(2018) 10 P&H CK 0292

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 20675 Of 2018

Union Of India And Others		APPELLANT
	Vs	
Rakesh Mohan Gupta And Another		RESPONDENT

Date of Decision: Oct. 15, 2018

Acts Referred:

- Evidence Act, 1872 - Section 59, 60
- Central Civil Services (Classification, Control and Appeal), Rules 1965 - Rule 16
- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Ajay Kumar Mittal, J; Avneesh Jhingan, J

Bench: Division Bench

Advocate: Namit Kumar

Final Decision: Dismissed

Judgement

1. The present writ petition has been filed seeking quashing of order dated 20.11.2017 (Annexure P-6) passed by the Central Administrative Tribunal,

Chandigarh Bench, Chandigarh (for short 'the Tribunal'), whereby the Original Application (OA) No.060/00737/2016 filed by Rakesh Mohan Gupta,

has been allowed.

2. Union of India through Secretary to Government of India, Ministry of Home Affairs and The Director, Intelligence Bureau, (Ministry of Home

Affairs), Government of India, are petitioners No. 1 and 2 respectively. Rakesh Mohan Gupta, Assistant Director, Subsidiary Intelligence Bureau

(Ministry of Home Affairs), Government of India, Chandigarh; Mohan Lal, ACIO-II/G, Intelligence Bureau, (Ministry of Home Affairs), Government

of India, New Delhi and Central Administrative Tribunal, Chandigarh, have been arrayed as respondents No. 1 to 3 respectively in the writ petition.

3. Mohan Lal, JIO-II/G (hereinafter referred to as 'the complainant') was attached with JD/J. He was posted to 'JA' Branch, within the group on April

05, 2007. Prior to his posting with 'JA' Branch, he was sanctioned leave from 09.04.2007 to 27.04.2007. He joined the 'JA' Branch on 05.04.2007 and

proceeded on leave from 09.04.2007. Respondent No.1 sent a letter dated 09.04.2007 asking the complainant to join the duty immediately. The letter

was not delivered. Another letter dated 27.04.2007 was issued advising him to join the duty and his pay was also stopped. The complainant submitted

an application for extension of leave from 28.04.2007 to 25.05.2007. The same was denied due to work pressure and non-availability of any other

working hand in the Branch. The complainant's leave was sanctioned w.e.f. 20.05.2007 on medical ground. He finally joined duty on 23.09.2007. His

absence was regularised by granting leave admissible except for the period from 28.04.2007 to 19.05.2007 and the same was treated as dies-non.

4. The complainant submitted two representations dated 01.10.2007 and 26.11.2007 before the National Commission for Scheduled Castes (NCSC)

alleging caste based harassment by respondent No.1. On receipt of comments from the Deputy Director and the reply, the Commission vide letter

dated 08.01.2008 stated that the allegations were not substantiated. Complainant submitted a rejoinder to NCSC and reiterated the allegations. The

complainant submitted further representations on 10.04.2008 and 14.10.2008 and requested summoning of respondent No.1 before the Commission.

As no new issue was raised in the representation and the allegations levelled were not substantiated, the complainant submitted another representation

dated 05.01.2009. Reply to the same was filed reiterating that the allegations were not proved. Rejoinder was filed by the complainant on 13.04.2009.

In the rejoinder apart from the issue of caste based harassment, he raised the issue of regularization of his absence from 28.04.2007 to 19.05.2007. On

re-consideration, his absence was regularised as earned leave and information was sent to NCSC alongwith parawise reply to the rejoinder.

Thereafter the complainant made a fresh representation on 25.09.2009. On receiving the representation, Assistant Director/Welfare was directed to

conduct preliminary enquiry into the allegations of caste based harassment. The Assistant Director/Welfare submitted report dated 27.04.2010 holding

that the allegations were absolutely true and correct in nature. While submitting the report, independent witnesses were not examined, Joint Director

was entrusted with the job of conducting fresh preliminary enquiry into the matter by recording statements of independent witnesses. Preliminary

inquiry report dated 04.02.2011 was submitted stating that the allegations stood substantiated.

