Constable Pawan Kumar Vs. Delhi Administration and anr.

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Dec-16-1998

Judge : T Bhat, B a S.P.

Appellant : Constable Pawan Kumar

Respondent : Delhi Administration and anr.

Advocate for Def. : Mr. Rajinder Pandita

Advocate for Pet/Ap. : Mr. Ashok Aggarwal

Judgement :

1. Both the O.As are being disposed of by a common order since they involve identical facts, reliefs and questions of law.

2. Applicants, Constables under the respondent Commissioner of Police Delhi. In these two original applications are challenging the legality of A-A orders dated 4.12.91 issued by the Appellate Authority rejecting their appeals against the order dated 30.4.91 whereby the punishment of forfeiture of 2 years of their approved services permanently have been imposed on them. Consequently, they have prayed for setting aside the impugned order dated 4.12.91 and also issuance of directions to respondents to provide all consequential benefits.

3. Brief description of the background facts is considered necessary for appreciation of the legal issues involved Constable Rajesh Kumar along with Pawan Kumar were selected for training of dogs in explosive sniffing to be started

w.e.f. 1,7.89 at B.S.F. Academy. Takenpur Gwalior (M.P). They were Medically examined by the Civil Surgeon, Civil Hospital Rajpur Road, Delhi and found fit for the purpose of the said training vide letter dated 30.6.89. Subsequently ,both were directed to report to Principal NTC for dogs. BSF Academy Takenpur on 8.7.89. Both the Constables reported at the above institution on 9.7.89 for undergoing the training from the scheduled date. However, both of them submitted an application of 15.7.89 at Takenpur stating therein that they were not willing to undergo the said training course. Thus, they were returned back with directions to report back to DCP/ C&R Headquarters vide order dated 28.7.89. Both of them reported their arrival back at Model Town Police Station/Delhi vide orders dated 29.7.89. In the background of the aforesaid details, both the officials were charge-sheeted for the following:- "Both of you never revealed your mind in this regard before proceeding to Takenpur otherwise the avoidable Govt., expenses that were incurred on training, could have been saved.

The above act on your part renders you both constables Pawan Kumar No. 329 Crime and Rajesh Kumar No. 170/Crime liable for action/punishment under Section 21 of DP Act 1978." 4. Proceedings against both the charged officials, with the change over of Enquiry Officers twice were concluded with the findings as extracted below:- "From the discussions above statements of PW III & IV. evidence on record, the charge against both the defaulters Constable Pawan Kumar 327/Cr. and Rajesh Kumar 170/Cr. stands fully substantiated in that they wilfully committed gross misconduct, indiscipline and derelictions in the discharge of their official duties besides disobeying the orders of DCP/C&R." 5. Mr. Ashok Aggarwal, learned Counsel for the applicants seeks to challenge the aforesaid finding as well punishment on several grounds.

He, however, intend to focus on the following four vital ones.

(i) The charges against the applicant do not constitute a misconduct. It is not a routine part of their duty which they have declined to work. All that the applicants would have lost by not taking the training is the incentive money that would have followed after the dogs training. Disobedience to carry out training is, therefore not a violation of any rules/regulations.

Drawing strength from the decision of the Apex Court in the case of Glaxo Laboratories (P) Ltd. v. Presiding Officer, Labour Court, Meerut and Ors. 1984(1) SCC. 1. the learned Counsel argued that one could be punished only against the "misconduct" as per the charge memo and not otherwise. To add strength to this contention, he drew our attention to the following order of the Hon'ble Court in the above cited caste: "In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in Standing Order 22 can be punished under Standing Order 23 must be rejected." In view of the above order, the impugned order is without any jurisdiction and bad in law inasmuch as the alleged charged level led against the applicants do not amount to misconduct, much less an enumerated misconduct under the service regulations. It has also been alleged that the conduct of the enquiry officer through out the enquiry was partial and adverse to the interest of the applicants. The enquiry officer has not conducted the departmental enquiry in an unbiased manner. On the contrary, he assumed the role of a prosecutor as well as an enquiry authority.

(ii) This is a case where the enquiry officer has held the charged officials responsible for something else than what has been alleged.

The findings of the enquiry officer, as at page 29 of the paper book, do not have any relation with the charges as at Annexure-D. (iii) The punishment is highly disproportionate vis., the misconduct alleged. The forfeiture of two years of services permanently will have serious adverse consequences on the entire service career of the officials who had started their career only recently.

