

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

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T.A. No. 906 of 1986
Civil Appeal No. 15 of 1985

(Arising out of O.S. 1475 of 1981)

The Union of India, through Secretary,
Ministry of Defence, Govt. of India,
New Delhi.

Appellant/
Defendant No. 1

Versus

Shri Purushottam Lal Kohli

.... Respondent
(Plaintiff)

Hon. Mr. A.B. Gorthi, Member (A)
Hon. Mr. S.N. Prasad, Member (J)

(By Hon. Mr. S.N. Prasad, Member (J))

This Civil Appeal No. 15 of 1985 was filed by the appellant (UOI) against Shri Purushottam Lal Kohli (respondents- plaintiff) in the court of District Judge, Kanpur, being aggrieved against the judgment and decree dated 30.11.1984 in suit No. 1475 of 1981 "Purushottam Lal Kohli (plaintiff) Vs. U.O.I. (Defendants) passed by the then Munsif City Kanpur, and due to advent of the Administrative Tribunals Act, 1985, the above civil appeal has reached this Tribunal by way of transfer under Sec.29 of the aforesaid Act.

2. Briefly, stated the facts of the aforesaid suit No. 1475 of 1981, interalia, are that the plaintiff was employed as Lower Division Clerk in Air Force Central Accounts Office (hereinafter for short A.F.C.A.O.) Indian Air Force New Delhi on 16 August, 1965 by the then employer. The plaintiff was posted on Compassionate grounds from A.F.C. A.O. New Delhi to Air Force Station Chakeri, Kanpur on 27 August, 1966 with all benefits of his previous service and emoluments; and the plaintiff was member of the Unit Civillian Committee, elected by the worker side and was holding the post of Joint Secretary of a Union named and styled as Vayu Sena Kramchari Union Kanpur as well as Deputy Convenor of Kanpur Defence Council Kanpur. The plaintiff was active

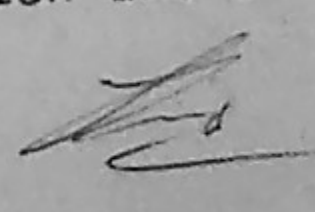
and responsible trade union leader and spokesman of workers in the Unit Civilian Committee, and while functioning as such spokesman of workers he had often to oppose strongly the views held by the administration in the interest of workers cause. The administration took such legitimate trade union activities of the plaintiff as personal offence and harboured an inimical bias against the plaintiff. It has been ^{~ further ~} stated that a concocted case was cooked by the then Officer incharge Civil Administration Section, Air Force Station Chakeri, Kanpur, Shri T.R. Behal (CGO), in connivance with Defendant No.2, to teach a lesson to the plaintiff for his active trade union activities and functioning as spokesman of the said Workmen committee, and he was made victim of their device, consequently, the plaintiff was served with a charge sheet under the signature and authority of Defendant No.2 for imposing major penalty under Rule 14 of C.C.S. (CC&A) Rules, 1965, It has further been stated that the charges levelled against the plaintiff were alleged incidents of 19th March 1974 ^{~ and ~} 23rd June 1973 and the alleged incident of 23 June 1973 was based on the finding and recommendation of Court of Inquiry Ordered Vide SRO Serial No.215 dated 15 September, 1973. The plaintiff was neither party to the proceedings to the said Court of Inquiry nor ^{wa} allowed to cross examine the witnesses. It has further been stated that the plaintiff submitted an application before the authority concerned (Defendant No.2) under Rule 14(8) of C.C.S. (C.C.&A) Rules 1966, to allowed him to take assistance of a Govt Servant Shri G.P. Saxena, senior store Keeper then posted at 24 EDAF Detachment at Agra, to defend the case of plaintiff but the request was illegally turned down and the plaintiff was denied reasonable opportunity to defend his case. It is further stated that the Inquiry Officer of the aforesaid Departmental Inquiry did neither

complied with the mandatory provisions as laid down in the C.C.S.(CC'A) Rules 1965 nor applied his mind on the aforesaid request of the plaintiff to allow the assistance of a Govt. Servant of his choice nor ~~xxx~~ he gave any intimation to the plaintiff as regards the date of proceedings/hearing of the aforesaid inquiry after 22 April 1975, though various sittings were fixed by the aforesaid Inquiry Officer, and he proceeded Ex-parte without any reason, ~~xxxxxxx~~. It has been ^{further} stated that the plaintiff made his request in writing against the aforesaid show-cause notice, to the Defendant No.2 on 29 Oct, 1975 for supplying ~~the~~ List of Documents as mentioned in the Annexure-III to Memorandum No. 402 STN/ 3350/25267/NI/PC dt. 17 September, 1974, to enable him to make his representation against the aforesaid show cause notice but the plaintiff was not supplied with the copy of findings and recommendations of said Court of Inquiry, and the plaintiff have not been given opportunity to cross-examine the witness produced on behalf of alleged disciplinary authority and as such the principle of Natural Justice were violated as no reasonable opportunity was afforded to plaintiff to defend himself. The defendant No.2 is not the disciplinary authority under rule 12 of C.C.S.(CC&A) rules 1965 and as such ~~xxxxxxx~~ the disciplinary proceeding against the plaintiff is without the lawful authority of defendant No.2. The defendant No.2 is not disciplinary authority under part IV of the schedule of C.C.S.(C.C.&A) Rules 1965 of the plaintiff and he can not pass the order for imposing any penalty. The disciplinary authority is competent to impose the penalty of dismissal from service in accordance with part IV of the schedule of C.C.S.(C.C.&A) Rules, 1965. The Air Officer Commanding in-Chief, Maintenance Command ^A IAF only is the competent authority, thus the impugned order of dismissal/ ^{dt. 10.1.76}

