Central Administrative Tribunal
Principal Bench

OA No. 448/2013

Order reserved on: 16.08.2016
Order pronounced on: 07.10.2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Puran Chand
S/o Sh. Sedu Ram
R/o 27 A, LIG Flats, Prasad Nagar,
Karol Bagh, New Delhi.

- Applicants

(By Advocate: Mr. U. Srivastava)

Versus

Union of India through

1. The Secretary,
   GOI, Ministry of Home Affairs,
   North Block, New Delhi.

2. The Union Public Service Commission
   Through its Chairman
   Dholpur House, Shahjahan Road,
   New Delhi-110069.

3. Govt. of NCT of Delhi through
   The Chief Secretary,
   Govt. of NCT Delhi, Delhi Secretariat,
   New Delhi.

4. The Dy. Secretary (VIG)
   Directorate of Vigilance,
   Govt. of NCT Delhi,
   4th Level, C Wing, Delhi Sectt.
   New Delhi.

- Respondents

(By Advocate: Mr. Vijay Pandita)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant, a Sales Tax Officer under respondent no.3, was served with a chargesheet on 09.05.2003 when he was about to retire on 31.05.2003. The allegations made in the chargesheet pertained to the years 1995 to 1998. The details of the charges are as follows:

> "STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SH. PURAN CHAND, SALES TAX OFFICER
>
> While functioning as Sales Tax Officer in ward-66, Sh. Puran Chand committed misconduct in as much as he failed to detect suppression by the dealer M/s Richi Rich Restaurant Pvt. Ltd. Registered at A-7, Wazirpur Industrial Area, Delhi during the assessment years 1995-96, 1996-97 & 1997-98, from the papers/documents seized by the team of Enforcement Branch of the Sales Tax Department on 23.07.97. He also failed to detect purchases of items taxable at 1st point by the said dealer from unregistered dealers in the above mentioned assessment years.
>
> As he did not consider the seized document properly, the dealer had to be reassessed for the said years and demands of Rs.6121/-, Rs.24,28,949/- & Rs.40,15,620 were created for the assessment years 1995-96, 1996-97 & 1997-98 respectively.
>
> Thus Sh. Puran Chand failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Govt. Servant and his conduct was in violation of provisions of Rule 3 of CCS (Conduct) Rules 1964."

2. Following the denial of charges by the applicant a departmental enquiry was conducted and a copy of the enquiry report was made available to the applicant for making his representation. The respondent no.3, following the retirement of the applicant on 31.05.2003, made a reference to the respondent

Comment [V1]: check

no.1 (Ministry of Home Affairs) for taking necessary action under Rule 9 of CCS (Pension) Rules, 1972, and finally, after consulting the UPSC the order dated 31.10.2012 was issued. The President imposed on the applicant the penalty of withholding of 20% of monthly pension otherwise admissible for a period of three years. The applicant has challenged this order and the order dated 09.05.2003 whereby respondent no.3 had given notice of initiation of departmental proceeding against the applicant in this OA.

3. Learned counsel for the applicant challenged the disciplinary action against the applicant mainly on three grounds; delay, no misconduct, and violation of the rule 32 of CCS (CCA) Rules.

4. It was submitted that the incident for which the applicant has been charged pertains to the years 1995-96, 1996-97 & 1997-98. The respondents waited for almost five years and served the chargesheet on the eve of retirement of the applicant. The departmental enquiry started in 2003 and the report was given in 2006. The final order by the Disciplinary Authority (DA) was passed on 31.10.2012. Thus, right from the issuing of chargesheet till the date of taking final decision of the DA, the whole process of disciplinary proceeding was badly delayed. This was sufficient ground for quashing of the disciplinary proceedings and the orders issued by the respondents.

5. According to the learned counsel for the applicant the charge against the applicant was neither serious nor there was any pecuniary loss to the respondents, which are the two ingredients for the application of Rule 9 of CCS (Pension) Rules, 1972. The lapse on the part of the applicant could at best be categorised as an error of judgment. A bonafide error could not be treated as misconduct. The learned counsel further submitted that in several judgments the Hon'ble Supreme Court has emphasised that the authority should clearly demarcate between an error committed by an employee during the course of his duty and misconduct where his bonafide is under cloud. In the Enquiry Report there is no evidence in support of the charge that the applicant failed to detect the suppression of sale by the dealer. The subsequent upward revision of taxes is still pending adjudication in the Appellate Court. Therefore, the Enquiring Authority (EA) could not have concluded that there was any misconduct on the part of the applicant when the revised assessment of tax is still under adjudication.

6. The learned counsel further submitted that the rule 32 of the CC (CCA) Rules, 1965 enjoins upon the Disciplinary Authority (DA) to make a copy of the advice of the UPSC to the Government employee for making representation before taking the final decision. In this case the DA supplied the copy of UPSC advice along with the copy of the final order imposing the penalty of cut

in pension. This violation of the statutory provision in the CCS (CCA) Rules makes the order of the DA illegal.

7. Some other grounds that have been taken in the OA are:

(i) Not all documents were supplied to the applicant for defending in the enquiry.

(ii) The penalty imposed on the applicant is not commensurate with the gravity of alleged misconduct.

(iii) The enquiry against the applicant also suffered from the procedural lapse as there was no general examination of the applicant.

