Dilip Kumar Rabidas Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Guwahati

Decided On : Jun-15-2004

Reported in : (2005)(2)SLJ280CAT

Judge : B Ray, P a K.V.

Appellant : Dilip Kumar Rabidas

Respondent : Union of India (Uoi) and ors.

Advocate for Pet/Ap. : Mr. M. Chanda

Judgement :
(i) To set aside the memorandum of charge sheet dated 12.5.1997, impugned order of penalty dated 12.12.2002 and the impugned appellate order dated 22.8.2003.

(ii) To direct the Appellate Authority to condone the delay in preferring the appeal and further to direct the Appellate Authority to pass reasoned order on merit of the appeal.

(iii) To direct the respondents to promote the applicant to the post of Senior Superintendent (stores) at least from the date of promotion of his immediate juniors with all consequential benefits.

While the applicant was working, as Junior Superintendent, Government Medical Stores Depot, Guwahati, a surprise check of stock of medicines was conducted by

the Central Bureau of Investigation (CBI for short) authority on 11.7.1996 and the following discrepancies were found: "(a) Shortage of 53,770 nos. of Tab.Pyrimetharnine Sulphadoxine Combination (250mg) valued Rs. 51,081.50 in NMEP Section.

(b) As per declaration in Bincard No. 67204, the stock of tablet Pyrimethamine Sulpohadoxine Combination 250 mg, should be 18,83,570 nos. But in physical stock verification the same was found only 18,29,000 nos. and thus there was a shortage of 53,770 nos tab.

under the possession of Shri B.K. Rabidas." However, on the next day, i.e. on 12.7.1996 the untraced quantity of medicine was traced out and reported by the applicant to the Head Office and was also reported to the CBI, Guwahati on the very day. But, 460 nos. of tablets of Pyrimethamine Sulphadoxine combination (250mg) could not be traced out, the cost of which is Rs. 437/-. The Assistant Director General (MS), Government Medical Stores Depot Guwahati vide Memorandum bearing letter No. ADMN/164/DKR/92 dated 12.5.1997 proposed to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The charges levelled against the applicant is as under: "While Shri Dilip Kr. Rabidas was posted and functioning was junior Supdt. in National Malaria Eradication Programme of Government Medical Store Depot, Guwahati during 1996 failed to maintain absolute integrity and devotion to duty for which 53,770 nos. of Tab. Pyrimethamine Sulphadoxine combination (250 mg.) valued at Rs. 51,081.50 were found short which ought to have been in his possession during a joint surprise check conducted on 11.7.96 in National Malaria Eradication Programme Store Section and thereby by the above acts, he contravened the provision of Rule 3(1)(2) of CCS (Conduct) Rules, 1964." 3. After receipt of the aforesaid charge memo dated 12.5.1997 the applicant submitted a detailed reply on 21.5.1997 denying the allegations contained in the article of charge and further showed the detailed position of medicines as on 11.7.1996. However, it was admittedly mentioned by the applicant that there were altogether 8,83,570 nos. of tablets available in the stock as on 11.7.1996 and on physical verification 18,83,110 nos. of tablets were found in good condition and 460 nos, of tablets, value of which was Rs. 437/- was detected to be short which could not be found in

the stock. It is also explained by the applicant in the reply to the charge memo that during the relevant period maximum quantity of UIP/CSSM(KTTS) stores were received, but due to insufficient accommodation in the Depot all medicines were kept in a scattered way and even in the corridor of the complex. The applicant prayed before the authority to consider the above facts sympathetically. The applicant in his reply has also assured that in future he would take more care for proper maintenance of the stock. Thereafter an enquiry was conducted by Dr. H.K. Sonowal, CMO CGHS Dispensary No. 3, Guwahati and the enquiry report submitted by him was sent to the applicant by the Disciplinary Authority alongwith the O.M. dated 3.12.2002, which is annexed as Annexure-III to the O.A.The Disciplinary Authority vide its memo dated 3.12.2002 informed the applicant to make a representation against the enquiry report, if any, within fifteen days of the receipt of the said memo, failing which it would be presumed that the applicant had no representation to make and orders would be passed against him. Accordingly the applicant sent his reply to the said memo on 9.12.2002, wherein he requested the authority to make recovery from his salary for adjustment of the shortage quantity of medicine found in the stock. The said reply is enclosed as Annexure-IV to the O.A. The Joint Director, CGHS--Respondent 4, thereafter issued the impugned order dated 12.12.2002 in the name of the President, whereby a penalty of reduction of pay by one stage was imposed on the applicant for a period of one year with effect from 1.1.2003 with the stipulation that during that period the applicant would not be eligible to earn increment and on expiry of the period the reduction will not have the effect of postponing his future increment of pay. A copy of the said order is enclosed as Annexure-V. Although the order was issued in the name of the President and there was no opportunity given to the applicant and there was nothing mentioned to prefer any appeal, the applicant preferred an appeal on 10.6.2003 to the Director General of Health Services, which was, however, rejected by the Director General, Health Services, on the ground that the appeal was made after a lapse of six months and without satisfactory reasons for the delay in preferring the appeal, the appeal was rejected, Annexure-VII.4. Being aggrieved by the charge memo dated 12.5.1997 and the order of penalty dated 12.12.2002 and the order of the Director General dated 22.8.2003 the applicant has approached this Tribunal seeking the reliefs stated above.