5. Memo dated 10.03.2011 was issued by the Disciplinary Authority under Rule 16 of the Central Civil Services (Classification, Control and Appeal),

Rules 1965 (for brevity 'the Rules'). The charges were that respondent No.1 during the period April 2007 to February 2008 had harassed the

complainant by passing caste denoting remarks in presence of other staff members of the Branch. Respondent No.1 filed a written statement on

23.03.2011 denying the charges and stating that the complainant has targeted him under the wrong impression that respondent No.1 recommended his

absence as dies-non.

6. The Disciplinary Authority after considering the case and holding oral enquiry, issued a detailed charge-sheet dated 07.07.2011. After considering

the reply submitted by respondent No.1, Assistant Director was appointed as Enquiry Officer. He submitted his enquiry report dated 20.09.2012

holding that the charges against respondent No.1 were not proved. The Disciplinary Authority dis-agreed with the findings of the Enquiry Officer and

recorded dis-agreement note. The enquiry report alongwith dis-agreement note of the Disciplinary Authority were forwarded to respondent No.1. He

submitted representation on 26.02.2013 and denied the charges. The Disciplinary Authority vide order dated 10.07.2013 found that the charges were

proved and imposed penalty of 'reduction in pay by one stage for a period of three years' without cumulative effect.

7. Aggrieved of the order, respondent No.1 preferred an appeal. As per the procedure, the Appellate Authority sought advice of UPSC. Vide letter

dated 17.09.2014. UPSC advised that charges stood proved and there is no merit in the appeal. The appeal was rejected vide order dated 06.06.2016.

8. Respondent No.1 assailed the charge-sheet, UPSC advice note, penalty order and the appellate order before the Tribunal. The Tribunal accepted

the OA filed by respondent No.1.

9. Aggrieved of the order of the Tribunal, the present writ petition has been filed.

10. Learned counsel for the petitioners argued that the order passed by the Tribunal is perverse. The Tribunal failed to appreciate the facts on record

and has not appreciated the evidence in a proper prospective.

11. The contention raised by learned counsel for the petitioners lacks merit.

12. The basic issue raised in the writ petition is regarding perversity of findings of the Tribunal. From the perusal of order of the Tribunal, it is evident

that the Tribunal has dealt with the issue in detail by passing a reasoned order. It reads thus:-

''13. As is evident from the record that the only charge framed against the applicant is that while he was posted as SO at Headquarters, New Delhi,

during the period w.e.f. April, 2007 to February, 2008, he had harassed subordinate Mohan Lal (Respondent No.3, by passing caste based remarks

against him, in the presence of staff members of his branch. Respondent No.3 was stated to have moved a complaint dated 25.9.2009 (Annexure A-

15), which forms the basis of the charge sheet against the applicant, which (complaint) reads as under :- â€œSub : Calling of office memo. No.

26/JA/2008(15)-42 dated Jan. 14, 2009 for justice in case of Shri Mohan Lal, JIO-I. Sir,

I was granted E.L. w.e.f. April 9 to 27, 2007 and due to urgent domestic circumstances I had applied for extension of leave w.e.f. April 30 to May 25,

2007. But on April 27, 2007, I was informed that since leave sanctioning order for my earlier application was not issued by the office, the whole leave

would be treated as unauthorized absence with no salary. Consequently my salary for that period was also deducted which resulted in financial

hardships for me.

Sir, this is a clear example of caste based harassment towards me as the Section Officer, JA granted leave to three branch members whose details

are given below without issuance of leave sanction order.

Sl. No. Name, Rank, & PIS No. Kind and span of leave Remarks

Â S/Sh

1. J.P. Gupta, Asistant, 115200 HPL 26.12.2007 Orders sanctioning

Â To 28.12.2007 Leave awaited.

2. Rajinder Singh Negi, UDC, HPL 26.11.2007 to Orders sanctioning

Â 103996 20.12.2007 Leave awaited.

3. Subhash Chander, PA, EL 7.1.2008 to Orders

Â 106764 11.1.2008 sanctioning leave

Â Awaited

It is requested that the aforesaid office memo may please be called as a proof of atrocity on the basis of caste based harassmentâ€.

