

CASE NO.:
Appeal (civil) 346 of 2005

PETITIONER:
Ranjit Singh

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. Sinha, J :

The Appellant herein was an Inspector, Central Excise and Customs, New Delhi. As his father died in harness, he was appointed on compassionate grounds

A raid by the Central Bureau of Investigation (CBI) was conducted in his house on 29th November, 1990. He was allegedly possessing assets disproportionate to his known source of income. A criminal case was initiated against him by the CBI. On or about 31.12.1991, a disciplinary proceeding was initiated against him. The charges framed against him were:

"Article \026 1 \026 That Shri Ranjit Singh during the year 1981-90 while working as a Government Servant in the capacity of Inspector Customs and Central Excise failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant inasmuch as he by exploiting his official position as a Government servant acquired assets to the tune of Rs. 6,43,737.15 in his own name and in the name of his family members which are disproportionate to the known sources to his income. During the above said period his total income from all known sources comes to Rs. 5,54,924.10 p and the expenditure comes to Rs. 1,92,676.83 and the assets disproportionate to the known sources of income come to the tune of Rs. 2,81,488.88 p. Thus, said Shri Ranjit Singh by his above acts of omission and commission contravened provisions of Rule 3 (1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

Article \026 II \026 That Shri Ranjit Singh during the said period while functioning in the above said capacity failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant as much as he invested Rs. 60,000/- in the purchase of FDRs in his own name as well as in the name of his mother Smt. Leelawanti in Punjab and Sind Bank, Vijayawada in 1981 without any intimation to his department/ Government as required under Rule 18 (3) of the CCS (Conduct) Rules, 1964."

A closure report was submitted by the CBI on 20th July, 2001. In the departmental proceeding, the Appellant adduced evidences on his behalf as also cross-examined witnesses examined on behalf of the Department. The Enquiry Officer submitted a report dated 26.9.1996 exonerating him from the said charges. The Disciplinary Authority, however, differed with the findings of the Enquiry Officer and issued a memorandum on or about 17.2.1997 stating the reasons for his difference with the Enquiry Officer and called upon the Appellant to make his representation in his defence to the grounds of disagreement before a final decision is taken stating:

"Any representation which he may wish to make against the tentative opinion will be considered by the undersigned independent of her tentative opinion. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 10 days from the date of receipt of this memorandum."

By a letter dated 13.3.1997, the Appellant prayed for grant of 10 days time. The same was allowed. Yet again on 25.3.1997, he prayed for further 10 days' time to submit his representation which was also allowed. It is, however, not in dispute that on or about 7.4.1997, i.e., after the expiry of 10 days time from 25.3.1997, he filed another application for granting 3-4 days time. According to the Disciplinary Authority, the order of punishment was already prepared on 8.4.1997 whereas the said application dated 7.4.1997 reached its hand later.

The contention of the Disciplinary Authority in this behalf furthermore is that he was informed by an order dated 21.3.1997 that no further opportunity would be granted to him. The Disciplinary Authority contends that the said order was served on the Appellant but according to him he did not receive the same.

The Appellant, however, submitted a memorandum on 10.4.1997 before the Disciplinary Authority stating in details as to why the conclusion of the Enquiry Officer in his report should be upheld. The said memorandum admittedly was not considered by the Disciplinary Authority.

The Disciplinary Authority by an order dated 8.4.1997 directed dismissal of the Appellant from services stating:

"The charges proved against the charged officer are quite grave in nature. The charged officer had acquired assets disproportionate to his known sources of income. This highly unbecoming of a Govt. servant and necessitate imposition of a severe penalty. I, therefore impose penalty of removal from service on Sh. Ranjit Singh with immediate effect."

In support of the said order, however, no fresh reason was assigned. The Disciplinary Authority proceeded on the basis that as the Appellant had been given an opportunity of hearing to submit his defence and as he had failed to do so, a presumption was drawn that he did not wish to comment on the grounds of disagreement. It was stated:

"\005The evidence proving disproportionate assets has already been discussed at length in the memo dt. 17.02.97. The same are unchallenged by the charged officer and nothing has come to the notice of the undersigned to refute the evidentiary value

of the material discussed in the said memo. The reasons for not treating AC, RCR, Music System, CTV & VCR as items having been fifteen/ leaned to Smt. Leelawanti by her relatives have already been given in memo dt. 17.02.97. As per my findings in this regard contained in the above said memo these items infact belonged to the charged officer and shall be treated as his assets.