5. Mr. M. Chanda, learned Counsel for the applicant, strenuously argued that when the Inquiry Officer in his report did never held that the charges were partially proved and only suggested to make necessary correction in the Bin Card to avoid unnecessary misunderstanding, the Disciplinary Authority was not justified in saying that the Inquiry Officer in his findings has said that the charges had been partially proved. He further added that when it was categorically held by the Disciplinary Authority that only minor mistake had been committed, there was no reason to hold that the applicant is guilty of misconduct for the purpose of initiating disciplinary proceedings. Therefore, the Disciplinary Authority was not justified in imposing any penalty upon the applicant taking recourse to Rule 14 of the CCS (CCA) Rules, 1965.

The learned Counsel for the applicant further submitted that when there was no proposal made by the Inquiry Officer to impose any penalty in its report and when there was only a suggestion as mentioned above, the Disciplinary Authority without giving the applicant any opportunity to defend his case could not have imposed the penalty and that the order dated 12.12.2002 issued by the Disciplinary Authority is violative of the principles of natural justice. In this context he has placed reliance on a judgment of the Supreme Court in the case of State Bank of India and Ors. v. K.P. Narayanan Kutty, (2003) 2 SCC 449, wherein it was held that it is the duty of the punishing authority when treating as fully proved the charges found by the enquiry officer to be partly proved, to afford opportunity to the delinquent employee irrespective of whether or not some prejudice is shown to have been caused by denial of such opportunity. It is the contention of the learned Counsel for the applicant that since in the present case the Inquiry Officer did not hold that the charges were partially proved or proved and has not made any proposal to impose any punishment, the principles laid down by the Hon'ble Supreme Court in the above case applies on the case in hand and therefore the applicant is entitled to get the relief prayed for.

5A. The learned Counsel for the respondents submitted that although the applicant had the opportunity to prefer his appeal against the order passed by respondent 4, but he did not avail of the said opportunity by filing the appeal in time. In fact, the appoint preferred his appeal after the expiry of the time schedule and the same

was rejected by the Director General of Health Services on the ground of delay. The learned Counsel for the respondents, however, could not enlighten the position as to why the order dated 12.12.2002 was issued in the name of the President when the applicant, admittedly, is a Group 'C' officer. The learned Counsel for the respondents could also not explain as to whether there was any scope of preferring appeal when the penalty order was issued in the name of the President.

6. Heard the learned Counsel for the parties. We have gone through the pleadings and the materials placed before us. We have also gone through the case relied upon by the learned Counsel for the applicant. A perusal of the enquiry report would show that no proposal had been made by the Inquiry Officer to impose any penalty against the charged official, i.e. the applicant herein. It is seen from the findings of the Inquiry Officer that the quantity that could not be trace on the date of verification, i.e. 11.7.1996 could be traced out on the next day, i.e. on 12.7.1996, but only 460 nos. of tablets were not traced out which cost Rs. 437/-, in which context the Inquiry Officer remarked that the 460 tablets which could not be traced out was worth Rs. 437/- only which itself in store accounting procedure is considered to be a very meagre amount, i.e. less than 0.9% of the traced quantity of medicine and finally the Inquiry Officer suggested to make necessary correction in the Bin Card to avoid unnecessary misunderstanding. It is also noticed that the respondent 4 in O.M. dated. 3.12.2002 (Annexure-III) advised the applicant to make representation to the enquiry report without mentioning anything about any possibility of imposing any penalty to enable the applicant to defend his case accordingly which in our view violated the principles of natural justice. As already mentioned above the learned Counsel for the respondents could not explain as to why the order was passed by respondent 4 in the name of the President and in case the order is of the President, where is the scope of preferring appeal. We find that the appeal preferred by the applicant was rejected by the Director General of Health Services on the ground of delay in submitting the appeal. We find force in the contention of the learned Counsel for the applicant that when the order of penalty was issued by the Joint Director and the Director General is not the next higher authority, therefore, the Director General is not the competent authority to act as the Appellate Authority and reject the appeal preferred by the applicant.

