

36

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.605/2002

New Delhi, this the 14th day of July, 2005

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

L.R. Saxena,
S/o Shri U.R. Saxena,
R/o A-308, Vikas Puri,
New Delhi – 110 018

... Applicant

(By Advocate: Shri R. Venkataramani, Senior Counsel with
Shri S.M. Garg)

Versus

1. Union of India,
Through the Secretary,
Ministry of Agriculture,
(Department of Animal Husbandry and
Dairying), New Delhi – 110 001

2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi – 110 018

... Respondents

(By Advocate: Shri S.M. Arif)

ORDER

BY MR. S.K. MALHOTRA, MEMBER (A):

This OA has been filed by the applicant with the prayer to quash and set aside the order dated 24.7.2000 (Annexure-A) of the disciplinary authority dismissing him from service and the order dated 28.2.2001 (Annexure-B) of the Appellate Authority converting the penalty of dismissal to compulsory retirement.

2. The facts of the case in brief are that the applicant while working as Dairy Supervisor in Delhi Milk Scheme, was issued a charge sheet on 20.1.2000 alleging attempted sexual assault and outraging the modesty of a female employee working as Dairy Mate on 31.12.1999 when she was alone in the Office of Central Dairy. The applicant denied the charge by way of a letter dated 31.1.2000 stating that allegation against him was completely biased and fabricated and is to take revenge with vested interests on the part of witnesses

1

and by the lady mate. In this letter he also stated that the truth could be unveiled only in an enquiry under the rules. An enquiry was conducted in which the applicant participated. The enquiry officer in his report, based on the deposition of the witnesses and other circumstantial evidence, came to the conclusion that the possibility of the charge against the applicant cannot be ruled out. The applicant was furnished the copy of the enquiry report and was given an opportunity to make a representation, which he did. The disciplinary authority, after considering his representation and taking into consideration the findings of the E.O., imposed a penalty of dismissal from service on the applicant vide order dated 24.7.2000 (Annexure-A). The applicant made an appeal, which was considered by the Appellate Authority. Taking into consideration the fact that the applicant had rendered more than three decades of service and had an unmarried daughter of marriageable age and had a family to support, the penalty was considered to be a bit harsh. Taking a compassionate view, the Appellate Authority converted the penalty of dismissal to compulsory retirement vide order dated 28.2.2001 (Annexure-B).

3. The applicant in the OA has contended that the charge against him is false and fabricated. He, as Supervisor, had sought to shift one lady employee – Smt. Samridhi Devi to another Section for cleaning work. She was not inclined to work in that Section and she threatened him of dire consequences, if she was shifted. One Shri G.P. Sharma, Dairy Supervisor also approached the applicant with the request not to shift Smt. Samridhi Devi, but he did not agree. She, therefore, made a complaint on 2.1.2000 (Annexure P-1) to the respondents alleging, attempted assault and outraging her modesty when she was alone in the office on 31.12.1999. In the complaint she stated that when she was being assaulted, she shouted for help and Shri G.P. Sharma, Dairy Supervisor came to her rescue. The matter was reported to the Manager on 31.12.1999 itself at 3.00 PM and a written complaint was filed on 2.1.2000. However, on 5.1.2000, the complainant approached the Manager and told her that her complaint may be returned as it was made due to some mis-understanding, and to this effect she

A

38

handed over a letter to him (Annexure P-2). However on this date itself i.e. 5.1.2000, again she sent a typed letter to respondents stating that she was being threatened by Shri R.C. Bhatia, Section Manager and had forced her to put signature on a hand-written letter dated 5.1.2000, withdrawing her complaint. In this complaint she also made a request that action should be taken against Shri Bhatia also for threatening her. It has been contended by the applicant that the complaint made by her on 2.1.2000 was withdrawn by her on 5.1.2000 but later on the provocation of Shri Sharma, she signed another type-written complaint dated 5.1.2000 which was received by the respondents on 10.1.2000 (Annexure P-4). The enquiry officer has not been able to find any evidence against him to prove the charge and as such, he has not given any categorical findings against him. In his report he has only stated that possibility of charge made against the applicant cannot be ruled out. The evidence of Shri G.P. Sharma who was having animosity against the applicant cannot be relied upon. Apart from the two witnesses i.e. Shri G.P. Sharma and Shri Ashok Bansal, Manager, Central Dairy, there is no other evidence of any independent witness. The allegation of sexual assault and outraging the modesty of the lady employee was a matter of criminal investigation but no complaint was filed by the respondents with the police. The disciplinary authority had also not conducted any preliminary enquiry to enquire into the truth of the allegation and had straightaway relied upon the findings of the disciplinary authority against the applicant in violation of the Article 14 of the Constitution. The conclusion drawn by the disciplinary authority is without any basis and there is no admission on the part of the applicant of the charges against him, as being made out. The alleged admission mentioned by the disciplinary authority in the order reads as under:-

