
(2007) 01 DEL CK 0133

In the Delhi High Court

Case No : Writ Petition (C) 18390-92 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

J.P. Singh

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 22
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 226

Citation : (2007) 137 DLT 276

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : R.V. Sinha and Satpal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioners by this writ petition assail the order dated 27th July, 2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 352/2005. The Central Administrative Tribunal by the impugned order set aside the order passed by the Disciplinary Authority dated 20th June, 2000, compulsorily retiring the respondent from service and the order dated 28th January, 2004, passed by the Revisional Authority, reducing punishment of compulsory retirement to reduction of pay by three stages for three years with cumulative effect. The Central Administrative Tribunal proceeded primarily on the limited ground that the statements of witnesses, which had been recorded during the preliminary enquiry by the complainant, were neither ratified nor authenticated by the makers of the statements, during the inquiry proceedings. Hence these could not be relied upon by the Inquiry Officer to uphold the charges and impose the above punishment. The Tribunal proceeded on the basis that with the exclusion of the said inadmissible evidence, it was rendered to be a case of "no evidence" and punishment imposed was not sustainable.

2. Before we can consider the grounds on which the petitioner/UOI seeks to

challenge the order of the Tribunal, the facts culminating into the present petition may be briefly noted.

i. respondent a Postal Assistant, was charge sheeted under Rule 14 of the CCS (CCA) Rules, 1965 for using unparliamentary and abusive language with his superior, one Sh. R.P.S. Yadav, Sub Divisional Inspector (E). He allegedly misbehaved and used unparliamentary and abusive language on being asked the reason for coming late on 9th September, 1994. He was also charged for coming to office in an intoxicated state.

ii. A preliminary inquiry was conducted by Sh. R.P.S. Yadav himself, who recorded the statement of a number of persons working in the office, regarding the alleged incident of misbehavior. On the basis of preliminary inquiry, charge sheet dated 15th February, 1995 was issued to the respondent. For facility of reference, the said Article of charges are reproduced as under:

ARTICLE - I

While Shri J.P. Singh was working as PA Yamuna Bridge Agra 6 he attended office at 1030 hrs on 9.9.94 in an intoxicated position. On being questioned by Shri RPS Yadav SDI (E) Agra he used unparliamentary and abusive language and misbehaved with him in the presence of post office staff. He then left the post office for obtaining Medical Certificate on return he again misbehaved with Shri RPS Yadav.

By acting in the aforesaid manner he infringed the provision of Rule 22(a), (b), (bb), (c) and (d) of CCS Conduct Rule, 1964. He also failed to maintain absolute devotion to duty and acted in a manner which is unbecoming of a Govt. Servant as such infringed the provision of Rule 3(1) (ii) and 3(1) (iii) of CCS (Conduct) Rule 1964.

ARTICLE II

Shri J.P. Singh while working as PA Yamuna Bridge PO Agra 6 attended the office at 10.30 am instead of 8.30 am on 9.9.94. On being asked by Shri RPS Yadav SDI (E) Agra about his late attendance Shri J.P. Singh abused him by using unparliamentary language and misbehaved and threatened the said SDI (E) Agra.

As such Shri J.P. Singh failed to maintain devotion to duty and acted in such a manner which is unbecoming of a Govt. Servant and hence infringed the rule 3(1) (ii) and 3(1) (iii) of CCS (Conduct) Rule 1964.

iii. The inquiry was concluded on 12th June, 1988 and an inquiry report was submitted on 15.3.2000, holding the charges to be proved. A copy of the inquiry report was duly supplied to the respondent who submitted his representation in defense dated 1st May, 2000. The Disciplinary Authority after considering and examining the file of the disciplinary proceedings, charge sheet, inquiry report and the representation and all other relevant and connected documents, held Articles I and II of the charges to be fully proved. It held mis-conduct and

misbehavior of the respondent to be proved in toto. However, the charge of being in intoxicated state was held to be partially proved because corroborative medical evidence was not obtained. In these circumstances, vide order dated 20th June, 2000, the Disciplinary Authority passed an order of compulsory retirement of the respondent.

iv. Respondent preferred a revision/appeal before the Member (P), Postal Service Board. The Revisional Authority duly considered and appraised the evidence that had been led before the Inquiry Officer. It noted that many of the witnesses while admitting their signatures on the statement made in the preliminary inquiry did not subscribe to its contents. After discussing the statements of witnesses recorded in the preliminary inquiry and the evidence before the Inquiry Officer, the Revisional Authority concluded that almost all the prosecution witnesses had denied having seen the petitioner in an intoxicated condition on the date of the incident. In the absence of medical opinion from Medical Officer to support the allegation, it held that the charge of coming to office in intoxicated condition was not established. Regarding the charge of using abusive and unparliamentary language it noted from the statement of prosecution witnesses that heated exchange of words did take place between Shri R.P.S. Yadav and the respondent. It held that the respondent by his action had marred the decorum of office and had mis-conducted himself and it held that charge of misbehavior with his superior to be proved. The Revisional Authority held that the punishment of compulsory retirement was not commensurate with the misconduct as is established and it modified the punishment to reduction of respondent's pay by three stages for a period of three years with the direction that during the currency of penalty, he will not earn any increment of pay. Petitioner preferred OA No. 352/2005 against the order passed by the Revisional Authority.

