

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2615/2013

Order Reserved on: 21.09.2016
Order pronounced on 02.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Smt. Raj Bala Bhardwaj, age 52 years

UDC,

W/o of Sh. Dinesh Bhardwaj

R/o – 1449-A, Sector-31

Housing Board Colony

Gurgaon (Haryana).

.... Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India through
Its Secretary
Ministry of Urban and Development & Poverty Alleviation
Nirman Bhawan
New Delhi.
2. The Joint Secretary (L&W)
Ministry of Urban and Development,
Land & Development Office
Nirman Bhawan
New Delhi.
3. The Land & Development Officer
Govt. of India
Ministry of Urban Development
Land & Development Office
Nirman Bhawan
New Delhi.

.... Respondents

(By Advocate: Shri Rajender Nischal)

ORDER

The applicant, an Upper Division Clerk in Land and Development Office of the Respondent-Ministry of Urban Development, Govt. of India, filed the OA, questioning the imposition of minor penalty of reduction to a lower stage in the time-scale of pay for one year without cumulative effect, on her.

2. Brief facts of the case are that the respondents vide Annexure A1 Memorandum dated 26.03.2012, issued under Rule 16 of CCS (CCA) Rules, 1965, called the representation of the applicant against the statement of imputation of misconduct or misbehavior enclosed to the said Memorandum. The said statement of imputation of misconduct, reads as under:

"It has come to the notice that file of Property No.D-77, Kalkaji is lost/misplaced. The said file was received by Smt. Raj Bala Bhardwaj while taking over the charge from Sh. R.C.Patney on 23.11.2000, the then D.A., duly acknowledged by her. Smt. Raj Bala Bhardwaj, UDC at that point of time was the concerned dealing assistant in respect of aforesaid property file. Smt. Raj Bala Bhardwaj was directed vide this office O.M. dated 23.1.2012 and 6.2.2012 to furnish the information regarding availability of file with documentary proof within 3 days as it was observed during the inquiry that the file was handed over to Smt. Raj Bala Bhardwaj on 23.11.2000 by Sh. R.C.Patney, the then DA. In her reply Smt. Raj Bala Bhardwaj admitted the fact that she had received this file and had put up the same on 30.4.2002 for the orders/approval of the competent authority to call for the required documents. But the said file was never received back or marked to her until her transfer from the PS-III Section on 30.6.2002.

Being the concerned dealing hand, it was her duty to properly maintain the records and keep the files in safe custody. However, she has failed to do the same resulting in the loss/misplacement of file No.D-77, Kalkaji, New Delhi.

Smt. Raj Bala Bhardwaj, UDC has thus showed gross negligence in discharge of her duties and thereby failed to maintain absolute devotion to duty and acted in a manner which is unbecoming of a Government servant and thereby violated Rules 3(1)(i)(ii) and (iii) of C.C./S. (Conduct) Rules, 1964."

3. The applicant submitted a detailed representation dated 09.04.2012 (Annexure A4), denying the charge levelled against her. However, the 3rd Respondent, Disciplinary Authority, vide Annexure A2-Order dated 17.09.2012, imposed the penalty of reduction to a lower stage in the time-scale of pay for one year without cumulative effect, on the applicant.

4. The Annexure A5-Appeal dated 16.10.2012, made against the aforesaid penalty order was rejected by the 2nd respondent-Appellate Authority, vide Annexure A3 Order dated 02.05.2013.

5. Heard Shri Sachin Chauhan, the learned counsel for the applicant and Shri Rajinder Nischal, the learned counsel for the respondents, and perused the pleadings on record.

6. The learned counsel for the applicant, in support of the OA averments, would, inter-alia, contend that

(a) The charge levelled against the applicant pertaining to the year 2000/2002 but the chargesheet under Rule 16 of the CCS (CCA) Rules, 1965 was issued in the year 2012, i.e., after more than a decade, without any valid explanation for the delay and hence, the entire disciplinary proceedings are liable to be quashed on the ground of abnormal delay and laches in initiating the disciplinary proceedings.

(b) Though the applicant vide her reply to the chargesheet and again by way of a statutory appeal to the appellate authority categorically explained the circumstances and

denied the charge leveled against her, both the authorities failed to appreciate the same in proper perspective and also failed to give any legal and valid reasoning.

- (c) Once it is not disputed that the subject file put up to the senior authority, no charge against the applicant will survive and that both the disciplinary and appellate authorities failed to state anything on the said fact and the various exhibits enclosed by the applicant, in this regard, to her reply to the Show Cause Notice dated 26.03.2012.
- (d) The learned counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in **Mann Singh v. State of Haryana and Others**, (2008) 12 SCC 331, and also on the decision of the Hon'ble High Court of Delhi in WP(C) No.4245/2013 (**Union of India & Anr. v. Hari Singh**), dated 23.09.2013.

