

(2011) 05 DEL CK 0195

In the Delhi High Court

Case No : Writ Petition (C) No. 6863 of 2010

Union of India (UOI) and Others

APPELLANT

Vs

Sh. R.K. Mehta

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Conduct) Rules, 1964 — Rule 14, 17, 18, 18(1), 18(3)
Constitution of India, 1950 — Article 226

Citation : (2011) 05 DEL CK 0195

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Anuj Aggarwal and Gaurav Khanna, for the Appellant; N.S. Dalal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioners, Union of India, through the Ministry of Home Affairs (IB) and Ors. have challenged the order dated 19th August, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 920 of 2009, titled as "Sh.R.K. Mehta v. Union of India, through the Ministry of Home Affairs (IB) and Ors. allowing the original application of the Respondent and holding that the punishment of dismissal from service imposed on the Respondent is disproportionate to the proved misconduct of not informing the Petitioners about taking loans from 11 different banks, and thus, setting aside the order of punishment dated 29th January, 2008 passed by the Disciplinary Authority and order dated 10th October, 2008 passed by the Revisional Authority and thereafter remitting the matter to the Disciplinary Authority, with the directions to grant an opportunity of hearing to the Respondent against the imposition of minor penalty in accordance with law. The Petitioners were also directed to reinstate the Respondent to the post which he was holding at the time of his dismissal from the service and to grant all consequential benefits as per law. The Petitioners were also given the opportunity to determine the back

wages from the date of the Respondent's dismissal from the service, up to the date he joins the service on reinstatement.

2. Brief facts to comprehend the disputes are that, the Respondent who was formerly working as an ACIO-II/G of the Strategic Intelligence Bureau, (S.I.B) at Sriganaganagar was issued the Charge Memo dated 10.01.2006 on the ground that he had taken loans from 11 different banks without intimation and prior permission from the department. The Respondent was charge sheeted for violating the Rule 3(1) (iii), Rule 17 & 18 (3) of the CCS (Conduct) Rules, 1964.

3. The Respondent served his written reply incorporating his defense on 17.07.2006 and again on 10.08.2006 and refuted the charges. He had also sought a personal hearing and requested the details of certain relevant documents, which were not supplied to him. The Respondent had also specified in his written statement that the charges were not covered under Rule 14 of the CCS (CCA) Rules 1965, which is why he had even sought for the withdrawal of the Charge Sheet. During the enquiry proceedings by letter dated 9th April, 2007 the Enquiry Officer, Shri H.M. Singh, Assistant Director, Sriganaganagar, was replaced by Shri P.R. Bishnoi, Assistant Director, Sriganaganagar, who, according to the Respondent, completed the enquiry in one day. It was also contended that the enquiry was not conducted in accordance with law and that the Inquiry Report was given on the basis of alleged admissions of the Respondent. The enquiry officer submitted his report on 24th August, 2007 stating that the Respondent had admitted his guilt on the basis of admissions made during the enquiry proceeding`, which were denied by the Respondent.

4. On receipt of copy of the Inquiry Report, the Respondent submitted his reply dated 3rd October, 2007 however, the Disciplinary Authority held him guilty of the charges made against him and dismissed him from service by order dated 29th January, 2008.

5. Aggrieved by the order of the Disciplinary Authority dated 29th January, 2008, the Respondent filed an appeal before the Joint Director and also with the Director, IB on 8th July, 2008 which was disposed of by the Revisional Authority, by order dated 10th October, 2008 rejecting his appeals and the revision petition.

6. The orders passed by the Disciplinary Authority and the Revisional Authority were challenged by the Respondent before the Central Administrative Tribunal by filing an Original Application u/s 19 of the Administrative Tribunal Act, 1985 contending inter-alia that the Enquiry Officer had conducted and completed the enquiry in one day, without following proper procedure as contemplated in Rule 14 of the CCS (CCA) Rules, 1965. It was categorically asserted that no evidence was produced against the Respondent and that the Enquiry Officer had put only three questions to the Respondent and on the basis of the reply given, the enquiry officer concluded the enquiry and recorded that the Respondent had admitted his guilt and as such also held that the charge was proved against him. It was also asserted that the Disciplinary Authority as well as the Revisional

Authority did not consider the representations made by the Respondent. The plea of disproportionate punishment was also raised and substantiated by relying on various other cases, wherein the employees had not intimated the employer before taking loans, however, minor punishments were imposed on them. Reliance was also placed on Rule 18 (3) of the CCS (Conduct) Rules, 1964 to contend that the employee was liable to give the details of the loans already taken by him at the time of appointment and was not liable to give details of the loans taken subsequently after employment.

