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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-30-2012

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

Appeal No. : O.A.No.2470 of 2010

Appellant : Ramesh Kumar Gupta

Respondent : Delhi Development Authority (Through Its Vice-chairman) Vikas Sadan, Ina Market New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Sidharth Joshi, Advocate. For the Respondents: Karunesh Tandon, Advocate.

Judgement :

ORAL:

M.L. Chauhan:

1. The applicant has filed this OA, thereby praying, inter alia, for quashing the impugned order dated 14.7.2010 (Annexure A-1) whereby on departmental proceedings, the penalty of reduction to a lower post of Peon for a period of five years and on promotion after the expiry of the said period, the period of reduction

shall operate to postpone future increments of pay was imposed upon the applicant and it was further directed that the applicant shall regain his original seniority in the grade of LDC. However, during the pendency of the OA, the appeal filed by the applicant was rejected vide order dated 24.2.2011 (page 87 of the paper book) and ultimately the applicant filed amended OA, thereby praying for quashing of the aforesaid order.

2. Briefly stated, facts of the case are that the applicant while working as LDC in Speed Post Section, DDA during the year 2005 was found responsible for removing lease deed papers from three envelopes, which were duly pasted by LAB (Rohini) for sending to the respective addressee/allottees through Speed Post. On the basis of these allegations, the charge sheet was issued to the applicant and ultimately the inquiry was initiated, which led to imposition of the aforesaid penalty order. As already stated above, the order of punishment, as imposed by the disciplinary authority, was also upheld by the appellate authority by rejecting the appeal vide order dated 24.2.2011.

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 while drawing our attention to the order passed by the appellate authority dated 24.2.2011 argued that the appellate authority has passed the cryptic order without giving any reason, inasmuch as one of the grievances raised by the applicant was that the inquiry officer could not have relied upon the photocopy of the notes dated 1.3.2006 and 17.3.2006 by the Deputy Director (LAB) Rohini without examining the said witness and giving opportunity to the applicant to cross-examine the said witness. Similarly, the disciplinary and appellate authorities could not have imposed the penalty, which is in violation of the principles of natural justice. In order to appreciate the aforesaid contentions raised by the learned counsel for applicant, it will be useful to quote relevant portion of the order dated 24.2.2011 passed by the appellate authority, which thus reads:-

“and whereas the undersigned being the appellate authority after having gone through the appeal filed by the appellant, order passed by the Disciplinary Authority and facts on record has observed that the inquiry officer has proved the charge. The charged official had also accepted before the Dy. Director concerned that the documents were removed from the envelope by him. Considering all these facts, I don’t see any reason to interfere with the penalty order passed by the Disciplinary Authority.

Now therefore, the undersigned being the appellate authority in exercise of powers conferred upon me under the said regulations has observed that the charged official had accepted before the Dy. Director concerned that the documents were removed from the envelope by him and has come to the conclusion that there is no reason to interfere with the penalty order passed by the Disciplinary Authority. Thus, the appeal is rejected.”

6. 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 back to the appellate authority to decide the appeal of the applicant afresh, as the appellate authority has not given any finding on the aforesaid aspects as well as whether there is violation of principles of natural justice, which have resulted into the failure of the justice and whether the findings of the disciplinary authority were warranted by the evidence on record.

7. In similar circumstances, this Tribunal in Shri Banarassi Prasad v. Union of India and others (OA-1318/2011) decided on 17.1.2012 has made the following observations in paragraphs 7 to 10, which thus read:-

“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."

8. The ratio, as laid down by this Tribunal in the aforesaid case, relevant portion of which has been reproduced hereinabove, is squarely attracted in the present case, although in this OA the disciplinary proceedings were initiated under DDA Conduct, Disciplinary and Appeal Regulation, 1999 and not under CCS (CCA) Rules, 1964 but the principle, as enumerated in the CCS (CCA) Rules, 1964, is attracted in the facts and circumstances of this case, especially when it is not disputed before us that provisions of CCS (CCA) Rules, 1964 have also been made applicable to the employees of DDA in case there are no specific provisions to that effect in DDA Conduct, Disciplinary and Appeal Regulation, 1999. We wish to observe here that it has not been brought to our notice whether there are similar provisions in DDA Conduct, Disciplinary and Appeal Regulation, 1999, as envisaged under Rule 27 of CCS (CCA) Rules, 1964. Accordingly, we have applied the aforesaid principle, which shall be kept in mind by the appellate authority while deciding the appeal of the applicant and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. Order dated 24.2.2011 passed by the appellate authority shall stand quashed and set aside.

9. With these observations, the OA shall stand disposed of. No costs.