M.L. Bmweja Vs. the State

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Court : Delhi

Decided On : May-29-1968

Reported in : 4(1968)DLT648; 1968LabIC1551

Judge : S.K. Kapur, J.

Acts : Central Civil Services (Classification, Control and Appeal) Rules, 1957 - Rule 12

Appeal No. : Civil Writ Petition No. 119 of 1967

Appellant : M.L. Bmweja

Respondent : The State

Advocate for Pet/Ap. : U.S. Thakur and ; Chetau Dass, Advs

Judgement :

S.K. Kapur, J.

(1) The petitioner is a Dermanent employee of the Accountant-General Punjab, Haryana and Himachal Pradesh, since 1st July, 1951. On 20th September, 1958, the Accountant General Central Revenues passed an order that the petitioner be placed under suspension under rule l2(b) of the Contral Civil Services (Classification, Control and Appeat) Rules, 1957, with effect from the date of relief from his duties. It was further ordered that- 'During the period of suspension Shri

M. L. Baweja, Divisional Accountant shall be paid the following amounts:-- (a) A subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had bean on leave on half averege pay or half pay and in addition dearness allowance based on such leave salary. (b) toher compereatory allowances, if any, of which Shri Baweja was in receipt on the date of suspension provided that he shall nto be entitled to the compensatory allowances unless he satisfies the A.G.C R. that he continues to meet the expenditure for which they are granted. no payment under para 2 above shall be made unless Shri M.L. Baweja, Divisional accountant furnishes a certificate and satisfies the A. G. C. R. that he was nto engaged in any toher employment, business, profession or vocation during the p?fiod for which the claim is preferred.' The reason given for ordering the suspension of the petitioner was that 'information has been received that a criminal case has been registered by the Special Police Establishment Ambala on 25th August, 1958, under section 161 of the Indian Penal Code read with section 5(2) of Act Ii of l947' From the order dated 18th October, 1900, made under Fundamental Rule 54(3) (Annexure 'D' to the petition), it apoears that the petitioner was under suspension from 23rd August, 1958, to 13th February, 19fc0. The petitioner was tried by the Special Judge, Ambala, and acquitted by his judgment dated 21st December, 1959. The learned Special Judge discarded the prosecution evidence, and concluded his judgment by saying- 'For the above discussion, I bold that the prosecution has failed to establish the charges against the accused beyond all reasonable doubt Giving the aceused used, the benefit of doubt, I acquit him'

(2) The learned counsel for the parties agree that after the acquittal of the petitioner the matter was governed by Fundamental Rule 54. under the said Rule when a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated the authrity competent to order the re-instutement is required to make a specific order. (a) Regarding the pay and allowances to be paid to the Government servant for the period of suspension; and (b) Whether or nto the said period shall be treated as a period spent on duty. Under sub-rule (2) of Rule 54' where the authority mentioned in sub- rule (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified the Government servant shall be given

the full pay and allowances to which be would have been entitled, had be nto been dismissed, removed, 650 compulsorily retired or suspended, as the case may be' In pursuance of Rule 54 it was decided by order dated 18th October, 1980, 'that the suspension of Shri M. L. Baweja, Divisional Accountant for the period from 23rd August, 1958 to 13tb February, 1960 has nto been unjustified and that the subsistence allowance already sanctined for paymenu to him in para (2) of this office order No.....dated 20th September 1958, shall be the pay and allowance which he should receive daring the period.

