

Krishan Chander Vs. Union of India Through Foreign Secretary, New Delhi and Another

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Nov-01-2011

Judge : V.K. Bali, Chairman & the Honourable Dr. Ramesh Chandra Panda, Administrative Member

Appeal No. : OA No. 807 of 2011 MA No. 554 of 2011

Appellant : Krishan Chander

Respondent : Union of India Through Foreign Secretary, New Delhi and Another

Advocate for Def. : Shri. R. N. Singh

Advocate for Pet/Ap. : For the Applicant: Suresh Tripathy, Advocate. For the Respondents: R.N. Singh, Advocate.

Judgement :

DR. RAMESH CHANDRA PANDA, MEMBER (A):

1. By this OA, Shri Krishan Chander, the applicant herein, is assailing the order dated 16.04.2008 (Annexure-A) whereby the respondent while setting aside the applicant's compulsory retirement from service, have taken recourse to place him under deemed suspension with effect from 01.05.2005 until further orders and have not allowed him to join service.

2. This is the second round of litigation before the Tribunal. In OA No.922/2005 decided by this Tribunal on 20.10.2005, the applicant challenged the major penalty of compulsory retirement from service for the alleged misconduct committed by him when he was working in the office of the Consulate General of India at Houston, USA. The details of the case are available in the orders of the Tribunal in OA No.922/2005. Hence, for brevity, relevant facts are recapitulated here. The applicant was charged with three charges; findings of the Inquiry Officer (IO) were in holding Charge No.2 as not proved and other two charges viz. Charge No.1 and as proved, applicant submitted his representation on the IO's report and the proposal of the Disciplinary Authority was intending to impose the "penalty of reduction to a lower stage by two stages in the time scale of pay for three years without effecting his retirement", and ultimately agreeing with the advice of UPSC, the applicant was inflicted the punishment of "compulsory retirement from service". On consideration of the facts of the case and guided by the catena of judgments of the Supreme Court, the Tribunal disposed of the OA in following terms:-

"8.Coming to the conclusion whether the punishment awarded was disproportionate, it is to be noted that various allegations levied in the departmental proceedings revealed that in the past, the conduct of the applicant must have been very fair and just that is why he has been selected to be sent to the USA on this important post. The past conduct of the applicant was also not discussed anywhere by the disciplinary authority or the Enquiry Officer etc. The scope of the judicial review in the penalty cases is very limited to the extent, namely, when the order of penalty was contrary to law, or the relevant factors were not considered or irrelevant factors were considered or the decision was one, which no reasonable person could have taken. If these factors exist in the penalty order, the Court/Tribunal can interfere with the findings of the disciplinary authority. In the present case, it is clearly indicated that the view on the quantum of penalty taken by the disciplinary authority has not been taken into account by the UPSC or the competent authority imposing the final penalty on the applicant as much as that the reasons as to why severer penalty on the applicant other than recommended by the disciplinary authority be imposed, has not been mentioned in the penalty order. Similarly, the UPSC has not taken into account the penalty order recommended by the disciplinary authority. It is also a fact to be considered that

the competent authority did not provide any opportunity to the applicant before imposing a severe penalty. All the proceedings were conducted by the Enquiry Officer or the disciplinary authority thereafter the lower penalty was recommended to be imposed on the basis of their findings but no new factor was brought on record to justify the severer penalty of compulsory retirement from service which was not recommended or intended to be recommended by the disciplinary authority as is evident from the counter reply of the respondents. Thus, to this extent, there is a scope for judicial review by this Tribunal.

9. In the light of the above discussion and the catena of judgments of the Apex court and the case law quoted above, we are of the confirmed view that in the absence of reasons, not having been recorded and the basis being the same for the intended penalty to be imposed as suggested by the disciplinary authority and the recommendations of the UPSC (which is not having a binding force on the disciplinary authority) and the competent authority imposing the final penalty on the applicant, the Tribunal is bound to take a judicial review of the above factors. Hence, the penalty as recommended by the disciplinary authority as mentioned in paragraphs 14 and 15 of the counter reply would be sufficient to meet the ends of justice, i.e., reduction to a lower stage by two stages in a time scale of pay for three years without effecting the increments of Shri Krishan Chander, Section Officer, the applicant (para 15 of the counter reply).