7. The Respondent also contended that on account of taking loans from the bank he was issued two other charge sheets and all the charge sheets were more or less the same. It was also contended that the Charge-Memo issued against him in the year of 2005 should have been dropped before issuing the fresh charge sheet, which had been challenged by him on the same set of allegations.

8. The OA filed by the Respondent was contested on behalf of the Petitioners contending inter-alia that the Respondent had taken loans from 11 banks without intimation or prior permission. It was also contended that the Respondent became a habitual debtor, and therefore, acted in a manner which was unbecoming of a Government Servant, and thus violated Rule 17, Rule 3(1) (iii) and Rule 18 of the CCS (Conduct) Rules, 1964. On behalf of the Petitioners, 25 documents were relied on which were refuted by the Respondent on the ground that copies of the same were not supplied to him. On behalf of the Petitioners, it was also contended that the Respondent had also submitted a forged letter of confirmation dated 6th June, 2003 for obtaining a personal loan of Rs. 90,000/- and that he had remained unauthorisedly absent w.e.f. 13th September, 2004 and also that 13 attachment orders from various Courts were received against the Respondent, for having availed the loan from those banks.

9. The Tribunal considered all the pleas and contentions of the parties, and took note of the Charge-Memo dated 10th January, 2006 which was the subject matter before the Tribunal. The article of charge which was framed against the Respondent in the Charge- Memo dated 10th January, 2006 is as under:

That the said Shri R.K. Mehta, ACIO-II/G while posted at IB Hqrs., New Delhi took loans from the under mentioned banks without any intimation to/prior permission from the department as required under the rules. He also did not refund, in full, the loans advanced to him:

(i) Loan of Rs. 50,000/- on 22.7.2004 from Punjab & Sindh Bank, Gole Market, New Delhi.

(ii) Loan of Rs. 1,00,000/- from the Canara Bank, DDA Shopping Complex, Defence Colony, New Delhi 110024.

(iii) Loan of Rs. 75,000/- from the Canara Bank, Raja Garden, New Delhi.

(iv) Loan of Rs. 43,200/- on 17.3.2003 from the Indian Overseas Bank, 1/209, Sadar Bazar, Delhi Cantonment, New Delhi 110010.

(v) Loan of Rs. 80,000/- on 1.1.2004 from the Bank of Baroda, Rajori Garden, Najafgarh Road, New Delhi 110027. (vi) Loan of Rs. 80,000/- on 23.2.2004 from the Bank of Baroda, Chowk Pahargunj, New Delhi 110055.

(vii) Loan of Rs. 84,000/- on 17.6.2004 from State Bank of Indore, M-94, Connaught Circus, New Delhi 110001.

(viii) Loan of Rs. 80,000/- on 5.12.2003 from the Bank of Baroda, C-1 Shopping Centre, Vacant Vihar, New Delhi 110057.

(ix) Loan of Rs. 95,000/- on 25.7.2003 from the Vijaya Bank, Delhi Cantt.-10

(x) Loan (amount not specified) from the Canara Bank, Karol Bagh, New Delhi.

(xi) Loan of Rs. 80,000/- from the Canara Bank, Hauz Khas, New Delhi.

Thus, by not giving intimation to/taking prior permission from the competent authority about the aforesaid transactions, Shri R.K. Mehta, ACIO-II/G has violated Rule 18(3) of the CCS (Conduct) Rules, 1964. Further, by taking loans frequently and failing to refund the same in full, he has involved himself in habitual indebtedness and has also acted in a manner unbecoming of a Govt. servant thereby violating Rule 17 and Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964.

10. The Tribunal also noted that the enquiry was conducted in three days and only three questions were put to the Respondents which were "whether the Respondent had taken 11 loans" to which was admitted by the Respondent. In the answer to another question, regarding whether he intimated the department or whether he took permission before taking the loans, the Respondent replied that he did not know about it. The third question put to him was whether he wants to say anything, to which the Respondent had replied that he does not want to say anything else. On the basis of these three answers, the Enquiry Officer held that the charge against the Respondent was made out.