14. Thus, a perusal of the complaint would reveal that there is not an iota of allegation, with regard to the passing of the caste based remarks against

the complainant, by the applicant. The contents of the charge are totally contrary to the allegation contained in the complaint. The main grievance of

the complainant, appears to be non sanctioning of his leave application, by the applicant. It has been specifically pleaded in para 5 of the written

statement by the respondents that the complainant joined the JA Branch under the applicant only on April 5, 2007 and proceeded on leave from April

9, 2007. He finally joined his duties on September 3, 2007. Not only that, it was duly acknowledged that the complainant Mohan Lal submitted

representations on 1.10.2007 and 26.11.2007, to the Commission, alleging therein caste based harassment by the applicant. Having obtained the

comments from the Deputy Director/J, a reply dated 8.1.2008, was sent to the Commission. However, these allegations of caste based harassment,

could not be substantiated there. Thereafter, he was transferred from that Unit to some other Unit. Perhaps that is the reason that the IO has duly

examined the relevant evidence and matter in right perspective and came to the definite conclusion that the charge alleged against the applicant was

not proved, vide his report dated 20.9.2012 (Annexure A-5).

15. Such being the position on record, now the short and significant question, though important, arises for our consideration in this case is as to whether

there is legal evidence to substantiate the contradictory impugned charge sheet & impugned disagreement note, in the given facts and circumstances

of this case or not?

16. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the negative, in this

regard.

17. As indicated hereinabove, the applicant was specifically charged for passing caste based remarks against the complainant Mohan Lal (Respondent

No.3) between April 27, 2007 to February, 2008. In an unsuccessful attempt to substantiate the charge, against the applicant, the star/ main witnesses

of the department was complainant Mohan Lal (Respondent No.3). He did not support the specific allegations contained in the impugned charge-

sheet, while appearing before the IO on 27. 3.2012. It has been specifically recorded in the Inquiry report that when IO asked complainant Mohan Lal,

whether he wanted to give any statement during the hearing, he has stated that he has already given his statement on September 25, 2009 (Annexure

A-15), which may be taken on record. He did not disclose (intimate) the day, time and venue of the alleged incidence. Rather, he has admitted that

applicant never made such remarks in his presence. During the course of examination complainant Mohan Lal, was questioned, as to how he could

know about the caste based remarks against him, as these were never passed in his presence, then he stated that PW-4 used to tell about it and only

he could tell as he used to tell him before 5.4.2007 (which is not even subject matter of the charge sheet). As regards evidence of PW-3 and PW-4,

no doubt they have vaguely stated (without any specific date, time and particulars), that the applicant used to pass castiest remarks against the

Respondent No.3 (complainant) and he also used to abuse and threaten to spoil their ACRs. But no implicit reliance can be placed on oral evidence of

the Department, being heir-say.

18. Possibly, no one can dispute that standard of proof in a domestic enquiry is not that heavy as is required to prove in criminal proceedings, but at the

same time, in domestic enquiry, charge should be proved by preponderance of probability of legal evidence, which is totally lacking in this case. As

mentioned hereinabove, that even the main witness complainant Mohan Lal did not utter a single word during the course of the enquiry that the

applicant has ever passed castiest remarks against him. He has reiterated the allegations contained in his complaint, Annexure A-15, in which, the

complainant has mainly demonstrated his grievance therein, that the applicant did not recommend his leave and asked him to join his duties, and

nothing more. The complainant, neither himself uttered a single word, of pointed castiest remarks before the IO, nor mentioned in his complaint,

