

Satheeshkumar Unnithan Vs. Union of India, Represented by Comptroller and Auditor General of India, New Delhi and Others

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Nov-05-2009

Judge : Honourable Mr. George Paracken, Judicial Member & Honourable Mr. K. George Joseph, Administrative Member

Appeal No. : Original Application No. 513 of 2008

Appellant : Satheeshkumar Unnithan

Respondent : Union of India, Represented by Comptroller and Auditor General of India, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Mr. P. Ramakrishnan, Advocate. For the Respondents: Mr. M.V.S. Nampoothiry, ACGSC (R1-4).

Judgement :

By Hon'ble Mr. George Paracken, Judicial Member

The applicant is aggrieved by the Annexure A-11 inquiry report dated 11.7.2006, Annexure A-12 disciplinary authority's order dated 21.8.2006 dismissing him from service and the Annexure A-14 appellate order modifying the disciplinary authority's order to that of compulsory retirement from service.

2. The brief facts of the case are that the applicant was served with Annexure A-8 memorandum proposing to hold an inquiry against him under Rule 14 of the CCS (CCA) Rules, 1965. The statement of articles of charge framed against him were the following:

"Article-I

That the said Shri Satheesh Kumar Unnithan J, while holding the post of Sr. Auditor in the office of the Audit Officer (Navy), Kochi entered Sr. Audit Officer's room on 6.11.2003 at about 11.30 a.m. He used indecent abusive language against Shri U. Gopinathan, Sr. Audit Officer, a conduct that is wholly unbecoming of a Government servant and which, thereby, violates Rule 3(i) (iii) of CCS (Conduct) Rule 1964.

Article-II

That the said Shri Satheesh Kumar Unnithan J, while holding post of Sr. Auditor in the office of the Audit Officer (Navy), Kochi entered Sr. Audit Officer's room on 6.11.2003 at about 11.30 a.m. and used indecent abusive language against him. After this, Shri Satheesh Kumar Unnithan J, hit Shri U. Gopinathan, Sr. Audit Officer inside the latter's room. He thereby conducted himself in a grossly undisciplined manner with his superior, which is wholly unbecoming a Government servant and which, thereby, violates Rule 3(I)(iii) of CCS (Conduct) Rule 1964.

Article-III

That the said Shri Satheesh Kumar Unnithan J, while holding the post of Sr. Auditor in the office of the Audit Officer (Navy), Kochi and head of office physically attacked Shri U. Gopinathan, Sr. Audit Officer with footwear in the corridor on 6.11.2003. By using physical violence against his superior officer, he has behaved in a manner unbecoming of a Government Servant thereby violating Rule 3(I)(iii) of CCS (Conduct) Rule 1964."

3. The statement of imputation of misconduct in support of the aforesaid charges are as under:

"Article-I

Shri Satheesh Kumar Unnithan J, was working as a Sr. Auditor in the office of the Audit Officer (Navy), Kochi. On 6.11.2003, he approached Ms. Nisha, Clerk/Typist in the office of the Audit Officer (Navy), Kochi to hand over a closed cover addressed to the Director of Audit, Navy, Mumbai. She expressed her inability to receive covers whose contents were not known, so she informed Shri Satheesh Kumar Unnithan J, of the same and requested him to speak with Shri U. Gopinathan, Sr. Audit Officer (Navy) who is also Head of Office in Kochi. Shri Satheesh Kumar Unnithan J, Sr. Auditor then entered Shri U. Gopinathan, Sr. Audit Officer's room at about 11.30 hours on 6.11.2003 on the pretext of handing over the said closed cover to him. When informed that this could not be done as its contents were unknown, Shri Satheesh Kumar Unnithan J, Sr. Auditor used indecent abusive language against Shri U. Gopinathan, Sr. Audit Officer. Thus he behaved in a manner unbecoming of a Government Servant, and has thereby violated Rule 3(I)(iii) of CCS (Conduct) Rules 1964.

Article-II

Shri Satheesh Kumar Unnithan J, working as Sr. Auditor in the office of the Audit Officer (Navy) Kochi entered the room of Shri U. Gopinathan, Sr. Audit Officer and Head of Office at about 1130 hours on 6.11.2003 on the pretext of handing over the closed cover to Sr. Audit Officer (Navy). He hit Shri U. Gopinathan, Sr. Audit Officer on the face. He has behaved in a manner unbecoming of a Government Servant, and has thereby violated Rule 3(I)(iii) of CCS (Conduct) Rules 1964.

