

(2004) 03 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32060 of 2000

Vimal Kumar Singh

APPELLANT

Vs

Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 5 AWC 4793

Hon'ble Judges : Umeshwar Pandey, J; S.P. Srivastava, J

Bench : Division Bench

Advocate : S.D. Dubey, for the Appellant; Subodh Kumar, Addl. S.C. and Satish Chaturvedi, Addl. S.C. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned counsel for the petitioner as well as the learned counsel representing the respondents who has put in appearance at this stage.

2. The petitioner had been subjected to disciplinary proceedings while he was posted as Postal Assistant. The charges leveled against him were in regard to temporary embezzlement of the amounts deposited by the savings account holders which had not been deposited in the Government Account. The disciplinary authority, having considered the enquiry report submitted by the enquiry officer and the evidence brought on record had come to the conclusion that the fact about the temporary embezzlement of the government money was established from the various entries in the relevant Registers made by the petitioner himself.

3. The revisional authority, vide its judgment and order dated 12.10.1993, taking a lenient view and modifying the major penalty of dismissal from service imposed on the petitioner had reduced the same to the penalty of compulsory retirement.

4. It may be noticed that even the revising authority had found it clearly established that the petitioner had received the amounts of deposits in question and made entries in the concerned pass-books, in had failed to account for the money in the Government Account. It has further observed that the petitioner had betrayed public trust in the services of the department and such a person was not liable to be retained in the Government service.

5. Obviously in the circumstances the employer had lost the confidence in the petitioner/employee. The order imposing the penalty of compulsory retirement was challenged before the Central Administrative Tribunal.

6. The Tribunal, vide its impugned order, dismissed the application filed by the petitioner u/s 19 of the Central Tribunal Act, 1985 returning the finding against the petitioner to the effect that no such procedural irregularity could be pointed out which may require any interference against the Department in support of the charges. It was also found that the petitioner himself had declined to avail the opportunity to cross-examine the witnesses, which opportunity was allowed to him. It was also observed that the petitioner had been afforded reasonable opportunity of defending himself and he could not be taken to have been prejudiced in any manner.

7. Learned counsel for the petitioner has urged that the petitioner was prejudiced in his defence as one witness was not cross-examined and the depositors had not been produced during the course of enquiry. So far as non-cross-examination of a witness is concerned, the findings returned against the petitioner were not based on the statement of that witness. The findings, which had been returned against the petitioner by the disciplinary authority as affirmed in appeal and revision, are based on documentary evidence and the entries made by the petitioner himself in his own handwriting.

8. It may also be noticed that the petitioner had not led any evidence, whatsoever, in support of his defence.

9. It may further be noticed that while imposing the punishment in question, the disciplinary authority had taken into account the cumulative effect of the activities/misconducts of the delinquent official and the evidence led in the case. In the present proceedings under Article 226 of the Constitution, this Court ought not to sit over as a Court of Appeal to assess the value of the evidence led in the disciplinary proceedings in question and appraise or reappraise the said evidence and substitute the findings returned against the petitioner with its own findings.

10. We are not satisfied that the impugned findings can be taken to be based on mere lurking suspicion or based on no evidence as claimed. The evidence had to be considered as a whole and so long as there is some evidence, however, meager it may be to support the findings of the enquiry officer or disciplinary authority, it will not be proper for this court to set aside the findings returned against the delinquent on the ground that the best evidence was not produced.

11. The disciplinary proceedings cannot be equated with the criminal trial or the Civil Suit and the mere preponderance of probability, is sufficient to sustain the charge. The findings cannot be interfered with on the basis of less quantum of evidence or omission to produce the best evidence provided, however, that the delinquent official has not been prejudiced in any manner in his defence.

12. In the facts and circumstances as brought on record we are not satisfied that sufficient ground can be said to have been made out for an interference in the impugned order in the present proceedings while exercising the extra ordinary jurisdiction envisaged under Article 226 of the Constitution.

13. This writ petition is accordingly dismissed.