10. In the result, OA stands disposed of accordingly with no order as to costs.”

3. The respondents challenged the above order before the High Court of Delhi in WP(C) No.12528-30/2007 with CMA No.9639/2006 which was decided on 21.08.2007 by quashing the major penalty of compulsory retirement and directing the Disciplinary Authority to take fresh view after supplying copy of the recommendation of the UPSC and getting his response in the matter. The High Court further directed the Petitioner in the Writ to allow the respondent therein to join the services. It is appropriate to take the extract of the High Court order which reads thus:-

“The admitted facts which appear on record in this case are that after holding inquiry and receiving the inquiry report, the disciplinary authority in the Ministry of

External Affairs has decided to impose the “penalty of reduction to lower stage by two stages in the time scale of the pay for three years without effecting his increment”. The case records were forwarded to UPSC for their concurrence on 17.08.2004. The UPSC conveyed its advice vide letter dated 12.1.2005 suggesting the penalty of “compulsory retirement from service.” In view of this advice of the UPSC, order of penalty of compulsory retirement from service was passed against the respondent herein. The respondent challenged this order before the Tribunal and the application filed by the respondent is allowed vide judgment dated 12.4.2005, inter alia on the ground that non supply of copy of the UPSC advice at pre decisional stage would amount to infraction of principles of natural justice.

Learned counsel for the respondent submits that this issue is no more res integra and has been settled by the Supreme Court in various judgments, including *Yoginath D. Bagde v. State of Maharashtra*, AIR 1999 SC 3734. He further points out that relying upon the aforesaid judgment, a Division Bench of this Court in *R. P. Singh v. Union of India and Ors.*, 2007 III AD (DELHI) 703 has held that it is necessary to confront the delinquent employee with such an advice of the UPSC before acting upon the advice. Learned counsel for the petitioner could not dispute this position. However, her submission is that the case be referred back to the disciplinary authority for taking appropriate view in the matter.

In our view, this is not a case which calls for our interference with the impugned judgment of the learned Tribunal and we confirm the conclusion arrived at by the learned Tribunal holding that imposing major penalty of compulsory retirement upon the respondent with effect from 1.5.2005 is untenable in law and is, therefore, quashed.

However, it would be open to the disciplinary authority to take fresh view in the matter after supplying copy of the recommendation of the UPSC and giving adequate opportunity to the respondent to respond to the same.

Since the order of compulsory retirement is quashed, the petitioner shall allow the respondent to join the services.

This petition is disposed of.”

4. The respondents in the present OA, not satisfied with the above directions of the High Court, carried the matter to Hon'ble Supreme Court. After hearing the counsel for both parties in Special Leave to Appeal on 29.02.2008, Hon'ble Supreme Court refused to grant interim order. When the CA Nos.3367-3370 of 2008 came up on 15.01.2008, the Hon'ble Apex Court granted 8 weeks time to file statement of case and failing compliance, the appeal would stand dismissed, for non prosecution without further orders. On 15.01.2010/12.03.2010, the Hon'ble Supreme Court finding non-compliance of the above directions dismissed the appeals. In the meantime, the applicant moved the Hon'ble Supreme Court in SLA (Civil) No.16707/2010 which was decided on 8.07.2010 in the following terms:-

“The Special Leave Petition is dismissed as withdrawn.

The petitioner is at liberty to avail any remedy questioning the order of suspension, in accordance with law.”

Thus, the applicant is before the Tribunal in the instant OA challenging his deemed suspension order dated 16.04.2008 issued by the respondents giving effect from 01.05.2005.

5. We heard Shri Suresh Tripathy, learned counsel for the applicant and Shri R. N. Singh, learned Senior Central Government Counsel representing the respondents.