8. Learned counsel for the respondents, on the other hand, reminded the Tribunal of the limitation imposed on its jurisdiction in the matter of disciplinary proceedings by the Hon'ble Supreme Court in **B.C. Chaturvedi vs. U.O.I.**, (1995) 6 SCC 749, **Union of India vs. Parma Nand**, AIR 1989 SC 1185, **Union of India vs. Sardar Bahadur**, 1972 (2) SCR 225 and **Union of India vs. A. Nagamalleshwara Rao**, AIR 1998 SC 111. With regard to the question of general examination of the applicant, learned counsel submitted that this question has been addressed by the DA in its order dated 31.10.2012.

9. He further pointed out that apart from a few documents that were not supplied to the applicant, there is no allegation from the

side of the applicant that he was denied the opportunity of defending himself. He also denied that the order dated 31.10.2012 was a non-speaking, unreasoned, bald and cryptic order. The DA had considered each and every aspect of the case. Therefore, the Tribunal has to confine itself to the aspect whether the proceedings against the applicant were conducted in accordance with the rules and law and there was any denial of natural justice to the applicant. The appreciation of evidence and the quantum of penalty were within the jurisdiction of the respondents and the Hon'ble Supreme Court has accepted this principle. Since the applicant had retired shortly after issuance of chargesheet, the procedure as laid down in CCS (CCA) Rules was duly followed and after it was found that the misconduct of the applicant was a grave misconduct, the penalty of 20% cut in pension has been imposed upon the applicant.

10. We have heard the learned counsel for the parties and perused the record. Admittedly there was delay in initiating action against the applicant in the first instance. The respondents served the charge-sheet on the applicant only 22 days before his superannuation despite the fact that the incident in question had occurred about five years back and even after that it took nine years for the respondents to pass the order dated 31.10.2012. It is apparent that the respondents' machinery dealing with such matters do not visualise the harassment and mental agony

caused to the person against whom an enquiry is lingering on for nine to ten years even after his retirement. However, the delay in serving the chargesheet or conclusion of disciplinary proceeding by itself cannot be a ground on which the entire proceeding could be quashed. In **B.C. Chaturvedi vs Union Of India And Ors,** 1995 SCC (6) 749, the Hon'ble Supreme Court observed as under:

> ".....Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5 (1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

11. We have considered the plea raised by the counsel for the applicant that the charges against the applicant are not serious. The fact remains that the EA has proved the charges against the applicant of failing to detect suppression of sale by the dealer that lead to reassessment of demand for the years 1995-96 1996-97, and 1997-98 to Rs.6121/-, Rs.24,28,949/- & Rs.40,15,620/-. This cannot be passed off as a routine error in the assessment of taxes. There is nothing on record that could establish that the finding of the EA is without any evidence or perverse. It is well establish that the Courts are neither sitting in appeal against the orders of the competent authority nor to re-appreciate the evidence in a disciplinary proceeding. The role of the Courts is confined to see whether the DA has acted in accordance with rules and the delinquent has been given full opportunity to defend

himself according to the principles of natural justice. We do not find any justification to interfere in the impugned orders on the aforesaid ground.

12. From the impugned order dated 31.10.2012 it is noticed that the DA had relied on the advice of UPSC dated 17.10.2012 while deciding the quantum of punishment and the copy of the UPSC advice was supplied to the applicant only along with the order dated 31.10.2012. The Rule 32 of CCS (CCA) Rules, 1965 reads thus:

> "32. Supply of copy of Commission's advice
>
> Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order."

13. We agree with the submission of the learned counsel for the applicant that this is a clear violation of the Rule 32 and a fatal lapse for the entire disciplinary proceeding. According to Rule 32 of CCS (CCA) Rules, 1965, if the DA relies on the advice of UPSC, the same should have been supplied to the applicant while calling for his representation on the action proposed by the DA on the report of the EA and the advice of UPSC. In **Union of India vs. S.K. Kapoor**, 2011 (4) SCC 589 the Hon'ble Supreme Court has held that where the advice of the Union Public Service

Commission is relied upon by the Disciplinary Authority, then a copy of the same must be supplied in advance to the concerned employee. For this reason the impugned orders passed by the respondents in this case can not be legally sustained and are liable to be quashed

14. In these circumstances we do not consider it necessary to examine other grounds taken by the applicant in the OA. For the reasons stated earlier in this order we quash and set aside the order dated 09.05.2003 and 31.10.2012. In the normal circumstances, it would be a fit case to be remanded back to the DA to restart the process from the stage of making available the advice of UPSC to the applicant for making representation and pass a fresh order. Nonetheless, as discussed in the preceding paras, the facts of this case are rather peculiar. The incident for which the applicant had been charged pertained to the period 1995-1998. The chargesheet was served on the eve of retirement of the applicant in 2003. The enquiry was completed in the year 2006 and the penalty was imposed on the applicant in the year 2012. The applicant having retired in 2003 would be around 73 years old now. We are of the considered view that it will not be in the interest of justice to remand the matter back to the authorities at this stage as it is only going to further prolong the agony of a retired employee for an indefinite period. In **Delhi Development Authority v D.P. Bambah and Another**, LPA

No.39/1999, Hon'ble Delhi High Court after considering various judgments on the issue of inordinate delay in completion disciplinary inquiry crystallised the legal position, and one of the settled principles enumerated in that order is:

> "The sword of Damocles can not be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary enquiry should be completed against him within a reasonable time. Speedy trail is undoubtedly a part of the reasonableness in every enquiry."

15. We, therefore, are refraining from remanding the matter back to the DA for any further action.

16. OA is allowed. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

'sd'

October 07, 2016