“As far as the allegation of sexual assault, this is not proved by touching the breast. There are some essential elements, which are not shown in this matter. The Complaint is only of nail marks on the breast. These marks are essentially required to be medically examined as per rules, which was not done. In the absence of it, the veracity of these marks itself comes within the domain of doubt because such marks can be made by anything and by anybody. Why only me and on which basis this allegation has been made against me. To prove the allegation the medical report was very essential, which was not done. Nor any other proof

Q

37

was presented. This sensitive fact cannot be said to be established by the evidence of biased, inimical and prejudiced witnesses. On a serious thought over the story of prosecution, the allegation of sexual assault gets itself demolished".

According to the applicant, the reading of the above passage would show that it cannot be construed as an admission of the charges on the part of the applicant. Thus the conclusion arrived at in the impugned order, is without application of mind.

4. The disciplinary authority has wrongly proceeded on the presumption that the enquiry officer in his report has concluded that the charge is proved which is not a fact. Accordingly a prayer has been made to quash both the order of the Disciplinary authority as well as the Appellate authority.

5. The respondents have filed a counter reply in which they have taken the plea that the penalty has been imposed on the applicant after holding the departmental enquiry as per rules. The charges against the applicant have been proved and the applicant had also admitted the charges during the course of enquiry. In so far as the withdrawal of the complaint by Smt. Samridhi Devi is concerned, her application to this effect is stated to have been obtained from her under pressure. The decision of the disciplinary authority is thus reasonable and is based on the facts and circumstances of the case as well as enquiry report. It has further been stated that there was no need for any preliminary enquiry as prima facie there was a clear case against the applicant and as such the departmental proceedings were initiated as per rules.

6. We have heard Shri R. Venkataramani, Senior Counsel with Shri S.M. Garg, counsel for applicant and Shri S.M. Arif, counsel for respondents and have also gone through the pleadings available on record.

7. It was brought to our notice by the learned counsel for the respondents that against the order of the Appellate authority, converting the penalty of dismissal to compulsory retirement, the complainant Smt. Samridhi Devi had approached the Hon'ble High Court of Delhi. The Hon'ble High Court has stayed the operation of the impugned order dated 28.2.2001, by which the applicant was compulsorily retired vide order dated 16.8.2001 which reads as under:-

Q

"CWP 2269/2001

The General Manager, Disciplinary Authority of the Respondent No.3 had arrived at the conclusion that Respondent No.4 had physically assaulted the Petitioner by touching her breasts. He had, therefore, imposed the penalty of dismissal from the service of the Respondent. In the impugned order dated 28th February, 2001 the Appellate Authority has without given any cogent reason changed the penalty from dismissal to compulsory retirement holding that there are extenuating factors in the family of Respondent no.4, that is, that he has a wife and an unmarried daughter. The impugned order is wholly unconscionable.

Rule.

CM 3903/2001

The operation of the impugned order dated 28th February, 2001 is stayed till further orders to the contrary.

Dasti also as prayed for".

However, later in its order dated 23.7.2003, the Hon'ble High Court directed that let the Central Administrative Tribunal decide the matter. This order reads as under:-

"CW 2269/2004

Petitioner is present in person. She has signed on the blank paper at four places. The signatures be kept on record. It is contended that against the order passed by the Appellate Authority, respondent no.4 has filed appeal before the Central Administrative Tribunal. Let Central Administrative Tribunal decide the matter. Therefore, the question with regard to the signature of the petitioner and as to fact whether on the petition and the affidavit, the petitioner has signed or not shall be taken up for consideration.

