

(2019) 02 CAT CK 0044

In the Central Administrative Tribunal

Case No : Original Application No. 100, 1289 Of 2016, Miscellaneous Application No. 100, 1281 Of 2016

Vijay Ram Joshi

APPELLANT

Vs

Central Pollution Control Board

RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0044

Hon'ble Judges : L. Narasimha Reddy, J; Sh. Mohd. Jamshed, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, Shubham Pundir, Dr. Ch. Shamsuddin Khan

Final Decision : Dismissed

Judgement

Mohd. Jamshed, J

1. The applicant was serving as Assistant in Central Pollution Control Board (CPCB). He was subjected to a departmental enquiry (DE) vide Charge Memo dated 19.02.2008 on the allegations that he failed to provide information about the cash remittance in the Bank, the shortfall of Rs.6,26,037/-, and has unauthorizedly retained this huge sum of CPCB with him for a long time, without any authority.

2. A Departmental Enquiry was ordered and the Enquiry Officer (EO) issued notice for preliminary hearing. The applicant participated therein. The applicant submitted his objections to various charges, which according to him were not considered and the enquiry was finalized.

3. The Disciplinary Authority (DA) imposed the penalty of compulsory retirement on the applicant vide order dated 7.10.2008. The applicant preferred an appeal against the said punishment order, and it was dismissed by the Appellate Authority (AA) vide order dated 17.09.2009. Aggrieved by the action of the respondents, the applicant filed OA 3646/2009. It was allowed by the Tribunal vide order dated 12.07.2010 with a direction to the respondents to reinstate the

applicant in service. The respondents were also given liberty to hold an enquiry against the applicant, in accordance with law and to complete the entire exercise within a period of three months.

4. In compliance with the order of the Tribunal, the applicant was reinstated into service vide order dated 15.09.2010. Thereafter another EO was appointed to conduct the enquiry denovo. Based on the findings recorded in the report, the penalty of compulsory retirement was imposed upon the applicant vide order dated 30.04.2014, by the Disciplinary Authority. The applicant preferred an appeal dated 11.06.2014 against the said penalty order, raising various grounds. The appeal was rejected vide order dated 14.02.2015. The applicant submits that neither the DA nor the AA examined the case in correct perspective and imposed the punishment. Aggrieved by the orders of the DA and the AA, the applicant filed this OA seeking following reliefs:

" To quash and set aside charge memorandum dated 29.09.2010;

Quash the orders dated 30.04.2014 and 14.02.2015, reinstating the applicant in service with all consequential benefits including arrears of pay."

5. On behalf of respondents, a detailed counter affidavit is filed stating that though the applicant sought the relief of reinstatement in service with all consequential benefits, he crossed the age of superannuation, and that the OA is not maintainable, or has become infructuous. On merits of the case, the respondents submit that the applicant, while working as Assistant was posted in the Accounts Division of CPCB and he was assigned duties such as issue of cheques, deposit of receipts, maintenance of cheque register/receipt register, operation of bank account, security deposit, earnest money deposit etc. and that during the finalization of bank reconciliation statement for the year 2006-07, it was observed that for most of the entries pertaining to cash, the amount had not been credited in the Bank and was appearing as outstanding in the bank reconciliation statement. It is also stated that the details of cash receipts and deposits for the year 2006-07 and 2007-08 indicated a shortfall of Rs.6,26,037/-. The respondents submit that the applicant did not deposit huge sums in the CPCB account timely and unauthorizedly retained the amount of Rs.6,26,037/-. They contend that penalty of compulsory retirement was perfectly justified and that the appeal was also rejected.

6. In the rejoinder filed by the applicant, the points raised in OA have been reiterated.

7. Learned counsel for the applicant, during the course of arguments, reiterated his contention that the respondents have not considered many factors during the enquiry and the DA and AA have also imposed the punishment without application of mind. On the other hand, learned counsel for respondents mentioned that the serious charges of temporary misappropriation of government money are made and proved against the applicant. He submits that detailed and speaking orders have been passed by the DA and the AA

considering all aspects and penalty of compulsory retirement has been imposed on the applicant. It is also submitted that the applicant has already retired from service and therefore, the reliefs sought are not maintainable and the OA has become infructuous.

8. Arguments have been heard and record perused.

9. The applicant was working as Assistant in the Accounts Department and was responsible for cash transactions in CPCB. During check, it was detected that huge sum of money had not been credited in the account. For this serious alleged temporary misappropriation of government money, disciplinary enquiry was ordered and punishment of compulsory retirement was imposed. The same was set aside by the Tribunal in a previous OA No. 3646/2009. As the liberty had been given to the respondents, they once again conducted and provided all reasonable opportunities to the applicant of being heard. The DA imposed the penalty of compulsory retirement through a speaking order and the AA also considered his representation and upheld the punishment imposed by the DA.

10. We are of the view that the charges against the applicant are serious in nature and reasonable opportunities have been given to the applicant to present his case not once, but twice. The Hon'ble Apex Court has also very clearly held that in such cases of misappropriation of government money, it is the loss of confidence which become a primary factor to be taken into consideration and for which, strict punishment can be awarded.

11. In Divisional Controller, KSRTC Vs. A.T. Mane, (2005) 3 SCC 254, the Hon'ble Apex Court held as under :

"Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

In Rajasthan State Road Transport Corporation and anr. Vs. Bajrang Lal, (2014) 4 SCC 693, the Hon'ble Apex Court held as follows:

"in cases involving corruption-there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

11. In any case, the Tribunal cannot decide on the quantum of punishment which has been imposed, after following the due procedure, by the respondents. All reasonable opportunities have been provided to the applicant.

12. In view of the above, we do not find any merit in this OA and the same is

accordingly dismissed. There shall be no order as to costs.