(iv) The Disciplinary Authority has passed the order of punishment in a mechanical and casual manner. It is a case vitiated by non, application of that mind since findings of the enquiry officer arc based on "no evidence" on record as well as based on extraneous considerations. If the charge was of a loss to the National

Exchequer, the quantum could have been worked out and the applicants asked to pay back the entire amount, if at all they had caused any loss of Revenue to the Government, the learned Counsel for the applicants argued. It has also been argued that they were not to be deputed to the training when the Principal of the Institute had earlier found them unsuitable.

6. Mr. Rajinder Pandita, learned Counsel for the respondents argued vehemently to say that misconduct on the part of the applicants stand proved. If at all they had no intention to proceed for the training, the applicants could have come out openly to refuse the same before making the movements., Drawing strength from the decision of the Apex Court in the case of B.C. Chaturvedi v. U.O.I and Ors. 1995(5) SLR 778, as well as the O.A. decided by this Tribunal in the case of Hari Prakash v. U.O. I. through Delhi Administration and Ors., 1998 (2) SLJ (CAT) 464. Mr. Pandita submitted that the Court/Tribunal in its power of judicial review are not to act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent finding. The Court/Tribunal may interfere where the proceedings held against the delinquent officer are, inter alia inconsistent with the rules or in violation of the principle of natural justice or perverse.

The learned Counsel also submitted that disciplinary proceedings have been held in accordance with the rules and the applicants have been given reasonable opportunity to defend their cases. He relies on the judgment of the Apex Court in the case of S.K. Singh v. Central Bank of India, 1996 (6) SCC 415. It has also been contended that the misconducts on the part of applicants are clear because of disobedience of legal orders. Normal penalty in such cases is dismissal from services. However, taking a lenient view as the applicants were new entrants, the Punishing Authority has awarded them the punishment of forfeiture of two years' permanent services which is justified and reasonable. It has been also denied that the Disciplinary Authority has passed the orders of punishment in a mechanical and casual manner. On the strength of the judgment of the Hon'ble Supreme Court in the case of "Punjab State Civil Supplies Corpn. Ltd. Chandigarh and Ors. v.Narinder Singh Nirdosh, 1997(5) SCC 62, the learned Counsel argued that the Disciplinary Authority, on the basis of magnitude of the misconduct is empowered to impose punishment commensurate with the gravity of the misconduct. The

nature of punishment has to depend upon the magnitude of misconduct. Since the misconduct is grave one and the punishment of forfeiture of two years service being a lenient one, the Tribunal may not be justified in interfering with the same.

7. We have carefully perused the records and heard the submissions made by the learned Counsel for the parties. The question therefore that arises for consideration is whether a delinquent official could be punished on an established "misconduct" that do not form part of the charge-sheet. We are confronted herein with a situation where the charges established are not one of those framed. The finding of the enquiry officer in the present case is gross misconduct, indiscipline and dereliction in the discharge of official duties whereas the charge is that the applicants never revealed their mind before proceeding to Takenpura resulting in avoidable Government expenses that were incurred on training and could have been avoided. We therefore, find some force in the contention of the learned Counsel for the applicants that the finding do not relate to the charges that were initially framed against the applicants. The applicants, therefore, had no opportunity to defend themselves against the charges which have been eventually established against them. For the purpose of imposing penalty, charges established must flow out of the charges framed and served. It cannot be left to the management to say ex-post-facto that some of the acts of omissions or commissions stand proved though nowhere enumerated in the charge memo or in the statement of allegations (emphasis ours). As observed by Lord Buckmaster in T.B. Barrett v. African Products Ltd., AIR 1928 PC 261, that no forms or proceedings should ever be permitted to exclude the presentation of a litigant's defence. We find that similar views in respect of principles of natural justice have been enunciated in State Bank of Patiala v. S.K. Sharma, JT 1996 (3) SC 722, and those were to be adhered to render justice. The two cases on hand suffer from this legal infirmity, 8. Based on the detailed discussions aforesaid, we allow these Original Applications and quash the Appellate Orders dated 4.12.91 as at Annexure A. DCP/Crime & Rlys' order of punishment of two years approved services permanently for two years as well as disciplinary proceedings shall stand quashed. The applicants shall be entitled for consequential benefits. We, however, make it clear that we have not expressed any opinion as regards the quantum of punishment imposed. Our orders, however, shall not stand in the way of the

respondents to hold fresh proceedings against the applicants, if they are so advised.