

(2010) 10 AHC CK 0322

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 6198 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

Gaya Prasad and Another

RESPONDENT

Date of Decision: Oct. 12, 2010

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 14, 14(23)

Citation: (2011) 5 ADJ 931 : (2011) 2 UPLBEC 1383

Hon'ble Judges: Virendra Singh, J; Ashok Bhushan, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Virendra Singh, J.

By means of this writ petition, the Petitioner has prayed for quashing the impugned judgment and order dated 10.8.2009 passed by Respondent No. 2, the Central Administrative Tribunal, Allahabad by which the Tribunal has allowed the Original Application No. 1624 of 2001 of Respondent No. 1 thereby entitling him for the pay benefits as if no penalty had been imposed upon him.

2. We have heard learned Counsel for the parteis and perused the record.

3. The learned Counsel for the Petitioner as per contents of the petition contended that Respondent No. 1 Gaya Prasad while working as a Supervisor Grade "B" was served with a charge-sheet in an enquiry against him under Rule 14 CCS (CCA) Rules, 1965 on 26.8.1986 for gross misconduct for unauthorizedly preparing of IPW Cards of Gang No. 36 and 128 for the month of July 1986 and fraudulently handed over the same to Sri Mohd. Mateen Khan showing failure to maintain absolute integrity and devotion to duty merely in order to earn his wages fraudulently. The Inquiry officer found the charge levelled against him proved. The disciplinary authority after considering the finding of the Enquiry Officer in the enquiry report imposed a penalty of stoppage of two increments with cumulative effect upon Respondent No.

1 vide order dated 3.12.1988. Against the punishment order, the Respondent in spite of filing an appeal before the appellate authority, filed an O.A. No. 12/1993 before Respondent No. 2 the Central Administrative Tribunal, Allahabad, which was disposed of by the Tribunal with the direction to Respondent No. 1 to file an appeal within a month before the appellate authority and the appellate authority shall decide the appeal within a period of three months. The Respondent No. 1 submitted the said appeal on 14.12.2000 which was rejected by the Petitioner No. 2 the Director General, Ordinance Factories, vide order dated 19.2.2001. The Respondent No. 1 challenged the appellate order thereby filing OA No. 1624/2001 before the Tribunal which was contested by the Petitioners and after exchange of affidavits the Tribunal had decided the Original Application vide impugned judgment and order dated 10.8.2005, thereby allowing the O.A. And quashing the impugned order of punishment.

4. On behalf of the Petitioner it is further contended that the judgment of the Tribunal goes to show that the Tribunal has held the appellate order as a cryptic order and based on virtually non-speaking enquiry report with no discussion of evidence while the appellate order was based on carefully examining the record thereby clearly finding that IPW Cards of Gang No. 36 and 128 for the month of July 1986 which were found in possession of Mohd. Mateen Khan, were found forged, for which Mohd. Mateen Khan had stated that the same were prepared by Ex. Supervisor Sri Gaya Prasad (Respondent No. 1). The Inquiry Report was very well considered by the punishing authority and it was not required by the appellate authority to give the detailed reasons for his satisfaction and confirmation of the order as is the law laid down in the case of [S.N. Mukherjee Vs. Union of India](#), by the Apex Court and therefore, the order of the Tribunal is bad in the eyes of law which is liable to be set aside.

5. Learned Counsel for the Respondent contended that Respondent No. 1 was falsely implicated for baseless charges because he had never handed over IPW Cards to Mohd. Mateen Khan nor he had prepared any IPW Card nor any of the card was given by him to any of the member of the gang. Thus, he did not violate any rule. The statement of Mohd. Mateen Khan during the course of enquiry was not based on any evidence on record. The listed documents alleged to have been prepared against the Respondent No. 2 were also not given by the enquiry Officer to the Respondent before framing the charge against him which was violative in view of the law laid down by Hon"ble Supreme Court in the case of Deepak Puri v. State of Haryana, 2000 SCC (L&S) 906 and in the case of [Kashinath Dikshita Vs. Union of India \(UOI\)and Others](#), on which basis the order passed against the Respondent was liable to be interfered by the Tribunal. The enquiry was started against the Respondent after two years from the appointment of the enquiry officer which remained violative of the Principles of Natural Justice. The enquiry report only in one and a half page was self-explanatory to the effect that it was in utter violation of the provisions contained in Sub-Rule 23 of Rule 14 of CCS (CCA) Rules and it was not