6. The Counsel for the applicant would contend that the Inquiry Officer (IO) held Charge No.2 as not proved and the Charge No.1 and 3 as proved which was accepted by the Disciplinary Authority. But the penalty remained thorny issue in the sense that the Disciplinary Authority opined to impose the punishment of reduction to a lower stage by two stages in the time scale for a period of three years without any effect on his increments, whereas the UPSC advised the penalty of compulsory retirement from service. The applicant was inflicted the punishment of compulsory retirement which was quashed by the Tribunal but directed that the punishment of reduction to a lower stage by two stage in time scale of pay for three years with no effect on increment would be proportionate. Shri Tripathy's contention is that the litigation went in favour of the applicant in the Hon'ble High Court where non-supply of UPSC report was treated as illegality and while

quashing the punishment of compulsory retirement, the matter was remitted to the Disciplinary Authority to take a fresh view in the matter of penalty and directed the respondents to allow the applicant to join services. Respondents have also failed in their efforts before the Supreme Court. He would contend that the directions of the High Court having been final, the respondents could not have put the applicant under deemed suspension. It was not open for the Disciplinary Authority to start fresh enquiry. Highlighting that the action of the respondent was contrary to the direction of the High Court. The SLP and Civil Appeal having been dismissed by the Hon'ble Apex Court, the respondent should be directed to supply the UPSC report to the applicant and on receipt of his representation the respondents would decide only the quantum of punishment. He urges that OA should be allowed directing the respondents to revoke applicant's suspension and permit him to join his service.

7. Controverting the above contentions advanced by the counsel for the applicant, Shri R. N. Singh, learned counsel for the respondents would contend that in compliance of Hon'ble High Court order dated 21.08.2007, the respondents passed the order dated 16.04.2008, whereby the penalty order of compulsory retirement was set aside, and in order to take steps as per the High Court order the applicant was placed under deemed suspension w.e.f. 01.05.2005 i.e. the date of compulsory retirement from service until further orders, under Rule 10 (4) of CCS (CCA) Rules. The applicant is being paid subsistence allowance as per the rules. In respect of the dismissal for default and non-prosecution of Civil Appeal before the Hon'ble Supreme Court, Shri Singh submits that the respondents have moved IA in the matter on 15.03.2011 to revive/restore the CA No.3367-3370/2008 in the Supreme Court. Shri R. N. Singh would further contend that non-supply of the advice tendered by the UPSC at the pre-decisional stage does not amount to the violation of the principles of natural justice as held by the Hon'ble Apex court in the case of Union of India versus T. V. Patel[2007-AIR (SCW)-2671]. Another contention advanced by Shri R. N. Singh relates to the issue that this Tribunal and High Court quashed the penalty order of compulsory retirement purely on technical grounds and the applicant's case has not been dealt on merits. It is stated that the Disciplinary Authority, at the time of referring the applicant's disciplinary case for advice, tentatively contemplated milder punishment which

was neither communicated to nor imposed on the applicant. As the applicant has been found guilty of commission of grave misconduct of misappropriating the Government funds, the Disciplinary Authority decided to impose the penalty of compulsory retirement. Shri Singh submitted that impugned order was passed by the competent authority in accordance with the relevant rules, and urged to dismiss the OA.

8. Having heard the contentions of the rival parties, with the assistance of their counsel, we perused the pleadings as well. The controversy is in narrow compass. Is the deemed suspension legally tenable?

9. Pursuant to the refusal of the Hon'ble Supreme Court in the order dated 29.02.2008 to grant ad interim direction to stay the judgment of High Court, the respondents have passed the impugned order dated 16.04.2008, which is reproduced below:-

ORDER

WHEREAS Shri Krishan Chander, Section Officer, was compulsorily retired from service with effect from 1 May 2005 (forenoon) as a result of departmental proceedings initiated against him under Rule 14 of the CCS (CCA) Rules, 1965, vide order dated 12 April, 2005;

