

Neutral Citation No. - 2025:AHC-LKO:23735-DB

Court No. - 1

Case :- WRIT - A No. - 6444 of 2022

Petitioner :- Union Of India Thru. The Secy. Goi And 2 Others

Respondent :- Kamlesh Kumar And Another

Counsel for Petitioner :- Dipak Seth, Anuj Singh

Counsel for Respondent :- Praveen Kumar, Praveen Kumar, Saroj Kumar Verma

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

- (1) Heard Sri Anuj Singh, learned counsel for the Union of India/petitioners and Sri Sudhanshu Srivastava, Advocate holding brief of Sri Praveen Kumar, learned counsel for the contesting respondent.
- (2) This writ petition is directed against the judgment and order dated 25.10.2018 passed by the Central Administrative Tribunal in O.A. No. 224 of 2010. The operative part of the impugned judgment reads as under:-

"16. In view of the above discussion, this O.A. is partly allowed. The matter is remitted back to the disciplinary authority to consider imposition of a lighter punishment, other than dismissal or removal, considering the fact that the applicant had rendered service of 30 years, at the time of his dismissal and then pass appropriate orders. Needful be done within a period of three months from the date of receipt of a copy of this order."

- (3) We have carefully gone through the impugned judgment and order passed by the Tribunal which has taken due pain in delving into the procedural aspects of the matter for imposition of major penalty. In paragraph - 9 of the impugned judgment, there is a categorical finding recorded to the effect that insofar as enquiry proceedings are concerned, the prescribed procedure has duly been followed as per rules and the evidence oral as

well as documentary has rightly been appreciated by the competent authority.

- (4) Threadbare consideration of the submissions in appeal by the Appellate Authority is also the observation made by the Tribunal regarding the order passed in Appeal. It is after finding it a case of no procedural irregularity that the Tribunal has stepped in the arena of proportionality of punishment imposed upon the respondent. While carrying out such an exercise, the Tribunal was impressed by the length of service rendered by the respondent to the extent of thirty years and that being so, the imposition of the punishment of dismissal from service was held to be shocking to the conscious of the Tribunal even if there was a mis-representation at the initial stage regarding eligibility.
- (5) Relying upon the judgments of the Apex Court, where the impugned punishment was shockingly disproportionate, the Tribunal has set aside the order of dismissal from service by remitting the case back to the departmental authorities for passing a fresh order imposing a punishment other than dismissal/removal.
- (6) Learned counsel for the petitioners/union of India, while arguing the matter, has brought to our notice a circular/Office Memorandum dated 19.05.1993 of which relevant part of paragraph - 2 reads as under:-

"If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if that charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed."

- (7) The Office Memorandum dated 19.05.1993 does not seem to have been adverted to by the Tribunal in the impugned judgment.
- (8) Learned counsel for the Union of India has argued that in all the cases where the Circular dated 19.05.1993 is attracted, necessary consequence is provided in the Office Memorandum itself and the same being binding upon the departmental authorities, no fault on this count can be attributed against the competent authorities for having taken a firm view.
- (9) It is next argued by the learned counsel for the Union of India that though the process of decision making by the departmental authorities is open to scrutiny by the Tribunal, but substituting its view in the matter of punishment, it is well settled, lies beyond the domain of the adjudicatory forums and the position of law in this regard is well settled in the case of ***Ram Saran v. IG of Police, CRPF and others [(2006) 2 SCC 541]***. Learned counsel for the Union of India has also relied upon a recent judgment of ***Union of India and others v. M. Duraisamy [(2022) 7 SCC 475]***. The judgments relied upon by the learned counsel for the petitioners/Union of India do offer a valid support to the arguments putforth which could not be repelled by the learned counsel for the respondent satisfactorily.
- (10) Although in paragraph - 14 of the impugned judgment, the Tribunal has attributed an omission on the part of the disciplinary authority not to have taken into consideration the length of respondent's services so as to weigh the proportionality of the punishment imposed, but such an observation recorded by the Tribunal seems to be in oblivion of the Office Memorandum dated 19.05.1993.
- (11) The limitations of Courts of Law to substitute its view have consistently been spelt out by the Apex Court so that there is no

invasion of jurisdiction upon the domain of administrative authorities to take independent decisions, therefore, the submission putforth before us in the light of judgments, noted above, in our humble consideration, carries weight and the submission made deserves acceptance.

- (12) At this stage, it is pointed out that the delinquent employee has already passed away and the proceedings are being contested by the wife, who is shown to be 64 years of age and the legal representatives of the deceased employee who are stated to be major are no more the dependents.
- (13) Except having a sympathy for the legal representatives of the deceased employee, this Court, on the merits of the case, is convinced that the judgment impugned herein is unsustainable in the eyes of law.
- (14) We accordingly **allow** the writ petition and set aside the impugned judgment and order dated 25.10.2018 passed in O.A. No. 224 of 2010, contained in Annexure No.1 to the writ petition, with all consequences upon the execution proceedings stated to be pending.

[Ajai Kumar Srivastava-I, J.] [Attau Rahman Masoodi, J.]

Order Date :- 25.4.2025
lakshman