(OA No 060/00833/2014
O.A. No. 060/00834/2014
O.A. No.060/00835/2014)

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

...

Order reserved on: 06.01.2016

Order pronounced on: 15.01.2016

CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

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1. **O.A. No. 060/00833/2014**
2. **O.A. No. 060/00834/2014**
3. **O.A. No. 060/00835/2014**

Raj Kumar, aged 47 years, son of Shri Mangal Singh, Stenographer, Sports Authority of India, Northern Regional Centre, Hockey Stadium, Sector 42, Chandigarh, resident of House NO. 266, Sector 44-A, Chandigarh.

....APPLICANT

BY ADVOCATE: SHRI BIPAN SHARMA

VERSUS

1. Sports Authority of India, Jawahar Lal Nehru Stadium, Lodhi Road Complex, New Delhi-110 003 through its Director General.
2. A.K. Sharma, Director Incharge (Retd.), Sports Authority of India, NRC, Village Joshi Chauhan, G.T. Road, Bahalgarh, Distt. Sonepat through Director General, Sports Authority of India, Jawahar Lal Nehru Stadium, Lodhi Road Complex, New Delhi-110003.
3. Sanjeev Sharma, Director Incharge, Sports Authority of India, Northern Regional Centre, Hockey Stadium, Sector 42, Chandigarh.
4. Ajit Singh, Deputy Director, Sports Authority of India, Northern Regional Centre, Hockey Stadium, Sector 42, Chandigarh.
5. P.K. Mattu, Assistant Director (Admn.), Sports Authority of India, Northern Regional Centre, Hockey Stadium, Sector 42, Chandigarh.

....RESPONDENTS

BY ADVOCATE: SHRI P.C. GOYAL AND MR. ANIL GROVER

ORDER

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HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-

By this common order, we are disposing of three Original Applications No. 060/00833/2014, 060/00834/2014 and 060/00835/2014 all filed by Raj Kumar against Sports Authority of India and Others. For convenience, facts are being taken from O.A. No. 060/00835/2014.

2. The case of the applicant is that he was appointed as a Stenographer vide appointment letter dated 24.07.1992 (Annexure A-1) by Regional Director of Sports Authority of India (SAI) and he joined as such on 29.07.1992. His service conditions are governed by SAI (Service) Bye Laws and Conditions of Service Regulations, 1992. Post of Director is feeder cadre for the post of Regional Director. Thus Director is lower/subordinate authority to the Regional Director. On completion of probation period, services of the applicant were confirmed w.e.f. 28.07.1994. The applicant was granted benefit of ACP Scheme w.e.f. 29.07.2004 on satisfactory completion of 12 years service. The applicant made statutory complaint dated 19.06.2006 seeking independent investigation into large scale multi crores corruption in SAI (Respondent no. 1). Immediately thereafter he was not permitted to join his duties and was being shown absent from duty. The applicant was threatened to be implicated in some false criminal case. The applicant filed CRM No. 69993-M-of 2006 in Hon'ble High Court regarding corruption in SAI. However, the non-official respondents no. 2 to 5 managed initiation of disciplinary proceedings

against the applicant. The applicant was served with first charge-sheet dated 18.04.2007 (Annexure A-8) by S.S. Roy, Director Incharge, an authority subordinate to the appointing authority. Order dated 16.05.2007 (Annexure A-9) was issued by respondent no. 1 SAI thereby sub-delegating disciplinary powers to the Director under the garb to Rule 9(h) of the Financial Bye-laws of SAI. This order has been manoeuvered with malafide intentions. Criminal Misc. case filed by the applicant in the Hon'ble High Court was disposed of vide order dated 24.03.2008 with direction to the Competent Authority to look into the complaint made by the applicant and to dispose it of in accordance with law. Punishment order dated 06.05.2009 (Annexure A-22) was passed by respondent no. 2 awarding major punishment to the applicant. Second charge-sheet dated 08.05.2009 (Annexure A-23) was served on the applicant by respondent no. 2 for the same allegations . On Writ Petition filed by the applicant, High Court handed over investigation to the Central Bureau of Investigation. The applicant challenged punishment order dated 06.05.2009 and second charge-sheet dated 08.05.2009 by filing O.A. No. 506/CH/2011. Vide order dated 22.02.2011, the applicant was relegated to the remedy of appeal before appellate authority. The applicant filed appeal which was decided by Director General (Respondent no. 1) vide order dated 31.03.2014 (Annexure A-39) reducing the quantum of punishment. The applicant has also given history of some other litigation. Respondent no. 3 Director issued order dated 20.11.2013 (Annexure A-62) placing the applicant under suspension. Respondent no. 3 also appointed Enquiring Authority and Presenting Authority in respect of third charge-sheet dated 23.07.2013 and fourth ~~and~~ charge-sheet dated 13.12.2013 vide orders dated 10.02.2014 (Annexures A-63 & A-64).

