CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
...

T.A. No. 290/00004/2015
(SB Civil Writ Petition No.4367/2006)

RESERVED ON : 05.09.2019
PRONOUNCED ON: 27.09.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Shri P.R.Jangir s/o Shri B.L.Jangir, aged about 58 years, resident of Near Old Post Office Merta City, at present employed on the post of T.A.(R.S.A.) in Telephone Exchange Kuchaman City under S.D.O.T., Kuchaman City.

...Applicant

By Advocate: Shri J.K.Mishra

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. The Chairman & Managing Director, B.S.N.L. Kidwai Bhawan, New Delhi.

3. The Chief General Manager, Telecommunication, Rajasthan Telecommunication Circle, B.S.N.L., Jaipur (Raj.)

4. The General Manager Telecommunication, B.S.N.L. Nagour (Raj.)

5. Divisional Engineer (Admn.), O/o G.M.T.D. B.S.N.L. Nagour (Raj.)

...Respondents

By Advocate: Shri Kamal Dave

ORDER

Per Mrs. Hina P.Shah

The applicant had earlier filed S.B. Civil Writ Petition No. 4367/2006 before the Hon'ble Rajasthan High Court. The said matter was transferred to this Tribunal vide order dated 21.4.2014 as the jurisdiction lies with this Tribunal and the same is registered as T.A. No.4/2015.

2. The applicant in the present Transferred Application has prayed for the following reliefs:-

(i) The impugned notice dated 19.01.2004 (Annexure-3), punishment order dated 26.03.2004 (Annexure-5) and appellate order dated 16.9.2004 (Annexure-8) may kindly be declared as illegal and without jurisdiction and the same may be quashed with all consequential benefits.

(ii) That any other writ, direction, relief or orders may be passed in favour of the petitioner, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

3. The case of the applicant is that he was issued a chargesheet dated 16.4.2001 under Rule 14 of CCS (CCA) Rules, 1965. The charge levelled against him was that on inspection on 16.12.2000, it was found that the parallel telephone No.20330 provided as service telephone at the residence of the applicant for official use was working at the

shop/STD PCO premises of his son and the same was being misused for providing conference facility through STD PCO No.20999. As the house of the applicant and the shop where STD PCO No.20999 provided in the name of son of the applicant are located in the same premises, the parallel connection of Telephone No. 20330 provided at the residence of the applicant has either been shifted by the applicant himself or has been allowed to be shifted for misuse at the shop for allowing the conference facility on STD PCO No.20999. Therefore, he has failed to maintain absolute integrity and devotion to his duties and had acted in a manner unbecoming of a Government service and infringed Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964. An inquiry was conducted and during the inquiry the charges were not proved. The Disciplinary Authority after satisfying with the inquiry report, exonerated the applicant vide order dated 21.10.2003.

Thereafter respondent No.4 issued a show cause notice dated 19.01.2004 (Ann.A/3) as to why penalty as provided under Rule 11 of CCS (CCA) Rules, 1965 should not be imposed on him. The applicant replied to the show-cause notice vide representation dated 31.1.2004 (Ann.A/4). Thereafter vide letter dated 26.3.2004 (Ann.A/5)

a penalty of stoppage of one increment for one year without cumulative effect was imposed upon the applicant. The applicant vide his letter dated 22.4.2004 demanded inquiry report, but the said request was rejected. Thereafter the applicant filed appeal dated 6.5.2004 to the Chief General Manager. The Appellate Authority passed order dated 16.9.2004 (Ann.A/8) whereby the punishment was reduced to stoppage of one increment for six months without cumulative effect.

The applicant prays that the impugned notice dated 19.1.2004 (Ann.A/3), punishment order dated 26.3.2004 (Ann.A/5) and appellate order dated 16.9.2004 (Ann.A/8) may be quashed and set aside on the ground that the appellate authority is Dy. General Manager and not the General Manager. Also that no inquiry report was supplied to him and that the orders passed are ex-facie illegal and arbitrary based on colourable exercise of powers and in violation of the principles of natural justice.

4. The respondents by way of reply to the OA have raised preliminary objection to the effect that the orders under challenge were passed in 2004 and the applicant approached before the Hon’ble High Court in the year 2006.