(3) The first contention of the learned counsel turn the petitioner is that the petitioner having been exonerated completely by the Special Judge, he was entitled to full pay and allowance to which he would have been entitled he had nto been suspended. That does nto appear to me to be correct reading of Rule 54(2). Under Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules 1957, it is discretionary with the Appointing Authority to place a Government servant undar suspension where a case against him in respact of any criminal offence is under investigation or trial. Consequently, where a challan is filed against a Government servant, as in this case, the Government servant may be placed under suspension and the juatification of the saspansion order has, normally, to be determined on the faces and circumstances as existing on the date of the order and may be held to be justified irrespective of the result of the Criminal case. That is so because justification for the suspension may legitimately be foanded on the fact that a person is being prosecuted on a criminal charge. If that were nto so the rule would have provided that in case of acquittal suspension will always be treated as unjastified. In this view I am supported by a Division Bench judgment of the Punjab High Court reported in (R.P. Kapur v. Union of India) I am nto concerned in this case with reinstatement after dismissal etc. The question whether the suspension was justified or wholly unjustified with Fondameatal Kale 54(2) will nto, thereforee, in all cases depend en the result of the prosecution. Circumstances may, however, arise where the concerned authority while pronouncing up on the justification of the suspension order under Fundamental Rule 54(2) may have to take into consideration the judgment rendered in the criminal case. The learned Deputy Advocate-General did nto dispute that in a given case such an authority may have to take ntoe of the result of the prosecution

and the reasons given by the Court in support of the Government servant's acquittal. If for instance the criminal Court acquits a Government servant on the ground that the case has nto been proved against him beyond doubt the suspension order may be held justified on the round of his prosecution alone If on toher hand, the Court comes to the conclusion that the person concerned was prosecuted under some mistake the authority may wall come to the come to the conclusion that the suspension older was wholly unjustified that is why tie justification and non-justification has been left to the decision by the authority. I am relieved from the responsibility of deciding whether the order under Fundamental Rule 54(2) is a quasi judicial order or purely an administrative one because the learned Deputy Advocate General conceded that such an order would be a quasi judicial order and the person concerned must be he-aid before the order is made. In fact, be stated that in viaw of the decision of their Lordships of the Supreme Court in M.Gopalkrishna Naidu v. The State of Madhya Pradesh it was nto open to him to contend to the coatrary. The learned counsel for petitioner contended that once it was conceded that the order was a quasijudicial one, the deciding authority must give reasons. For this contention the learned counsel relid on Bhagat Raja v Union ef India and -Jagannath Kashinath Kavalekar v. Union of India and tohers'. In Bhugat Raja's case, their Lordships of the Supreme Court. were concerned with the question whether in dismissing a revision and confirming the order of a State Government made under the Mines and Minerals (Regulation and Dgvelopment) Act, 1967, the Union of India was bound to make a speaking order. Their Lordships of the Supreme Court observed:-

'ITwas argued that the very exercise of Judicial or quasi judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party, The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that btoh the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word rejected or dismissed. In such a case, this Court can probably only exercise the appellate Jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will

certainly be a very unsatisfactory method of dealing with the apeeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the tohers, as it must, and the Central Government adopts the reasoning of the State Government, this Court may proceed to examine whether the reasons given are sufficient lor the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are nto, and the Central Government merely endorses the order of the State Government with- ont specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances, what is known as a speaking order' is called for'.

In Jagannath Kashinath Kayalekar's case, I said -

'THEnecessity to give reasons has been variously put as requirement of natural justice, or to ensure that the concerned authority applies its mind to the matter or to prevent the provisions as to appeals and revisions being rendered nagatory by the authorities, making cart orders. It has also been suggested that in a case like this where a right has been given to the petitioner to appeal to the Central Board of Revenae and then file a revision before the Central Government, the obvious intention of the Legislature is to require the subordinate authorities to make a speaking order. Moreover when an authority is required to decide some matter and the decision depends upon the existence or nonexistence of certain facts, that authority mast in its order show as to whether or nto those facts exist. In the absence of reasons it is impossible by the Coarts exercising appellate powers, or the powers of superintendence, to see whether or nto the authority was influenced by any extra- neous considerations. The practice of making summary orders will, in effect, reduce the provision as to appeal and revision to silence. When the order of an authority is made subject to sciutmy by an appellate or revisional authority,

the Legislature obviously intends to make that right effective. If the authority does nto give reasons it amounts, in substance, to depriving the party of the right of appeal or revision. The requirement that quasi judicial tribunals should give findings is the requirement for guarantee that the decision shall be rendered by such tribunals according to the evidence and the law- rather than arbitrarily or on extra-legal considerations.

