

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 1015/2014

Reserved on : 22.12.2015
Pronounced on : 04.01.2016

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

Mohd. Shakeel,
S/o Shri Abdul Ghaffar,
R/o Flat No.-B, Plot No.B/53,
Shalimar Garden-2,
Sahibabad, Ghaziabad, U.P.

.. Applicant

(By Advocate : Shri Sunil Kumar Singhal)

Versus

1. Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel and Training),
(Through its Secretary).

2. Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi

(Through its Director).

.. Respondents

(By Advocate : Shri Rajeev Kumar)

ORDER

By Hon'ble Mr. P.K. Basu

The applicant was appointed as Public Prosecutor in CBI on 20.04.1998. During the year 1999, while functioning as Public Prosecutor, CBI/ACB/Chandigarh, he was entrusted with the task of vetting of draft charge sheets in case No.RC.39(A)/95-CBI-CHG. The allegation against the applicant is that he was failed to point

out to include one, Shri Gopal Rai, as an accused in the charge sheet prepared by the Inquiry Officer, despite the fact that DIG, CBI, Chandigarh being competent authority had recommended the prosecution of the said Shri Gopal Rai along with the other accused persons. On the other hand, Shri Gopal Rai was cited as a prosecution witness and subsequently, examined as such during the trial of this case. The said case ended in acquittal vide judgment dated 31.07.2003 passed by the Special Judge, Shimla.

2. The applicant was issued charge memorandum dated 07.09.2006 by the competent authority for initiating the disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965, which was served upon the applicant, along with Inquiry Officer of the case, namely, Shri B.R. Prabhakar and it was decided to hold common proceedings against both the officers.

3. The CBI appointed the SP, CBI and Additional SP, CBI as Inquiry Officer and Presenting Officer for conducting the departmental enquiry. The Inquiry Officer completed the disciplinary inquiry against the applicant and submitted his Inquiry Report dated 29.05.2010 to the disciplinary authority, i.e. DoPT, for decision of the competent authority vide memorandum dated 15.05.2012. The DoPT served a copy of the Inquiry Report along with a copy of 2nd stage advice of the CVC dated 15.03.2011 to the applicant for submitting his representation within 15 days of its

receipt. The applicant submitted his written statement of defence on 11.06.2012. Thereafter, UPSC advice dated 06.06.2013 was served on the applicant. The representation dated 16.07.2013 of the applicant on the UPSC advice was sent to the disciplinary authority for decision. After taking advice of the UPSC and after considering all other aspects of the case, vide order dated 20.09.2013, the disciplinary authority imposed the penalty of reduction to a lower stage in the time scale of pay by one stage for a period of two years with cumulative effect on the applicant. Thereafter, the CBI issued order dated 30.09.2013 directing implementation of the said punishment order. Being aggrieved by this action of the respondents, the applicant has filed this O.A. with the following prayer(s) :-

“(i) To set aside the orders mentioned below:

31/10/2013 : Office order No.789/2013 Dated 31/10/2013, whereby the Pay of applicant (Mohd. Shakeel, PP, CBI, ACB, New Delhi is re-fixed and reduced to a lower stage in the time scale of pay by one stage for a period of two years with cumulative effect w.e.f. 20.9.2013.

20/09/2013 : Order No.221/4/2006-AVD.II (B) of Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training dated 20.9.2013, whereby penalty of “Reduction to a lower stage in the time scale of pay by one stage for a period of two years with cumulative effect” is imposed against the applicant (Mohd Shakeel, PP, CBI).

30/09/2013 : HO Letter No.DP PERS.I/2013/3123/53/7/2005 dated 30.9.2013, the orders may kindly be quashed/set aside.

- (ii) To pass such other and further orders and grant such other and further relief as your Honour, may deem fit, and proper in the circumstances of the case.”

4. The short case of the applicant is that he had just joined the CBI and, hence, he was still on probation when this incidence happened. According to the learned counsel for the applicant, the case No.RC.39(A)/95-CBI-CHG was registered on 12.12.1995 with Shri B.R. Prabhakar as Inquiry Officer. In the initial FIR, Shri Gopal Rai's name was not shown as an accused but as a witness. Later, in the supplementary FIR dated 26.12.1995, he was included as an accused. On 19.12.1997, Senior Public Prosecutor recommended more names. The applicant was not in the picture upto this point as he joined as Public Prosecutor only on 24.09.1998. Thereafter, on 13.07.1999, the SP, CBI marked draft charge sheet to the Senior Public Prosecutor, who, in turn, marked it to the applicant. On 16.09.1999, it is claimed by the applicant that he vetted the charge sheet, fair typed it and submitted to the Senior Public Prosecutor, which was thereafter submitted to the SP, CBI, in which Shri Gopal Rai is shown as a witness.

5. It is further stated that Shri Gopal Rai appeared as a witness before the court and was examined as such. It is further added that

in the acquittal order, the learned Judge has nowhere mentioned that the acquittal is as a result of non-inclusion of Shri Gopal Rai as an accused or that there is lapse on the part of the applicant and the Inquiry Officer Shri B.R. Prabhakar.