Respondent no. 3 being lower and subordinate authority ~~of~~ to the appointing authority ~~to~~ of the applicant could not have done so. Respondent no. 3 vide order dated 29.08.2014 (Annexure A-67) revoked the suspension of the applicant and also transferred him to Dharamshala.

3. In O.A. 060/00833/2014 the applicant has challenged order dated 31.03.2014 (Annexure A-15) passed by respondent no. 1 in appeal against second charge-sheet dated 08.05.2009 (Annexure A-7) issued by respondent no. 2 Director and has also challenged the said charge-sheet dated 08.05.2009 (Annexure A-7) and has also sought consequential benefits, on various grounds.

4. In O.A. NO. 060/00834/2014 the applicant has sought quashing of order dated 31.03.2014 (Annexure A-15) passed by respondent no. 1 in appeal against punishment order dated 06.05.2009 and has also challenged the said punishment order dated 06.05.2009 (Annexure A-6) and has also sought consequential benefits, on various grounds.

5. In O.A. No. 060/00835/2014, the applicant has challenged order dated 16.05.2007 (Annexure A-9) issued by respondent no. 1 to the extent of sub-delegating of disciplinary authority powers to the lower authority, subordinate to the appointing authority of the applicant and has also sought declaration that the said order has been manoeuvered with malafide intentions, on various grounds.

6. Respondents 1 & 3 to 5 filed their joint written statements and interalia pleaded that respondent no. 1 is a Society registered under

the Societies Registration Act, 1861 and has its own Memorandum of Association and Rules. Its Director General has the power under Rule 21 (b) to delegate in writing such of his powers as he may consider necessary to the Secretary or any other officer or officers below in rank to him in the Society. The Regional Head who is Director enjoys full powers of Appointing as well as Disciplinary Authority of Group-C and D employees. The applicant has already been dismissed from service vide orders dated 09.02.2015 (Annexure R-2). The applicant has preferred an appeal against the said order challenging the aforesaid delegation of powers. The said appeal is pending. The applicant is compulsive litigant and has concealed several facts. Challenge to order dated 16.05.2007 regarding delegation of powers is barred by limitation. The delegation of powers has been approved by the DG, SAI. Rule 18 of the Service Bye-laws of SAI also authorized delegation of powers to lower authorities. Head of the Region not below the rank of Director is appointing authority as well as disciplinary authority for Group-C & D employees. At the time of the appointment of the applicant as Stenographer, Regional Head was Regional Director due to administrative exigency. The region was thereafter headed by the Director or even by Deputy Director who exercises delegated powers issued from time to time. The delegation of powers was pleaded to be legal and valid. Various charge sheets were rightly issued to the applicant and punishment order dated 06.05.2009 as also appellate orders have been rightly passed. Similarly charge-sheet dated 08.05.2009 and appellate orders against the same have been rightly passed. It was also pleaded that Director is not subordinate to the Regional Director. Director, Regional Centre, Sonepat was independently working as appointing authority as well as

disciplinary authority of Group-C & D employees. Grounds pleaded by the applicant in all the three O.As. to challenge the action of the respondents were controverted. Various other pleas were also raised.

7. The applicant filed rejoinders controverting the stand of the respondents and reiterating his own version.

8. We have heard counsel for the parties and perused the voluminous case files with their assistance.

9. Counsel for the parties reiterated their respective stands. Counsel for the applicant vehemently contended that the applicant was appointed as Stenographer by the Regional Director and, therefore, disciplinary action against him could not be taken by the Director being subordinate to the Regional Director (appointing authority of the applicant), and therefore, disciplinary action against the applicant by subordinate authority is in violation of Article 311 of the Constitution of India and against the service rules. Reliance in support of this contention has been placed on various judgments namely:

i) Secretary, Min. of Defence and Ors. Vs. Prabhash Chandra Mirdha [2012 AIR (SC) 2250];

ii) Union of India & Ors. Vs. B.V. Gopinath [2013 (120 JT 392];

iii) Kultar Devi Kalsi Vs. Central Institute of Hand Tools through its Chairman and Others [1991 (3) RSJ 478];

iv) Management of Delhi Transport Undertaking Vs. B.B.L Hajelay [1972 (2) SCC 744;

v) Krishan Kumar Vs. Divisional Assistant Electrical Engineer [1979 AIR (SC) 1912]

vi) Bank of India Vs. Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court [1991 (2) S.C.T. 455];

vii) Jagdish Chander Vs. H.S.E.B. [1993 (3) S.C.T. 438]

vii) Bajinder Kumar Chopra Vs. The Food Corporation of India [P&H) (DB) 1998(3) S.C.T. 517.