Such speaking decisions serve the additional purpose, where provisions for appeal or revision aie made, of apprising the parties and the reviewing tribunal of the factual basis of the action of such tribunal so that the parties concerned and the reviewing tribunal may determine whether or nto the case has been decided upon the evidence and the law or, on the contrary, upon arbitrary or extra-legal considerations When a decision is nto accompanied by findings that speak, the reviewing tribunals are deprived of their power? of deciding whether the order under review follows, as a matter of law, from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. It is for this reason that the necessity of giving reasons is termed as something far from technicality. Insistence upon reasons effectively ensures against Star Chamber methods, to make certain that justice shall be administered according to facts and law. It will nto be very far-fetched to say that the right of a party to know the reasons, for the decision, bs it judicial or quasi jadicial is one of the principlea of natural justice.

(4) It was nto disputed on behalf of the respondents that against the order made under Fundamental Rule 54 an appeal lay under Rule 24(2)(d) of the Central Civil Services Classification, Control and Appeal Rules, 1957. The reasons given retarding the necessity of making a speaking order in the aforementioned two decisions, thereforee apply with equal force to this case Moreover the supervisory jurisdiction of this Court can also be exercised effectively only when reasons are. recorded in the order made under Rule 54 of the Fundamental Rules. There is ntohing in the order to show that the authority applied its mind to the various requirements of law to which he was supposed to direct his attention. It does nto appear from the order that be took the decision after proper comprehension of the scope of the rule or that he considered the effect of the judgment of the special

Judge. The order dated October 18, 1960. is a curt one and states that 'the A G. C. R has ordered that the suspension of Shri M.L.Baweja, Divisional Accountant for the period from 23rd August, 1958 to 13th February, 1960 has nto been unjustified.....,.' In the appeal filed by the petitioner before the Accountant Gerenal Central Fevenaues, the petitioner terms sated 'It has been stated in the order that my suspension was net unjustified As the reasons which have led to this conclusion have nto been mentioned in the order, it is difficult for me to explain my position The same grieveance had been repeated by the petitioner in his appeal before the Controller and Auditor Genrel of India (Annexure 'G' to -ha petition). inspire of that none of the appelllate authorities gave any reasons in the orders rejecting the appeals but merely stated that after considering the facts of the case they found no justification for interfering therewith. The order dated October 18, 196l, is signed by the Deputv Accountant-Genrel and it is stated therein that the A.G.C.R. has ordered that suspension of the petitioner is nto unjustified. I asked the learned Deputy Advocate-General if he could show from his records whether or nto the A.G.C.K. had given any reasons for his decision as recorded on the file. He frankly conceded that there was no speaking order made under Fundamental Rule S4 by the Accountant General Central Revenues In these circumstances, the conclusion is inescapable taht the accountant General Central Revenues by making a non speaking order denied, in effect, to the petitioner his right of appeal and there was a clear violation of the rules of natural justice. The learned Deputy Advocate General also conceded that the petitioner was nto given any opportunity of being heard before deciding whether or nor his suspension was justified In these circumstances, the order dated October 18. 1960, deciding that the suspension of the petitioner was justified must be qaashed. it would, however, be open to the authorities concerned to make a fresh order in the light of the observations above.

(5) The second claim of the petitioner relates to his crossing the effici ency bar. The petitioner maintains that ha should have crossed the efficiency bar on December 2, 1960, but he was informed that since a departmental inquiry was contemplated against him the question of crossing the efficiency bar would be considered after that finalsation of the said inquiry. This allegation of the petitioner is contained in paragraph 13 of the petition. In ieply to the said paragraph the

