(2009) 07 DEL CK 0403

In the Delhi High Court

Case No : Writ Petition (Civil) No. 10006 of 2009

Union of India (UOI) and Others APPELLANT

Vs

Ram Kumar Sharma RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0403

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioners have filed this writ petition against the order dated 30th March, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as "Tribunal") whereby order dated 15th May, 2007 passed by the Disciplinary Authority imposing penalty of withholding of next two increments of the respondent with cumulative effect has been set aside.

2. Initially respondent was appointed as a postman with the Petitioner. Later on he was promoted as Postal Assistant w.e.f. 8th May, 1986. Respondent was placed under suspension on 15th March, 1995 on the ground of contemplation of disciplinary proceedings against him. Charge sheet dated 29th January, 1997 was served upon him. Vide order dated 12th May, 2000, the Disciplinary Authority imposed the penalty of reduction in post to the cadre of postman for a period of three years upon the respondent. However, aforesaid order was set aside by the Member (P) vide order dated 5th January, 2004 with the direction to hold de novo proceedings from the stage of appointment of Enquiry Officer.

3. Pursuant to the order dated 5th January, 2004 enquiry was held and Enquiry Officer gave report on 26th December, 2006 wherein he concluded that charge No. 1 and 2 had remained unproved but charge No. 3 was proved only to the

extent that VPMOs were issued late.

4. Enquiry Officer submitted his report to Disciplinary Authority. Vide order dated 15th May, 2000 Disciplinary Authority accepted the enquiry report and imposed the penalty of withholding of next two increments of the respondent with cumulative effect.

5. Respondent preferred an appeal but the same was rejected by the Appellate Authority vide order dated 3rd March, 2008. Thereafter respondent filed OA No. 2172/2008 before the Tribunal wherein the impugned order has been passed.

6. Tribunal has held that sufficient evidence had not been brought home by the department to establish conclusively the guilt of the delinquent official. Tribunal further held that Disciplinary Authority has to record the definite finding with reasons in support of the conclusion that charge against the delinquent official stood proved and suspicion and surmises cannot take place of proof. In the facts of this case, Tribunal was of the view, that conclusion was based on suspicion and surmises.

7. We have perused the Enquiry Report and orders of the Disciplinary Authority as well as Appellate Authority. We are in agreement with the Tribunal that no definite finding with reasons has been recorded in the order of the Disciplinary Authority. Enquiry Officer in his report dated 26th December, 2006 has himself stated that all the three charges levelled against the respondent could not be proved in toto and the third charge was proved only to the extent that VPMOS were issued late but this was not confirmed as to whether these VPMOs were issued late or VPP articles were delivered late. This itself shows that the Enquiry Officer himself was skeptical about the evidence on record.

8. Order of the Disciplinary Authority is a non-speaking order. No reasons have been assigned by the Disciplinary Authority to arrive at the conclusion that charge No. 3 was duly proved against the respondent. Disciplinary Authority has simply quoted findings of the Enquiry Officer in Para No. 4 but he has not given his opinion. The charge No. 3 was to the effect that the respondent while working as Postal Assistant in Parcel Import Branch during the period 23rd June, 1993 to 14th March, 1995 had failed to deposit the amount in treasury and got issued the VPMOs after lapse of several days and misutilised the Government amount deliberately in respect of the four VPP articles.

9. However, no definite findings have been recorded either by the Enquiry Officer or the Disciplinary Authority that the charge of mis-utilization of the Government fund was duly proved. As stated above, Enquiry Officer had himself stated that third charge was proved only to the extent that VPMOs were issued late. Accordingly, we are of the opinion that the Tribunal has rightly held that department had failed to establish conclusively the guilt of delinquent official. Tribunal has rightly observed that the suspicion and surmises cannot take place of proof.

10. We do not find any jurisdictional error in the impugned order. The writ petition is accordingly, dismissed in limine.

