Santhosh Kumar S.V. Vs. the Deputy Comptroller and Auditor General and Others

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Mar-15-2011

Judge : P.R.Raman, Judicial Member &Amp; the Honourable Mr. K. George Joseph, Administrative Member

Appeal No. : O.A. No. 872 of 2009

Appellant : Santhosh Kumar S.V.

Respondent : The Deputy Comptroller and Auditor General and Others

Advocate for Pet/Ap. : For the Applicant: M/s. Dandapani Associates, Advocate. For the Respondents: V.V. Asokan, Advocate.

Judgement :

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

1. The applicant is an employee in the office of the Accountant General, Thiruvananthapuram. The disciplinary proceedings were instituted against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Charge sheet was issued to him, a copy of which is produced as Annexure A-4. The following are the charges levelled against him:-

That the said Shri.Santhoshkumar S.V., Senior Accountant, Office of the Accountant General (AandE), Kerala, Thiruvananthapuram, while attending the training class organised by the Pension Wing held in the upstairs of the Canteen hall on 29.11.2006, raised his voice and spoke roughly to the Accountant General who chaired the training class. Inspite of repeated directions by the Accountant General to lower his voice, Shri.Santhoshkumar continued to speak very roughly and in a loud voice. At this juncture, the Accountant General requested him to leave the hall. Instead of obeying the orders of the Accountant General, Shri.Santhoshkumar sat down in his chair and declared that under no circumstances he would leave the hall. By his aforesaid wilful and blatant insubordinate behaviour of disobeying the lawful and reasonable orders of the Head of the Department, Shri.Santhoshkumar S.V., Senior Accountant, disturbed the peace at the training class and behaved in a manner unbecoming of a Government servant and thus violated the provisions of Rule 3 (1) (iii) of Central Civil Services (Conduct) Rules, 1964.

That the said Shri.Santhoshkumar S.V., Senior Accountant, Office of the Accountant General (AandE), Kerala, Thiruvananthapuram was placed under suspension for his wilful and blatant insubordinate behaviour of disobeying the lawful and reasonable orders of the Head of the Department, vide order No.DAG(A)/C.Cell/SKSV/DA/2006 dated 30.11.2006. In the suspension order it was specifically stated that Shri.Santhoshkumar S.V., Senior Accountant shall not enter the office premises without obtaining prior permission of the Deputy Accountant General (Admn.). But Shri.Santhoshkumar S.V., Senior Accountant, wilfully entered the office premises without prior permission of the Deputy Accountant General (Admn.).

By the aforesaid misbehaviour of wilfully disobeying the orders of the Deputy Accountant General (Admn.), Shri.Santhoshkumar S.V., Senior Accountant behaved in a manner unbecoming of a Government servant and thus violated the provisions of Rule 3 (1) (iii) of Central Civil Services (Conduct) Rules, 1964.

2. The statement of imputations of misconduct or misbehaviour in support of the Articles of charge is given in Annexure II of the charge sheet wherein it is stated

