(2010) 03 DEL CK 0119

In the Delhi High Court

Case No : WP (C) No. 10110 of 2009

Union of India (UOI) APPELLANT

Vs

M.L. Sharma RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 18
Central Civil Services (Conduct) Rules, 1964 — Rule 18, 4
Constitution of India, 1950 — Article 226, 5

Citation : (2010) 03 DEL CK 0119

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Secretary, Ministry of Corporate Affairs has challenged the order dated 6th March, 2009 passed by the Central Administrative Tribunal, Principal Bench in OA No. 1738/2007 titled M.L. Sharma v. Union of India allowing the original application of the respondent and setting aside the order dated 20th September, 2006 whereby major penalty of compulsory retirement was imposed upon the respondent and holding that as the applicant has already attained the age of superannuation, he would be deemed to be in service from 20th September, 2006 till he retired on superannuation and shall be entitled for all the consequences and retiral benefits in accordance with rules.

2. Brief facts to comprehend the disputes are that the respondent joined as an Assistant in Department of Company Affairs on 23rd December, 1968. He was appointed to the post of Joint Director (Legal) on 7th August, 1990 in the office of Regional Director, Bombay on selection and he held various positions. However, before his superannuation, Disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated on the ground that he had indulged in

transaction of immovable property of Rs. 1 lac without reporting it and that he made additional construction in the house inherited from his father to the extent of Rs. 9,67,645/- without reporting to the prescribed authority and that he did not informed about his relatives being shareholders of one company M/s. Janthal Agro Foods (P) Ltd. and he made transactions as members of Hindu undivided joint family and he was fond in possession of disproportionate assets known to legal sources of his income.

3. Pursuant to departmental proceedings initiated against the respondent, the inquiry was conducted by Central Vigilance Commission. The Inquiry Officer did not find any charges proved against the respondent, however, on consultation with CVC, major penalty was recommended and the Disciplinary Authority issued a disagreement note by memorandum dated 18th May, 2004, disagreeing on the articles of charges I, II, III and V and thereafter, after consultation with UPSC, the penalty of compulsory retirement, two months before the age of superannuation was imposed on the respondent.

4. The respondent challenged the order of the Disciplinary Authority by filing an original application, inter-alia, on the ground that the disagreement note was based on extraneous consideration as no evidence was adduced in respect of any of the charges and the Disciplinary Authority had also imputed his own knowledge and misinterpreted the rules. It was also asserted that no cogent evidence was adduced by the petitioner to bring the case of the respondent within the ambit of misconduct as defined under Rule 18 of CCS (CCA) Rules, 1965. Regarding the article of charges, it was asserted that Rs. 1 lac was handed over to him by his family members and even that amount was not in the name of the respondent and consequently, the disagreement note was apparently on account of non-application of mind. Regarding acquisition of property and the addition alteration carried out in the same to the extent of Rs. 9,67,645/-, it was pleaded that on the basis of a Will of executed by his father, the rights in the property were not transferred during the lifetime of the executants of the Will and in any case the addition alteration in the property was carried out by his brother who had incurred the expenditure and not by the petitioner. It was specifically asserted that there was no proof produced by the petitioner that the construction cost was incurred by the respondent and the inferences of the petitioner were based on surmises and conjectures. Regarding the relatives of the respondent being the employees of the company, it was contended that his daughter was only a Director and so she was not an employee and he could not be held guilty of violation of Rule 4 of CCS (Conduct) Rules.

5. The respondent categorically averred that regarding disproportionate assets in terms of Article 5 of charge, there was no evidence and Inquiry Officer had dropped the charge, however without any application of mind and without any cogent reason and evidence the Disciplinary Authority issued the disagreement note without justifying as to how he had assets disproportionate to his income.

6. On the basis of expenditure incurred by the brother of the respondent on the

property of the father and a two wheeler in the name of the daughter of the respondent valuing about Rs. 37,000/-, it could not be held that the respondent possessed about Rs. 30 lacs and his assets were disproportionate to his sources of income.

7. The punishment of compulsory retiring the respondent of two months before his normal superannuation was also stated to be in violation of the Rules and in the circumstances, there was no misconduct established against the respondent and it was a case of no evidence and consequently, no punishment could be awarded.

8. The petitioners had contested the original application filed by the respondent u/s 19 of the Administrative Tribunal Act, 1985, on the ground that the Tribunal should not substitute its own inferences with the inferences drawn by the Disciplinary Authority. According to the petitioner, the disagreement arrived at was a reasoned one and it was after consideration of the pleas the contentions of the respondent and reasoned order has been passed.