The money spent on the construction of house no. EA-68 Inderpuri has also been logically discussed in above referred memo. In the absence of any objection from charged offer this is also held to correct calculation.

Thus, as per discussion in the memo dt. 17.02.97 an assets amounting to Rs. 1,15,873.62 owned by Sh. Ranjit Singh are held to be disproportionate to his known sources of income and therefore charge I is held to be proved against the charged officer."

The Appellant thereafter preferred an appeal before the Appellate Authority being the Commissioner of Central Excise, Delhi against the said order. The following points were framed by the said authority for consideration:

- "(i) Whether by not giving Sh. Ranjit Singh extension of time, which had twice over expired, prejudice has been caused to him, in other words, whether it amounts to denial of principles of natural justice in the circumstances of the case."
(ii) Whether or not the conclusion arrived at by the Disciplinary Authority in her disagreement with the inquiry officer, who had property evaluated the evidence and come to the conclusion are in accordance with the test laid for departmental inquiries namely preponderance of probability or not."

On the first point, the Appellate Authority opined in favour of the department. On the second point, it was held:

"Shri Ranjit Singh has agitated that his mother's property has been attributed to him, therefore, he has been wronged. According to him, this point has been overlooked by the inquiry officer and also by the Disciplinary Authority. There is elaborate findings and discussion in IO report on the subject, in the nature of circumstances of this case that appears to be the most appropriate method. I agree with the same and reject the contention of Shri Ranjit Singh in the appeal memorandum in this regard."

The Appellate Authority on the said premise agreed with the observations of the Disciplinary Authority that both the charges have been established.

A revision filed thereagainst by the Appellant was also dismissed. The Revisional Authority used the same language as that of the Appellate Authority while passing the order dated 22.4.1999.

An Original Application was filed by the Appellant before the Central Administrative Tribunal which was marked as OA No. 1106 of 2000. The said original application was dismissed only stating:

"In UOI Vs. Upendra Singh (1994) 27 ATC 200 the Hon'ble Supreme Court has held the Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed even after the conclusion of the disciplinary proceedings, if the matter comes to the Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings rendered by the disciplinary authority, or the Appellate Authority as the case may be. The function of the Court/ tribunal is none of judicial review, the purpose of which is to ensure that the individual receives fair treatment."

A writ petition filed by the Appellant herein was summarily rejected by the Division Bench of the High Court. The Appellant is, thus, before us.

Mr. Parag Tripathi, learned senior counsel appearing on behalf of the Appellant has raised two contentions in support of the appeal. The learned counsel would firstly submit that keeping in view of the fact that the Municipal Corporation of Delhi valued the residential house of the Appellant at Rs.2,41,576/- whereas the Executive Engineer appointed by the CBI valued the same at Rs. 3,26,000/- and, thus, the difference between the two valuations being only Rs.84,426/-, it cannot be said that the assets possessed by the Appellant were disproportionate to his known source of income.

It was further submitted that the Appellate Authority could have granted some time to the Appellant to file his show cause having regard to the fact that although he is said to have prepared his order on 8.4.1997, it was not dispatched from his office till then and in that view of the matter, it must be held that the principles of natural justice have been violated.

Mr. T.S. Doabia, learned senior counsel appearing on behalf of the Respondent, on the other hand, contended that the Executive Engineer of the CBI was examined before the Deputy Commissioner for the purpose of proving his report on valuation of the residential building of the Appellant and in that view of the matter, his report was admissible in evidence. It was contended that from the order of the Appellate Authority, it would appear that a portion of the building was not valued by the MCD.

It is not disputed that the Disciplinary Authority had issued a show cause notice. It is also true that pursuant to or in furtherance of the said notice, the Appellant did not file any show cause. However, it stands admitted that a show cause was filed by the Appellant herein prior to communication of the order. The Disciplinary Authority states that the Appellant was communicated the order dated 21.3.1997 that no further time would be granted, but the Appellant, on the other hand, contends that that he did not receive the same. The Tribunal, before whom the said contention was raised by the respondent for the first time, did not go into the same nor was it established by or on behalf of the Disciplinary Authority that the said communication dated 21.3.1997 reached the hands of the Appellant before he made a request for grant of 3-4 days' further time by letter dated 25.3.97.