7. On the other hand, Shri Rajinder Nischal, the learned counsel for the respondents would contend that admittedly the custodian of the subject file was the applicant and hence, she cannot escape her liability from loss or misplacement of the file.

8. The learned counsel for the respondents further submits that the applicant at no stage requested for regular departmental inquiry or requested for furnishing of any documents and hence cannot dispute the fact of loss or misplacement of the subject file in her hands.

9. The learned counsel further also submits that as the respondents have followed the rules in force, and given full and fair opportunity by following the principles of natural justice to the applicant, before imposing the punishment, the Court or Tribunal while exercising their power of judicial review in disciplinary matters cannot appreciate the evidence or cannot act as second appellate authority.

10. In **M. V. Bijlani v. Union of India & Others**, (2006) 5 SCC 88 it was held by the Hon'ble Supreme Court that the judicial review is of the decision making process and not with re-appreciation of evidence.

It was held that

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

11. In a recent decision of the Hon'ble Apex Court in **Union of India & Others v. P. Gunasekaran**, (2015) 2 SCC 610, it was held that

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

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17. In all the subsequent decisions of this Court upto the latest in Chennai Water Supply and Sewarage Board v. T. T. Murali Babu[(2014) 4 SCC 108], these principles have been consistently followed adding practically nothing more or altering anything."

12. In the backdrop of the above decisions of the Hon'ble Apex Court, it can be concluded that it is permissible to examine whether the decision making process of the respondents while imposing the

punishment on the applicant was in accordance with law, while exercising the power of judicial review, by this Tribunal.

13. The charge levelled against the applicant was that she was the custodian of the file of property No.D-77, Kalkaji when she was working as UDC during the period from 23.11.2000 to 30.06.2002, i.e., from the date of taking over charge by her, till she was relieved from the said post, on her transfer, and since the said file was lost/missing, she is responsible for the same and accordingly deserves the punishment imposed. When it was the specific case of the applicant in her reply dated 09.04.2012 and also in her appeal dated 16.10.2012, that on 30.04.2002, she put up the property file No.D-77, Kalkaji, New Delhi to the then Superintendent, in which the approval of the competent authority was sought for calling certain documents from the lessee of the property, and Exhibits R2 and R3 were enclosed, the non-consideration of the said crucial fact by both the disciplinary and appellate authorities in their respective orders, is unacceptable. Further, it is also not disputed that in all the Sections the dealing Clerks and Superintendents maintain their respective Assistant Dairies to record movement of files. Not giving a finding on the crucial issue by both the aforesaid authorities prejudice the rights of the applicant.

14. Further, in this case, it is noticed that the incident took place in the year 2000/2002 but the chargesheet has been issued in the year

2012, and the delay in issuance of the chargesheet, after a period of nearly 10 years, has not been explained by the respondents.

15. We are conscious of the fact that in **U.P.State Sugar Corporation Ltd. v. Kamal Swaroop Tanda**, (2008) 2 SCC 41, it was held that it cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed.

16. The conspectus of various case law on the issue of delay in initiation of disciplinary proceedings indicate that each case must be examined keeping in view the relevant facts and whether any proper or valid reasons for delay in initiation were either explained or prevailing in the said case, and that any prejudice is caused to the delinquent due to the said delay.

17. However, in the present case, the applicant was admittedly transferred from the place where the property file No.D-77, Kalkaji was under her custody w.e.f. 30.06.2002 and the proceedings under Rule 16 of CCS (CCA) Rules, 1965 were initiated against her on 26.03.2012, i.e., after a lapse of 10 years. The respondents miserably failed at any stage of the disciplinary proceedings or even in their counter to explain the reasons, if any, for initiating the disciplinary proceedings against the applicant, after the said long/abnormal delay.

18. It is not forthcoming from the respondents that when at the time of taking over charge by the applicant on 23.11.2000, from her predecessor, i.e., Shri R.C.Patney, all the files under his custody were

handed over to the applicant under proper receipt, how the successor of the applicant while taking charge from her on 30.06.2002, not made an endorsement about non-receipt of the Property File No.D-77, Kalkaji, and not reported to the higher authorities about loss or misplacement of the said file.

19. In this view of the matter, the abnormal delay in initiating the disciplinary proceedings, in such matter, definitely prejudice the rights of the applicant in defending her case.

20. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders, including the charge Memorandum, are quashed with all consequential benefits. However, the applicant is not entitled for any interest on the arrears, if any, payable to her. No costs.

(V. Ajay Kumar)
Member (J)

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