Annexure A-15. The oral evidence of PW-3 and PW-4, with regard to the passing of the caste remarks against Mohan Lal (Respondent No.3) are

hear-say and not, at all, admissible in evidence as contemplated in sections 59 and 60 of the Indian Evidence Act, which postulates that all facts,

except the contents of the documents, may be proved by oral evidence and ORAL EVIDENCE, must in all cases, SHALL BE DIRECT. Therefore,

no legal direct evidence of passing castiest remarks, against the applicant, is forthcoming, on record. Rather, the allegation in the complaint are totally

contrary to the contents of the impugned charge-sheet. Hence, no implicit reliance can be placed on the oral evidence of the department, being hear-

say, in this relevant connection. That was the reason that the IO has rightly concluded that the charge framed against the applicant is not proved on

record. Moreover, DA has not recorded cogent reasons, in this regard, while recording impugned disagreement note. Even the AA has relied upon the

representation of the complainant of Aril 10, 2008, October 14, 2008, January 5, 2009 and April 13, 2009, made by him to the Commission, which were

neither relevant or formed part of the impugned charge sheet. In other words, even AA has relied upon the foreign material to reject his appeal, which

is not legally permissible.

19. Therefore, it is held that the inadmissible hear-say evidence, brought on record, by the Department before the IO, is totally falls short of, as is

legally required, to prove the charge in a domestic enquiry. The IO has rightly concluded that the charge against the applicant was not proved. On the

other end, the DA has slipped into deep legal error, in recording the impugned dis-agreement note, on the basis of the indicated inadmissible evidence,

which cannot legally be sustained. The same very mistake was repeated by the AA as well.

20. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As mentioned hereinabove, the complainant has

based his case on the basis of complaint, Annexure A-15, that the applicant did not recommend his leave and has asked him to join his duties. There is

not even a whisper in it that the applicant has ever passed any castiest remarks against him, for which the applicant was charge sheeted. The

allegation of charge sheet is as vague, as anything. It will not be out of place to mention here that the alleged occurrence is stated to be between April,

2007 to February, 2008, whereas the impugned charge-sheet was belatedly served on the applicant on 7.7.2011 (Annexure A-19), after a lapse of four

years, without any cogent explanation. Even if, the applicant did not recommend, his leave application and asked the complainant to join his

(applicant‟s) duties, in discharge of his official duties, indeed cannot possibly be termed to be a misconduct, warranting a departmental enquiry. If such

officers, duly performing their duties, in their official capacity, are punished, in this manner, then there will be no end to it and it will hamper their

functioning as a public servant.''

13. At this stage, it would be appropriate to examine the scope of judicial review in writ petition under Article 226 of the Constitution of India relating

to disciplinary proceeding.

14. The Supreme Court in UNION OF INDIA AND OTHERS VERSUS P. GUNASEKARAN, 2015(2) SCC 610 held that the High Court should

not act as an Appellate Authority in disciplinary proceedings. It is not open to re-appreciate the evidence. The Supreme Court laid the principles

relating to the issues which can be examined by the High Court and the issues which shall not be open to be scrutinized by the High Court in writ

petition. The relevant portion of the judgment is reproduced below:

''13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary

proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and

was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first

appeal. The High Court, in exercise of its powers under Article 226 /227 of the Constitution of India, shall not venture into re-appreciation of the

evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.''

15. As held by the Apex Court, scope of interference in the writ petition is very limited in respect of disciplinary proceedings.

16. It would be important to note that the complainant kept on making complaints to NCSC for almost one and half years. Number of complaints were

made and there was no specific allegation regarding caste based comments in any of the complaint. Rather from the perusal of complaint it is evident

that the grievance was regarding non-sanctioning of leave thereby treating the complainant to be un-authorisedly absent with no salary. Complaint

made was that leave was sanctioned to other three persons, but denied to complainant because of his caste. The complaints were rejected by NCSC.

It was not a case of the complainant that the alleged utterance was made in his presence or he had heard the same. The complainant had a motive as

according to his perception it was respondent No.1 who was responsible for absence of the complainant being treated as dies-non. The Tribunal has

dealt with the matter. It was considered that there was a delay of four years between the alleged occurrence and the impugned charge-sheet being

issued to respondent No.1. The evidence cannot be re-appreciated in writ petition.

17. The view taken by the Tribunal is possible view, even the Enquiry Officer had taken a similar view, and therefore, in such circumstance, it cannot

be held that the findings recorded by the Tribunal are perverse in any manner or legally not sustainable.

18. The writ petition is accordingly dismissed.