Article-III

On Thursday the 6th November 2003, Shri Satheesh Kumar Unnithan J, working as Sr. Auditor in the office of the Audit Officer (Navy), Kochi after using indecent abusive language against and hitting Shri U. Gopinathan, Sr. Audit Officer in his room, rushed out of the latter's room. In the corridor, Shri Satheesh Kumar Unnithan J, Sr. Auditor again hit Shri U. Gopinathan, Sr. Audit Officer with footwear, thus resorting to undisciplined activity and to the use of physical violence with his superior officer. He has thus behaved in a manner unbecoming of a

Government servant and has thereby violated Rule 3 (I)(iii) of CCS (Conduct) Rules 1964."

4. The following documents by which the articles of charge framed against the applicant were proposed to be sustained during the inquiry:

"1. Sr. Audit Officer (Navy), Kochi's confidential letter No.744/RA Admin/120/Confdl/03 dated 6.11.2003.

2. Copy of FIR No. 137 dated 6.11.2003 filed by Shri U. Gopinathan, Sr. Audit Officer.

3. Statement made by Shri Peter Paul, Sr. Auditor dated 6.11.2003

4. Statement made by Shri Gopakumaran Nair B, Sr. Auditor dated 6.11.2003

5. Statement made by Kum. Nisha Ayyappan, Clerk/Typist dated 6.11.2003

6. Statement made by Shri Shaji Mon P, Group 'D' official dated 6.11.2003."

5. The list of witnesses by whom articles of charge framed against the applicant are proposed to be sustained is as under:

"1. Shri U. Gopinathan, Sr. Audit Officer.

2. Shri Peter Paul, Sr. Auditor.

3. Shri Gopakumaran Nair B, Sr. Auditor.

4. Shri Shaji Mon, Group 'D' official.

5. Kum. Nisha Ayyappan, Clerk/Typist."

6. The charged official did not furnish any list of defence witnesses. However, he has submitted the following documents in his defence.

"1. Copy of a certificate dt. 8.3.04 issued by Inspector of Police, Kochi Harbour Police Station (DE-I)

2. Copy of FIR dt. 4.3.04 on complaint of Shri Satheesh Kumar Unnithan J., Sr. Ar at Kochi Harbour Police Station. (DE-II)
3. Copy of acknowledgment dt. 2.6.03 received for the cover addressed to DA (N) Mumbai. (DE-III)
4. Copy of Gautham Hospital intimation dt. 6.11.03 to the Police Inspector, Harbour Police Station. (DE-IV)
5. Copy of the Bills issued from Gautham Hospital dt. 6.11.03. (DEV)
6. Copy of representation, submitted by Shri Satheesh Kumar Unnithan J., Sr. Ar. dt. 18.10.02, 25.10.02, 5.11.03, 16.09.03. (DE-VI)
7. Copy of Hon. CAT orders dt. 2.9.02, 12.9.02, 17.9.02 and 23.10.02. (DE-VII)
8. Copy of appeal dt. 13.11.03 from Shri Satheesh Kumar Unnithan J. Sr. Ar. to DA(N), Mumbai. (DE-VIII)"

7. After conducting a detailed inquiry, the inquiry officer submitted Annexure A-9 report dated 2.8.2004 and its findings were that in the absence of any direct or indirect evidence, the charges in Articles I and II have not been proved but the charge in Article III was proved as the witnesses have confirmed that the applicant hit Shri U. Gopinathan, Sr. Audit Officer with chappal.

8. Based on the aforesaid inquiry report, the disciplinary authority has imposed the major penalty of dismissal from service vide its order dated 26.8.2004. The appellate authority upheld the aforesaid punishment vide its order dated 18.1.2005. However, the revisional authority vide Annexure A10 order dated 5.1.2006 considered his revision petition dated 15.2.2005 and remitted the case back to the disciplinary authority from the stage of examination/cross-examination of witnesses for non-observance of the prescribed procedure in imposing the penalty. The operative part of the said revisional authority's order is as under:

"3. I have considered the points raised by the Petitioner and also:

(i) Whether the procedure laid down in the CCS (CCA) Rules has been complied with and, if not, whether such noncompliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;

(ii) Whether the findings of the Disciplinary Authority are warranted by the evidence on record and

(iii) Whether, the penalty imposed is adequate, inadequate or severe.

4. I have perused the relevant record and found that the Disciplinary Authority had not followed the procedure prescribed in Rule 14 of CCS (CCA) Rules, 1965. The examination of the charged official by the Presenting Officer is not provided in Rule 14 of CCS (CCA) rules, 1965. I, therefore, set aside the penalty of dismissal from service as imposed on the Petitioner by the Disciplinary Authority and upheld by the Appellate Authority and remit the case back to the Disciplinary Authority for proceeding afresh from the stage of examination/crossexamination of witnesses."