No ground has been mentioned by the applicant for the said delay. The request of the applicant for inquiry report is not tenable since the case of the applicant was re-opened by respondent No.4 for revision and in such circumstances, the request of the applicant has rightly been rejected vide order dated 22.4.2004. The respondent No.3 has specifically mentioned in the order dated 16.9.2004 that as per orders passed by the Ministry of Communication and BSNL, the respondent No.3 is competent revising authority and, therefore, respondent No.3 reviewed the case and thereafter passed order dated 16.9.2004, which is in accordance with the law. The respondents have further submitted that the inquiry report has already been supplied and the applicant has made mention of the same in para No.6 of this application. The respondent No.4 has reopened the matter under Rule 29 of CCS (CCA) Rules, 1965 and in a case of revision of an order, there is no question of any inquiry report.

5. The applicant has filed rejoinder to the reply and reiterated the averments made in the TA.

6. Heard the learned counsel for both the parties and perused the material available on record.

7. It is the plea of the applicant that even though he demanded inquiry report, but the same was not supplied to him. The disagreement note also did not show the tentative reasons for dis-agreement with the report of the Inquiry Officer. The penalty was imposed by an incompetent authority, who has also passed a non-speaking order. Also the revising authority has extended the scope of charges not mentioned in the original chargesheet. The applicant further clarified that though the Appellate Authority has agreed with the submissions and statement of two witnesses but still he has imposed penalty. Therefore, principles of natural justice have been violated. In support of his contentions, the applicant relied upon the judgment dated 18.1.2006 passed in Civil Writ Petition no.4440 of 1991- Dalip Singh vs. State of Rajasthan and Ors. and in the case of Punjab National Bank and Ors. vs. Kunj Behari Mishra reported in AIR 1998 SC 2713 on the principles of natural justice and submitted that tentative reasons have to be given for dis-agreement and that an opportunity be given to the delinquent to represent before it records its findings.

8. On the other hand, the respondents stated that the investigation report which was conducted prior to the

inquiry was never demanded by the applicant. The very report show that the applicant allowed the service telephone No. 20330 to the shop of his son which was misused for providing conferencing facility through STD PCO No.20999. The charges were very serious but the Revising Authority has imposed punishment of withholding of one increment for a period of one year without cumulative effect. The respondents have further stated that even if the inquiry report was not given to the applicant, there is no prejudice caused to him as the Inquiry Officer has found the charges as not proved. Therefore, it was immaterial whether the inquiry report was given to him or not. In support of his contention, the learned counsel for the respondents relied upon Rule 29(1)(iv) of CCS (CCA) Rules, 1965, which is to the following effect:-

> "29. [Revision]
>
> (1) Notwithstanding anything contained in these rules-
>
> (i) The President; or
>
> (ii) The Comptroller And Auditor General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or
>
> (iii) The Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser Human Resources Development, Department of Telecommunication in the case of a

Government servant serving in or under Telecommunications Board; or

(iv) The Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board) under the control of such Head of a Department; or

(v) The Appellate Authority, within six months of the date of the order proposed to be revised; or

(vi) Any other authority specified in this behalf by the President by a general of special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise and order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) Confirm, modify or set aside the order; or

(b) Confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) Remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) Pass such other orders as it may deem fit:

[Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to

> be imposed any of the penalties specified in Clauses (v) to (ix) of Rule 11 or .... "

The respondents contended that though the order is passed by the General Manager instead of Dy. General Manager, no prejudice has been caused to the applicant and since the applicant was about to retire, therefore, a lenient view was taken by the Appellate Authority and the punishment was reduced from stoppage of increment for one year without cumulative effect to that of stoppage of increment for six months without cumulative effect. The respondents state that no objection was raised by the applicant at the relevant time, which are taken in these pleadings. The applicant had never asked for inspection report nor challenged it, therefore, there is no violation of the principles of natural justice to him. The competent authority has powers to pass necessary orders. The issue of non-supply of disagreement note was never raised by the applicant, in fact it was for the first time in the present OA the applicant asked for disagreement note. Therefore, there is no question of judicial review since the orders passed are just and legal. In support of their contentions, the respondents have relied upon the judgment of the Hon'ble Apex Court in the case of Union of India and Ors. vs. Bishamber Das Dogra, (2009 13 SCC 102) and

submitted that no attempt had ever been made at any stage by the applicant as to what prejudice has been caused to him by non-furnishing of inquiry report. The respondents have also relied upon the judgment in the case of State Bank of india vs. Samarendra Kishore Endow, (1994 2 SCC 537) stating that the departmental authorities are, if the inquiry is otherwise properly held, the sole judgment of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution.

