

(2014) 09 DEL CK 0053

Delhi High Court

Case No: Writ Petition (Civil) 7652/2011 and C.M. No. 17325/2011

Union Public Service Commission

APPELLANT

Vs

B.S. Negi

RESPONDENT

Date of Decision: Sept. 10, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Vipin Sanghi, J; S. Ravindra Bhat, J

Bench: Division Bench

Advocate: Naresh Kaushik and Aditi Gupta, Advocate for the Appellant; G.D. Bhandari and Arun Bhardwaj, Advocate for the Respondent

Judgement

Vipin Sanghi, J.

The present Writ Petition has been preferred under Article 226 of the Constitution of India to assail the order dated 05.09.2011 passed in OA No. 2443/2009 by Central Administrative Tribunal, Principal Bench, Delhi (CAT/ Tribunal) , whereby the Tribunal set aside the Order dated 21.11.2007 vide which 10% permanent cut in pension was imposed on the Respondent No. 1. It was further directed by the Tribunal that the amount of pension so deducted be also refunded to the Respondent No. 1.

2. The respondent No. 1 was working as Assistant in Union Public Service Commission (UPSC) . In the year 1990, disciplinary proceedings were initiated against him on the charge of helping one candidate, Shri Ratipal Saroj, in substituting History Paper-II answer sheets in Civil Services (Main) Examination, 1985. On 10.01.1990, the Charge Memorandum was issued to the Respondent No. 1 containing the Article of Charge, which is as under-

"The said Shri Bharat Singh Negi, while functioning as Assistant in Confidential Section VII, UPSC, New Delhi during the period 1985-86 failed to maintain the absolute integrity, devotion to duty and exhibited acts unbecoming of a public

servant in as much as he helped Shri Ratipal Saroj, Section Officer/ Under Secretary, UPSC New Delhi in substituting a fresh written answer book of History Paper-II in Civil Services (Main) Examination, 1985 in place of original scripts (Answer book) with the result that Shri Rati Pal Saroj obtained very high marks and was selected and delivered appointment letter dated 31.7.86 by Central Government for the post of Indian Administrative Service Group "A" services for which he could not have been selected.

And thereby said Shri Bharat Singh Negi contravened rule 3(1)(i) (ii) and (iii) of the CCS (Conduct) Rule, 1964."

3. On 22.04.1991, Respondent No. 1 denied the charges leveled against him. Thereafter, the inquiry was conducted and on conclusion of the inquiry, the Inquiry Officer submitted his Report on 28.02.2006 with the finding that charges are not proved against Respondent No. 1.

4. On 13.04.2006, the Disciplinary Authority - after examining the records of the inquiry, issued a Disagreement Note. Further, the Central Vigilance Commission (CVC) also concurred with the disagreement note. The Disagreement Note, CVC's second stage advice and the inquiry report were served upon the Respondent No. 1. He represented against the same.

5. The Disciplinary Authority, after considering the respondents representation, vide Order dated 21.11.2007, passed the order imposing a penalty of 10% cut in the monthly pension on permanent basis, while observing as follows:

"And Whereas the representation of Shri B.S. Negi was considered and the same was found devoid of merits. The depositions of SW-4 and SW-5 categorically stated that Shri B.S. Negi was the custodian of the answer books in the Confidential Section. IO in his report also stated that the CO, who worked as an Assistant in the Confidential Section-VII, was the custodian of the answer sheets under the overall supervision of the Section Officer. Further, Shri Vijayendra Kumar (SW-1) during his cross examination admitted that the CO helped Shri R.P. Saroj in substitution of his answer book of History Paper-II. As regards the CFSL report, it appears that the same has not taken into account the fact that it was a whole- sole replacement of the answer book. SW-3 and SW-6 in their depositions before the IO revealed the fact that in the course of investigation, Shri R.P. Saroj had confessed before them that the CO had helped him in substituting History Paper-II of Civil Service (Main) Examination-1985..

....Now, therefore, after considering the facts of the case, evidences on record, the representation submitted by Shri B.S. Negi, the advice of the Central Vigilance Commission and the advice of Union Public Service Commission, the President of India has come to the conclusion that Shri B.S. Negi, Assistant (Retd.) has failed to maintain absolute integrity, devotion to duty and exhibited acts unbecoming of a Govt. servant, thereby contravening the provision of Rule 3 of the central Civil

Services (Conduct) Rule, 1964 and is of the view that the ends of justice would be met if the penalty of 10% cut in the monthly pension to be drawn by him is imposed on permanent basis on Shri B.S. Negi, Assistant (Retd.) ."

