SUPREME COURT OF INDIA

Prem Nath Bali

Vs.

Registrar, High Court of Delhi & Anr.

C.A.No.958 of 2010

(Jasti Chelameswar and Abhay Manohar Sapre, JJ.)

16.12.2015

JUDGMENT

Abhay Manohar Sapre, J.

1. This appeal is filed against the final judgment and order dated 21.08.2008 of the High Court of Delhi at New Delhi in Writ Petition(c) No. 2046 of 2001 whereby the High Court dismissed the petition filed by the appellant herein.

2. In order to appreciate the issue involved in this appeal, which lies in a narrow compass, it is necessary to set out the relevant facts in brief infra.

3. On 01.10.1965, the appellant joined the office of District & Sessions Court, Delhi as Lower Division Clerk. He was confirmed w.e.f. 06.07.1976. Thereafter on 26.07.1986, he was promoted as Upper Division Clerk (U.D.C.). In May, 1989, he was posted as U.D.C. as in-charge of copying agency criminal side at Patiala House Court, New Delhi.

4. While working as U.D.C. and in-charge of Copying Agency (Criminal) at Patiala House Court, on 23.01.1990, the appellant submitted a written complaint against one Window Clerk, namely, Smt. Brij Bala, to the officer in-charge of the Copying Agency, Patiala House Courts stating therein that she is not discharging her duty effectively and she often used to close the counter of the Copying Agency before the prescribed time and after lunch also she used to resume her duty after the prescribed time. Therefore, the litigants had occasion to make a complaint to the appellant and he had to depute other official to attend the work. The appellant requested for her transfer.

5. On the same day, Smt. Brij Bala also made a statement to the superior officer that on 22.01.1990 after closing the application register at 1.00 p.m., she came to know that some

applications, which were not even entered in the register on that day, were entered in CD2/Dak register subsequently and the certified copies were got prepared of those applications on the same date. She was also pressurized to deliver the copies on the same date at 2.30 p.m. When she refused to deliver the copy, the appellant quarreled with her and used unwanted words in the office, which were uncalled for.

6. The office-in-charge forwarded the aforesaid statement of Smt. Brij Bala to the District Judge. On the basis of said complaint, a preliminary enquiry was made. Thereafter a departmental enquiry was also held against the appellant. On 06.02.1990, the appellant was placed under suspension.

7. A memorandum dated 18.07.1990 was served on the appellant by the office of the District & Sessions Judge, Delhi that the authority proposes to hold an enquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short "the CCS Rules") which included the statement of articles of charges and other relevant documents.

8. The disciplinary proceedings, which commenced on 18.07.1990, continued for more than nine years. Pending disciplinary proceedings, the appellant sought revocation of suspension order but such representation made by the appellant was not considered. Subsequently, vide order dated 01.03.1999, the then District & Sessions Judge, exercising the powers conferred under Clause C ofsub-rule 5 of Rule 10 of CCS Rules revoked the order of suspension with immediate effect. The issue, whether the period of suspension is to be reckoned as period on duty, was not decided and directed to be taken up after conclusion of the disciplinary proceedings.

9. The District & Sessions Judge, Delhi passed two orders dated 27.10.1999 and 28.10.1999 imposing a major penalty of compulsory retirement on the appellant. It was also ordered that the appellant will not be entitled to any amount more than the allowances already paid during the period of suspension.

10. Challenging the said order, the appellant filed an appeal before the Administrative Judge of the High Court of Delhi. Vide order dated 21.08.2000, the Administrative Judge dismissed the appeal.

11. Against the said order, the appellant filed W.P.No. 2046 of 2001 before the High Court. The High Court, by impugned judgment dated 21.08.2008, dismissed the petition.

12. Aggrieved by the said order, the appellant filed this appeal by way of special leave before this Court.

13.The appellant appeared in-person. Mr. Wasim Qadari, learned counsel appeared for respondents. Since the appellant had no legal assistance, he was appearing in person. We

requested Mr. Sreegesh, learned counsel, who was present in Court, to appear for the appellant to enable us to decide the appeal.