9. The Tribunal after consideration the pleas and contentions, noted that though in any disciplinary proceedings, the inferences of the Tribunal is limited but is not absolutely restricted and the Tribunal can interfere in case of no misconduct and if the findings are based on no evidence and if the inferences arrived at are without application of mind merely on assumptions and surmises and conjectures, then the Tribunal must interfere and should set aside such orders.

10. The Tribunal also considered all the charges including the findings of the inquiry officer and the disagreement note and has held that in the case of the respondent, there is no evidence to make out the misconduct against him and thus set aside the order of punishment of compulsory retirement which was imposed two months before the date of superannuation of the respondent.

11. The learned Counsel for the petitioner has produced a summary of the findings of the Inquiry Officer, disagreement by the Disciplinary Authority, reply given by the charged officer to the disagreement and the decision of the Disciplinary Authority. We have perused the summary produced by the petitioner as well as the relevant pleadings and the documents.

12. The misconduct alleged against the petitioner is violation of Rule 18 of CCS (Conduct) Rules, however, this has not been disputed that as per Government of India''s Decision No. 8 (2) (iv) the transactions as members of Hindu undivided joint family do not require Government''s prior permission. The learned Counsel for the petitioner has not been able to refute that the letter dated 3rd April, 2001 acknowledged an amount of Rs. 1 lac given to Sh. Akhilesh Sharma as the amount which did not belong to the respondent and this amount was the share of his nephew Master Giriraj Kumar Sharma, which was given by the grandfather Sh. Swalal Sharma. The amount was given by the respondent to master Giriraj Kumar Sharma as the father of master Giriraj Kumar Sharma had expired and he had to be looked after. The learned Counsel is also unable to deny that there is

no evidence to show that six promissory notes worth Rs. 1 lac were in the name of the respondent and the cheque issued with the blank names do not show that they were in the account of the respondent. The Tribunal has also noticed that since no transaction of immovable property had taken place and the money belonged to master. Giriraj Kumar Sharma which had passed through the respondent for his nephew master Giriraj Kumar Sharma, no misconduct is made out nor it can be attributed to the respondent. Despite these facts, in answer to the Court''s queries to the learned Counsel, no cogent evidence has been disclosed by the petitioner on the basis of which Article of charge can be established against the respondent. It is not a case where there is evidence which can be interpreted in different manner. The case of the respondent is where there is no evidence in support of article of charges alleged against him.

13. It is true that the jurisdiction of the Tribunal in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some cogent and reliable evidence to prove the charges. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, but one cannot loose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the evidence and documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot make his own assumptions. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with nor he can introduced his personal knowledge of the facts which have not been proved.

14. The learned Counsel for the petitioner regarding second Article of charge of Acquisition of property by Will and spending an amount of Rs. 9,67,645/- has not been able to dispute that the rights in an immovable property will not be transferred to the beneficiary during the lifetime of the executant of the Will. The respondent merely being a beneficiary and the executor of the will did not require any right in the property of the father during his life time. The petitioners have not established by producing any document that the expenditure was incurred on additional construction on the property of the father by the respondent. The inferences of the Disciplinary Authority are based on the assumption that since under the Will, respondent was a beneficiary, therefore, the construction must have been done by the respondent. The legal ownership of the property did not vest in the name of the respondent and the proposition relied on by the disciplinary authority is contrary to law. The inferences of the Disciplinary Authority are also based on no evidence. The learned Counsel for the petitioner is unable to show any evidence to show that the amount for additional construction was spent by the respondent.

15. The learned Counsel for the petitioner cannot dispute that if there is no evidence or has been shown to establish the charges against the respondent, a fortiori the inferences then are based on the assumption and surmises and conjectures. Since the respondent is the beneficiary under the Will, therefore, the construction must have been done by the respondent is nothing but a surmise and conjecture and on the basis of such an assumption, compulsory retirement of the respondent two months before the date of his superannuation could not be justified and the findings of the Tribunal cannot be faulted nor it can be said that the order of Tribunal suffer from such illegality or irregularity which would require interference by this Court.

16. In the circumstances, there cannot be any doubt that the inferences of the Disciplinary Authority are unsustainable and are contrary to law and are based on no evidence and are result of mere suspicion and assumption made by the Disciplinary Authority. The findings of the Tribunal in the facts and circumstances that none of charges were established against the respondent cannot be faulted.