proceeded as per the procedure laid down under Rule 14 of the aforesaid Rules, which is overlooked by the Disciplinary Authority who was bound to go through it as per Rules. The Appellate Authority too has not properly complied with the order dated 13.9.2000 passed by the Tribunal in OA No. 12/1993 and passed a cryptic order which is not in accordance with the direction of the learned Tribunal. The appellate authority even did not go to the grounds of appeal. The Tribunal has been pleased to observe that there was no finding against Respondent No. 1 based on any of the evidence against him and since there was no finding in this regard in the enquiry report, therefore, the order of punishment was not appreciable and the learned Tribunal has rightly interfered in the order of the punishment authority.

6. In the light of the contentions of both the parties as aforesaid, we have gone through the order passed by the learned Tribunal which is impugned in this petition. There cannot be two opinions on this point that an important duty is cast upon an appellate authority under the CCA Rules to go into the question of suitability of punishment as well as amongst other factors. It is of utmost importance that the appellate authority must pass a reasoned order after applying its mind as required by the prescribed Rules, dealing with the contentions raised in the appeal and even to give a hearing to the delinquent official, if necessary. In this case before us, when the Tribunal vide its order dated 13.9.2000 had specifically stated that the enquiry report against the Respondent did not have any finding on any count and whatever has been written in the enquiry report cannot be termed that finding recorded on the basis of appreciation of any evidence, even after it, the appellate authority did not pay any attention towards the findings of the Tribunal and stated that the enquiry officer has been logical in appreciating the evidence on record and the findings arrived at by him are based on evidence on record, which shows that the appellate authority assumed itself as if it was the appellate authority on the order passed by the Tribunal. In such circumstances, the Tribunal has rightly held that the appellate authority did not apply its mind at all. The basic infirmities in the enquiry report to the disciplinary authority having been pointed out by the tribunal, the minimum requirement of the appellate authority was to examine the case thoroughly and to explain in the order as to what are the points to be considered and what was the basis of coming to a particular conclusion on a particular point. The application of mind should be manifest from the very discussion for the orders of the lower authorities sitting in appeal by the appellate authority. The Hon"ble Supreme Court in the case of [Union of India \(UOI\) and Others Vs. R. Reddappa and Another](#), has held that an illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision, unless the higher authority is found to have applied its mind to the basic infirmities in the order. Here in this matter, surprisingly, despite the order dated 13.9.2000 passed by the Tribunal, directing the disposal of the appeal after thereby appreciating the evidence and the defence of the applicant by reasoned order, the appellate authority has not applied its mind in respect to the infirmities in the

enquiry report and the disciplinary authority. The minimum requirement of the appellate authority was to examine the case thoroughly and explain it on point to point. Therefore, we do not find any ground on record to interfere in the impugned order passed by the Tribunal by which the orders dated 12.12.1988 and 19.2.2001 have been quashed and set aside thereby entitling the Respondent No. 1 for payment of the benefits as if no penalty had been imposed upon him. The contentions on behalf of the Petitioner in this regard that the appellate authority had carefully examined the reports in respect to the enquiry report which was accepted by the punishing authority, is not tenable and whatever may be the facts on record as is contended on behalf of the Petitioner that Mohd. Mateen Khan has submitted the statements stating therein that IPW Cards have been made by the Ex-Supervisor Sri Gaya Prasad the Respondent No. 2 in this petition cannot be taken into account at this stage in this writ petition.

7. Therefore, this writ petition deserves to be dismissed and is hereby dismissed accordingly.