14. Heard Mr. Sreegesh, learned counsel for the appellant and Mr. Wasim A. Qadri, learned counsel for the respondents.
15. We record our appreciation for Mr. Sreegesh, learned counsel, who on our request argued the case ably with fairness for the appellant and rendered his valuable assistance on every date of hearing.

16. Submissions of Mr. Sreegesh were three-fold. In the first place, he contended that no case whatsoever is made out against the appellant for imposing the punishment of compulsory retirement. He also made attempt to find fault in departmental inquiry proceedings and contended that the manner in which the proceedings were held would indicate that the appellant did not get fair opportunity to meet the charges and, therefore, the departmental proceedings are rendered bad in law having been conducted in violation of principle of natural justice.

17. In the second place, learned counsel contended that in any event the punishment of compulsory retirement imposed on the appellant was not commensurate with the gravity of charge and being wholly disproportionate to the nature of charges, this Court should interfere in the quantum of punishment and reduce it to make the same in tune with the gravity of the charges.

18. In the third place, learned counsel contended that the appellant was kept under suspension for a long period of 9 years and 26 days (06.02.1990 to 01.03.1999) without any justifiable cause on the part of the respondents and yet the respondents excluded this period while calculating the appellant's pension, which according to him was not justified and, therefore, a direction be issued to the respondents to count the period of suspension for determining the appellant's pension and other retiral benefits.

19. In reply, learned counsel for the respondents supported the impugned order. As regards the last submission of the learned counsel for the appellant, his reply was that since the departmental proceedings were delayed due to the appellant's seeking frequent adjournments from time to time and hence he is not entitled to claim the benefit of period of suspension for fixing his pension which, according to him, was rightly fixed after excluding the suspension period.

20. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force only in the third submission of the appellant's counsel whereas the first two submissions are concerned, we find no substance.

21. We have perused the record of the departmental proceedings and find that the inquiry officer fully observed principle of natural justice while conducting the departmental proceedings. It is

not in dispute that the appellant was served with detailed charge sheet along with the documents referred to therein. He filed reply to the charge sheet. The parties were then given full opportunity to adduce evidence and which they availed of by examining witnesses in their support and by cross-examining each of them. What more, in our opinion, is then required in any departmental proceedings? The writ court examined this issue in detail and rightly recorded the finding that the inquiry officer observed the principle of natural justice in the departmental proceedings and found no fault in the
proceedings so as to entitle the court to interfere in writ jurisdiction.

22. We find no good ground to take a different view on this issue and reject this submission being devoid of any merit.

23. This takes us to the next question as to whether the punishment of compulsory retirement inflicted on the appellant was justified or not. It was the submission of learned counsel for the appellant that the punishment of compulsory retirement was not justified. However, in our view, it was rightly inflicted.

24. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

25. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment.

26. Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscious of the Court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority
as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.

27. Learned counsel for the appellant was not, however, able to show us with reference to the facts of the case that the case of the appellant satisfies any of the aforementioned grounds so as to entitle this Court to interfere in the quantum of punishment and hence, in our considered view, the punishment of compulsory retirement inflicted upon the appellant by the appointing authority

having regard to the nature of proved charges appears to be just and proper and does not call for any interference.

28. This takes us to the last submission of learned counsel for the appellant, which in our considered view, deserves serious consideration.

29. One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the

appellant but it was equally attributable to the respondents as well. Due to such unreasonable delay, the appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.

30. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

34. Now coming to the facts of the case in hand, we find that the respondent has fixed the

appellant's pension after excluding the period of suspension (9 years and 26 days). In other words, the respondents while calculating the qualifying service of the appellant for determining his pension did not take into account the period of suspension from 06.02.1990 to 01.03.1999.

35. Having regard to the totality of the facts and the circumstances, which are taken note of supra, we are of the view that the period of suspension should have been taken into account by the respondents for determining the appellant's pension and we accordingly do so.

36. In view of foregoing discussion, the appeal succeeds and is allowed in part only to the extent indicated above in relation to fixation of appellant's pension. The respondents are accordingly directed to re-determine the appellant's pension by taking into account the period of suspension (06.02.1990 to
01.03.1999) and then pay to the appellant arrears of the difference amount from the date he became eligible to claim pension and then to continue to pay the appellant re-determined pension regularly in future as per Rules. It is to be done within three months from the date of receipt of this order. No costs.