11. The Disciplinary Authority relied on the report of the Enquiry Officer and held that the Respondent had not managed his private affairs so as to avoid habitual indebtedness, and therefore, imposed the penalty of dismissal from service.

12. The Tribunal relied on various precedents of the Supreme Court and inferred that generally the Tribunal should not interfere with the decision of the authorities in the matter of disciplinary proceedings unless the proceedings are found to be suffering from procedural illegality, statutory impropriety and infirmity. The grounds on which the Tribunal culled the guiding principle for interfering with the findings and orders of the disciplinary authority are as under:

The Tribunal cannot interfere with the findings of the inquiry officer which is based on evidence and substitute its own independent findings.

When the findings of the disciplinary authority of the Appellant authority are based on some evidence, the Tribunal cannot re appreciate the evidence and

substitute its own findings.

Judicial review by this Tribunal is not an appeal over a decision but a review of the manner in which decision is made.

When an enquiry is conducted on the charges of misconduct against a public servant, where the authority held the proceedings against the delinquent officer, the Tribunal is empowered to determine- Whether the inquiry was conducted by the competent officer Or- Whether rules of natural justice have been complied with Or -Whether the findings/conclusions are based on some evidence or no evidence to reach a finding/conclusion Or-Whether the mode of inquiry is in violation of statutory rule's Or-Whether the findings are arbitrary or utterly perverse.

Adequacy of evidence or reliability of evidence applies to the disciplinary proceedings including the notes of disagreement.

When the inquiry officer finds and accepts the evidence, his conclusion normally is guided by such evidence and as such the disciplinary authority is entitled to hold the delinquent officer as the guilty or otherwise of the charge.

The disciplinary authority exercises his quasi judicial power to appreciate the evidence and finding is based on the same.

In case of an appeal, the appellate Authority has co-extensive power to re appreciate the evidence and the nature of punishment and the appellate order is to be passed as expeditiously as possible.

The Tribunal can interfere with the decision of the disciplinary/appellate/reversion authority, if such a decision is illogical or suffers from procedural impropriety or deficiency in the decision making process or was shocking to the conscience of the Tribunal in the sense that such decision was in defiance of logic or moral standards.

The Tribunal exercising the powers of Judicial review is entitled to consider whether while inferring commission of misconduct on the part of the delinquent officer, relevant place of evidence has been considered and irrelevant facts have been excluded there from. Inference on facts must be based on evidence which meet the requirements of legal principles.

The Tribunal is entitled to arrive at its own conclusion on the premise that evidence adduced in the enquiry meets or does not meet the requirement of burden of proof, namely preponderance of probability.

13. The Tribunal held that the enquiry officer had not put any question on the component of charge relating to the Respondent's habitual indebtedness. The Tribunal had also held that the Respondent was not charged under Rule 18 (1) (i) (d) but under Rule 18 (3) of the CCS (Conduct) Rules, which only contemplates prior permission or subsequent intimation for certain transactions to the competent authority. The charges were not for habitual indebtedness of the

Respondent. In the circumstances, it was also held that taking loans from 11 banks is not a misconduct, as credit worthiness of the Respondent must have been ascertained and checked by the banks prior to sanctioning the loan, and that the only alleged misconduct on the part of the Respondent is not intimating or taking prior permission from the Petitioners. It was also noticed that the Inquiry Report does not reveal anything about the habitual indebtedness of the Respondent, nor could it deal with this aspect, as the basis of the Inquiry Report was the alleged admission of the Respondent and the Respondent had not admitted anything regarding his alleged habitual indebtedness. This was also considered that though three charge sheets were issued, however, the enquiry was conducted only pertaining to charge sheet dated 10th January, 2006 where the allegations were regarding not taking prior permission or intimating the employer regarding the taking of 11 loans by the Respondent. The Tribunal has also considered that the charges framed in other charge sheets could not be extrapolated to the charge sheet dated 10th January, 2006 as the enquiries pursuant to the other two charge sheets were not conducted nor the charges framed in the other charge sheets were admitted by the Respondent, and, therefore, there are no findings regarding the alleged forged letter of confirmation and forged undertakings or the Respondent remaining absent unauthorisedly.

