

Banarassi Prasad Vs. Union of India Through Secretary Ministry of Urban Development Nirman Bhawan, New Delhi and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-17-2012

Judge : The Honourable Mr. M.L. Chauhan, Member (J) & the Honourable Mrs. Manjulika Gautam, Member (a)

Appeal No. : O.A.No.1318 of 2011

Appellant : Banarassi Prasad

Respondent : Union of India Through Secretary Ministry of Urban Development Nirman Bhawan, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Sanjay K. Das, Advocate. For the Respondents: Prashant Khatana for Pramod Kumar, Advocates.

Judgement :

ORAL:

M.L. Chauhan:

1. The applicant has filed this OA against the impugned orders dated 15.3.2010 (Annexure A-1) and dated 8.10.2010 (Annexure A-2) whereby on departmental proceedings the penalty of censure was imposed upon him and also the period of absence was treated as dies-non.

2. Briefly stated, facts of the case are that the major penalty proceeding was initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1964 (for short 'Rules 1964') by issuing a charge sheet dated 8.10.2002. Inquiry was held and the charges were partly proved in the inquiry proceedings. Not agreeing with the findings given by the inquiry officer, the disciplinary authority recorded 'note of disagreement' and ultimately after considering the reply of the applicant, imposed the penalty of censure and declared the absent period from 19.12.2001 to 24.6.2002 as dies-non without forfeiting past service. The appeal filed by the applicant was also rejected by the appellate authority. It is these orders, which are under challenge before this Tribunal.

3. Notice of this application was given to the respondents, who have filed their reply affidavit thereby justifying their action.

4. We have heard the learned counsel for the parties and perused the material placed on record.

5. Learned counsel for applicant by drawing our attention to the order passed by the appellate authority dated 8.10.2010 argued that the appellate authority has passed the cryptic order without giving any reason, and the contention raised by the applicant that while disagreeing with the findings recorded by the inquiry officer, the disciplinary authority has taken into consideration the documents, which were not part of the inquiry proceedings for the purpose of sustaining the articles of charge, besides the other points were neither considered nor have any findings been recorded, qua this aspect. In order to appreciate the aforesaid contentions raised by the learned counsel for applicant, it will be useful to quote the order passed by the appellate authority dated 8.10.2010 (Annexure A-2), which thus reads:-

ORDER

Sh. Banarsi Prasad JE(E) attached to ECD-I has filed an appeal dt.22/7/2010 against the orders passed by the Disciplinary Authority SE(E) DCEC VI on 15/3/10 on a disciplinary Proceeding Conducted under Rule 14 of CCS (CCA) Rules 1965.

I have considered the appeal and after careful examination of the record, facts of the case and contents in the appeal submitted by the applicant. Undersigned has come to a conclusion that the penalty imposed by the Disciplinary Authority was with due consideration and considering the pros and cons of the case. Therefore, I do not agree with the appeal preferred by Sh. Banarsi Prasad JE(E) forwarded by him vide his letter no.nil dated 22/7/2010, for any revision in the speaking order issued by the Disciplinary Authority vide his order No.7(1)/DCEC VI/EI/38 dt.15/3/10.

I order accordingly.”

6. Thus, as can be seen from the appellate order, as extracted above, the appellate authority has relied upon the findings given by the disciplinary authority so far as the imposition of penalty is concerned and has not given any other finding on the aforesaid contentions raised by the applicant. We have also perused the grounds of appeal filed by the applicant before the appellate authority on 22.7.2010 (Annexure A-8) wherein he has specifically raised the contention that the disciplinary authority has relied upon the Executive Engineer's letter dated 9.7.2002, which was not part of the charge sheet, besides OM dated 20.11.2009 and also other letter dated 28.10.2009 as also the reply furnished by the Executive Engineer vide letters dated 30.0.2009, 1.10.2007 and 25.4.2008.

7. We have given due consideration to the submissions made by the learned counsel for applicant and we are of the view that the applicant has made out a case for remitting the OA to the appellate authority to decide the appeal of the applicant afresh, as admittedly the appellate authority has not decided the appeal in terms of the provisions contained in Rule 27 (2) of the Rules 1964. At this stage, it will be useful to quote the relevant portion of Rule 27 (2) of the Rules 1964, which thus reads:-

“27 (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

(i) conforming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases.”

8. In view of this, the appellate authority while disposing of the appeal is required to apply his mind with regard to the factor enumerated in sub-Rule 2 of Rule 27 of the Rules 1964. There is no indication in the impugned order dated 8.10.2010 that the appellate authority was satisfied as to whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice or whether the findings are justified in the light of the contentions raised by the applicant whereby he has stated that the disciplinary authority has taken into consideration the document, which was not part of the listed documents while imposing the punishment.

9. As already stated above, it seems that the appellate authority only applied his mind to the requirement of clause (c) of Rule 27 (2) of the Rules 1964, viz. whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

10. In the facts and circumstances of the present case, there being no compliance of Rule 27 (2) of the Rules 1964 the impugned order passed by the appellate

authority dated 8.10.2010 is liable to be quashed, which is accordingly quashed and set aside. Matter is remitted to the appellate authority to pass fresh order keeping in view the mandate of Rule 27 (2) of CCS (CCA) Rules, 1964 and the contentions raised by the applicant in his appeal and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

11. With this, the OA shall stand disposed of. No costs.

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