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Court : Delhi

Decided On : Feb-02-2016

Judge : The Honourable Ms. Justice Hima Kohli & Sunil Gaur

Appeal No. : W.P.(C) No. 7281 of 2013

Appellant : Ram Naresh

Respondent : Union of India and Another

Judgement :

Sunil Gaur, J.

1. Penalty of reduction of pay by two stages i.e. from Rs. 7860/- to Rs. 7290/- in the time scale of pay Rs. 5200-20200/- + Rs. 2000/- (Grade Pay) for a period of one year with the rider that petitioner will not earn increments of his pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay, is assailed in this petition by petitioner, who was working as Constable of Central Industrial Security Force (CISF) Unit, SSG, Greater Noida (U.P.) in the year 2010.

2. Vide Office Memorandum of 12th September, 2011, charge-sheet under Rule 36 of the CISF Rules-2001 was issued. The Article of Charge upon which petitioner was departmentally tried reads as under: -

That No.014070042 Const. (GD) Ram Naresh, AdmGroup, CISF Unit, SSG, Greater Noida, (U.P.) while performing duty in MI Room of the unit involved himself in malpractice during the process of medical test of Anand Kumar for the post of Constable in CISF scheduled to be held at CISF Hospital, Ghaziabad, U.P. in August, 2010. Such serious act on his part tantamount to gross indiscipline, misconduct, dereliction of duty, which is highly unbecoming of a member of a disciplined Armed Force of the Union like CISF. Hence the charge. ?

3. Petitioner had given a reply to the Memorandum of Charge, which was not found to be satisfactory, and in the Inquiry conducted, nine witnesses were got examined. The material evidence is of the complainant-Sergeant Ramashray Ram (PW-1), uncle of Anand Kumar, who had also deposed before the Inquiry Officer. Apart from this, there is evidence of father as well as brother of above-said Anand Kumar as well as of Constable-Deepak Kumar Rao.

4. Regarding the mal-practices in the recruitment of Constables (GD), an anonymous complaint was received on 22nd August, 2010 on which preliminary inquiry was held. However, a complaint was received from Ramashray Ram (PW-1), uncle of selected Constable-Anand Kumar, regarding the demand of bribe for recruitment of Anand Kumar as Constable in CISF.

5. While relying upon the evidence recorded, Inquiry Officer vide his Report of 31st January, 2012 concluded that the charge against petitioner stood proved. The Inquiry Report was supplied to petitioner, who had responded to it and thereafter, the Disciplinary Authority had passed the final order of 31st March, 2012 inflicting afore-noted impugned penalty upon petitioner.

6. Departmental appeal was preferred by the petitioner, which stood dismissed vide impugned order of 20th June, 2012 (Annexure P-4), which is assailed in this petition.

7. At the hearing, learned counsel for petitioner had assailed the impugned penalty on the ground that the Inquiry conducted against petitioner is void ab initio in view of the Central Vigilance Commission's guidelines of 29th June, 1999 (Annexure P-2). It was vehemently submitted by learned counsel for petitioner that the Inquiry

was initiated on an anonymous complaint, which could not have been done as anonymous/pseudonymous complaints have to be just filed.

8. It was further submitted that Inquiry against petitioner proceeded on vague charge, which is impermissible in law. To contend so, reliance was placed upon Apex Court's decisions in *Anant R. Kulkarni v. Y.P. Education Society and Others* (2013) 6 SCC 515 and *Sawai Singh v. State of Rajasthan* (1986) 3 SCC 454.

9. It was next contended that impugned penalty inflicted upon petitioner is liable to be set aside as it is based on no evidence. To contend so, reliance was placed upon Apex Court's decision in *Union of India v. H.C. Goel* (1964) 4 SCR 718. Reliance was also placed upon Apex Court's decision in *Roop Singh Negi v. Punjab National Bank and Others* (2009) 2 SCC 570 to submit that even in a domestic Inquiry, suspicion or presumption cannot take place of proof. Contending that there is no evidence on record to prove the charge against petitioner, it was submitted by learned counsel for petitioner that the impugned penalty deserves to be set aside.

10. On the contrary, it was submitted by learned counsel for respondents that the Inquiry did not proceed on anonymous/ pseudonymous complaint only, but was infact based on complaint made by Sergeant Ramashray Ram and so, there is no violation of Central Vigilance Commission's guidelines.

11. To submit that the charge against petitioner was not vague, attention of this Court was drawn to the Imputation of Charge and the reply thereto by the petitioner. To do so, the original record was produced by respondents. Attention of this Court was also drawn to the deposition of Ramashray Ram (PW-1) and to the evidence of Pappu Kumar (PW-2), brother of Anand Kumar. It was sought to be highlighted that the frequency of the mobile calls between petitioner and Anand Kumar during the period in question corroborates the charge against petitioner and so, it cannot be said that it is a case of no evidence. Thus, dismissal of this petition was sought.

12. Upon considering the submissions advanced by both the sides and on perusal of the impugned order, the original record produced before us and the decisions

cited, we find that the Departmental Inquiry against petitioner did not proceed solely on the basis of anonymous/pseudonymous complaint, but was on the basis of the complaint of Ramashray Ram and so, reliance placed by learned counsel for the petitioner upon Central Vigilance Commission's guidelines (Annexure P-2) is of no avail.