6. The Respondent No. 1 being aggrieved by the aforesaid Order preferred an Appeal on 07.01.2008. Thereafter, the Respondent No. 1 vide letter dated 19.02.2008 was informed that the aforesaid Order is not appealable as the same has been issued by the President, and under Rule 22(i) of the CCS (CCA) Rules, 1965, no appeal lies against any order made by the President. He was further informed that he may prefer a Revision Petition against the said order of the President. However, the Respondent No. 1 preferred an O.A. No 2443/2009, which was allowed, and the Order dated 21.11.2007 was quashed by the Tribunal.

7. Being aggrieved by the order of the Tribunal, the petitioner has preferred the present Writ Petition.

8. Learned counsel for Petitioner submits that Respondent No. 1 was the custodian of the answer sheets and, as he had access to the papers, he helped Shri R.P. Saroj in substituting the answer sheet of History Paper-II.

9. Learned counsel further submits that the Court has limited jurisdiction to set aside the penalty awarded by the disciplinary authority. In this regard, he places reliance on the judgments of the Supreme Court in B.C. Chaturvedi Vs. Union of India and others, ; Sanjay Kumar Singh Vs. Union of India (UOI) and Others, ; Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, ; Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and Others, .

10. On the other hand, the counsel for respondent no. 1 submits that it was the case of Shri R.P. Saroj that copying of answers from the book had taken place inside the examination hall, and it was not a case of substitution of answer paper by him. He further submits that if the answer script would have been replaced, he would have copied all the answers, and not some of them. Learned counsel also urges that the account of blank answer sheets in the store of UPSC does not show any shortage of blank answer sheets. Thus, it could not have been concluded that the original answer book, or any part of it, was replaced, much less that the respondent had played a role in it.

11. Before we proceed to deal with the submissions of the parties, we consider it appropriate to analyse the impugned order. The Tribunal while allowing the application in favour of respondent no. 1, observed as follows:

"It is seen that all procedural requirements of CCS (CCA) Rules have been complied with in the matter of inquiry against the applicant. But the main fact that has been raised by the applicant in his appeal is that he has been exonerated by the inquiry officer in very categorical terms by stating that the prosecution had failed to establish that the Charged Officer had rendered any kind of assistance/ help to Shri

Ratipal Saroj in the matter of substitution of answer sheet. The inquiry officer also recorded that answer book of History Paper II might have been replaced with freshly written answer sheet but there was nothing to link or prove that the substitution had been done by the Charged Officer. The case of the applicant has been based totally on the dissenting note written by the disciplinary authority. On the basis of certain observations, the disciplinary authority has come to the following conclusion:

"In view of the reasons given above and also taking into account the fact that disciplinary proceeding is not a criminal trial and the standard of proof required is that of "Preponderance of Probability" and not proof beyond reasonable doubt, I accordingly, disagree with the findings of I.O. and have come to the conclusion that the charge is fully proved against C.O."

Simply by relying upon preponderance of probabilities and disagreeing with the findings of the inquiry officer, the disciplinary authority has come to the conclusion that the charge is fully proved against the Charged Officer."

12. The Tribunal also held that there did not exist sufficient material on record to conclusively prove the charge that respondent no. 1 helped Shri R.P. Saroj in substituting the answer script. The Tribunal held as follows:

"8. Though it is not for us to go into the detailed facts of the matter, a brief perusal of the dissenting note shows that the conclusion arrived at has no basis of dissenting note referred to above, it has been decided to continue the proceedings against the applicant even after his retirement and to award him major penalty of 10 percent cut in pension with permanent effect. We do not feel that there is sufficient material on record to conclusively prove the charge that the applicant helped Shri Ratipal Saroj in substituting a fresh answer sheet of History Paper-II in Civil Services Main Examination in place of original script (answer book) with the result that Shri Ratipal Saroj obtained very high marks and was selected and delivered appointment letter by Central Government for the post of Indian Administrative Service Group "A" Service for which he could not have been selected. Not only this, there is no evidence to prove that the applicant helped Shri Ratipal Saroj or that there was a substitution at all. Even the contention that Shri Ratipal Saroj obtained very high marks in the paper is also challenged in appeal where the applicant has stated that Shri Ratipal Saroj obtained only 53 per cent marks in History Paper II."

13. Having heard learned counsels for the parties and considered the materials placed on record, this Court is of the opinion that the impugned order cannot be sustained.

14. From the Inquiry Report it is evident that there had been substitution of History Paper-II of Shri Ratipal Saroj, and respondent no. 1 was the custodian of the papers.

