

(2009) 07 DEL CK 0544

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1314 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Mukesh Garg

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Citation : (2009) 6 ILR Delhi 600

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : J.K. Singh, for the Appellant; Meenu Mainee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—By this writ petition, the Petitioners have prayed that the order dated 25th April, 2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (herein after referred to as "Tribunal") in O.A. No. 1144/2006 be set aside. By the impugned order, Tribunal has set aside the order dated 27th October, 2004 passed by Disciplinary Authority whereby pay of the Respondent was reduced from Rs. 3880/- to Rs. 3540/- in the pay scale of Rs. 3200-4900/- for a period of four years with cumulative effect; as also the order dated 18th May, 2005 passed by the Appellate Authority dismissing the appeal of the Respondent.

2. Brief background of the case is that the Respondent was working with the Petitioner as a Parcel Clerk at Delhi on 21.10.1998 when in a surprise check, a sum of Rs. 150/- was found in his possession as excess as private cash and it was also revealed that he had created an artificial shortage of Rs. 145/- in the Government cash. A departmental enquiry was initiated against the Respondent. The Enquiry Officer gave his report on 24th May, 2000 thereby holding that charge No. 1 was proved fully; whereas charge No. 2 was proved partially since alterations were proved only on LT No. 199613. Enquiry report was served on the Respondent, who made a representation before the Disciplinary Authority.

Thereafter, vide order dated 10th May, 2001 the Disciplinary Authority held Respondent guilty of charges levelled against him and imposed punishment of reduction of pay to Rs. 3200/- from Rs. 3710/- for a period of four years with cumulative effect in the grade of Rs. 3200-4900/-. Respondent preferred an appeal before the Appellate Authority against this order, which was also dismissed vide order dated 5th July, 2001.

3. The Respondent challenged the aforesaid orders passed by the Disciplinary Authority as well as the Appellate Authority before the Tribunal by filing an application being OA No. 1929/2002 which was allowed vide order dated 30th May, 2003. The Tribunal quashed the order dated 10th May, 2001 passed by the Disciplinary Authority and order dated 5th July, 2001 passed by the Appellate Authority as well as Enquiry Officer's report dated 24th May, 2000 and remanded the matter back to the Enquiry Officer with the direction to start the enquiry from the stage of calling the defence witness Sh. A. Rehman. It was further directed that the competent authorities shall pass appropriate speaking orders in accordance with law, rules and instructions within a period of six months.

4. Pursuant to above referred order the Enquiry Officer summoned and recorded the statement of defence witness Sh. A. Rehman and submitted enquiry report before the Disciplinary Authority. The Enquiry Officer concluded that on the basis of evidence both oral and written that both the charges were proved. Copy of the enquiry report was given to the Respondent and he filed a detailed representation before the Disciplinary Authority. Thereafter, Disciplinary Authority vide order dated 27th October, 2004 held that the Respondent was guilty of charges levelled against him and imposed punishment of reduction of his pay to Rs. 3540/- from Rs. 3880/- for a period of four years with cumulative effect, in the grade of Rs. 3200-4900/-. Respondent preferred an appeal before the Appellate Authority who dismissed the appeal vide order dated 18th May, 2005.

5. Respondent challenged the order dated 27th October, 2004 passed by the Disciplinary Authority and the order dated 18th May, 2005 passed by the Appellate Authority before the Tribunal by filing an original application being O.A. No. 1144/2006 which was allowed by the impugned order dated 25th April, 2007 and the orders dated 27th October, 2004 and 18th May, 2005 have been set aside. The Tribunal has held that the Respondent was entitled to all the consequential benefits. The Tribunal has categorically observed in the impugned order that after remand of the matter, Enquiry Officer has not passed a fresh enquiry report. His enquiry report was in continuation of the earlier report which had already been set aside by the Tribunal. After the remand, Enquiry Officer had examined the DW but had not taken into account the defence statement and the contentions raised before him. The enquiry report was vague, indefinite and contrary to the statutory rules. Disciplinary Authority had also not passed a speaking order. The Tribunal has further held that the appellate order had also not raised or discussed any of the pleas of the Respondent and its order was a non speaking order. The orders passed both by Disciplinary Authority as well as

Appellate Authority were non-speaking and perpetuated the illegality earlier committed which had been set aside by the Tribunal.

6. We have carefully perused the report of the Enquiry Officer as well as the orders passed by the Disciplinary Authority and Appellate Authority. We are of the view that the same are non-speaking orders. Perusal of enquiry report shows that the same was given in continuation of the earlier report which was quashed by the Tribunal vide order dated 30th May, 2003. After the matter was remanded back by the Tribunal with the direction to the Enquiry Officer to afford opportunity to the Respondent for calling the defence witness Sh. A. Rehman and thereafter to pass appropriate speaking order, it was obligatory on the part of Enquiry Officer to consider the matter afresh and to give a reasoned and speaking report after considering the statement of defence witness and also the contentions raised by the Respondent. No reason whatsoever has been given in the enquiry report on the basis of which Enquiry Officer had concluded that the charges against the Respondent stood proved. After the enquiry report was served on the Respondent, he made a detailed representation before the Disciplinary Authority. However, impugned order dated 27th October, 2004 of the Disciplinary Authority is also a non-speaking order. The Disciplinary Authority has also not given any reason for arriving at conclusion that charges against the Respondent were duly proved. Similarly the order of the Appellate Authority is also a non-speaking order. Directions of the Tribunal that the competent authorities shall pass appropriate speaking order in accordance with law, rules and instructions were also not adhered to. Non speaking and cryptic enquiry report as well as order passed by the Disciplinary Authority and Appellate Authority are in violation of principles of natural justice and unsustainable.

7. Alleged incident dates back to 21.10.1998; thus, remanding the case back for giving reasoned enquiry report, would be inequitable in the peculiar facts and circumstances of this case.

8. In view of the above discussion, we do not find any jurisdictional error in the impugned order dated 25th April, 2007 passed by the Tribunal, consequently, writ petition is dismissed.