6. The other argument put forth by the learned counsel for the applicant is that in the same case, a departmental enquiry was held against the SP, CBI for non-inclusion of the name of Shri Gopal Rai as an accused and charge memo was also issued to the SP, CBI. However, he was exonerated. It is thus argued that since the SP, CBI and the Senior Public Prosecutor were both aware and have vetted the fair draft of the charge sheet and had not directed inclusion of Shri Gopal Rai as an accused, the applicant cannot be singled out for this lapse. In fact, it is pointed out that the SP, CBI in his deposition had also stated that it is an inadvertent mistake and not a deliberate act by the applicant. Moreover, since the SP, CBI being the seniormost officer has been exonerated, it is discriminatory on the part of the respondents to impose a penalty on him, who, in any case, was on probation at that time.

7. The applicant further added that there has been unconscionable delay on the part of the respondents in conducting the departmental proceedings. While the incidence relates to the year 1999 and the acquittal order had come on 31.07.2003, the charge sheet was issued only in the year 2006, i.e. after three years,

and after dragging on the inquiry for almost seven years, the penalty order was passed in the year 2013. This delay has caused prejudice to the applicant and, therefore, the penalty order should be quashed.

8. The learned counsel for the respondents, first of all, stated that the applicant has only challenged the penalty order dated 20.09.2013 and, therefore, he cannot now go back and question the charge memorandum and inquiry report. Moreover, it is settled law that Courts/Tribunals should not normally get involved in re-appreciation of evidence, which the learned counsel for the applicant has attempted to do.

9. It is further added that it would be seen from the facts of the case that the respondents have nowhere breached any procedure as laid down for departmental proceedings under Rule 14 of the CCS (CCA) Rules, 1965. In view of this, it was prayed that no case is made out by the applicant for allowing his prayer.

10. Heard the learned counsel for both the sides and perused the relevant record.

11. It is well settled legal position that in the matter of a departmental proceeding the scope of judicial review is limited and confined to the decision making process but not against the decision. It is limited only to correct the errors of law or procedural

error leading to manifest injustice or violative of natural justice. It is equally well settled that while judicial scrutiny or review the evidence on record is not to be re-appreciated unless the same is found to be perverse. The Hon'ble Apex Court in **B. C. Chaturvedi vs. Union of India and others** [JT 1995 (8) SC 65] in para 12 of the judgment held as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. 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. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

12. Therefore, unless it is found that the conclusion or finding recorded by the disciplinary authority is based on no evidence or

the finding is so unreasonable that no prudent person would have ever reached the same, the same cannot be interfered in judicial review. Similarly, the order of the Disciplinary Authority and the Appellate Authority cannot be interfered with unless it is found that the proceeding against the delinquent officer was held in a manner inconsistent with the Rules of natural justice or in violation of statutory rules prescribing the procedure of inquiry.

13. Similar view was reiterated by the Apex Court in **Chairman cum Managing Director, Coal India Limited & Anr. Versus Mukul Kumar Choudhuri & Ors.** (AIR 2010 SC 75), wherein, their Lordships did not agree with the view taken by the High Court and in Para 18 of the judgment held as under:-

“18. It has been time and again said that it is not open to the High Court to examine the findings recorded by the Inquiry Officer as a Court of Appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the Inquiry Officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.”

Therefore, in view of the enunciation of law by the Apex Court in a judicial review, the finding recorded by the Inquiry Officer cannot be reappraised like an appeal and reach its own conclusion as the judicial review is not against the decision but it confines only to the

decision making process. Therefore, where no procedural illegality or irregularity is noticed, it has to be held that the charges against the delinquent stood proved.

14. Thus it is well settled law that the Courts/Tribunals will not get into re-appreciation of evidence. Moreover, the applicant has also not challenged the departmental proceedings upto the point of passing of the penalty order. He has only challenged the penalty order, therefore, he cannot, even otherwise, now introduce fresh instances of appreciation of evidence during the inquiry, the correctness of charge sheet or the inquiry report. We also find from the reply filed by the respondents, which is not challenged by the applicant, that at each stage, the applicant had been given fair opportunity to respond to his charges, the CVC advice and the UPSC advice. Therefore, we cannot find any fault or detect any irregularity in the procedure followed by the respondents.

15. On the question of discrimination between the SP, CBI and the applicant, we are of the view that these two are separate departmental proceedings and the departmental proceedings against the SP, CBI is not under challenge here and, therefore, we cannot go into the merits or demerits of that departmental proceedings. Just because the SP, CBI has been exonerated, it does not mean that automatically the applicant should be exonerated in his departmental proceedings, when the Inquiry Officer has found

that it is a fact that name of Shri Gopal Rai was not included in the charge sheet by the Inquiry Officer despite the orders of the competent authority but was, in fact, included as prosecution witness and that this non-inclusion of the name of Shri Gopal Rai as an accused was not pointed out by the applicant, who was the then Public Prosecutor. Hence, he concluded that the charges against both the charged officers are partly proved.

16. In view of the above, we are of the opinion that it does not call for any interference by us in the order dated 20.09.2013 passed by the respondents and subsequent orders dated 30.09.2013 and 31.10.2013. The O.A. is, therefore, dismissed. There will be no order as to costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

/Jyoti/