

(2011) 07 DEL CK 0414
In the Delhi High Court
Case No : Writ Petition (C) 5466 of 2000

Union of India (UOI) and Others

APPELLANT

Vs

S.C. Sharma

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 226

Citation : (2011) 07 DEL CK 0414

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; Rekha Palli, Punam Singh and Amrita Prakash, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The Respondent herein while working as Senior Accounts Officer (SAO) was issued a Memorandum of Chargesheet on 28th August, 1993 under Rule 14 of the CCS (CCA) Rules, 1965. The allegations made in the said charge sheet was that the Respondent had issued cheque bearing No. AX-305405 dated 19th August, 1991 for Rs. 1,63,920/- to a non-existent firm M/s Beena Shoppies, General Suppliers at Dehradun by the office of DCDA (R & D), Dehradun with reference to local purchase bill, alleged to have emanated from Defence Electronics Application Laboratory, Dehradun but was disowned by the said Laboratory and so a preliminary investigation was carried out which revealed that Respondent had attempted to embezzle public money to the tune of Rs. 1,63,920/- by causing issue of a cheque in favour of a non-existing firm and for handing over the cheque personally to a person whose whereabouts were not known.

2. A regular departmental enquiry was held after appointing an Enquiry Officer. The Enquiry Officer after conducting and concluding the enquiry submitted his

report giving the following findings:

Charge-I-Not proved.

Charge-II: Partially proved. Only the part of the Charge "removed the cheque as well as the supporting LP Bill? is proved.

Charge-III- Partially proved. Only the part of the Charge "informed the Section that the cheque had been personally handed over to the representative" has been proved. It was established during the inquiry that instead of the cheque being handed over to the resp. of the "firm, the CO had informed that the cheque had been handed over to the Rep. of the "Unit.

Charge-IV- proved.

A copy of the Enquiry Officer Report was sent to the Respondent who furnished his comments thereupon. The disciplinary authority after going through the enquiry report as well as the comments furnished by the Respondent passed the orders dated 12th January, 1996 imposing the punishment of compulsory retirement. In this order, the disciplinary authority also recorded his own findings holding that charge No. 1 stood proved and likewise, charge-II and III were also proved fully. To that extent, obviously, the disciplinary authority did not agree with the findings of the Enquiry Officer holding that charge-I has not proved and charge-II and III have partially proved. The Respondent filed appeal before the appellate authority which was rejected vide orders dated 30th October 1996. Feeling aggrieved by the orders passed by the disciplinary authority as well as the appellate authority, the Respondent approached the Central Administrative Tribunal (CAT) by filing O.A. 390/1997 u/s 19 of the Central Administrative Tribunal Act. The enquiry as well as the punishment orders were challenged on various grounds. One of the grounds taken by the Respondent was that before disagreeing with the findings of the Enquiry Officer in respect of charge I, II and III, the Respondent was not given any show cause notice or opportunity of being heard by the disciplinary authority and no note of dissent/disagreement was provided to the Respondent. This contention of the Respondent found favour with the learned Tribunal holding that when the disciplinary authority chose to disagree with the findings of the Enquiry Officer, it was incumbent upon the disciplinary authority to give a show cause notice to the Respondent. The Tribunal relied upon the judgment of Apex Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, holding as under:

Principles of natural justice have to be read into Regulation 7 (2). Whenever the disciplinary authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer.

3. The Tribunal in these circumstances, did not go into the other contentions raised by the Respondent and allowed O.A. of the Respondent herein and quashed the penalty order. The precise directions given by the Tribunal in this behalf read as under:

In the result, for the reason given above, O.A. succeeds and is allowed with the following directions:

(i) The impugned penalty orders dated 12th January, 1996 and 30th October, 1996 are quashed and set aside.

(ii) If the applicant has not reached the age of superannuation from service the Respondents shall reinstate him, and liberty is granted to them to proceed with the disciplinary proceedings against him in accordance with law and regulations within 2 months from the date of receipt of a copy of this order.

(iii) Therefore, the competent authorities shall pass necessary orders regarding the intervening period from the date of compulsory retirement to the date of retirement in accordance with the rules. No order as to costs.

4. Challenging this order of the Tribunal, the present writ petition is preferred under Rule 226 of the Constitution of India invoking extraordinary jurisdiction of this Court.

5. Rule DB was issued in this case and the matter was directed to be listed. Nobody appears on behalf of the Petitioner/UOI at the time of hearing. The matter was argued by the learned Counsel for the Respondent. We have also perused the writ petition as well as other pleadings including the impugned judgment of the learned Tribunal. We are one with the Tribunal insofar as Tribunal holds that the impugned order passed by the disciplinary authority suffered on account of violation of principles of natural justice by not giving hearing before disagreeing with the findings of the Enquiry officer on charges-I, II and III.

6. On the facts of this case, the judgment of Supreme Court in Kunj Behari (supra) is squarely applicable. The petition is decided on merits and is dismissed with costs quantified @ Rs. 10,000/-.