Director General of Police and Others

Vs

R. Janibasha

Civil Appeal No. 4588 of 1995

(K. Venkataswami V. N. Khare JJ)

05.08.1997

ORDER

1. The respondent was charge-sheeted for certain misconduct and on enquiry it was found that the charges have been established. On that basis, the disciplinary authority passed an order dismissing the respondent from service. On appeal, the appellate authority modified the punishment to that of "compulsory retirement". Still aggrieved the respondent preferred an application before the Tribunal and the Tribunal held that the charge-memo was issued not by the appointing authority but by a different authority and after reappreciating the evidence as if it was an appellate forum, the Tribunal independently came to the conclusion that the evidence was not sufficient to hold that the charges were established. On that ground the Tribunal set aside the order compulsorily retiring the respondent. The State, aggrieved by that order has come up in this appeal.

2. Mr. Mariarputham, learned counsel appearing for the appellant, submitted that the view of the Tribunal that the charge-memo was not issued by the disciplinary authority, the further proceedings were illegal, was not accepted by this Court in the judgment reported in Inspector General of Police v. Thavasiappan ((1996) 2 SCC 145 : 1996 SCC (L&S) 433 : (1996) 32 ATC 663). As a matter of fact, the Tribunal has followed its earlier order in OA No. 4235 of 1991 dated 9-12-1992 which was reversed by this Court in the abovesaid judgment. On the second point, namely, reappreciation of evidence, the learned counsel for the appellant submitted that the jurisdiction of the Tribunal was not to reappreciate the evidence, but to find out whether there are any technical irregularities and illegalities in the decision of the disciplinary authority. On the other hand, in this case, the Tribunal has gone into the evidence as if it was an appellate authority and then has come to its conclusion upsetting the findings of the disciplinary authority. In support of that he placed reliance on the judgment of this Court in State of T.N. v. S. Subramaniam ((1996) 7 SCC 509 : 1996 SCC (L&S) 627 : (1996) 33 ATC 317).

3. The learned counsel appearing for the respondent however submitted that the Tribunal has rightly interfered with the conclusion of the disciplinary authority as it has found the discrepancy as set out in the order which goes to the root of the order and, therefore, the Tribunal was justified in this case in reappreciating the evidence. We find from the order of the disciplinary authority the charge was that the respondent had demanded and accepted the bribe, but the only discrepancy pointed out in the evidence was regarding the date, time and amount. This has been noticed by the disciplinary authority and it has given acceptable reasons for ignoring those discrepancies. If that be the position, we do not think that the Tribunal can substitute its own finding in place of the finding given by the disciplinary authority. This Court in S. Subramaniam case ((1996) 7 SCC 509 : 1996 SCC (L&S) 627 : (1996) 33 ATC 317) has observed as follows : (SCC Headnote)

> "The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested in the Tribunal by the Administrative Tribunals Act, 1985. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application to the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion."

4. In the light of the above decision of this Court, we are of the view that the learned counsel for the appellant is right that the Tribunal exceeded its jurisdiction in reappreciating the evidence and substituting its finding in place of the findings rendered by the disciplinary authority. On the question of the authority who can issue the charge-memo, learned counsel for the respondent has fairly accepted that the case is covered by the Thavasiappan case ((1996) 2 SCC 145 : 1996 SCC (L&S) 433 : (1996) 32 ATC 663). In the circumstances, we set aside the order of the Tribunal and restore the order of the disciplinary authority. The appeal is allowed. There shall be no order as to costs.