

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00153/2016

Jabalpur, this Thursday, the 26th day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ajay Sancha (Assistant Engineer), S/o Shri S.Sancha,
Aged about 40 years, R/o CMS Compound, Ghampur,
Jabalpur, M.P.-482001
(By Advocate –**Shri Akash Choudhay**)

V e r s u s

1. Union of India, through its Secretary, Central Public Works Department, Nirman Bhawan, New Delhi-110001

2. The Director General, Govt. of India,
CPWD, Nirman Bhawan, New Delhi-110001

-Respondents

(By Advocate –**Shri S.P.Singh**)

(Date of reserving the order:-06.04.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

The applicant is calling in question the legality, validity and propriety of the entire disciplinary proceedings initiated against the applicant vide charge memorandum dated 13.10.2015 (Annexure A-1). Hence he has filed this Original Application.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:

(i) Summon the entire relevant record of DAR proceedings from the respondents.

(ii) Set aside the charge sheet dated 13.10.2015(Annexure A/1) with all consequential benefits arising thereto

(iii) Any other order/orders, direction/directions may also be passed.

(iv) Award cost of the litigation to the applicant. ”

3. The brief facts of the case are that the applicant is an Asst. Engineer in Central Public Works Department (CPWD), Jabalpur. He was served with a charge sheet dated 13.10.2015 (Annexure A-1), alleging that while posted as Jr. Engineer under CPWD, Jabalpur during the period from 16.04.2003 to 22.12.2010 has committed certain irregularities during deposition made by him in the CBI Court and has not supported prosecution as he has changed his statement recorded by CBI Investigating officer and turned hostile.

4. The applicant further submits that he was detained to put his signatures on numerous documents by the CBI officials in a short span of time wherein it was difficult for the applicant to read all the documents. He further submits that the statement recorded by the CBI under section 161 Cr.P.C. is an un-signed testimony and therefore, does not have any evidentially value. It was further submitted by the applicant that whatever he has experienced during the trap proceedings was correctly deposed by him before the Court. The applicant submitted representation in this regard, which

is annexed at Annexure A-2. The said representation was not considered by the respondent department and on 16.12.2015 (Annexure A-3), enquiry officer was appointed to enquire the matter.

5. It is submitted by the applicant that at the time of incident he deposed statement under section 161 of Cr. P.C. which has no evidentially value and apart from that the applicant deposed actual facts before the CBI Court about the incident which took place on 08.06.2007. Therefore, the applicant can not be held guilty of change in his statement. The applicant further averred that in the statement given by him and other independent witness Shri Shailesh Chandra Saxena there was no variation of statement. Copy of the statement is attached as Annexure A-4.

6. The main ground for challenge in this O.A. is that the applicant was made a witness in a case registered against one Shri Vaibhav Chouhan and he deposed the actual facts before the CBI court of the incident which took place on 08.06.2007. Therefore the applicant cannot be held guilty of change in his statement and turned hostile.

7. The respondents in their preliminary submissions have submitted that the charge memorandum dated 13.10.2015 (annexure A-1) was issued to the applicant in term of CVC's office

order dated 15.12.2005 on the subject of “Action against public servants serving as witnesses, but turning hostile in trap and other cases of CBI” (Annexure R-1). On the basis of letter from CBI dated 21.12.2011 (Annexure R-5) informing that the applicant, who was an independent witness in that case, had turned hostile during the trial of the case, and requested that disciplinary proceedings may be started against him on the basis of instructions contained in the said order of CVC. The said action on the part of the applicant would constitute a misconduct.

8. The respondents, in their para-wise reply have submitted that the applicant is holding the post of Assistant Engineer in CPWD and the charge sheet dated 13.10.2015 was issued to him containing the stated charges. As the said charges were denied by the applicant, the Disciplinary Authority appointed the enquiry officer to enquire the matter. The applicant was given ample opportunities to prove his innocence in the disciplinary proceedings for which an enquiry has been conducted but the applicant failed to prove himself.

9. We have heard the learned counsel for the parties and perused the documents available on record.

10. In the instant Original Application, the applicant has been charge-sheeted for disciplinary proceeding on account that the

applicant has resiled from his earlier statement under section 161 of Cr.P.C. It is an admitted fact that the applicant stood prosecution witness in the CBI case. The main contention of the applicant is that the statement under section 161 of Cr. P.C. has no evidential value and it is used only to test the veracity of the witness in the Court. It is only the statement given by the witness in the Court which has the evidential value.

11. It has been further contended by the counsel for the applicant that the action against the applicant has been taken on the request of CVC alleging misconduct. The charge memo dated 13.10.2015 is annexed as Annexure A-1. The respondents have specifically submitted that the applicant was holding the post of Assistant Engineer in CPWD. A charge-sheet dated 13.10.2015 was issued and the applicant denied the charges so the enquiry officer was appointed. It was specifically submitted by the replying respondents that ample opportunity to prove the innocence has been given to the applicant but the applicant failed to prove himself innocent.

