(2011) 07 DEL CK 0008

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5240 of 2011

Union of India (UOI) and Others APPELLANT

Vs

Vinod Sharma RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3

Citation : (2011) 07 DEL CK 0008

Hon'ble Judges : Dipak Misra, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Mukesh Kumar Tiwari, for Ruchir Mishra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

CM No. 10638/2011 (for exemption)

1. Allowed, subject to all just exceptions.

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2. Union of India, Ministry of Urban and Development & Pensions, Poverty Alleviation, has filed the present writ petition to assail the order dated 19th January, 2011, passed in OA No. 726/2010 Vinod Sharma v. Union of India and Ors. By the impugned order, Tribunal has allowed the aforesaid OA and has quashed the order of penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect.

3. Learned Counsel for the Petitioner has submitted that the Respondent was guilty and responsible for destruction of the ledger pages/file. He has drawn our attention to the fact that the file was under his charge and as per the entry dated 14th May, 1993, made in the file movement register, the file was under his custody and thereafter the file was lost/misplaced from his charge.

4. By Memorandum dated 8th October, 1999, a charge-sheet was served on the Respondent. As per the said charge sheet there were two allegations against the Respondent, Vinod Sharma:

(i) He while working as L.D.C., deliberately and willfully misplaced/got lost the file in 1993, which was marked in his name w.e.f. 14.5.1993;

(ii) This was done with a view to avoid penalty and falsification of property documents.

5. This is clear from the Memorandum of Charge, which reads:

The said Sh. Vinod Sharma U.D.C. (Cashier) while working in Lease-I Section as L.D.C. during the year 1993 was the dealing assistant of property file of 95/1 Market Road and also known as "Laxmi Niwas". As per file movement register, the relevant file stands marked in his name w.e.f. 14/5/93. During this period, the said Sh. Vinod Sharma, U.D.C. with a view to avoid payment of penalty and/ or in falsification of property documents and failed to maintain absolute integrity and exhibited total lack of devotion to duty and thereby violated Rule-3(1)(i) & (ii) of the CCS (Conduct) Rules, 1964.

6. The enquiry officer in his report dated 21st July, 2008, held that the Presenting Officer has failed to prove the charge and the attempt to prove the allegations was feeble. This was because there was No. substantial evidence on which he could establish the case. He further recorded that role of one Mr. S.K. Arora, Overseer, was dubious but he had not been charge-sheeted. The relevant findings are as under:

11. From the account given above, it will be seen that though the Presenting Officer has pressed for meting out punishment to the charged officer under Rule 14 of the CCS Rules, 1965, he has patently failed to prove the charge. His attempt is feeble. For this, he is not to be blamed because he has not been given substantial evidential base upon which he may construct the case edifice. Things would have been different if the case had been probed properly. When the Charged Officer submitted his statement to the Vigilance on 1.6.1995, the then VLO had marked the file to the concerned dealing hand with the remarks "Pl. examine and put up". He had obviously remarked so because the Charged Officer had made certain serious revelations in his written statement of 1.6.1995 that needed to be looked into, before preparation of the charge sheet. This was perhaps not done and rather the charge sheet was prepared in 1999 without taking into account the contents of the CO''s statement of 1.6.95.

12. Seen in the above background, the observations made by the Defence Assistant, as recounted in para 8 above, assume significance and, therefore, merit consideration. Further, the role of Shri S.K. Arora, Overseer, in this case seems to be dubious. Why did Shri S.K. Arora, Overseer want to show the file to the lessee of the property in question who according to him was his friend? Obviously, he want to help the friend. Or was the occasion used as a ploy to keep

track of the file with the purpose of stealing it or making it disappear at the earliest opportunity.

13. It comes out from the written statement dated 1.6.95 of the CO that certain unscrupulous forces were at play to make the file in question disappear or stolen with a motive to help the lessee of the property. This aspect does not appear to have been probed by the Prosecution. Otherwise, Shri S.K. Arora, Overseer, Shri Sahrawat, the then Dy. L&DO and the In charge of the Account Section could have been included as Prosecution Witnesses to make the matters clear.

14. Shri Vinod Sharma, the Charged Officer, was the custodian of the file in question at the time of its disappearance. He has not denied it. However, he has erred in showing the file to Shri S.K. Arora, Overseer, unofficially even though the latter was a senior colleague, because if Shri S.K. Arora wanted to see the file he should have sent a written requisition for it. Similarly, the CO should have shown the file to Shri S.K. Arora by taking the Section In charge or the Dy. L&DO into confidence.

15. Other than the above, the involvement of the Charged Officer in disappearance of the file does not stand proved, as No. corroborative evidence has been adduced by the Prosecution to sustain the charge.

7. It is clear from the aforesaid finding that the charge against the Respondent was not proved but the enquiry officer went and gave a finding in respect of something which was extraneous and not a subject matter of the charge. The memorandum of charge, as noticed above, was specific and pin-pointed.

8. By the Office Memorandum dated 4th August, 2008, the Disciplinary Officer has directed as under:

The undersigned is therefore, directed to advice Shri Vinod Sharma, UDC, to submit his representation/written submission on the above observations/finding of the Inquiry Officer within 15 days from the date of issue of this Office Memorandum failing which it will be presumed that he has not representation to make and orders will be passed against him ex-parte.

(emphasis supplied)

9. Disciplinary Authority, after taking into consideration the submissions made by the Petitioner and inquiry report, passed the Order dated 10th August, 2009 which reads as under:

And whereas, the undersigned being the Disciplinary Authority, has carefully considered the Inquiry Report as well as the explanation given by Shri Vinod Sharma, UDC and has come to the conclusion that there is severe lapse on his part in not ensuring the safe custody of the file in spite of having knowledge of interest of unauthorized persons in the property file to whom he had carried the file without any written request. The lapses on the part of Shri Vinod Sharma, UDC, had resulted in the loss of the official records/file on 95/1 Market Road also known as Laxmi Niwas.

And therefore, the undersigned being Disciplinary Authority, having considered all aspects of the case has come to the conclusion that Shri Vinod Sharma, UDC failed to maintain absolute integrity and absolute devotion to duty and acted in a manner unbecoming of a Government servant.

Now therefore, the undersigned in exercise of the powers conferred by Rule 11 of the CCS(CCA) Rules, 1965 consider that ends of justice would be met by imposing the penalty of reduction of his pay by two stages lower in the time-scale of pay of Rs. 5200-20200/- for two years with cumulative effect upon. Shri. Vinod Sharma, UDC.

10. The disciplinary authority imposed punishment of reduction in pay by two stages lower in time scale of pay of Rs. 5200-20200 for two years with cumulative effect, which was modified by the appellate authority to reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting the Respondent''s pension.

11. The Tribunal has rightly noted the difference in the memorandum of charge; what was subject matter of the enquiry and the charge on which the Respondent had been subjected to departmental enquiry and the "charge" which had resulted in the punishment. Mr. S.K. Arora was never charge-sheeted and the Respondent was not made to answer any charge that he should not have shown the file to Mr. S.K. Arora, Overseer, his superior, and if Mr. S.K. Arora wanted to see the file, he should have sent a written requisition. No. note of disagreement was issued by the Disciplinary Authority.

12. It may noted here that as per the Petitioner, the said Mr. S.K. Sharma, Accountant had submitted the reply dated 15th April, 1996 that he had nothing to do with the file and the same was maintained by Lease Section-1.

13. In view of the aforesaid facts, we entirely agree with the findings given by the learned Tribunal and do not find any merit in the writ petition. Accordingly, the writ petition is dismissed.