Renotify on 17.11.2003"

Two more orders dated 28.1.2004 and 27.7.2004 have been passed by the Hon'ble High Court but no final view has been taken so far. Based on the order dated 23.7.2003 passed by the Hon'ble High Court, as reproduced below, we proceed to deal with the OA which is before us.

8. During the course of discussion, the main point emphasized by the learned counsel for the applicant was that there was no evidence against the applicant of the charges levelled against him. According to him, the applicant had left the office at 2.00 PM whereas this incident alleging attempted sexual assault is stated to have taken place at 2.15-2.20 PM. Sh. G.P. Sharma who was the eye witness in the case had certain animosity against the applicant and he has been instrumental in persuading Smt. Samridhi Devi to make a false complaint against him. In fact, the conspiracy was hatched against him by Shri

WL

Sharma in connivance of Smt. Samridhi Devi who had a vested interest as she did not want her duty to be shifted to another Section and had also threatened him of dire consequences if she was shifted. In fact, Shri Sharma had been instigating other employees also to make complaint against the applicant in the matter of administrative functioning of D.M.S.

9. In so far as the allegation is concerned, our attention has been drawn to the defence statement made by the applicant as reproduced at para 3. According to him this statement has been construed as admission of the charges by the applicant which is a wrong interpretation of what he had stated. What he meant was that touching the breast of a woman or nail marks on the breast does not prove the allegation of sexual assault. These marks can be made by anything or by anybody. To prove the allegation medical examination was necessary which was not done in this case. He had given this as an example but the same has been wrongly construed by the Enquiry Officer and the disciplinary authority as admission of the charges by the applicant. Besides the above, apart from the statement of the two eye-witnesses, there is no independent witness examined by the enquiry officer. That is why the enquiry officer in his concluding remarks has merely stated that the possibility of the charge levelled against the applicant cannot be ruled out. There is no categorical finding of the enquiry officer proving the charge against the applicant. His conclusion is thus based only on presumption and not on evidence and as such cannot become the basis for imposing the penalty.

10. The learned counsel for the respondents on the other hand stated that remarks made by the applicant in his defence statement justifying his action by stating that "touching the breast of a woman does not prove the sexual assault" only shows the psyche of a pervert mind of the applicant. This statement is nothing but admission of the charge by the applicant. The allegation that the complaint made by Smt. Samridhi Devi was fabricated and she had filed it at the instigation of Shri G.P. Sharma is totally baseless. To suggest that a lady would make a false complaint of such a nature only to please another male employee

C

who according to the applicant had been nurturing ill feelings towards the applicant, is not only preposterous but also unthinkable and unimaginable. No woman in her right senses would stake her reputation by degrading and humiliating herself and thus sully her name for sake of another person, no matter how close she may be to that person. A lady's honour will always be the top priority for her and other considerations pale into insignificance when compared to her honour. He further argued that even if it is accepted that Shri G.P. Sharma and Smt. Samridhi Devi has hatched a conspiracy against the applicant but it is unbelievable that Shri Ashok Bansal, the Manager to whom the complaint was made by her, could become part of the conspiracy when he had nothing personally against the applicant.

11. The learned counsel for the applicant after the conclusion of discussions in this case, has produced copies of some judgements in support of the case.

These judgements are:-

- A.I.R. 1961 SC 1070 in the case of Jagdish Prasad Saxena vs. The State of Madhya Bharat.
- 506 Supreme Court Reports (1964) Vol. In the case of Khardah Co. Ltd. Vs. their workmen
- U.O.I. vs H.C. Goel {1963 (4) S.C.R. 718}
- UOI & Another vs. BC Chaturvedi {(1995) 6 SCC 750}
- Ganga Prasad Tiwari vs. UOI & Ors decided by CAT Jabalpur Bench on 4.2.1987 in T.A. 24/86

The above judgements pertain to admission of charges by the charged officer, recording of evidence, dismissal of delinquent employee based on 'no evidence' and credibility of the evidence etc. These judgements were not cited at the time of discussion of the case, thus depriving the learned counsel for the respondents, of the opportunity to put forth his views. In any case, these judgements will be kept in view while deciding the case under consideration.