that the pension wing had organised a training class in the upstairs of Canteen Hall at 2:30 P.M on 29.11.2006 for imparting training to those staff who had volunteered to do the work relating to revising the pension under the 'One Rank-One Pension' scheme launched by the State Government. Senior Accounts Officers and Secretary to the Accountant General with the help of Power Point Presentations led the class in the presence of the Accountant General (AandE). Since the Accountant General was fully conversant with all the aspects of this onerous task, he himself, whenever necessary, explained the procedures in detail. While the class is progressing smoothly, the applicant who was an Accountant, rose from his seat and sought some clarifications in a very aggressive tone. The Accountant General intervened and provided necessary clarifications but not satisfied with the same he raised the irrelevant query as to why the office is outsourcing the work of data entry. Though the Accountant General explained the reasons for outsourcing the work, the applicant in a very loud voice said that instead of outsourcing the work should be given to the staff of the Accountant General (AandE) only. The Accountant General asked him to lower his voice and then once again explained that their primary responsibility is towards the State Government and they are duty bound to complete the work at the earliest opportunity, and explained the rates offered for error free data entry and supply of data in hard and soft copies which was lower than the honorarium that is paid to the staff. However, the Accountant General added that the Administration is prepared to reconsider the proposal for outsourcing provided that the staff is prepared to take up the responsibility for the work. This did not satisfy the applicant and he spoke in a very roughly and in a loud voice that if this was the stand of the Accountant General, in future, the Administration would outsource all data entry work and pay only lower rates of honorarium to the staff as charged by the outside vendors. At this juncture, the Accountant General intervened and pointed out that the applicant was disturbing the class and requested him to leave the hall. Instead of obeying the orders of the Accountant General the applicant sat down in his chair and declared that under no circumstances he would leave the hall. Since the applicant refused to obey the order by his aforesaid wilful and blatant insubordinate behaviour of disobeying the lawful and reasonable orders of the Head of the Department he disturbed the peace at the training class and behaved in a manner unbecoming of a Government servant and thus violated the provisions of Rule 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964. In support of the second charge alleged as per Article-II of the charge sheet, as per the statement of allegation it is alleged that the applicant was placed under suspension for disturbing peace at the training class by his wilful and blatant insubordinate behaviour of disobeying the lawful and reasonable orders of the Head of the Department by order dated 30.11.2006. Annexure-III contained the list of documents by which the articles of charge framed against the applicant were proposed to be sustained and Annexure-IV contained list of witnesses by whom the articles of charge framed against the applicant were proposed to be sustained. The applicant simply denied the charges and said he did not mean any disrespect towards the Accountant General in the interactive session of the training class. Annexure A-5 is the copy of the reply. Not being satisfied with the reply, the matter was proceeded with and an Inquiry Officer was appointed. The applicant was also kept under suspension. In the inquiry the applicant fully participated. Two witnesses were examined on the side of the employer who were cross examined by the applicant. Nine witnesses were examined on the side of the delinquent officer. After the conclusion of the inquiry the Inquiry Officer submitted its findings and report. A copy of which is produced as Annexure A-7. The Inquiry Officer found that both the charges are proved in the inquiry. The Disciplinary Authority agreeing with the findings of the Inquiry Officer held him guilty of both the charges imposed the punishment of penalty of reduction to the lower post of Accountant in the pay scale of Rs.4500-7000 until he is found fit, after a period of three years from the date of the order, to be restored to the higher post of Senior Accountant. It is further directed that he will draw a pay of Rs.7000/- in the scale of Rs.4500-7000 and will not earn increments of pay during the period of reduction. It is further directed that the period of reduction shall have the effect of postponing his future increments of pay on restoration to the higher post and that on re-promotion after having been found fit, he will not regain his original seniority in the higher post which has been assigned to him prior to the imposition of the penalty. Annexure A-2 is dated 19.3.2008. The applicant challenged the said order before the Appellate Authority. However, the Appellate Authority after due consideration of the matter did not find any good ground to interfere with the Disciplinary Authority's order and confirmed the same. Aggrieved thereby the present O.A is filed.

3. The applicant seeks to quash Annexure A-1, Annexure A-2, Annexure A-3 and Annexure A-4 orders and to direct that the applicant be restored to the post of Senior Accountant from the date he was demoted with all consequential benefits.

4. In the reply statement filed by the respondents they support the findings of the Inquiry Officer as also the order imposing the punishment and as confirmed in appeal.

5. We have heard learned senior counsel Smt.Sumathi Dandapani appearing on behalf of the applicant and learned counsel Shri.V.V.Asokan along with Ms.Ramanya Gayathri appearing on behalf of the respondents. The main contention on behalf of the applicant is that the charges levelled against him are not properly proved in the inquiry, that the findings of the Inquiry Officer are perverse, unsustainable in law. At any rate, the charges levelled against him as could be seen are trivial in nature and the imposed punishment is shockingly disproportionate even assuming that so called charges are proved against him. It is also contended that the order of suspension was not even warranted considering the nature of the charges levelled against the applicant. Before we proceed to consider the contention as above, we may consider the scope of judicial review in a disciplinary matter. In Fertilizer Corporation Kamgar Union (Regd.), Sindri and others Vs. Union of India and others reported in 1981 (1) SCC 568 it has been held that functioning is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration. It was held in B.C.Chaturvedi Vs. Union of India and others reported in 1995 (6) SCC 749 that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute their own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary

authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. It was held in Commissioner of Police and others Vs. Syed Hussain reported in 2006 (3) SCC 173 that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior court while exercising its power of judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists.