Therefore, the order of the Director General of Health Services dated 22.8.2003 is not sustainable in the eye of law and is liable to be quashed. It is also noticed that the Appellate Authority did not consider the crucial point that the Appellate Authority while rejecting the appeal on the ground of delay did not notice that the penalty order was issued in the name of the President and therefore there was no scope to prefer any appeal and it was also not considered as to whether the order could be passed in the name of the President when the charged officer is not a gazetted officer. Therefore, the Appellate Authority did not apply its mind and has passed an order which is not sustainable in law.

7. The next question to be considered is whether the allegation constituted misconduct in the eye of law. A close reading of the article of charge, the findings of the Inquiry Officer and the order of the Disciplinary Authority would only show that the Inquiry Officer as well as the Disciplinary Authority noticed that a minor mistake has been committed by the applicant. The suggestion of the Inquiry Officer to the applicant to make necessary correction in the Bin Card by rectifying the mistake to avoid unnecessary misunderstanding would go on to show that at no point of time the Inquiry Officer as well as the Disciplinary Authority came to the conclusion to hold that there was any ill motive behind the action/ inaction on the part of the applicant in committing the minor mistake which would constitute misconduct. In fact, nowhere in the charge memo or in the finding of the Inquiry Officer as well as in the order of the Disciplinary Authority, misconduct has been alleged, noticed and/ or established. Therefore, we find considerable force in the contention of the learned Counsel for the applicant that in view of the allegation made against the applicant in the charge memo read with the statement of imputation, the findings of the Inquiry Officer and the order of the Disciplinary Authority, it is very much clear that the applicant can be held to be guilty of negligence in keeping the medicines properly which resulted in the loss of Rs. 437/- which is again according to the Inquiry Officer a meagre amount, i.e. less than 0.9% of the traced quantity of medicines and also has been noticed by the Disciplinary Authority as minor mistake committed by the applicant. Therefore, there is no reason to say that the applicant was guilty of any misconduct for the purpose of initiating disciplinary proceeding. In this context the learned Counsel for the applicant placed reliance on the judgment of the Hyderabad Bench of the

Tribunal in G. Buddappa v. Union of India and Ors. (O.A.No. 198 of 2000) decided on 12.7.2001, wherein it was observed that mere negligence does not constitute misconduct and that no charge memo can be issued in absence of a misconduct. In this context we have also gone through the definition of misconduct in Stroud's judicial dictionary (1986 Fifth Edition) which is as under: "misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistakes, do not constitute such misconduct." The Central Administrative Tribunal, Hyderabad Bench, in the said judgment, referred by the applicant, has also considered the judgment of the Hon'ble Supreme Court in the case of Union of India v. J. Ahmed, 1979 SLJ 308 (SC) in which the Hon'ble Supreme Court observed, inter alia as under: "It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct.

Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings." 8. In view of the above discussion and the contention of the learned Counsel for the applicant mentioned above and the judgments discussed above, we are of the view that there is nothing in the charge memo or in the findings of the Inquiry Officer or in the order of the Disciplinary Authority to hold that the applicant was guilty of any misconduct. A loss of Rs. 437/- that was due to the applicant's negligence would not constitute misconduct when there is no alterior motive behind such failure on the part of the applicant in taking care of the medicines and keeping them in order in the store room. We, therefore, hold that since the applicant is not guilty of any misconduct, the respondents were not justified initiating the disciplinary by issuing the charge memo under letter dated 12.5.1997 and therefore the charge memo is liable to be set aside.

9. In view of the irregularities pointed out above, we hold that the charge memo dated 12.5.1997 and the orders dated 12.12:2002 and 22.8.2003 issued by respondent 4 and the Director General, Health Services, respectively are not

sustainable in the eye of law.

Accordingly, they are quashed and set aside.