been disposed of, it was not necessary to redetermine the same and the respondent herein should be informed of this fact. Thereafter, respondent preferred review petition dated 16-06-03 which was rejected on 16-07-04. After receiving the rejection orders, respondent approached the Tribunal again and filed OA 344/05 challenging the punishment of removal. Petitioners herein filed their reply contesting this petition and after hearing the parties, the Tribunal had passed the impugned order dated 05-07-06, as already referred to in the beginning of this judgment that de novo inquiry was not permissible. It has set aside the order of the Disciplinary Authority on the ground that he had reached the final conclusion, before even soliciting the respondents reply, in his note of disagreement. The directions given in the last para of the judgment, while allowing OA of the respondent are to the following effect:

14. Insofar as the back wages for the interregnum when the applicant had remained out of service are concerned, though we are not inclined to award back wages, yet the learned Counsel for the applicant, on instructions from the applicant at the Bar, undertakes that he would not claim back wages for the aforesaid period. Accordingly, we direct the respondents to forthwith reinstate the applicant in service and except back wages, he would be entitled to all consequential benefits. No costs.

10. With this background of facts, we now come to the propriety or otherwise all the reasons/points given by the Tribunal in support of its aforesaid conclusion.

11. As pointed out above, the Tribunal has supported its judgment on two grounds. The First reason is contained in para 9 of the judgment which reads as under:

9. In our considered view, once the earlier removal has been set aside for violation of principles of natural justice by the appellate authority, it is deemed that the applicant is put back in service either on reinstatement or under deemed suspension. Against a removed employee and in that capacity, even a de novo proceeding would not be legally sustainable as without jurisdiction. By not reinstating the applicant and subjecting him to de novo proceedings, which culminated, on disagreement into the penalty of removal cannot be sustained in law. It is trite that against a removed employee, no inquiry can be proceeded and no punishment can be imposed.

12. We have not been able to understand the aforesaid line of reasoning adopted by the learned Tribunal. In the first breath, the Tribunal itself points out that once the earlier removal was set aside, it would be deemed that the respondent was put back in service either on reinstatement or under deemed suspension. However, immediately thereafter, it is observed that against a removed employee de novo inquiry would not be legally sustainable and would be without jurisdiction. May be, what the Tribunal implies is that after the order of punishment of removal was set aside by the Appellate Authority, before proceeding further, there should have been a specific order of either reinstatement or placing the respondent under deemed suspension, and only thereafter "Note of Disagreement" should have been given to the respondent asking him to make his representation there against.

13. However, once the Appellate Authority had set aside the penalty of removal dated 14/21-01-95, the effect thereof was that there was no such order of penalty in existence as on that date. Therefore, the respondent was to be treated in service as if no removal orders were passed since the same were set aside. In such circumstances, even if formal order of reinstatement or deemed suspension was not passed, that would not mean that the respondent was still to be treated as a terminated employee and on that basis it could not be concluded, as erroneously done by the Tribunal, that de novo inquiry could not be held against a terminated employee. Once the Appellate Authority had held that earlier order of removal was in violation of principles of natural justice (as being one passed without giving an opportunity to the respondent to make his representation), and directing "de novo" inquiry to be held from the stage of giving inquiry report along with the "Note of Disagreement", and by giving an opportunity to the respondent to make his representation there against, it clearly meant that order of removal was set aside by the Appellant Authority and even in the absence of specific/formal order by the disciplinary authority of reinstatement or deemed suspension, the respondent could be treated as in service. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , the Hon"ble Supreme Court has categorically held that in such circumstances, fresh inquiry can be held and it is

not necessary to take back the delinquent employee on duty. May be, in the absence of specific order of deemed suspension, the respondent could have said that he is to be treated as in service and, Therefore, could have claimed full salary, etc. for the intervening period. However, by no stretch of imagination, it could be taken to mean that the respondent was still a dismissed employee and, Therefore, fresh inquiry was not permissible. We, Therefore, are unable to subscribe to the view taken by the Tribunal.

14. The other reason given by the Tribunal is that in the "Note of Disagreement" the disciplinary authority took a final view of the matter which shows that it had already made up its mind and the entire action was pre-determined. This reason finds discussion in para 12 of the impugned judgment, which is in the following words:

12. What is permissible in disagreement is tentative reasons recorded on disagreement by the disciplinary authority and on representation a final view of the matter has been taken. But once the disciplinary authority even without receipt of the representation against note of disagreement once proved the charges, it shows that he has already made up his mind and the entire action is pre-determined. The concept of reasonable opportunity and the principle of audi alteram partem would go redundant in such a case. As such, the decision in Yoginath D. Bagde's case (supra) clearly applies to the present situation where the disagreement note being tentative, the disagreement note as well as subsequent orders cannot be sustained in law.