12. As mentioned above, the emphasis of the learned counsel for the applicant was that there was not sufficient evidence before the enquiry officer to reach the conclusion arrived at by him in his report. According to him, it is the case of "no evidence." Secondly, the applicant had not admitted the charges

against him and his defence statement made by him had not been properly understood by the disciplinary authorities.

13. We have carefully gone through the report of the enquiry officer. The plea taken by the applicant that he was not in office at the time of the incident of molestation has been discussed at length in the report. He is stated to have left office at 2.00 p.m. The first shift is upto 2.15 p.m. and on that date i.e. 31.12.1999, 750 crates were yet to be filled up. Normally after the close of the shift, certain entries are required to be made in the records. Thus the Dairy Supervisor cannot leave before 2.20-2.25 p.m. The incident is stated to have taken place around this time. It cannot, therefore, be believed that on that date, he left at 2.00 p.m. The enquiry officer has thus reached the conclusion that he recorded the time of his leaving the office at 2.00 p.m. only to defend himself. It only proves that the applicant was present in office after 2.00 p.m. and since a farewell party was going on, nobody was present in the Central dairy office, as alleged by Smt. Samridhi Devi. She complained about this incident to Shri Bansal, Manager around 2.45 p.m. when he came back from the farewell party.

14. It is also mentioned in the enquiry report that when Shri Bansal enquired from the applicant about this alleged incident next day, he denied it. According to the enquiry officer, if the applicant was innocent, he should have protested by giving a representation in writing, which he did not do. According to the enquiry officer, no lady employee will stake her reputation and make a laughing stock of herself by making such a complaint in writing. After considering all the relevant facts and evidence on record, the Enquiry Officer reached the conclusion that the possibility of the charge levelled against the applicant cannot be ruled out. The argument advanced by the learned counsel for the applicant that this finding is not categorical does not carry much weight. In a case of molestation, there cannot be an eye witness of the incident. Therefore no conclusive and categorical finding can be given in such a case of departmental enquiry. The finding is based on preponderance of probabilities. Her written complaint and her reporting to the Manager immediately after the incident is enough to prove the

guilt of the applicant. The enquiry report also proves that the applicant had given wrong time of his hearing the office at 2.00 p.m. in order to defend himself in an enquiry later. On this aspect, we are relying on the decision of the Hon'ble Supreme Court in the cases of State of Karnataka & Anr. Vs. T. Venkataramanappa (1996) 6 SCC 455 and Senior Supdt. of Post Offices vs. A. Gopalan 1997 (11) SCC 239. It has been held that in the departmental proceedings, a strict proof of misconduct, as in a criminal case is not required. The standard of proof in such case is preponderance of probabilities.

15. The learned counsel for the applicant after the discussion in the court has given copies of certain judgements in support of his contentions as mentioned in para 11 above. We have gone through these judgements. In so far as the judgement in the case of Jagdish Prasad Saxena (supra) is concerned, it has been held that a delinquent officer, whose statement did not amount to clear admission of guilt, could not be removed from service without holding a fresh enquiry. It has been observed in this judgement that even if the applicant had made some statement which amounted to admission, it was open to doubt whether he could be removed from service on the strength of the said alleged admission without holding a formal enquiry as required by the rules. This judgement cannot come to the rescue of the applicant, as in the instant case a detailed enquiry was held in which the applicant had participated. He was not removed merely on the basis of the statement made by him in his defence. The second judgement in respect of Khardah Co. Ltd. Vs. their workmen (supra) cited in para 11 above relates to the dismissal of a workman under the Industrial Disputes Act. The facts and circumstances of the case are quite different. One of the points raised in the judgement is that the Manager who held the enquiry had not recorded his finding and it was not known how he appreciated the evidence led before him. As against this, in the present case the enquiry officer had given his findings, after giving detailed reasons for arriving at the conclusion. This judgement also, therefore, cannot be made applicable to the instant case. The judgements in respect of Union of India vs. H.C. Goel and Ganga Prasad