passed by the defendant No.2 which merged in the order dated 4.11.1977 passed by the reviewing authority are void abinitio, illegal, arbitrary, mala-fide and without jurisdiction.

The defendant(U.O.1) filed written statement with the contentions, inter-alia, that the defendant No.2 being the appointing authority of the plaintiff, is the disciplinary authority under rule 12 of C.C.S.(C.C.&A) Rules 1965. There has been no violation of statutory provisions and as such the defendant No.2 being appointing authority was competent to pass the impugned order as disciplinary authority. The plaintiff was afforded reasonable opportunity to defend himself during enquiry proceedings as required under the rules and he deliberately abstained from the enquiry proceedings in spite of due information and there was no denial of reasonable opportunity to him for cross-examining the witnesses produced on behalf of the disciplinary authority. The plaintiff was supplied a copy of the enquiry report alongwith the show cause notice and the charges against the plaintiff were proved beyond reasonable doubt. The copies of the documents and the statements of witnesses were not required to be supplied to the plaintiff they were however, made available to the plaintiff for inspection. The order dated 30.8.1978 does not impose double punishment rather it modifies the earlier punishment of dismissal and the aforesaid impugned order were passed validly in accordance with the law after affording reasonable opportunity to the plaintiff and the plaintiff's suit is liable to be dismissed with cost.

The trial court(Munsif city Kanpur) framed the 6 issues which are as follows:-



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1. Whether the disciplinary proceedings held against the plaintiff are vitiated and were illegal and untenable as alleged in the plaint?
2. Whether the order of dismissal of the plaintiff from service passed by defendant No.2 by his order No. 4025-TN/3350/25257/Nil/PC dated 10.1.76 is illegal, arbitrary, without jurisdiction and ultravires as alleged in the plaint?
3. Whether the order imposing the penalty of reduction of pay of the plaintiff by three stages and stoppage of increments for 3 years, is illegal and null and void as alleged in the plaint?
4. Whether the order dated 30.8.1978 passed by the Reviewing authority deducting 50% of salary and allowances of the plaintiff for the intervening period between the date of dismissal from service and the date preceding rejoining duty by the plaintiff is illegal, wrongful, null and void and not binding on the plaintiff?
5. Whether the notice u/s 80 C.P.C. is illegal?
6. To what relief, if any, is the plaintiff entitled?

The trial court decided issue no.1 to 4 in affirmative in favour of the plaintiff and also decided by issue No.5 and 6 in favour of the plaintiff and consequently decreed the suit of the plaintiff with cost against the defendants holding the aforesaid impugned orders illegal and ineffective and deeming the plaintiff to be in continuous service of the defendants.

Feeling aggrieved against the aforesaid impugned judgment and decree dated 30.11.1984 this appeal has been filed by the defendant (U.O.I.) which has come up before us by way of transfer under section 29 of the Administrative Tribunals Act, 1985.

We have heard learned counsel for the parties at length and have thoroughly and carefully gone through the records of the case.


The learned counsel for the appellant while drawing our attention to the pleadings of the parties and to the papers filed by the parties and to the statement of the plaintiff (P.W.-1 Purshottam Lal) and to the impugned judgment and decree passed by the trial court (Munsif City Kanpur), has argued that the trial court

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has not considered the relevant law and evidence on record from proper ^{~ perspective ~} ~~perspective~~ and has erred in holding that the defendant no.2 was not disciplinary authority of the plaintiff under rule 12 C.C.S. (C.C.A.) Rules, 1965 and has erred in holding the impugned order to be invalid and illegal, though from the scrutiny of the evidence on record, it would be seen that the defendant no.2 is the disciplinary authority and the enquiry proceeded against the plaintiff was not in any manner vitiated as the reasonable opportunity was given to the plaintiff to defend himself and as such appeal should be allowed and the impugned judgment and decree passed by the trial court should be set aside and the plaintiff's suit be dismissed with cost.