9. Considered the rival contentions of both the parties.

10. In the present case, no appeal was required to be filed by the applicant against the order of the Disciplinary Authority as the applicant has been exonerated from the charges. The order of the Disciplinary Authority was revised/reviewed by the revisionary authority after giving show cause notice to the applicant for imposing penalty under Rule 11 of CCS (CCA) Rules. In reply to the show cause notice, the applicant has not taken any ground in support of his defence. He only stated that no charge has

been proved against him in the inquiry and now punishing him will not be justified action. The Disciplinary Authority had passed the order dated 21.10.2003, and the revisionary authority has passed the order in revision vide order dated 26.3.2004, which is within the period of six months. Therefore, we find that there is no violation of the principles of natural justice. So far as the contention of the applicant that the Dy. General Manager is the Appellate Authority and this power should be exercised by the Dy.General Manager and not by the General Manager, but looking to the facts and circumstances, we are of the view that if the power of revision has been exercised by the General Manager and when the revision is made within time, no prejudice has been caused to the applicant. So far as the contention of the applicant that due to non-supply of the inquiry report, his defence has been prejudiced, it is clear that the charges have not been proved by the Inquiry Officer in the inquiry report, therefore, non-supply of the inquiry report has not prevented the applicant to defend his case and it cannot be said that any prejudice has been caused to the applicant. We also do not find force in the submission of the applicant that the revising authority has extended the scope of the charge sheet.

11. It would be relevant to refer to some of the judgments of the Hon'ble Apex Court on the issue of prejudice and principles of natural justice. In the case of **State Bank of Patiala vs. S.K.Sharma** (1996) 3 SCC 364, the Hon'ble Apex Court emphasized on the application of doctrine of prejudice and held that unless it is established that non-furnishing copy of the inquiry report to the delinquent employee has caused prejudice to him, the Court shall not interfere with the order of punishment for the reason that in such an eventuality setting aside the order may not be in the interest of justice rather it may be tantamount of negation thereof. The Court held that :-

> "Justice means justice between the parties. The interest of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

12. In **Aligarh Muslim University vs. Mansoor Ali Khan,** (2000) 7 SCC 529, the Hon'ble Apex Court has considered the judgment in M.C.Mehta vs. Union of India and Ors., (1999) 6 SCC 237 wherein it has been held that an order passed in violation of natural justice need not be set aside in exercise of the writ jurisdiction unless it is

shown that non-observation has cause prejudice to the person concerned for the reason that quashing the order may revive another order which itself is illegal or unjustified. The Hon'ble Apex Court also considered the judgment in S.K.Kapoor vs. Jagmohan, AIR 1981 wherein it has been held that in a peculiar circumstance observance of the principles of natural justice may merely be an empty formality as if no other conclusion may be possible on admitted or indisputable fact. In such a fact-situtation, the order does not require to be quashed if passed in violation of the natural justice. The Hon'ble Apex Court came to the conclusion that a person complaining non-observance of the principles of natural justice must satisfy that some real prejudice has been caused to him for the reason that there is no such thing as a merely technical infringement of natural justice.

13. If the matter is considered in the light of the above ratio of the Hon'ble Apex Court, we are of the view that in case inquiry report has not been made available to the applicant, it does not ipso facto vitiate the disciplinary proceedings. Since the Inquiry Officer has not proved the charges, therefore, non-supply of inquiry report has not caused any prejudice to the applicant.

14. It is settled law that Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It 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 the eye of the Court.

In **B.C. Chaturvedi Vs. Union of India**, (1995) 6 SCC 749, a three Judge Bench of the Hon'ble Apex Court held in paragraph 12 as under:-

> "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 the eye of the Court. When an inquiry is conducted on charges of 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 are 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 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 in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that 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 or 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."

The said principle was again restated in Kalinga Mining Corporation Vs. Union of India & others, (2013) 5 SCC 252:

> "62. It is by now well settled that judicial review of the administrative action/quasi-judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be reappreciated by the Court in exercise of its powers of judicial review. The Court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi- judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the Court would be justified to interfere with the decision. The scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be erroneous."

15. In view of the above facts and circumstance, we do not find any reason to interfere in the matter. The TA is accordingly dismissed with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/