13. So far as the vagueness of the Article of Charge against petitioner is concerned, we do find that though the Article of Charge, as referred to above, is not specifically worded, but it conveys the substratum of the charge i.e. of the petitioner being involved in mal-practices of getting Anand Kumar cleared in the medical test. Memorandum of charge has to be considered in the light of the reply given by petitioner to the aforesaid Memorandum. On doing so, it becomes clear that petitioner was very much aware as to on what basis he was being proceeded against. On this aspect, the pertinent observations of the Apex Court in *Anant R. Kulkarni* (supra) are as under: -

Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defense of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

The purpose of holding an enquiry against any person is not only with a view to establish the charges leveled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity. ?

14. We have considered the Memorandum of Charge and the reply thereto by the petitioner and upon doing so, we find that it cannot be said that the petitioner was not aware about the nature of accusations. During the course of hearing, it was not brought to our notice as to how and in what manner the petitioner has suffered any prejudice on account of generalized charge leveled against him. Reliance placed by learned counsel for petitioner upon the Apex Court's decision in Sawai Singh (supra) is of no avail as in the said decision, the vague charge was not sufficient to connect the charged officer with the alleged misconduct. It is not so in the instant case. So, on this count, the impugned penalty cannot be faulted.

15. With the able assistance of learned counsel for the parties, we had gone through the original record produced and upon doing so, it transpired that the evidence of the complainant-Ramashray Ram (PW-1) primarily proceeds on the information given to him by Anand Kumar (PW-5) and is in the nature of corroborative evidence. Pertinently, in the cross-examination, this witness (PW-1) has stated in his evidence in no uncertain terms that he had no talk with Anand Kumar (PW-5) and Pappu Kumar (PW-2) regarding any taking or giving of money and this witness has gone to the extent of stating in his evidence that Deepak Kumar Rao (PW-4) had told him about the medical examination of Anand Kumar (PW-5). Pappu Kumar (PW-2) in his cross-examination has clearly stated that he had no contact with the petitioner regarding the medical test of Anand Kumar and there was no conversation with the petitioner regarding taking or giving of money.

16. In the cross-examination, this witness (PW-2) has pleaded ignorance to most of the questions put to him. Although R.K. Bhardwaj (PW-3) deposed about the mobile calls between the petitioner and Deepak Kumar Rao, but he has stated in his evidence that he does not have any proof. Pertinently, it has not come on

record as to what was the nature of the conversation between petitioner and the said Deepak Kumar Rao. Infact, Deepak Kumar Rao (PW-4) has a different story to tell. He talks of some marriage proposal between Anand Kumar and his sister. The cross-examination of this witness (PW-4) reveals that the mobile talks with the petitioner were essentially regarding the marriage proposal and had nothing to do with the subject matter of the charge. The material witness, Anand Kumar (PW-5) in his evidence has consistently maintained that there was no demand of any money by the petitioner, nor he had met the petitioner. This witness has categorically negated the case set up against the petitioner. The court witness, K. R. Pillai has proved the call details and from his evidence, nothing emanates which can incriminate the petitioner.

17. The limits of judicial review of penalty/punishment imposed by the Disciplinary/Appellate Authority are reiterated by the Apex Court in Rajasthan Tourism Development Corporation Limited and Another v. Jai Raj Singh Chauhan (2011) 13 SCC 541 as under: -

16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it

should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* [(1982) 1 WLR 1155 : (1982) 3 All ER 141 (HL)] observed: (WLR p. 1160)

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.'

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority. ?

18. Applying the afore-noted dictum to the facts of the instant case, we find that though the evidence was led before the Inquiry Officer, but so far as the petitioner is concerned, it is a case of no evidence qua him. Pertinently, the Disciplinary Authority in the final order of 31st March, 2012 has relied upon the evidence of Ramashray Ram (PW-1) and Pappu Kumar (PW-2) and the call records to conclude that the petitioner had mis-conducted himself. It is worthwhile to note that

there do not exist any voice recordings of the calls made to connect the petitioner with the alleged mal-practices. The call details simply reveal that one solitary call of a short duration was there between the petitioner and Anand Kumar. We are conscious of the fact that the petitioner's co-accused, Deepak Kumar Rao has also been found guilty and the penalty imposed upon him is sub judice before another High Court and so, we have cursorily gone through the evidence with particular reference to the petitioner only and we refrain from commenting upon the evidence qua the petitioner's co-accused-Deepak Kumar Rao, lest it may prejudice the case of the petitioner's co-accused. So far as the petitioner is concerned, we find that the evidence qua the petitioner coupled with the call details does not connect him with the alleged mal-practices in any manner whatsoever.

19. The Apex Court in Roop Singh Negi (supra) has reiterated that the departmental proceedings are quasi judicial and suspicion or presumption cannot take the place of proof even in a domestic Inquiry and that the writ court is entitled to interfere with the findings of facts by any Tribunal or Authority in certain circumstances. In our considered opinion, this is one such case where the finding on charge being proved from the evidence on record deserves to be interfered with, as on scrutiny of the evidence on record, we have found that no incriminating evidence has emerged for justifying the imposition of the impugned penalty upon the petitioner. Consequently, in our considered opinion, the findings of misconduct returned against the petitioner, are legally untenable.

20. In the light of the aforesaid, the final order of 31st March, 2012 (Annexure P-3) imposing the impugned penalty as well as the appellate order of 30th November, 2012 (Annexure P-5) is hereby quashed and set aside.

21. This petition is accordingly allowed and disposed of while making it clear that any observations made in this Judgment will have no bearing in the case of the petitioner's co-accused-Deepak Kumar Rao.