

Kamlesh Vs. Mcd and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-20-2012

Judge : The Honourable Mr. Shailendra Pandey, Member (a) & the Honourable Dr. K.B. Suresh, Member (J)

Appeal No. : O.A.No.356 of 2011

Appellant : Kamlesh

Respondent : Mcd and Others

Advocate for Pet/Ap. : For the Applicant: M.K. Bhardwaj, Advocate. For the Respondents: Rajinder Khatter, Advocate.

Judgement :

Shailendra Pandey, Member (A):

1. In this OA, the applicant is aggrieved by the action of the respondents in deciding the suspension period as dies-non vide order dated 28.06.2010 (copy of which is stated to be not received by the applicant), communicated vide order dated 09.07.2010 issued in compliance of the directions of this Tribunal dated 02.02.2010, passed in OA No.3024/2009.

2. The brief facts of the case are that the applicant [a widow], who was working as a School Attendant in the MCD School, Mangolpuri, Najafgarh Zone, New Delhi, was implicated by her real brother in a criminal case under Section 323/341/34

IPC. She was placed under suspension from 28.12.1996, which was revoked on 2.11.1999 vide order dated 3.11.1999. The learned Metropolitan Magistrate punished the applicant under Sections 323 and 341. The applicant challenged the said order in appeal before the appellate Court, which was allowed and the applicant was acquitted vide order dated 4.03.2004. After the acquittal in the criminal case, the applicant made a representation for treating her suspension period as spent on duty but the respondents vide order dated 8.2.2006 (Annexure A-1A) restricted the payment for the suspension period to the amount already drawn and directed that this period need not be regularized by granting leave due to her involvement in the criminal case. An appeal preferred by the applicant on 27.04.2006 was rejected by the respondents on 29.08.2007 (Annexure A2) by confirming the decision of the disciplinary authority. Thereafter, the applicant filed OA No.3024/2009 before this Tribunal challenging the aforesaid orders of the respondents dated 8.02.2006 and 29.08.2007. A Coordinate Bench of this Tribunal disposed of the OA with the following directions:

“8. In the result, for the foregoing reasons, impugned orders are set aside. The matter is remitted back to the appellate authority to reconsider the claim of applicant for treatment of the suspension period as spent on duty at par with Satbir, by passing a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. No costs.

9. Before parting with, it is pertinent to mention that in case of acquittal from a criminal case the same has to qualify for pension as ruled by the Apex Court in N.V. Subba Rao v. Corporation Bank, 2006 (13) SCALE 287.”

3. In compliance thereof the Appellate Authority passed an order dated 09.7.2010 treating the suspension period of the applicant as not spent on duty except for pensionary benefits. Hence, the present OA has been filed seeking the following reliefs:

to quash and set aside the impugned order dated 9.7.2010.

to quash and set aside the order dated 8.2.2006 and direct the respondents to treat the suspension period w.e.f. 28.12.1996 to 2.11.1999 as spent on duty for all

purposes including grant of arrears.

To direct the respondents to grant pay and allowances to the applicant of the suspension period with 12% interest.

To direct the respondents to give to the applicant same treatment as given to similarly placed persons Sh. Satbir s/o Sh. Surtay.

4. The learned counsel for the applicant has submitted that the applicant has been discriminated against in the matter of treatment of her suspension period as in the case of one Satbir, who was identically situated and was acquitted on appeal, on benefit of doubt, an order was passed on 23.1.2007 by the respondents in appeal, in terms of which the period of suspension was regularized as spent on duty for all intents and purposes. Further, it is submitted that in spite of the directions of this Tribunal, the appellate authority, in the impugned order dated 09.07.2010, has not mentioned the case of Satbir, and has wrongly treated the suspension period as not spent on duty and that the impugned order is a non-speaking order and liable to be quashed and set aside.

5. The respondents have opposed the OA and have stated that the applicant was acquitted by giving her the benefit of doubt and that the suspension period of the applicant has been decided as per the provisions of law and rules, and that there is no violation of the principles of natural justice. It is also stated that an employee who has been given some benefit to which he was not entitled by itself cannot be a basis for claiming the same benefit as no equality can be claimed on the basis of an illegality. In this view of the matter, it is prayed that the OA may be dismissed.

6. We have heard the counsel for both the parties and have been through the pleadings on record.

In R.P. Bhatt V. Union of India [(1986) 2 SCC 651] the Hon'ble Supreme Court opined:

"The word "consider" in Rule 27(2) implies "due application of mind". It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if

not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

It is trite law that when an appellate authority acts as per CCS (CCA) Rules, 1965 the order passed by him should contain reasons dealing with all the contentions raised in appeal, as ruled by the Apex Court in *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and others*, 2009 (4) SCALE 169.

7. In the present case, in compliance of this Tribunal's directions, the Appellate Authority passed an order dated 09.7.2010, the relevant parts of which are extracted below:

"Whereas she preferred an application before the Hon'ble CAT vide OA No.3024/2009 against the orders of the Disciplinary Authority dated 16.1.2006 and the Appellate Authority dated 1.8.2007 issued and notified on 8.2.2006 and 29.8.2007 respectively. The Hon'ble CAT vide orders dated 2.2.2010 has set aside the impugned orders and remitted back the matter to the Appellate Authority to

reconsider the claim of the applicant and treatment of suspension period as spent on duty at par with Satbir by passing a reasoned and speaking order within a period of three months from the date of receipt of a copy of the order.

and

Now, therefore, Commissioner the Appellate Authority reconsidered the entire facts relating to the case has ordered that the pay and allowances of Smt. Kamlesh Dabas, School Attendant pertaining to her suspension period be restricted to what she has already drawn and her suspension period be treated as not spent on duty except for pensionary benefits, vide his orders dated 28.6.2010.

This is issued and notified for information and necessary action by all concerned.”

A perusal of the impugned order shows that nothing has been mentioned about the case of Satbir despite this being raised by the applicant and despite a specific direction to the appellate authority to reconsider the claim of applicant for treatment of the suspension period as spent on duty at par with Satbir, by passing a reasoned and speaking order.

8. In view of the above, in the interest of justice, we remit the matter back to the respondents to reconsider the request of the applicant afresh, and pass a reasoned and speaking order with reference to her suspension period after dealing also with the case of Satbir. This should be done within a period of six weeks from the date of receipt of a copy of this order.

9. The OA is disposed of in terms of the aforesaid directions. No costs.

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