Commissioner and Secretary to The Govt. and Others

Vs

C. Shanmugam

Civil Appeal No. 271 of 1994

(K. Venkataswami, V. N. Khare JJ)

09.12.1997

ORDER

1. This appeal by special leave is preferred against an order of the Tamil Nadu Administrative Tribunal in OA No. 2253 of 1991 dated 11-5-1993. The respondent was a basic servant in the District Employment Office, Tiruchirapalli. By an order dated 13-5-1980 he was placed under suspension on account of his misbehaviour with his superior officers and on that count charges were framed against him under Rule 17-B of the Tamil Nadu Civil Services (CCA) Rules. After holding a regular departmental enquiry an order of compulsory retirement was passed against the respondent by the disciplinary authority. The departmental appeal and review were not successful. Hence he moved the Tribunal by filing the said OA. The Tribunal was of the view that the copy of the enquiry report was not supplied to the delinquent on account of which he could not place his defence effectively. The Tribunal also thoroughly reappreciated the evidence and found that in the absence of an independent witness to substantiate the charges, the conclusions reached by the disciplinary authority based on evidence of the other employed in the office, cannot be sustained. Another ground given by the Tribunal was that the punishment of compulsory retirement can be awarded if the norms prescribed under Rule 56 of the Fundamental Rules are attracted. On these grounds the Tribunal set aside the order of compulsory retirement and allowed the application. Aggrieved by that, the present appeal is filed by the appellants.

2. It is seen from the order of the Tribunal that at the regular departmental enquiry held, the employees who were present at the time of the incident in the office on 2-8-1980 were examined and they all supported the charges (misbehaviour with the superior officer) levelled against the respondent/delinquent. The Tribunal on a reappreciation of evidence, in judicial review, was of the view that the enquiry report based on such evidence cannot be totally accepted as free from bias and an order passed on such reports cannot be accepted as a fair and just one. Assailing this view of the Tribunal, the learned counsel appearing for the appellants brought to our notice three judgments of this Court reported as State of T. N. v. S. Subramaniam ((1996) 7 SCC 509 : 1996 SCC (L&S) 627 : (1996) 33 ATC 317), Govt. of T. N. v. A. Rajapandian ([1995] 1 SCC 216 : 1995 SCC (L&S) 292 : (1995) 29 ATC 89) and State of Haryana v. Rattan Singh ([1977] 2 SCC 491 : 1977 SCC (L&S) 298). In State of T. N. v. S. Subramaniam ([1996] 7 SCC 509 : 1996 SCC (L&S) 627 : (1996) 33 ATC 317) a three-Judge Bench of this Court observed as follows : (SCC pp. 511-12, para 5)

> "The only question is : Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. 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 by the power under Article 323-A and invested the same in the Tribunal by the Central Administrative Tribunals

> Act. 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 for 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. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusions on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B. C. Chaturvedi v. Union of India ([1995] 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44) State of T. N. v. T. V. Venugopalan ([1994] 6 SCC 302 : 1994 SCC (L&S) 1385 : (1994) 28 ATC 294) (SCC para 7), Union of India v. Upendra Singh ([1994] 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200) (SCC at para 6) Govt. of T. N. v. A. Rajapandian ([1995] 1 SCC 216 : 1995 SCC (L&S) 292 : (1995) 29 ATC 89) (SCC para 4) and B. C. Chaturvedi v. Union of India ([1995] 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44) (SCC at pp. 759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

3. In Govt. of T. N. v. A. Rajapandian (([1995] 1 SCC 216 : 1995 SCC (L&S) 292 : (1995) 29 ATC 89) this Court held as follows : (SCC p. 217, para 4)

> "The Administrative Tribunal set aside the order of dismissal solely on reappreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondent. We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in reappreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by reappreciating the evidence and reaching a finding different than that of the inquiring authority."

4. While coming to the above conclusions, this Court referred to an earlier decision of this Court in

Union of India v. Sardar Bahadur ([1972] 4 SCC 618).

5. In State of Haryana v. Rattan Singh ([1977] 2 SCC 491 : 1977 SCC (L&S) 298) this Court more or less in an identical situation held as follows : (SCC p. 493, para 4).

> "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition, it is not necessary to cite decisions nor textbooks, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passage from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

6. In State of Haryana v. Rattan Singh ([1977] 2 SCC 491 : 1977 SCC (L&S) 298) the delinquent was a conductor who was charge-sheeted for taking the passengers without issuing tickets. The contention was that no independent witnesses were examined except the checking inspector. In that context the above observations were made by this Court.

7. In the light of the settled view of this Court as expressed above, we are of the view that the Tribunal was not right in reappreciating the evidence and coming to a conclusion that in the absence of independent evidence the enquiry report cannot be accepted without appreciating the place of incident and the circumstances. Moreover it is not the finding that there was no evidence to sustain the impugned order.

8. Regarding the non-supply of the enquiry report in this case, the punishment was awarded on 13-5-1983. In view of the ruling of this Court in Union of India v. Mohd. Ramzan Khan ([1991] 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505) non-supply of the copy of the enquiry report will not vitiate the order.

9. The view taken by the Tribunal on the application of FR 56 was misconceived. FR 56 contemplates entirely a different situation and in this case, the disciplinary authority taking a lenient view and having regard to the interest of the family members of the delinquent imposed punishment of compulsory retirement which is one of the punishments that can be awarded after enquiry. Instead of compulsory retirement, if the disciplinary authority had imposed either removal or dismissal order, the consequences would have been more serious to the delinquent.

10. The view of the Tribunal that the requirement of FR 56 must be satisfied before imposing a punishment of compulsory retirement on the facts of this case, is not sustainable. As pointed out earlier both deal with different situations. Under FR 56 even without enquiry an order of compulsory retirement can be passed provided the requirements therein are complied with. In the case of imposing punishment of compulsory retirement after enquiry, the requirements are totally different. Therefore, the Tribunal was not right in holding that the requirement of FR 56 ought to be satisfied even for imposing punishment after full-fledged enquiry. None of the grounds by the Tribunal to set aside the order of compulsory retirement on the facts of this case is sustainable in law. Accordingly, the appeal is allowed and the order of the Tribunal is set aside. OA No, 2253 of 1991 stands dismissed. No costs.