The Disciplinary Authority did not arrive at any independent finding for passing the order of dismissal dated 8.4.1997. He, as indicated hereinbefore, proceeded on the basis that as the Appellant had not filed a show case, he must be held to have accepted the points on the basis whereof

the Disciplinary Authority recorded his disagreement with the findings of the Inquiry Officer. The Disciplinary Authority, however, failed to consider that the grounds on which he had disagreed with the Inquiry Officer forming the basis for issuing the show cause notice dated 17.2.1997, was a tentative one. Only because the Appellant did not file a show cause, the same would not mean that he was not required to consider the materials brought on records by the parties before the Disciplinary Authority, afresh. He was obliged to do so.

In Punjab National Bank and Others v. Kunj Behari Misra [(1998) 7 SCC 84], this Court has clearly held that the principles of natural justice are required to be complied with by the Disciplinary Authority in the event he intends to differ with the findings of the Enquiry Officer observing:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

The said decision has been followed by this Court in State Bank of India and Others v. K.P. Narayanan Kutty [(2003) 2 SCC 447], wherein it was clearly held that in such an event the prejudice doctrine would not be applicable stating:

"6.\005 In para 19 of the judgment in Punjab National Bank case extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) [Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case] and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court."

In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the Disciplinary Authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which

were in favour of the Appellant. Such findings were required to be over turned by the Disciplinary Authority. It is in that view of the matter, the power sought to be exercised by the Disciplinary Authority, although not as that of an appellate authority, but akin thereto. The inquiry report was in favour of the Appellant but the Disciplinary Authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in absence of any show cause filed by the Appellant, to analyse the materials on records afresh. It was all the more necessary because even the CBI, after a thorough investigation in the matter, did not find any case against the Appellant and thus, filed a closure report. It is, therefore, not a case where the Appellant was exonerated by a criminal court after a full fledged trial by giving benefit of doubt. It was also not a case where the Appellant could be held guilty in the disciplinary proceedings applying the standard of proof as preponderance of the probability as contrasted with the standard of proof in a criminal trial, i.e., proof beyond all reasonable doubt. When a final form was filed in favour of the Appellant, the CBI even did not find a prima facie case against him. The Disciplinary Authority in the aforementioned peculiar situation was obligated to apply his mind on the materials brought on record by the parties in the light of the findings arrived at by the Inquiry Officer. He should not have relied only on the reasons disclosed by him in his show cause notice which, it will bear repetition to state, was only tentative in nature. As the Appellate Authority in arriving at his finding, laid emphasis on the fact that the Appellant has not filed any objection to the show cause notice; ordinarily, this Court would not have exercised its power of judicial review in such a matter, but the case in hands appears to be an exceptional one as the Appellant was exonerated by the Inquiry Officer. He filed a show cause but, albeit after some time the said cause was available with the Disciplinary Authority before he issued the order of dismissal. Even if he had prepared the order of dismissal, he could have considered the show cause as it did not leave his office by then. The expression "communication" in respect of an order of dismissal or removal from service would mean that the same is served upon the delinquent officer. [See State of Punjab vs. Amar Singh Harika, AIR 1966 SC 1313]

Even otherwise also the jurisdiction of a Disciplinary Authority to consider the matter would remain with him till it goes out of his hands which would mean the order is dispatched, as in the case of order of suspension. [See Sultan Sadik v. Sanjay Raj Subba and Others, (2004) 2 SCC 377]

We are, therefore, of the opinion that interest of justice will be subserved if the Disciplinary Authority is directed to consider the matter afresh in the light of the show cause filed by the Appellant herein before him. It will be desirable that an opportunity of personal hearing is also given to the appellant herein. We make it clear that although we are setting aside the order of Disciplinary Authority and consequently all other orders, we direct that the Appellant shall be deemed to be under suspension till an appropriate order is passed by the Disciplinary Authority. The question of payment of backwages, it is directed, would depend upon the ultimate order that may be passed by the Disciplinary Authority. For the views we have taken, it is not necessary for us to consider the other contentions raised by Mr. Tripathi.

This appeal is allowed to the afore-mentioned extent and the matter is remitted to the Disciplinary Authority for consideration of the matter afresh in the light of the observations made hereinbefore. However, in the facts and circumstances of the case, there shall be no order as to costs.