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Mohinder Kumar Vs. Dda and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Feb-09-2012

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

Appeal No. : OA No.2824 of 2010

Appellant : Mohinder Kumar

Respondent : Dda and Others

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

Judgement :

ORAL:

M.L. Chauhan, Member (J):

1. Applicant while working as Accountant in HAU-IX was issued a charge-sheet vide Memorandum dated 09.01.2004 (Annexure A-3) on the allegation that during the year 1999-2000 he recommended the revision of cost of flat No.44-S, Cat. I, 2nd floor, Sector 8, Jasola from the current cost of Rs.10,66,500/- to the old cost of Rs.7,77,100/- to facilitate refund for an amount of Rs.2,22,263/- to a fake person in violation of instructions issued vide office order No.HAU-IX/Delay/98/DDA/40-n dated 31.3.99 and also despite the fact that being a closed case, the cost was not

to be revised as per VC's orders dated 7.7.99 in file No.178(404)91/SFS/JL-II thereby caused financial loss to the authority.

2. On the basis of the aforesaid allegations, an enquiry was held and the applicant was found guilty of the charges and he was imposed a penalty of reduction of pay by two stages (equivalent to two increments) with cumulative effect for two years with further stipulation that during the penalty period, he will not earn increments and this will have an effect of postponement of his future increment vide impugned order dated 16.07.2009 (Annexure A-1).The appeal filed by the applicant against the aforesaid order passed by the disciplinary authority (DA) was also rejected by the appellate authority vide order dated 18.05.2010 (Annexure A-2).It is these two orders as well as the Memorandum dated 09.01.2004 (Annexure A-3) whereby the charge-memo was issued against the applicant, which have been challenged by the applicant in this OA with a prayer that these orders may be quashed and respondents may be directed to restore the reduced pay with all consequential benefits including arrears of pay.

3. It may be stated here that the OA filed by the applicant was disposed of by this Tribunal on 08.12.2010 with a direction to the respondents to meet out the same treatment to the applicant by taking an appropriate action within a period of three months from the date of receipt of a copy of that order, as it was brought to the notice of the Tribunal that in other similarly circumstanced the charge-sheet which was belatedly issued, imposing the punishment, has been withdrawn. This Tribunal further observed that while doing so respondents may also consider the documents appended with the rejoinder. However, subsequently, the respondents filed a Review Application (RA), thereby stating that the Tribunal has passed a short order without stating that who are the similarly circumstanced in which the charge sheet was belatedly issued imposing the punishment has been withdrawn. It was further stated that the case of the applicant was not same as were in the case of other similarly circumstanced to whom the charge-sheet was belatedly issued imposing the punishment. Be that as it may, the RA filed by the respondent-department was allowed and the OA was restored to its original position. That is how the matter has been listed for hearing today.

4. We have heard the learned counsel of the parties and gone through the material placed on record. We are of the view that without going into the merits of the case, the orders passed by the DA as well as the appellate authority are required to be quashed and set aside and the matter is required to be remitted back to the authorities, as no reasons whatsoever have been given either by the DA as well as by the appellate authority as to on what basis the charges against the applicant stand proved on the basis of the report submitted by the inquiry officer (IO) and as to how the defence of the applicant cannot be taken into consideration. The DA has not recorded any reason which shows application of mind while awarding the punishment. Further the appellate authority too has also not given any reason whatsoever, which shows application of mind while affirming the order of the DA. At this stage, it will be useful to quote the relevant portion of the order passed by the DA dated 16.07.2009 (Annexure A-1), which thus reads:

“and WHEREAS the undersigned being the Disciplinary Authority after having gone through the IO Report, reply to Show Cause Notice and facts of the case has come to the conclusion that ends of justice will be met, if the penalty of reduction of pay by two stages (equivalent to two increments) with cumulative effect for two years is imposed on Sh. Mohinder Kumar, Acctt. With further stipulation that during the penalty period, he will not earn the increments and this will have an effect of postponement of his future increments.