12. The counsel for the applicant has relied upon various judgments passed by various High Courts regarding the evidential value of statements under section 161 of Cr. P.C. It is a settled law that the statement under section 161 of Cr.P.C. has been recorded

by the Investing Agency and it is used only for the purpose to test the veracity of the witness in the Court and also the main purpose of statement under Section 161 of Cr. P.C. is to make the accused conversant regarding the case. The counsel for the applicant has also relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh, Jabalpur Bench in the matters of **Kuppili Mohan Rao and Another vs. Managing Director, Food Corporation of India, New Delhi and others** in Writ Petitions Nos. 1839 & 1820 of 1997 decided on 26.09.1997.

13. In the said case, the Hon'ble High Court has held that Misconduct, the expression is of wide amplitude, but in order to justify a disciplinary action by the employer, there must be some conduct contrary or inconsistent with the fulfilment of the express or implied conditions of service. There must be some nexus with the condition of service. In the similar circumstances, the Hon'ble High Court has held that merely because the petitioners version of the incident in the cross-examination is not fully consistent with their version given to the police under section 161 of Cr.P.C is not sufficient. the relevant portion is as under:-

“17. The above part of deposition which is relevant and reproduced in the statement of allegations, does not prima facie amount to a criminal offence involving moral turpitude. Merely because the petitioners' version of the incident in the cross-examination is not fully consistent with their version given to the police under section 161, Criminal Procedure

Code and in their examination-in-chief before the criminal Court, it cannot be said that the last version of the incident given by them to the Court was a false evidence. It was not so held by the criminal Court and no action for perjury was taken by that Court. On the existing facts, as stated in the charge-sheet, no case of 'commission of any act which amounts to a criminal offence involving moral turpitude' has been made out or could be alleged against the petitioners. Therefore, Regulation 32-A (17) also can have no application.

20. The expression "misconduct" is an expression of wide amplitude. But, in order to justify a disciplinary action by the employer, it must be some conduct contrary or inconsistent with the fulfillment of the express or implied conditions of service. Some nexus of the conduct with service, therefore, must exist to justify a disciplinary action particularly where the employer in its service regulations has enumerated the acts of misconduct. Any particular misconduct which is not comprehended in the enumerated misconducts in the Regulations cannot be disciplinarily dealt with. See - the following observations of the Supreme Court in Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation, AIR 1985 SC 504 :-

"The High Court while dismissing the petition held that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer.

The petitioner in the case (supra) before the Supreme Court was proceeded against for suppression of some material fact in seeking employment. That was not enumerated as one of

the misconducts in the Certified Standing Orders or the Regulations. The Supreme Court did not approve the view expressed by the High Court and refused to sustain the disciplinary action of the employer.”

14. The counsel for the applicant has also relied upon the judgment passed by the Hon’ble Apex Court in the matters of **Nagaraj Shivarao Karjagi vs. Syndicate Bank Head Office Manipal and Anr.**, 1991, AIR 1507, 1991 SCR (2) 576.

15. In this matter the Hon’ble Apex Court has held that if the advice tendered by the Commission is not accepted/acted upon, it will amount to non-acceptance of the advice. If the advice of the CVC is accepted and the punishing authority pass the appropriate punishment without confirming the gravity of the misconduct proved in the case which will amount to restrict the quasi judicial powers of the disciplinary authority. In such circumstances the Hon’ble Apex Court has set aside the instructions on which basis the punishment advised by the CVC was given by the disciplinary authority.

16. In the instant case also the case of the applicant is that charge-sheet has been given to the applicant on the recommendation of the CBI on the allegation that the applicant has resiled in the Court from its earlier statement. But in the judgment of Kuppili Mohah Rao (**Supra**) it has been clearly held by the

Hon'ble High Court of judicature Madhya Pradesh that if the witness resiled in the Court of their earlier statement, it does not amount to misconduct.

17. Furthermore, the impugned orders passed by the respondent department vide Annexure A-1 is not in consonance with the law settled by Hon'ble Apex Court and Hon'ble High Court of Madhya Pradesh as discussed above. Moreover, in the disciplinary proceedings, merely by saying that the applicant could not prove his innocence, is not in the spirit of the disciplinary proceedings. The prosecution has to stand on its own leg. On this account also the Annexure A-1 is bad in law.

18. In view of the above, resultantly Annexure A-1 dated 13.10.2015 is quashed and set aside and the respondents are directed to grant all consequential benefits within a period of 60 days from the date of receipt of a certified copy of this order.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member