respondents admit that crossing of the efficieney bar fell due to the petitioner on December 2, 1960. They say that the matter was considered in October 1961 and the petitioner was informed that as a case regarding departmental inquiry against him was under consideration, the question will be considered later on. It is further stated that- 'the matter regarding dapartnaental enquiry has been continuously under correspondence at, various levels and still awaits finalisation. Subsequently, it was decided in April 1937 nto to pastpone the consideration of the efficiancy bar case of the petitnnoner till the finalisation of the dapartmental enquiry. Consequently after due consideration it was decided by the competent authority that the peti tioner was allowed to cro:-s the efficiency bar from 2nd December, 1961 instead of 2nd December, 1960. The learned Deputy Advocate-General informed me that a final decision has been taken that no departmental inquiry should be held against the petitioner. In the office order dated May 17, 1967, it is stated that the Senior Deputy Accountant General has been pleased to permit the petitioner to cross the efficiency bar at the stage of Rs. 290 with effect from December 2, 1961 No reasons are given as to why the petitioner was nto allowedwed to cross the effciency bar from December, 1930, as due to him. The learned Deputy Advocate-General relied on Fundamination rule. 25 and paragraph 262-A of the Comptroller and Auditor Genral Manual of Standing Orders. He said that paragraph 26-A of the Comptroller and Auditor General s Manual of Standing Ordurs had, by virtue of Artical 148 of the Constitution, a statutory force. According to the learned Deouty Advocate General the efficiency bar could nto be allowed to be crossed without the specific sanction of the authority mentioned in Fundamental Rule 20 and the confidential reports and the work of the employee could be taken into consideration by virtue of paragraph 262-A before granting permission to cross the efficiency bar. The learned counsel for the petitioner, on the toher hand, said that the authority concerned denied his right to i;im arbitrarily, without considering any material and without applying his mind to the facts of the case I am prepared to assume, for the purpose of the present controversy in favor of the learned Deputy Advocate General that the concerned authority could on consideration of the confidenatial reports and efficiency of the Government employee defer the crossing of the efficiency bar. I asked the learned Deputy Advocate-General if he could show either from any document on the record or

even from the original file that the order was passed on consideration of any material. He frankly conceded that neither the ntoes on the file nor the order showed that any such consideration had been brought to bear on the subject by the authority passing the order. In these circumstances, the only conclusion that follows is that the petitioner's crossing of the efficiency bar was deferred without the authority concerned applying its mind ttohe various aspects to which it should have directed its attention. I, thereforee, quash the order dated May 17, 1967, leaving it to the authorities to pass the order afresh.

(6) The third claim by the petitioner is regirding the expenses for litigation incurred by him for defending the criminal prosecution against him. The learned Drpuly Advocate-General stated that the matter was under consideration and in view of this statement the learned counsel for the petititioner did nto press this claim.

(7) The last contention raised on behalf of the petitioner was that he was entitled to be considered for appointment in the selection grade during the year 1963 but had been kept outside the field of choice due to the contemplated departmental inquiry against him while persons junior to him were considered and appointed to the selection grade In paragraphs 13 and 14 of the written-statement it is stated that the petitioner's case along with the cases of five tohers was pto up before the Selection Board in July, 1963, he appeared before the Board on July 3, 1963, and was nto selected by the Board for apppointment in the selection grade. It is further stated that as per provisions of paragraph 27U-A of the Comptroller and Auditor General's Manual of Standing Orders the selection had to be made on the bai is of seniority-cum merit and the petitioner was nto considered fit for promtoion In the rejoinder affidavit the petitioner has made several allegations regarding his inteiview by the Selection Board bat admitted the basic fact that he was called for interview as alleged by the respondents. It is unfortunate that in this behalf the petitioner suppressed important facts in his petirion. That apart, the award of selection grade is nto a matter of right and the fact that the petitioner was considered by the appropriate authoority for appointment in the selection grade and rejected disentitles the petitioner to any relief in ibis behalf.

(8) In the resalt, the petition is allowed to the extent that the orders dated October 18, 1960. and May 17, 1967, are quashed with liberty to the Government to make fresh orders, wl-.i!e the claim of the petitioner to his appointment in the selection grade is disallowed. In the circumstances, the parties are left to bear their own costs.