6. We may now proceed to consider the merits of the contentions raised. Two witnesses were examined on the side of the employer in support of the charges. PW-1 and PW-2 were two Senior Accounts Officers. PW-1 N.Chandra Babu deposed in his examination-in-chief proved his statement (Exhibit P2) shown to him and submitted that the statements made therein were correct. It was deposed by him that the applicant who was present in the meeting has asked for certain clarifications in a very aggressive tone. The Accountant General intervened and provided necessary clarifications and assured the group that all necessary steps were taken for the smooth processing of the pension cases. Then the applicant raised an irrelevant query as to why the office is outsourcing the work of data entry. The Accountant General partially explained that the revision work is voluminous and already the administration has gone to great pains to properly undertake the arduous task. The applicant raised his voice in an unbecoming manner and demanded that the work should be given to the staff. Though the Accountant General asked him to lower his voice and then proceeded to explain their responsibility towards the State Government, the applicant continued to demand that the work should be given to the staff. The applicant then spoke in a roughly and in a raised voice. The Accountant General then asked him to leave the hall. But the applicant refused and sat down in his chair and shouted at the Accountant General stating that under no circumstances he will leave the room as ordered by him. Then the Accountant General placed him under suspension with immediate effect. Thereafter the applicant along with others walked out of the hall. Though the applicant had crossed examined those witnesses elaborately nothing

is suggested in a cross examination. PW-2 another witness who was also a Senior Account Officer supports the version of PW-1. He was also cross examined by the applicant. On the side of the delinquent officers nine witnesses were examined who sat with the applicant and to a specific question whether the applicant at any point of time disturbed the classes they answered in the negative saying "No, at no time". They also denied that the applicant was repeatedly asked to lower his voice in the cross examination. It was admitted by DW1 to a specific question in the cross examination that as to why the applicant was asked to leave the class the witness replied that he did not know. When asked in the cross examination as to whether the applicant left out of the hall on being asked to leave the hall he replied by saying "When AG asked the applicant to leave the hall he requested the AG to permit him to attend the class till the end. Then the AG ordered that he was under suspension and the class is over." It was admitted in the cross examination that he was an active member of Accounts Association Category III and a training class had been conducted in the Audit Office which was disturbed by a group of employees of AandE office and to a specific question as to whether a meeting held on 1.12.2006 for imparting training was disturbed by a group of employees and whether he was issued any charge sheet regarding the same he replied that a memo imputing such allegation was served on him. DW2 was also a member of the Accounts Association Category II and he was also served with a memo as in the case of DW1. The other witnesses examined in the case had stated that Accountant General had asked the applicant to lower his voice may be because he felt that it was little raised but the applicant replied that the Accountant General had a mike whereas the applicant did not have a mike. On hearing this everybody laughed and the Accountant General also smiled. During the interaction the Accountant General had asked the applicant to leave the hall but the applicant said that he was an invitee to the class and requested that he may be permitted to remain in the class till it was over. After an elaborate consideration of the evidence adduced on both the sides, the Inquiry Officer found that the delinquent officer had spoken in a aggressive tone in its interaction with the Accountant General. Regarding the credibility of witnesses the Inquiry Officer found both PW1 and PW2 are senior officers with long years of experience, holding responsible position and who are actively involved in the planning and execution of the One rank-One pension revision work project of the Government of Kerala and considering the probabilities and other attendant circumstances in believing the statement made by the witnesses who were examined in support of the charges in preference to the version spoken to by the defence witnesses. Assessing the credibility of the witnesses and the evidences lies in the realm of appreciation of evidence. The Inquiry Officer after weighing the evidence as a whole entered his findings with which the Disciplinary Authority agreed. The second charge regarding the violation of the order of suspension is concerned, the arguments of the learned senior counsel is that the delinquent officer was an office bearer of the AG's Office Employees Credit Society which was functioning in the same premises and he had come there to oversee the audit work. Though it was denied that the said society office was situated in different building, learned senior counsel was not in a position to substantiate this contention with reference to the evidence on record. The fact that the officer had entered the premises without obtaining prior sanction as ordered in the order of suspension was also found proved in the inquiry. However, the circumstances under which the delinquent officer entered the premises was considered by the Disciplinary Authority at the time of imposing the punishment. As we find that the Disciplinary Authority has evaluated the entire evidence and also gone through the findings of the Inquiry Officer and after carefully considering the inquiry report found that the findings are supported by the evidence in the inquiry. The order of suspension was also ordered by the authority competent to place him under suspension and considering the nature of the charges it cannot be said that the order of suspension was not warranted. The Appellate Authority also went into the materials on record and considered the contentions raised by the delinquent officer and found no merit in the contentions raised.

