
(2011) 12 DEL CK 0040
In the Delhi High Court
Case No : Writ Petition (C) 8720 of 2011

UOI and Others

APPELLANT

Vs

Sh. Kailash Chandra Gupta

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 12 DEL CK 0040

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : R.V. Sinha and Ms. Sangita Rai, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns, the order dated 26.11.2010 of the Central Administrative Tribunal, Principal Bench, New Delhi allowing the O.A. No. 662/2010 preferred by the respondent, as also the order dated 19.08.2011 dismissing the application for review preferred by the petitioner. The O.A. aforesaid was preferred by the respondent impugning the departmental order dated 01.11.2008 affirmed by the appellate authority on 19.05.2009 of recovery of Rs. 45,000/- in nine equal installments from the pay of the respondent. The said recovery was ordered from the respondent for the reason of the respondent, while officiating as Assistant Post Master (APM), SB IVth Group, Aligarh Head Post Office, having failed to supervise the work being done by the Ledger Clerks and having not noted any objection upon the irregularities i.e. incomplete posting work, improper checking of the vouchers, being committed by the Ledger Clerks and which resulted in one Sh. Shyam Pal Singh posted in Somna Post Office committing a fraud and inflicting loss amounting to Rs. 10,56,764/- on the department. Since the respondent was not the principal offender and had officiated on the position where he was required to supervise the Ledger Clerks for a very short time, inspite of loss being of Rs. 10,56,764/-, the recovery of Rs. 45,000/- was ordered from the respondent.

2. The Tribunal vide impugned order dated 26.11.2010 allowed the O.A. of the respondent merely on the ground that since the loss sustained of Rs. 10,56,764/- had been processed to be recovered from Sh. Shyam Pal Singh against whom an FIR for offences of misappropriation and breach of trust has also been lodged, the recovery effected from the respondent over and above the sustained loss could not be sustained in law.

3. The petitioner sought review pleading that the Tribunal had not appreciated that the loss of Rs. 10,56,764/- could not be recovered from Sh. Shyam Pal Singh and a sum of only Rs. 1,35,695/- could be recovered from his assets and thus need was felt to recover the remaining loss from the subsidiary offenders including the respondent. The said review was however dismissed as not maintainable.

4. The petitioner before us has found fault with the reasoning given by the Tribunal for allowing the O.A. of the respondent and we are in agreement with the same. We are unable to accept the reasoning/logic given by the Tribunal. The Tribunal, without satisfying itself that the entire loss had been recovered, could not have held the recovery from the respondent to be over and above the sustained loss.

5. However, notwithstanding the same, we, in exercise of our powers of judicial review are still of the view that this is not a fit case to interfere with the orders of the Tribunal. From a perusal of the record of the O.A. placed before us, we find that the irregularity during the period the respondent was officiating as APM, SB IVth Group, Aligarh Head Post Office was of Rs. 2,000/- only. There is nothing to show as to why and how the recovery from the respondent was computed at Rs. 45,000/-. It is also borne out from the records that, the respondent is a handicapped person; has since retired and is settled at Aligarh, his O.A. was entertained by the Principal Bench at Delhi, owing to his being handicapped and difficulty in approaching the Tribunal at Allahabad much farther from Aligarh than Delhi. We also find from the records that no inquiry was ordered or conducted before inflicting the order of recovery of Rs. 45,000/- from the respondent. The petitioner in its reply, to the O.A. before the Tribunal, to the said plea merely pleaded that inquiry was not felt necessary owing to the facts adduced earlier. We also find that the respondent officiated on the supervising position intermittently and for a very short period and it was inter alia his plea that the accounts at the contemporaneous time had been computerized and the manual checking was got stopped. The disciplinary authority and the appellate authority however instead of returning any finding of fact on his said plea merely rejected the same for the reason of the respondent having not placed on record any order stopping the manual checking.

6. For all the aforesaid reasons, we are of the opinion that even if the order of the Tribunal, having been found to be unsustainable in law, is set aside by us, the preponderance of probability is of the matter being remanded for proper inquiry after giving due opportunity to the respondent. Considering that the

respondent has already retired, is a handicapped person, and further considering the stakes to be of Rs. 45,000/- only, we are of the view that it would not be worthwhile to allow the matter to languish any further. Rather, it appears that the time, money, effort and energy spent by the petitioner itself in the process may be much more than Rs. 45,000/-. The powers of this Court while exercising jurisdiction under Article 226 are wide. This Court, to do substantial justice between the parties, can decline relief even where entitlement in law is made out (see Chandra Singh Vs. State of Rajasthan and Another, and ONGC Ltd. Vs. Sendhabhai Vastram Patel (2005) 6 SCC 454) and similarly grant relief inspite technical violation as aforesaid. Similarly, in Taherakhatoon (D) by Lrs. Vs. Salambin Mohammad, even at the time of the dealing with the appeal after grant of special leave, it was held that the Court was not bound to go into the merits and even if entering into the merits and finding an error, was not bound to interfere if the justice of the case on facts does not require interference or if the relief could be moulded in a different fashion. This Court has echoed the same views in Filmistan Exhibitors Ltd. Vs. N.C.T. and Others, by holding that even if there is a violation of law, this Court is not bound to exercise discretionary jurisdiction and in DTC Retired Employees' Association and Others Vs. Delhi Transport Corporation by refusing to interfere in exercise of discretionary powers inspite of holding the reasons given by the Labour Court to be not convincing. The present appears to be a fit case to exercise such discretionary powers under Article 226 of the Constitution of India

7. We thus, though disapproving of the impugned orders of the Tribunal, nevertheless for the reasons aforesaid, dismiss the petition. No order as to costs.