3. The learned Tribunal allowed the OA, as noted by us earlier, primarily on the ground that the Disciplinary Authority as well as the Revisional Authority have acted on inadmissible and extraneous evidence. The Tribunal held that the witnesses whose statement had been recorded under the preliminary inquiry, on which reliance was placed during the regular inquiry, had not supported the statements as recorded in the preliminary inquiry. The Tribunal, in our view, rightly held that unless the statement of witnesses earlier recorded, were ratified and authenticated by the makers, the same could not be relied upon. The Tribunal noted that while it is true that in disciplinary proceedings, strict rules of evidence as contained in Evidence Act may not be applicable and the principles of preponderance of probabilities is acted upon, yet the procedure adopted in disciplinary proceedings cannot be such so as to permit basing of the finding as to misconduct on evidence, which was wholly inadmissible. Finding of misconduct based on such inadmissible evidence would not be sustainable. We are in agreement with the approach adopted by the Tribunal.

4. The Tribunal considering the evidence as recorded held that the prosecution witnesses had retracted from the previous statements and not corroborated the

charges thus rendering it to be a case of almost "no evidence" against the respondent. The Disciplinary Authority and the Revisional Authority could not have proceeded on the basis of inadmissible evidence or based an order on virtually "no evidence". The Tribunal held that this had vitiated the entire inquiry proceedings. Under Rule 14, recording of oral evidence in an inquiry was mandated and non-adherence to the basic principles would render the inquiry redundant.

5. We have heard Mr. R.V. Sinha, counsel for the petitioner Union of India, in support of the petition. Mr. Sinha urges that the Tribunal has erred and exceeded its jurisdiction by re-appraising and re-appreciating the evidence, which was not within its province. Learned Counsel sought to urge that it was not a case of "no evidence" but rather a case of some evidence. Learned Counsel vehemently urged that there was sufficient legal evidence available to return a finding of misconduct.

6. We have looked at the statements of witnesses tendered by the Union Counsel. We find that in the instant case, one of the witnesses Chander Pal Singh, who accepted his signatures on the statement Ex.Ka-9 stated that his signatures were obtained under pressure. Shri Bahadur Singh, another witness accepted his signatures but did not subscribe to the contents of the statement. He deposed that he was not aware whether abusive language was used. He stated that he was at a distance and there was some unpleasant exchange of words, which also was an inference drawn by him. Shri Om Prakash, another witness did not confirm the contents and stated that he had written the statement on hearing from others about the incident. He had heard that there was a quarrel. Shri Tribhuvan Singh stated that no liquor had been consumed by the respondent but confirmed exchange of unpleasant words. Shri Ramesh Chander Sikarwar stated that he had given his deposition on similar lines as others who had given theirs on being asked to do so.

7. Mr. Sinha placed reliance on Ex.Ka-6, the statement of P-6 in the preliminary inquiry. P-6, confirmed his previous statement and the document was duly proved. We have considered this aspect also. We find that Shri O.P. Sharma, PW-6 stated before the Inquiry officer that upon Shri R.P.S. Yadav asking the respondent reasons for his coming late to office, the respondent had given him the medical certificate and he was relieved of the charge. He further confirmed that there was exchange of unpleasant words. PW-6 stated that "Kaha Suni Hui-Gali Galoch Nahi Hui". This itself shows that even the star witness on whom the petitioner is relying stated that there was no abusive behavior and there was only exchange of words.

8. In these circumstances, we are of the view that the Tribunal cannot be faulted with for having held that the Disciplinary Authority and the Revisional Authority have erred in acting and relying on evidence, which was inadmissible and which had not been substantiated and proved during the regular inquiry but had been retracted.

9. The scope of interference in a petition under Article 226 of the Constitution of India, unlike a regular appeal, is a limited one. The writ Court is to correct only errors of law resulting in breach of rights, which are amenable to judicial interference in the exercise of writ jurisdiction. We do not find any such error, which calls for our interference in the exercise of writ jurisdiction. We, accordingly, find no merit in the writ petition and dismiss the same.