7. We have carefully gone through the findings of the Inquiry Officer, the order of the Disciplinary Authority and that of the Appellate Authority and also the deposition produced in the case. We are unable to hold that the findings entered by the Inquiry Officer is in any way perverse or unsupported by any material on record. It is settled principle in a domestic inquiry that the charges need not be proved to the tilt and if there are some evidence to support the charges the findings made by the Inquiry Officer are not liable to be interfered with. The

findings of the Disciplinary Authority cannot be substituted in the process of judicial review. It is well settled that this Tribunal while exercising the power of judicial review, is not sitting in appeal over the decision rendered by the Disciplinary Authority or that of the Appellate Authority as the case may be. But it is only considering the procedural formalities and whether the applicant had been given a reasonable opportunity of being heard. There was no contention on the side of the applicant that any of the principles of natural justice are violated in this case. On the other hand, we find that full opportunity to cross examine the witnesses of the employer was given, besides having an opportunity to adduce his own witness in the matter. It was after evaluating the evidence on record that the Inquiry Officer found him guilty which finding was agreed to by the Disciplinary Authority after applying his mind and to the materials on record. The Appellate Authority also agreed with the said finding. In such circumstances we do not find there is any merit in the contention regarding the finding of the guilt on the first charge.

Regarding the second charge no doubt while he was under suspension the employee was specifically directed not to enter the office without seeking prior permission. That prior permission was not obtained is not disputed, that he also entered the premises is seriously in dispute except that he has taken the contention that he has gone into the office of the Cooperative Society but there is no evidence to show that the Cooperative Society was functioning elsewhere and not in the same building. Thus, the finding that he entered the premises of the office cannot be said to be in any way perverse. As a matter of fact the explanation offered by the applicant as to why he entered the Cooperative Society office has been taken note of while imposing the punishment. The order of suspension, considering the nature of the charges cannot be said to be in any way unwarranted.

8. Now coming to the question of punishment, we find that an officer of the establishment was alleged to have behaved in an unbecoming manner by raising his voice and even continuing to sit at the meeting disregarding the directions of the highest officer of the establishment, namely, the Accountant General and hence deserve appropriate punishment. Here the punishment imposed is reduction to a lower post of Accountant for a period of three years, it did not stop

with that. There is a further direction that the period of reduction shall have the effect of postponing his future increments of pay on restoration to the higher post and on re-promotion after having been found fit, he will not regain his original seniority in the higher post which has been assigned to him prior to the imposition of the penalty. Therefore, not only the reduction to a lower post but even denied the increment. It has been ordered to postpone his future increments even on restoration to the higher post and even after re-promotion he will not regain his original seniority in the higher post. Though it is for the employer to decide as to what punishment is to be awarded and normally it is an area where the Court will not interfere. (see Shri. Paramananda Vs. State of Haryana and others reported in 1989 (2) SCC 177) But considering the fact that there was an agitation against outsourcing of the work which was ultimately implemented and it was during the meeting held for the purpose that the employee become outrageous and behaved in a manner as alleged, that the employee is not imposed with any punishment on an earlier occasion is not borne out by producing any order earlier passed or by any other records produced. No reference is made in the order imposing the punishment of any previous misconduct committed by him. In this situation we find that the totality of the punishment imposed is shockingly disproportionate to the misconduct alleged and proved. However, it is for the Appellate Authority to reconsider the punishment aspect. To enable him to do so and to this limited extent, we allow this OA and the Appellate Authority is directed to pass appropriate orders on the punishment to be imposed within a period of three months. We also direct that till such order is passed by the Appellate Authority the status quo as on today will continue. The OA is partly allowed as above.