9. Thereafter, inquiry was conducted from the stage of examination/cross-examination of witnesses and the Inquiry Authority submitted the Annexure A-11 inquiry report dated 11.7.2006 rendering the same findings as before, i.e. the first and second charges were not proved but the third charge was proved. A copy of the aforesaid inquiry report was forwarded to the applicant for his defence statement. The disciplinary authority after considering the inquiry report, defence statement and other documents on the file of the inquiry officer passed the Annexure A-12 penalty order dated 21.8.2006 imposing the penalty of dismissal from service upon the applicant. The operative part of the disciplinary authority's order is as under:

"and whereas a copy of the report of the inquiry was sent to Shri Satheesh Kumar Unnithan, Auditor, vide this office letter No. 173/E.3/SKU/Conf/2003 dated 21.7.2006 and he was given such opportunity of making such submissions on the report of the inquiry as he desired. His submissions on the report of the inquiry were received vide his letter dated 7.8.2006. and whereas on careful consideration of the report of the Inquiry Officer and other records of the case, and in the light of the submissions made by Shri Satheesh Kumar Unnithan, Auditor in his

observations on the report of the Inquiry Officer, the undersigned has decided to accept the findings of the Inquiry Officer. The evidence of the witnesses who had actually seen the incident has substantiated the charge. It is well settled that the charges in a departmental inquiry are to be established on the principle of preponderance of probability. There are witnesses to support the charge leveled by the Disciplinary Authority, but no witnesses to prove the Charged Official's contention. The undersigned finds that the procedure under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has been followed and the charged official has been given reasonable opportunity of defence. The charge of striking a senior officer in the office premises is serious and grave misconduct. It reflects adversely on the discipline and decorum to be maintained in the office by a government servant and diminishes the authority and dignity of the superior officer and of the office. Now therefore, after considering the record of the inquiry and the circumstances of the case, the undersigned has come to the conclusion that Shri Satheesh Kumar Unnithan, Auditor, has behaved in a manner unbecoming of a government servant by physically attacking his superior officer in office premises. The undersigned is of the view that the ends of justice would be met if the penalty of dismissal from service were imposed upon him. Accordingly, the above penalty is hereby imposed on Shri Satheesh Kumar Unnithan. A copy of this order be added to the Confidential Rolls of Shri Satheesh Kumar Unnithan."

10. The applicant filed Annexure A-13 appeal dated 30.9.2006 against the said penalty order and the appellate authority, vide Annexure A-14 order dated 31.8.2007, modified the disciplinary authority's order and imposed the lesser penalty of compulsory retirement from service.

11. The applicant has challenged the aforesaid inquiry officer's report and disciplinary authority's order and appellate authority's order in this Original Applications mainly on the ground that the inquiry officer has traveled beyond his jurisdiction and relied upon extraneous documents to come to the conclusion that the 3rd charge against him was proved. In this regard he has invited our attention to the list of documents supplied to him along with the Annexure A-8 memorandum dated 16.1.2004. Along with the said memorandum, there were only six documents as quoted elsewhere in this order. However, in the inquiry report, the

inquiry officer has relied upon following three more documents: "P.E 7 -Harbour Police Station letter dt. 8.3.04 stating that the charged official (CO) came to that station on 6.11.2003 at 1130 to lodge a complaint against Shri Gopinathan. P.E 8 - Final report of Harbour Police Station dt. 31.5.2004 (with Translation in English) on the letter dt. 8.3.04 (P.E 7 refers.) P.E 9 -Letter dt. 13.11.2003 of the C.O. addressed to Director (N) of Audit Mumbai."

12. According to the learned counsel for the applicant Shri P. Ramakrishnan, by relying upon the extraneous documents, the inquiry officer violated the principles of natural justice, observance of which is the basis for all departmental proceedings. The learned counsel for the applicant has also stated that the additional documents relied upon by the inquiry officer has never been produced during the inquiry conducted from 25.3.2006 to 23.8.2006 and the inquiry officer has procured them later before submitting its report on 1.7.2006. In this regard he has relied upon the judgment of the Apex Court in Committee of Management Kisan Degree College Vs. Shambhu Saran Pandey and Ors.-1995 ILLJ SC 625. The relevant part of the said judgment is as under:

"5. On the facts and circumstances, we are of the view that at the earliest the respondent sought for the inspection of documents mentioned in the charge sheet and relied on by the appellant. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural Justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent. If he seeks to cross- examine the witnesses examined in proof of the charge he should be given the opportunity to cross examine him. In case he wants

to examine his witness or himself to rebut the charge, that opportunity should be given. In this case, at the earliest, the delinquent sought for inspection of the documents. It is now admitted in the affidavits filed in this Court and in the letter written by the enquiry officer, that some of the documents were seized by the police after the murder of the Manager of the appellant-institution on 3 1.7.80 for investigation. In that case the respondent was also one of the accused charged for the offences under Section 302 read with Sec.120-B I.P.C. It is now an admitted fact that in Sessions Trial No.228/81 dated 31.7.86 he was convicted for the said offence and was sentenced to undergo imprisonment for life. It would appear that he filed an appeal in the High Court and bail was granted to him."