2. and WHEREAS the Hon'ble High Court of Delhi vide Order dated 21 August 2007 in WP (C) 12528-30/2007 and CM Appl. No.9639/2006 has held that imposition of major penalty of compulsory retirement upon Shri Krishan Chander with effect from 1.5.2005 is quashed and has directed that it would be open to the disciplinary authority to take a fresh view in the matter after supplying copy of the recommendation of the UPSC and giving adequate opportunity to Shri Krishan Chander to respond to the same;

3. and WHEREAS the Hon'ble Supreme Court while hearing the Special Leave Petition filed by the Ministry in CC 2977-2980/2008 dated 29.2.2008 has refused to grant ad-interim order;

4. NOW, THEREFORE, the President hereby-

(i) sets aside the said order No.Q/Vig/842/16/2000 dated 12 April 2005 of compulsory retirement from service imposed on Shri Krishan Chander, Section Officer;

(ii) directs that further steps be taken as per the aforementioned order dated 21 August 2007 of the High Court of Delhi;

(iii) directs that the said Shri Krishan Chander shall, under sub-rule (4) of Rule 10 of the CCS (CCA) Rules, 1965, be deemed to have been placed under suspension with effect from 1.5.2005 (FN) i.e. the date of compulsory retirement from service and shall continue to remain under suspension until further orders.

5. This order is subject to the outcome of the Special Leave Petition filed in the Supreme Court against the said Order dated 21 August 2007 of the High Court of Delhi and any other order(s) of Law Courts in petitions to be filed in the matter.”

Before, we dwell on the controversy, it is to be noted that respondents’ move against the order of the High Court in the Civil Appeal Nos. 3367-3370/2008 has been dismissed for non prosecution; and the IA moved by them is yet to be admitted in the Apex court. In another case moved by the applicant (SL (Civil) No.16707/2007) the Apex court while dismissing the same on 08.07.2010 granted liberty to avail any remedy questioning the order of suspension in accordance with law. In the said backdrop, we are considering the issue raised by the applicant.

10. The applicant has been placed under deemed suspension vide order dated 16.04.2008 by invoking the provisions under Sub Rule (4) of CCS (CCA) Rules, 1965, which reads thus:-

“(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from

the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.”

11. The above provision is absolutely clear to mention that when a penalty of compulsory retirement is set aside consequent to the judgment of a Court of Law, the Disciplinary Authority on consideration of the circumstances of the case, if decides to hold further enquiry would place the Government servant under suspension. In the present case, the Hon'ble High Court in its judgment has clearly directed that the Disciplinary Authority to take a fresh view in the matter after supplying copy of the recommendation of the UPSC and giving adequate opportunity to the respondents to respond to the same. The direction issued to the Disciplinary Authority is simple and unambiguous. The fresh view is in relation to the major penalty of compulsory retirement imposed by the Disciplinary Authority on the applicant which was quashed by the High Court holding the view that non supply of UPSC recommendation was irregular and illegal. The Hon'ble High Court has concurred with the Tribunal order in the sense it has observed “we confirm the conclusion arrived at by the learned Tribunal holding that imposing major penalty of compulsory retirement upon the respondent with effect from 1.5.2005 is untenable in law and is, therefore, quashed.” The clause “to take fresh view” should be read in conjunction with the entire order that has been passed. Fresh view does not connote fresh inquiry. The invocation of Rule 10 (4) of CCS (CCA) Rules is unwarranted. The penalty order alone has been quashed and set aside. Neither the charge memo nor the IO's findings have been quashed or set aside. The competent authority has not been directed to conduct a fresh enquiry against the applicant. Hence, to the extent of placing the applicant under deemed suspension, the impugned order passed by the competent authority dated 16.04.2008 is not in accordance with the direction issued by the Hon'ble High Court. It must be mentioned here that the compulsory retirement having been quashed the direction was to the respondents to allow the applicant in the present OA to join the services. By not allowing the applicant to join the services but to

place him under deemed suspension right from 1.05.2005 is also the violation of the Hon'ble High Court's direction.