17. Regarding the charge of disproportionate assets, the only disproportionate asset is alleged to be cost incurred in the construction of a portion of the property and two wheeler vehicle valuing about Rs. 37,000/- in the name of the daughter of the respondent.. As has already been held there is no evidence that the cost of construction was borne by the respondent, rather there is categorical statements by the respondent that the cost was incurred by his brother and consequently, the disagreement note by the Disciplinary Authority was completely without application of mind and without any evidence and even the inference that the respondent has income disproportionate to his assets is also based on no evidence. The learned Counsel for the petitioner is also unable to show any such facts and evidence which will show that the respondent has such assets which are disproportionate to his sources of income.

18. Perusal of the disagreement note and the reply regarding Article 5 rather reflects that even the pleas and contentions raised by the respondent have not been considered by the Disciplinary Authority. The Inquiry Officer had dropped the charge of disproportionate assets on the ground that Rs. 1 lac given by the respondent to Sh. Akhilesh Chauhan did not belong to him and the cost of additional construction of property bearing A-112, Pratap Nagar, New Delhi was not done by the charged officer but his brother and the Kinetic Honda vehicle in the name of the daughter of respondent Ms. Bhavne was valued at Rs. 37,000/-, which was purchased out of the pin up monies given to her and the gifts received by her from other relatives. The Disciplinary Authority in his disagreement only indicated that in view of the facts as stated by the inquiry officer, which were dropped by him, the charge stood proved to the extent of undisclosed investment made in the construction of the property. The respondent had categorically raised the plea in his reply to the amount spent on the portion of the property in possession of his brother amounting to Rs. 22,382/- which could not be accounted properly. However, the same cannot be treated as substantial

amount over a period of four years specially when the charged officer had earned over Rs. 5 lacs during the said period. The cost of construction incurred by the brother of the respondent was fully explained and the money was accounted for and in the circumstances, the orders of the disciplinary authority could not be sustained.

19. Learned Counsel for the petitioner has not been able to show any grounds to differ with the decision of the Tribunal in respect of Article No. 5 that the petitioner had disproportionate income to the known sources of income nor it has been proved in the facts and circumstances.

20. The learned Counsel for the petitioner has also not been able to dispute that daughter of the respondent being a Director of the company cannot be held to be an employee so as to convene the requirement of Rule 4 of the CCS (Conduct) Rules. If that be so, the Rule does not apply nor its violation can be imputed to the respondent. The learned Counsel also has not been able to show that if a relative of an employee is not in employment on any company and have some other fiduciary relationship, then also the intimation has to be given to the concerned authority and prior permission has taken from them on the basis of any Rule or office memorandum. In the circumstances, the finding of the Tribunal that even said charge has not been established and consequently, no misconduct has been established against the respondent cannot be faulted.

21. Since the petitioners have failed to establish any misconduct against the respondent, it will not warrant any punishment especially compulsory retirement two months before the age of superannuation.

22. In the circumstances, this Court finds no ground to interfere with the order of the Tribunal in setting aside the punishment order which was based on no evidence and appears to be outcome of assumptions drawn by the Disciplinary Authority, which were also contrary to law.

23. The Tribunal has also held that the respondent had been prejudiced and deprived of a reasonable opportunity as his defense had not been considered which reflects non application of mind by the Disciplinary Authority. The Tribunal has observed that though the order of the Disciplinary Authority ran into 18 pages, however, there was no reasons in support of inferences drawn by the Disciplinary Authority and the order was rather a bald one without application of mind.

24. Since on consideration of all the Articles of charges, this Court is of the opinion also that Articles of charge have not been proved against the respondent as there is just no cogent and reliable evidence and the inferences of Disciplinary Authority were based on assumptions which are also contrary to law. The point that the respondent was prejudiced on account of no reasonable opportunity given to the him was not challenged in detail by the learned Counsel for the petitioner.

25. In the sum and substance, this Court does not find any such illegality or irregularity in the order of the Tribunal dated 6th March, 2009, which shall require interference by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India.

26. The Tribunal by order dated 6th March, 2009, had directed the petitioners to comply with the order within two months. Though, the two months time was granted from the date of receipt of the order, however, the present writ petition was filed by the petitioners on 21st May, 2009, and the objections were finally removed and petition was re-filed on 14th July, 2009 and it came up for hearing on 15th July, 2009.

27. While considering the petition, the order dated 6th March, 2009 was not stayed and thereafter, the matter has been adjourned from time to time at the request of the counsel for the petitioner. Though, the order impugned before us dated 6th March, 2009 was not stayed, yet it was not complied with. The learned Counsel for the petitioner has sought more time to comply with the order, however, in the peculiar facts and circumstances of this case, this Court declines to grant further time to the petitioners to comply with the order. The order should be complied with forthwith in the facts and circumstances.

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