NOW, THEREFORE, the undersigned in exercise of the powers conferred upon me under the said Regulations hereby order to impose penalty of reduction of pay by two stages (equivalent to two increments) with cumulative effect for two years on Sh. Mohinder Kumar, Acctt. with further stipulation that during the penalty period, he will not earn the increments and this will have an effect of postponement of his future increments.

These orders will take immediate effect.”

5. Thus, as can be seen from the portion as quoted above, the DA while referring to facts in earlier part of the order has passed a cryptic order to the effect that he has gone through the inquiry report, reply to the show cause notice and facts of case and then imposed the aforesaid penalty without discussing any evidence on

the basis of which charge has been held proved by the IO and how the defence taken by the delinquent cannot be accepted. According to us, it was incumbent upon the DA to record some reasons in its order, at least in brief, so that it was permissible for the applicant to challenge the finding of the DA before the appellate authority.

6. At this stage, it will also be useful to quote the relevant portion of the order passed by the appellate authority, which thus reads:

“and WHEREAS, Sh. Mohinder Kumar Accountant, has filed an appeal dated 1.9.09 and 14.1.10 against the said penalty order dated 16.7.2009.

NOW THEREFORE, in exercise of the powers conferred by Regulation 32 (E)(2) of DDA Conduct, Disciplinary and Appeal Regulations, 1999 and after having gone through the inquiry report, the reply submitted before Disciplinary Authority, the decision taken therein, the contents of the appeal and the facts of the case on record, the undersigned does not find any reason to interfere with the orders of the disciplinary authority. Thus, the appeal of Sh. Mohinder Kumar Accountant is hereby rejected.”

7. The appellate authority also after narrating the facts has passed a cryptic order, affirming the order of the DA, which shows non-application of mind.It was incumbent upon the appellate authority also to give some reasons, though briefly, while affirming the order of the lower authority.

8. The law on this point is no more res Integra. At this stage, we wish to refer to the decision of the Apex Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and others, (2009) 1 SCC (LandS) 806, where the issue involved before the Apex Court was whether appellate authority was required to give reasons, though briefly while affirming the order of the disciplinary authority. The Apex Court held that an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the

appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. At this stage, it will be useful to quote paras 5-8 of the said judgment, which thus read:

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case(supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in Divisional Forest Officer vs. Madhusudan Rao, JT 2008 (2) SC 253 (vide para 19), and in Madhya Pradesh Industries Ltd. vs. Union of India, AIR 1966 SC 671, siemens Engineering and Manufacturing Co. Ltd. vs. Union of India, AIR 1976 SC 1785 (vide para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not?

Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.”

9. It may be relevant to state here that as can be seen from the judgment of the Apex Court in the case of Jagdish Sharan Varshney (supra) elaborate reasons were given by the DA but no reason was given by the appellate authority. Thus, the Apex Court has partly affirmed the judgment of the High Court and the matter was remitted back to the appellate authority to decide the appeal instead of remitting the same to the DA, as directed by the High Court. But, in the instant case, as can be seen from the orders passed by the DA, DA has not given any reason as to how the charges stand proved against the applicant on the basis of the report submitted by the IO and as to how the defence of the applicant cannot be taken into consideration. Thus, we have no option but to quash the orders passed by the disciplinary as well as the appellate authorities, which are accordingly quashed and the matter is remitted to the DA to pass speaking order, taking into consideration the reply submitted by the applicant to the inquiry report/show cause notice and pass appropriate orders in accordance with law, including the grounds raised by the applicant that in similar circumstances the charge-sheet which was belatedly issued, imposing the punishment was withdrawn by the Department. Such a decision will be taken within a period of 02 months from the date of receipt of a copy of this order. We wish to clarify that we have not gone into the merits of the case and the matter is being remitted solely on the ground that the order passed by the DA as well as appellate authorities are cryptic and show non-application of mind. No costs.

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