12. It is noted that the details of the case has been referred to by the Tribunal in its judgment passed on 20.10.2005 in which the relevant issues have been discussed on merits. It was found that the punishment imposed was glaringly disproportionate to the proved misconduct and non supply of the UPSC recommendations being an additional irregularity, the punishment was modified by the Tribunal to that of the conclusions which the competent Disciplinary Authority reached before sending the same to the UPSC for views i.e. the reduction to a lower stage by two stages in a time scale of pay for 3 years without affecting the increments of the applicant. The Hon'ble High Court of Delhi has taken the view that non supply of the UPSC recommendation is illegal and, therefore, the penalty order has been quashed directing the respondents to allow the applicant to join the service. The clear intention of the Hon'ble High Court direction is (i) to allow the applicant to join the service, (ii) serve on him the copy of the UPSC recommendation and (iii) thereafter, on receipt of applicant's response, to pass appropriate orders indicating the proportionate quantum of punishment on the basis of the proved misconduct. By not doing so, the order of the competent authority dated 16.04.2008 has violated the directions issued by the High Court in its judgment dated 21.08.2007.

13. The respondents have relied on the judgment of Hon'ble Apex Court in the matter of T. V. Patel's case (supra) to state that supply of UPSC recommendation along with the final order would suffice and meet the requirements of the principles of natural justice. On the other hand, we have come across the latest judgment of the Hon'ble Supreme Court in the case of Union of India and Others versus S. K. Kapoor (2011-STPL(WEB)-277-SC). In the said judgment dated 16.03.2011, the Hon'ble Apex Court has distinguished its own decision in T. V. Patel's case (supra) and held in following terms:-

"11. There may be a case where the report of the Union Public Service Commission is not relief upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee.

However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice.

While passing the above order, the Hon'ble Apex Court has clearly stated that the decision in S. N. Narula versus Union of India and Others (Civil Appeal No.642 of 2004 decided on 30.01.2004) was prior to the decision in T.V. Patel's case (supra) and held that the decision in S. N. Narula's case having not been noted in T. V. Patel's case (supra), the latter decision was per incuriam and the decision in S. N. Narula's case was binding on the subsequent bench of Hon'ble Apex court of equal strength. In view of the clear findings and distinguishing the judgment in T. V. Patel's case (supra) the Apex Court has reiterated its stand taken in S. N. Narula's case (supra). Thus, we follow the dicta of the Hon'ble Supreme Court in S. K. Kapoor's case (supra) and hold that non supply of UPSC recommendations to the applicant and not getting his response on the same before taking a final decision being violative of the principles of natural justice, is positively illegal and irregular in decision making process in the quasi judicial proceedings like the present disciplinary case.

14. Having considered the facts and circumstances of the case, we are of the considered opinion that (i) the orders in respect of Paragraph 4 (i) and (ii) are proper compliance of the High Court direction and hence legally sustainable but (ii) the Paragraph 4 (iii) of the impugned order dated 16.04.2008 having put the applicant under deemed suspension under Rule 10 (4) of CCS(CCA) Rules, is illegal in view of the violations of the directions issued by the High Court in Writ Petition No. 12538/2007 directing the applicant to be allowed to join his service. In view of our considered opinion, we quash and set aside only the Paragraph 4 (iii) of the impugned order dated 16.04.2008 and direct the respondents to allow the applicant to join services forthwith. Consequently, the Competent Authority would proceed in the disciplinary case in accordance with the directions of the Hon'ble High Court from the stage of supplying a copy of the recommendation of the UPSC to the applicant and on receipt of his representation to pass final penalty order in the disciplinary case with regard to the quantum of punishment, keeping in view the proportionality angle. The above exercise shall be completed as

expeditiously as possible but preferably within a period of three months from the date of receipt of certified copy of this order.

15. Resultantly, in terms of our above directions, the OA having merits is allowed. Our present order, however, will be subject to the judgment of Hon'ble Supreme Court of India in case the IA moved by the respondents is allowed and the Civil Appeals are decided. There is no order as to costs.

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