Q

WS

Tiwari vs. Union of India and others (supra) pertain to the cases where the order of dismissal was passed based on 'no evidence' or the evidence lacked credibility. From the facts and circumstances of the present case, it is observed that there was sufficient evidence against the applicant. The written complaint of the lady employee supported by the evidence of the eye witnesses and the alleged manipulation of record by the applicant as brought out in the enquiry report, could be construed as sufficient proof of the charges against the applicant. This case cannot, therefore, be termed as having "no evidence" or evidence lacking credibility. The applicant cannot be allowed to take benefit of these judgements either.

16. The learned counsel for the applicant has also cited the land mark judgement of the Hon'ble Supreme Court in the case of Union of India and another vs. B. C. Chaturvedi (supra) in support of his contentions. We have not been able to appreciate as to how this judgement could be of any help to the applicant. On the other hand in this judgement, it has been held that in a departmental enquiry the Court/ Tribunal cannot re-appreciate the evidence and interfere with findings of fact based on evidence and substitute its own independent findings. The following observations made in this judgement are relevant:-

"Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/ Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence".

It would thus be observed that we have no jurisdiction to reassess the reliability of the evidence and the disciplinary authority is the sole judge to arrive

yb

at a decision based on the evidence before it. In the present case the enquiry officer had considered the matter in detail based on the evidence and other material before him and came to the conclusion that the possibility of the charge against the applicant cannot be ruled out. This finding cannot be construed as based on "no evidence" and we have no justifiable reasons to interfere with the findings and the decision taken by the Disciplinary/ Appellate authority.

17. Another important aspect of the case is that the lady employee who had made a complaint against the applicant has been of the view that the penalty of dismissal alone would meet the ends of justice in this case. She, therefore, filed a writ petition in the Hon'ble Delhi High Court challenging the decision of the Appellate authority converting the penalty of dismissal from service to compulsory retirement. This step seems to have been taken by her in order to vindicate her honour for which one need to muster enough courage. As explained above, this writ petition is pending adjudication before the Hon'ble Delhi High Court. However, this action on the part of the lady employee speaks volumes about the genuineness of the complaint made by her. Considering this aspect of the matter the arguments advanced by the learned counsel for the applicant that she had made a false complaint to implicate the applicant in order to please another male employee, does not carry conviction.


18. It is a well-settled principle of law that the jurisdiction of the Tribunal in the matter of judicial review of the orders of disciplinary authority in departmental enquiry is quite limited. In a series of decisions including that of B.C. Chaturvedi vs. Union of India and Others (1995) 6 SCC 749 as cited by the learned counsel for the applicant, the Apex Court in the case of State of T.N. vs. T.V. Venugopalan, (1994) 6 SCC 302, Union of India vs. Upendra Singh (1994) 3 SCC 357, State of T.N. & Another vs. Subramaniam, (1996) 7 SCC 509, Government of T.N. vs. A. Rajapandian (1995) 1 SCC 216 and U.P. State Road Transport Corporation vs. Basudeo Chaudhar and Another (1997) 11 SCC 370 has ruled that where the Tribunal had not found any fault with the proceedings conducted by the enquiring authority, it has no jurisdiction to re-appreciate the

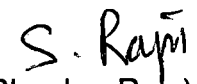
C

47

evidence and to interfere with the order of punishment. Judicial Review is not an appeal against a decision but a review of the manner in which the decision is made. The learned counsel for the applicant has not pointed out any lacunae in the conduct of the enquiry or disciplinary proceedings. We also find that the disciplinary proceedings have been conducted in accordance with relevant rules and no fault can be found with it. In such a situation, the Tribunal cannot sit as a court of appeal over the decision of the disciplinary authority based on the findings of the enquiring authority. In exceptional cases, the Tribunal can interfere only if findings of the disciplinary authority are totally perverse, mala-fide or legally unsustainable, which is not so in the present case.

19. In view of the foregoing, we do not find any merit in the OA and the same is accordingly dismissed without any order as to costs.


(S.K. Malhotra)
Member (A)


(Shanker Raju)
Member (J)

/gkk/