15. We find ourselves in agreement with this conclusion arrived at by the learned Tribunal. We have gone through the "Note of Disagreement" dated 09-12-95. It starts with the observation of the Disciplinary Authority that he did not agree with certain findings in the inquiry report dated 10-09-94 submitted by the Inquiry Officer due to the reasons given by him in respect of those findings. Thereafter, he has given his reasons and in the end, the "Note" states:

CONCLUSION

Due to the above reasons, all the charges leveled against Shri Anokhe Lal, E.D.D.A. (put off duty) are proved to have been leveled against the evidence.

16. It is clear from the above that in the "Note of Disagreement" itself the disciplinary authority has arrived at its conclusion to the effect that the charges leveled against the respondent herein stood proved. The final opinion is thus given by the Disciplinary Authority without even eliciting a reply to the said "Note of Disagreement" from the respondent. This would clearly show that the Disciplinary Authority had already made up his mind and with a pre-determined mind an opportunity was given to the respondent to submit his Explanation, which would be an empty formality. In the case of Yoginath D. Bagde v. State of Maharashtra JT 1999 (6) SC 62, the Supreme Court, in no uncertain terms, mandated that the disciplinary authority is supposed to communicate to the delinquent officer only the "tentative" reasons for disagreeing with the findings of

the Inquiry Officer so that the delinquent officer has the opportunity to indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the Inquiry Officer are not germane and the finding of "not guilty" already recorded by the inquiring authority should not be interfered with. Thus, The disciplinary authority was only supposed to record his tentative/proposed reasons for disagreeing with the findings of the Inquiry Officer and not to arrive at the final conclusion. Therefore, on this ground the Tribunal rightly set aside the impugned penalty imposed upon the respondent herein.

17. This gives rise to the query: Whether, after setting aside the penalty, the Tribunal should have granted further opportunity to the petitioners herein for holding fresh proceedings from the same stage? Normally, such course of action is to be followed having regard to the judgments of the Supreme Court in the case of Union of India (UOI) and Others Vs. Mohd. Ibrahim, and U.P. State Textile Corporation Ltd. Vs. P.C. Chaturvedi and Others, . However, the double fault committed by the Disciplinary Authority in the present case, would not allow us to adopt this course of action in this particular case. First time, on receipt of the report submitted by the Inquiry Officer holding that the charges are not proved, the Disciplinary Authority straightway imposed the penalty of removal from service without even giving any opportunity to the respondent to represent even when the Disciplinary Authority was disagreeing with the findings recorded by the Inquiry Officer in the inquiry report. Only copy of the inquiry report, vide letter dated 19-09-94, was sent to the respondent as per which respondent was exonerated. The respondent did not even know that the Disciplinary Authority had intended to disagree with the findings of the Inquiry Officer. On the basis of this report when the respondent vide his letter dated 05-01-95 requested the Disciplinary Authority to take him back on duty, he was slapped with a memorandum dated 14/21-01-95 which was the penalty order imposing punishment of removal. This order was thus passed without giving an opportunity to the respondent to submit his representation against the reasons/ points of disagreement purportedly recorded by the Disciplinary Authority. Respondent succeeded in appeal as the Appellate Authority remitted the case back to the Disciplinary Authority for de novo proceedings from the stage of sending of the inquiry report with reasons/points of disagreement with the findings of the Inquiry Officer. On the second occasion, the Disciplinary Authority farcically completed the formality of sending the "Note of Disagreement" as he recorded his final opinion thereon.

18. It is clear that the Disciplinary Authority was sitting with a closed mind from the beginning and was bent upon punishing the respondent without affording any opportunity to the respondent to justify the findings of the Inquiry Officer, who had exonerated him. No doubt, the Disciplinary Authority has a right to disagree with the report of the Inquiry Officer, but it is supposed to take the final decision only after giving an opportunity to the delinquent officer to represent against the "tentative reasons for disagreement" as it is the right of the delinquent employee

to point out that the finding of "not guilty" already recorded by the Inquiry Officer, was not liable to be interfered with. This is possible only if the tentative reasons are recorded and the Disciplinary Authority has an "open" mind on the entire issue. As it is said, justice should not only be done, but it must be seen to be done. In a case like this, the Disciplinary Authority has shown its pre-determined and biased mind twice over, we are of the opinion that no useful purpose would be served in giving a further opportunity to the petitioners. Moreover, the Tribunal has not awarded back wages and the respondent also gave statement before the Tribunal that he would not claim back wages for the intervening period. The effect is that the respondent would not be getting any pay for a period of twelve years and nine months.

19. For the above reason, we dismiss the present petition upholding order of the Tribunal on this ground.