14. In the facts and circumstances, the Tribunal held that the major penalty of dismissal from service could not be imposed for the alleged misconduct of not intimating the employer regarding the 11 loans taken by the Respondent. Regarding the other charges, neither was any enquiry conducted nor were the charges proved. Even the charge of habitual indebtedness could not be established on the basis of the alleged admission of the Respondent and thus Inquiry Report regarding the allegation of habitual indebtedness was without any evidence and basis and thus the Tribunal set aside the punishment order of dismissal from services, holding it to be disproportionate to the allegations established against the Respondent on the basis of his alleged admission.

15. The Petitioners have challenged the order of the Tribunal contending, inter-alia, that the Tribunal was not justified in interfering with the quantum of punishment. It has been urged on behalf of the Petitioners by the learned Counsel that a charge sheet dated 26th August, 2005 was also issued which contained four articles of charges i.e. (i) the Respondent took loan from 11 banks without intimation to the department, (ii) Submitted forged certificate to a bank for obtaining loan, (iii) Forged pay slip for the month of November, 2004 for obtaining loan & (iv) Absence from duty continuously w.e.f. 13th September, 2004. Reliance was also placed on another charge memo dated 14th September, 2006 alleging forgery of letter of confirmation and forged undertakings given to the bank and thus it was contended that the imposition of major penalty was justified.

16. This argument of the learned Counsel for the Petitioners is to be rejected

since the articles of charge made against the Respondent by charge sheets dated 26th August, 2005 and 14th September, 2006 were not enquired into nor were there any such admissions on the part of the Respondent on the basis of which it can be held that the those charges are established. No Inquiry Report in respect of those charges were given nor did the Disciplinary Authority give any findings on those charges after giving a reasonable opportunity of hearing to the Respondent. The reason given for not conducting the enquiry is that the Respondent was dismissed from service in the enquiry conducted on the basis of charge sheet dated 10th January, 2006. The plea of the Petitioners cannot be accepted, as the Respondent cannot be punished for charges which have not been established against him. It was for the Petitioners to conduct the enquiry in respect of all the charges, even if he had been awarded punishment of dismissal in respect of one of the charge sheets and the allegation made in that was that he had taken loans from 11 banks without giving intimation and taking prior permission from the employer. The charges that he submitted a forged certificate to a bank for obtaining loan; submitted a forged pay slip for the month of November, 2004; remained absent from duty continuously w.e.f. 13th September, 2004 and submitted forged letter of confirmation and forged undertakings to the bank have remained unproved, and, therefore, cannot be relied on for imposition of any kind of punishment. The only charge which has been established against the Respondent is that he had obtained loan from 11 banks without intimating the department or without taking prior permission. This cannot be disputed that as per instructions of Government of India, major penalty can be imposed in six types of cases which are as under:

- (i) Corruption cases involving (a) possession of disproportionate assets; (b) obtaining or attempting to obtain illegal gratification; (c) misappropriation of Government property/money stores; and (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate;
- (ii) Falsification of Government Records;
- (iii) Gross irregularity or negligence in the discharge of official duties with a dishonest motive;
- (iv) Misuse of official position or power for personal gain;
- (v) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act; And
- (vi) False Claims on the Government-like T.A. claims, reimbursement claims, etc.

17. On perusal of the allegation which has been established against the Respondent, it is apparent that the alleged misconduct of the Respondent is not covered in any of the six eventualities which entail imposition of major penalty. In the circumstances, the findings of the Tribunal that the Respondent could not be awarded the major penalty in the facts and circumstances cannot be faulted.

The learned Counsel for the Petitioners is also unable to show any ground or any law on the basis of which it can be held that a major penalty for the charges in respect of which enquiry was not conducted and which were not proved, can be imposed on the Respondent. In the circumstances, the learned Counsel for the Petitioner is unable to show any such illegality or un-sustainability or perversity in the order of the Tribunal which will require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

18. In any case, the Tribunal has set aside the order of dismissal and has remitted the matter back to the disciplinary authority to take appropriate action after giving an opportunity of hearing to the Respondent in accordance with law.

19. In the facts and circumstances, the writ petition is without any merit and it is, therefore, dismissed. The parties are however, left to bear their own costs.