The learned counsel for the respondents² (plaintiff) has argued while drawing our attention to the pleadings of the parties, to the statement of the P.W.1, Purshottam Lal, to the papers filed by the parties that the above findings of the trial court are proper and valid and are based on the relevant law and the evidence on record; and there is no perversity in the impugned judgment and decree and as such the appeal should be dismissed.

This² is important to pointout that according to the respondent-plaintiff, disciplinary authority competent to impose penalty of dismissal from service in accordance with part-IV of Schedule of C.C.S. (C.C.A.) Rules, 1965 is Air Officer commanding in-chief, Maintenance Command, I.A.F. only and not the Air Officer Commanding, No. 402 Air Force Station, Chakeri, Kanpur (who is defendant no. 2 in the aforesaid suit). In this context it is note-worthy that Ext. A-1



(copy of Ministry of Defence Order No. 5 (8)/79/D (IAB) dated 12.11.1979 regarding delegation of disciplinary powers) shows that from 12.11.1979, the president empowered the authorities to impose the penalties specified in sub-rule (i) ~~to~~ (ix) of Rule-11 of the Rules as shown against the respective authorities on Group-C and D Defence Civillian Employees of Air Head Quarters and ~~and~~ under their control ^{and} and within their jurisdiction. Thus, it is clear that only from 12.11.1979 the defendant no. 2 was empowered to impose penalties on the respondent- plaintiff and prior to that only Air Officer Commanding-in-chief, Maintenance Command I.A.F. was the competent authority in this regard. This fact should not be lost ^{sight} of that the incident about which the disciplinary proceedings were proceeded with against the respondent-plaintiff relate, to the year 1973 and the impugned order imposing penalty of dismissal from service in regard to the respondent-plaintiff passed by the defendant no. 2, is dated 10.1.1976. In this context, it is also significant to point out that Ext. A-2 (copy of letter No. 6373/D (Lab.) dated 9.10.1980) clarified that any delegation made by A.O.C.-in-chief under rule 12 (2) of C.C.S. (C.C.A.) Rules 1965 is invalid. Thus, from the ^{scrutiny} ~~said~~ of the entire evidence and material on record, it becomes quite clear that the defendant no.2 was not the competent authority to impose the penalty in question and as such the entire disciplinary proceeding and the impugned order of dismissal from service in regard to the respondent-plaintiff dated 10.1.1976 stands vitiated; and the impugned order dated 30.8.1978 passed by the reviewing authority also stands vitiated.

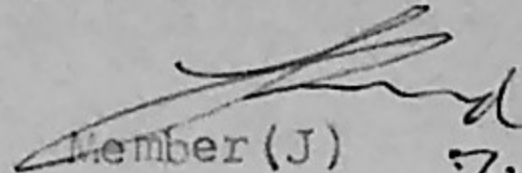
This is significant to point out that from the perusal

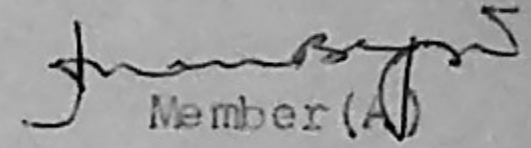
of the statement of the P.W. 1, Purushottam Lal Kohli (plaintiff-respondent) and from the perusal of para-15 (ix) of the written statement of the defendants, it is apparent that the copies of the documents and the statement of the witnesses were not supplied to the plaintiff (respondent) by the enquiry officer and non-supply of the copies of the such documents to the plaintiff shows that the plaintiff was deprived of the reasonable opportunity to defend him-self as for want of such papers he could not defend himself properly and as such there is violation of the principle of natural justice, Keeping in view the principles of law as laid down in the rulings reported in 1967 S.L.R. Trilok Nath Vs. Union of India, Supreme Court at page 759, and A.T.R. 1986(2)(Supreme Court of India), Kashinath Dikshit (petitioner) Vs. Union of India and others (Respondents) at page 186.

This is also noteworthy that a perusal of telegram Ext. A 6 shows that Shri G.P. Saxena, whose legal assistance was required by the plaintiff to defend himself, the plaintiff was deprived of the legal assistance of the aforesaid Shri G.P. Saxena (senior Store Keeper) merely on the ground of the non-availability of the such Shri G.P. Saxena before October and as such this further shows that the plaintiff was not afforded reasonable opportunity to defend himself.

Thus, from the foregoing discussions and after scrutinizing the entire evidence on record and keeping in view the circumstances of the case and having regard to the above rulings, we find that there is no illegality and impropriety in the above findings of the trial court and we do not find any cogent reason to interfere with those findings.

Consequently, we find that the appeal is devoid of merit and accordingly the appeal is dismissed and the impugned judgment and decree of the trial court are hereby affirmed with the modification that the parties to bear their own costs of the suit and as well as of the appeal.


Member (J) 7.2.92


Member (A)

Dated: 7 .2.1992

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