13. Learned counsel for the respondents Shri K.N. Kumaraswamy Sarma has submitted that all the prosecution documents as well as defence documents have been duly considered by the inquiry officer. He has also stated that the objection of the inquiry officer relying upon extraneous documents have been duly considered by the appellate authority in its order and held that those documents were not given behind the back of the applicant but in course of hearing and objection, if any, should have been registered by the applicant or his defence assistant in the course of the inquiry itself. Shri Sarma has also submitted that no prejudice has been caused to the applicant by the action of the inquiry officer in relying upon the additional documents, existence of which were not denied by the applicant and the statements of the witnesses have been taken in the presence of the applicant and he had the opportunity to examine and cross-examine them. He has also pointed out that the prosecution witnesses have clearly justified that the applicant hit the SAO with Chappal.

14. We have heard the learned counsel for the parties and perused the pleadings very carefully. The article of charge which proved against the applicant in the departmental inquiry was that he attacked Shri U. Gopinathan, Sr. Audit Officer with footwear in the corridor of his office on 6.11.2003 and by using physical violence against his superior officer, he has behaved in a manner unbecoming of a Government Servant thereby violating Rule 3(I)(iii) of CCS (Conduct) Rule 1964. There were eye witnesses to aforesaid alleged incident and they confirmed their statement given earlier during the proceedings before the inquiry officer.

Therefore, there is no doubt that the 3rd charge against the applicant was proved. Assaulting a superior officer in the office is a very serious breach of discipline and misconduct which cannot be taken lightly. Therefore, there is no doubt that the applicant deserves the severest punishment of dismissal from service. The appellate authority, however, in his wisdom, reduced the punishment of dismissal from service to that of compulsory retirement.

15. In the case of M.P. Electricity Board Vs. Jagdish Chandra Sharma -2005 (3) SCC 401 the Apex Court has considered a similar case and held as under:

"Here it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved."

15.1 Again in Hombe Gowda Educational Trust and Anr. Vs. State of Karnataka and Ors. -2006 SCC LandS 133, the Apex Court has held as under:

"19. Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as to shock one's conscience."

15.2 In Union of India Vs. Parma Nanda JT 1989 (2) SC 132, B.C. Chaturvedi Vs. Union of India JT 1995 (8) SC 65 and other subsequent judgments the Apex Court has clearly held that Courts are not entitled to interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence

even if some of it is found to be irrelevant and extraneous. In the case of the *Parma Nanda* (supra), the Apex Court held as under:

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In the case of *B.C. Chatuvedi* (supra) the Apex Court's findings were as under:

"12. 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 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 of 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 reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held 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."

16. Now, the question is whether the inquiry officer was justified in relying on documents which were other than those which have been listed by the disciplinary authority by which the articles of charges were proposed to be sustained. The Apex Court in i) Union of India and Ors. Vs. Mohd. Ramzan Khan -1991 (1) SCC 588 ii) Managing Director, ECIL, Hyderabad and Ors. Vs. B. Karunakar and Ors. - 1993 (4) SCC 727 and iii) South Bengal State Transport Corpn. Vs. Sapan Kumar Mitra and Ors. 2006 SCC (LandS) 553 etc. has considered the question of non-furnishing inquiry report to the delinquent employee. The Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad and Ors. (supra) has looked into the question of effect on the order of punishment when the report of the inquiry officer has not been furnished and held that the Court should not interfere with the order of punishment if non-supply of report would have made no difference to the ultimate findings. The operative part of the judgment is as under:

"30.(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the

ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to, stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

17. Applying above said doctrine of prejudice, we have to see impact of additional documents relied upon by the inquiry officer but copy of which have not been furnished to the applicant before or during the inquiry proceedings. They were the documents regarding the complaint made by the applicant against Shri U. Gopinathan, Sr. Audit Officer before the Harbour Police Station and the applicant's letter addressed to the Director (N) of Audit, Mumbai. They were not the documents relied upon by the inquiry officer to hold that the 3rd charge against the applicant was proved. By making reference of these letters, in the inquiry report no prejudice has been caused to him.

18. In South Bengal State Transport Corpn. (supra), the Apex Court held as under:

"It is well settled that the Inquiry Officer and disciplinary authority are the sole judges of facts. Adequacy and reliability of the evidence is not a matter that can be canvassed before a High Court in a writ proceeding under Article 226 of the Constitution (See: State of A.P. and Ors. v. S. Sree Rama Rao, AIR (1963) SC 1723).562"

19. In view of the above position, the OA is dismissed. There shall be no order as to costs.