In this regard, the Inquiry Officer recorded the following finding:

"There is no doubt that no written instructions/ guidelines (issued by UPSC) " have been brought out by the prosecution to indicate as to who would be the custodian of the answer sheets in the Confidential Section. Nonetheless, the evidence of SW .4 and SW .5 are quite relevant. To me, the depositions of Sw .4 and SW .5 do not appear contradictory. SW .5 categorically stated that Assistant is the custodian of the answer book are retained in the Confidential Section under the supervision of Section Officer. It is a matter of common knowledge that a Section Officer is a supervisory officer of any Section and the "dealing hand" retains the papers/documents in any Section under the overall supervision of the Section Officer. The overall supervision of Section Officer does not dilute the responsibility of an Assistant in the matter of maintenance of any record. Thus, Assistant in the Confidential Section is deemed to be the custodian of the answer sheets of course under the overall supervision of the Section Officer.

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It is difficult to imagine and believe that howsoever intelligent and capable a person be it is almost impossible to remember the precise "wordings" of a book. The fact that many paras in the answer have been reproduced "word by word" from books clearly indicates that Shri RP Saroj did copy some of the answers. This possible could have been done only outside the Examination Hall and therefore applying the principle of "preponderance of probability" it stands established that History Part-II was replaced with a fresh written answer book. "

(Emphasis supplied)

15. The submission of respondent no. 1 that Shri Ratipal Saroj was involved in copying the answers from the book, and that the history paper-II had not been replaced by him has no merit. It is apparent from the inquiry report that the answers in the history paper-II of Shri Ratipal Saroj have been copied verbatim from books of M.S. Jain. The aforesaid findings of fact are based on relevant and cogent materials, and are reasonable. It was not open to the Tribunal to sit in judgment over the findings of the Enquiry Officer or the Disciplinary Authority, as if, the Tribunal was having an "Appeal" from the order of the Disciplinary Authority.

16. In the inquiry report, it has been noted that during the interrogation of respondent no. 1 by SW-6, he had admitted to having helped Shri R.P. Saroj. Further, during the investigation of the criminal case, the witnesses produced before SW-6 and SW-3, also made statements that the History Paper-II had been substituted of the said candidate with the assistance of respondent no. 1. Even the report of the Disciplinary Authority in the case of Shri Ratipal Saroj, it has been recorded that "there is adequate evidence which brings out that Shri Ratipal Saroj had close association with the concerned staff of the Confidential Section and considering the other available evidence on record there are reasonable grounds to come to a view

that the answer sheets copied from the model answers/books have been substituted with the help of the officials of UPSC".

17. Thus, there was sufficient evidence on record to show that respondent no. 1 misused his authority of being the custodian of the papers working in confidential Section VII by helping Shri Ratipal Saroj in substituting the paper, which does amount to grave misconduct.

18. It is no more res integra that the scope of judicial review of an order of punishment passed in departmental proceedings, is extremely limited. In this regard, reliance was placed on B.C. Chaturvedi (supra) , where it was held as follows:

"A review of the above legal position would establish 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 its 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. "

(Emphasis supplied)

19. In Damoh Panna Sagar Rural Regional Bank (supra) , the Court was of the view that the Court/ Tribunal should not interfere with the decision of the authority unless it is illogical or suffers from procedural impropriety or was shocking to the conscience of the Court/ Tribunal, in the sense that it was in defiance of logic or moral standards. Thus, the Court/ Tribunal cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record.

20. As far as the departmental proceedings are concerned, it is for the departmental authorities to conduct an inquiry in accordance with the prescribed Rules. The role of the Court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record, particularly when they cannot be said to be based on no evidence; on extraneous or irrelevant materials, or; such that no reasonable person would arrive at them on the basis of the existing evidence.

21. In the present case, the Tribunal interfered with the findings of the Disciplinary Authority as though it was reappreciating the evidence as an appellate Court/

forum. If the findings of the Disciplinary Authority are accepted, it cannot be said that the penalty imposed was shocking or disproportionate. We are of the opinion that the Tribunal erred in holding that there was no evidence and, consequently, in quashing the penalty awarded/imposed on the respondent. The Tribunal failed to see that the Disciplinary Authority had considered the evidence regarding the substitution of the answer script, and that the respondent no.1 was the custodian of the answer scripts. Consequently, the conclusion that the substitution had taken place with the assistance of respondent no.1 was a probable finding.

22. The scope of judicial review in such like cases is limited to the irregularity in decision-making process, and not the decision Itself - except in a few limited cases as observed above. Therefore, in the light of the above discussion, we are of the view that the Tribunal could not have interfered with the decision of the Disciplinary Authority. By doing so, the Tribunal has exceeded its jurisdiction.

23. For the above reasons, this Court is of the opinion that the impugned order cannot be sustained. It is, therefore, set aside. The writ petition is, accordingly, allowed, leaving the parties to bear their respective costs.