It was also contended that respondent no. 3 Sanjeev Sharma was promoted as Director on adhoc basis only vide order dated 21.05.2012 (Annexure A- 78) and being adhoc directior also, he could not have exercised the powers of Director for disciplinary action against the applicant. Reliance in support of this contention has been placed on following judgments:-

i) Ram Pravesh Sharma Vs. Coal Mines Provident Fund Organization, Delhi [2004 (6) SLR 795];

ii) K.K. Gupta Vs. State of M.P. and Others [2013 (3) M.P.L.J. 386];

iii) Sri. B.N. Dhotrad Vs. The Board of Directors-cum-Appellate Authority, Karnataka Land Army Corporation Ltd. & Ors. [2006 (5) Air Kar R 395].

It was also submitted that delegation of powers vide orders dated 16.05.2007 (Annexure A-9) is not valid. Reliance in support of this contention has been placed on judgment in case of Director General, ESI Vs. T Abdul Razak [1996 (4) S.C.T. 272].

10. On the other hand, counsel for the respondents submitted that Director, although lower in rank, is not subordinate to the Regional Director and, therefore, in view of valid delegation of powers vide order dated 16.05.2007, respondent no. 2 as Director was competent disciplinary authority to take action against the applicant and to issue impugned charge-sheet and to pass the impugned punishment order.

It was also submitted that in view of Bye-laws of SAI, DG was competent to delegate the powers to any other officers of SAI as per Rule 21(b) (Annexure R-1) and thus there was valid delegation of powers vide order dated 16.05.2007. It was also pointed out that according to schedule (II) to the Bye-laws, the Director is also amongst the appointing authorities specified therein for posts carrying the pay-scale of the post of Stenographer held by the applicant and, therefore, Director was appointing and disciplinary authority of the applicant in accordance therewith. It was also pointed out that respondent no. 3 promoted as Director on adhoc basis is also competent disciplinary authority of the applicant. However, the impugned charge-sheet and impugned punishment order were not issued by respondent no. 3, but were issued by respondent no. 2, A.K. Sharma who was Director on regular basis at the relevant time. It was also submitted that since respondent no. 1 SAI is a registered society, Article 311 of the Constitution is not applicable to it.

11. We have carefully considered the matter. As regards delegation of powers vide order dated 16.05.2007, there is no material on record to depict that Director General was not competent to delegate the said powers. On the contrary, in accordance with Rule 21(b) (Annexure R-1), D.G. was competent to delegate the powers as delegated by impugned order dated 16.05.2007 (Annexure A-9).

12. As regards the competence of Director to act as disciplinary authority against the applicant, Director is not subordinate to the Regional Director. According to Article 311 of the Constitution, a civil servant cannot be dismissed or removed by an authority subordinate

to that by which he was appointed. The word used in the said provision is 'subordinate'. In the instant case, Director is not subordinate to Regional Director. The Constitution has not used the expression 'lower in rank or authority'. Rather, the word used is 'subordinate' which has its own significance. Consequently Director although lower in rank, but being not subordinate to the Regional Director, could validly act as disciplinary authority of the applicant. Judgments cited by the applicant in this regard do not help the applicant because the said judgments also referred to the subordinate authority imposing major penalty. Moreover, Article 311 of the Constitution of India is not applicable to the applicant because he is employee of respondent no. 1 a Registered Society and, therefore, applicant cannot be said to be a civil servant. However, we may hasten to add that Article 311 of the Constitution is also not violated in the instant case. Moreover, vide punishment order dated 06.05.2009, the applicant was not dismissed or removed from service, but was imposed some other penalty. For this reason also, Article 311(1) of the Constitution, which prohibits subordinate authority from only dismissing or removing a civil servant, is not attracted to vitiate the punishment order.

13. The plea of the applicant that respondent no. 3 having been promoted as Director on adhoc basis could not exercise powers of Director is completely devoid of substance. Judgments cited by the counsel for the applicant relate to current duty charge, held by a person. A person holding 'current duty charge' only cannot exercise the powers of that authority. In the instance case, respondent no. 3 was promoted as Director (may be on adhoc basis) and was not holding 'current duty charge' of the said post. Consequently the

aforesaid judgments are not attracted. In addition to it, the impugned charge-sheet dated 08.05.2009 and impugned punishment order dated 06.05.2009 were not passed by respondent no. 3, but were passed by respondent no. 2 who was holding regular charge of the post of Director.

14. For the reasons aforestated, we find no infirmity in order dated 16.05.2007 regarding delegation of powers, charge-sheet dated 08.05.2009 and its appellate order, and punishment order dated 06.05.2009 and its appellate order. All the three O.As are thus found to be without merit and are accordingly dismissed with no order as to costs. All pending M.As are disposed of as infructuous.

(JUSTICE L.N. MITTAL)
MEMBER(J)

(RAJWANT SANDHU)
MEMBER(A)

Dated: 15.01.2016

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