2024 INSC 577

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 8435 - 8436 OF 2024
(@ S. L. P. (CIVIL) Nos. 2733-2734 of 2024)

MOOL CHANDRA …APPELLANT

VERSUS

UNION OF INDIA & ANR. …RESPONDENTS

J U D G M E N T

Aravind Kumar, J.

1. Heard.

2. Leave Granted.

3. Appellant has laid challenge in these appeals to the Order dated 14.09.2023 passed by the High Court of Delhi in WP (C) No.5350 of 2022 and CM Appls. 16008 of 2022 and 46942 of 2023 whereby the Writ Petition and connected applications came to be dismissed and Review Petition No.305 of 2023 filed against said Order also came to be rejected on 03.11.2023 and consequently the Order dated 10.12.2020 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter

referred to as the “Tribunal” for brevity) came to be affirmed whereunder the Tribunal dismissed the application for condonation of delay in challenging the Order dated 22.11.2006 imposing the penalty of stoppage of one increment with cumulative effect, on the ground of delay of 425 days in filing the OA and held penalty imposed on the appellant was justified given the nature of charge.

4. It would be apt and appropriate to narrate the factual background for appreciating the rival contentions raised in these appeals and the parties are referred to hereinafter as per their rank in the High Court.

BRIEF BACKGROUND

5. The appellant was appointed to Indian Statistical Services in the year 1982 and after being promoted as Deputy Director (STS) on regular basis in 1987 came to be promoted as Joint Director (JAG) on ad hoc basis in the year 1992 and regularised in 1993. In the light of the Judgment of this Court in *Union of India and Others v. Tushar Ranjan Mohanty and Others* (1994) 5 SCC 450 the appellant along with others was reverted in the year 1996 to the post of Deputy Director and again was promoted to the post of Joint Director w.e.f. 08.06.2005.

6. Appellant came to be placed under suspension on 13.10.1997 followed by issuance of charge memorandum under Rule 14 of CCS

(CCA) Rules, 1965. The only charge against the appellant was that he had deserted his family consisting of his wife and two school going children in December 1985 and was residing separately along with another woman without judicial separation from his wife. The said charge sheet was issued on the basis of the complaint lodged by his wife during August 1997 and he was not paid salary from May 1996 to July 1997.

7. The Disciplinary Authority appointed an Inquiry Officer to enquire into the memorandum of charge and during the pendency of the inquiry, the wife of the appellant filed an affidavit withdrawing her complaint on the ground that there had been some misunderstanding. Despite the said affidavit the enquiry officer proceeded with the inquiry and submitted enquiry report on 16.12.1998 holding appellant guilty of charge of deserting his family and further held that the charge of appellant living with another woman was not proved. This report resulted in order of dismissal of appellant from service imposed by the disciplinary authority by order dated 17.04.2000 and review petition filed against the same also ended in its dismissal.

8. Being aggrieved by the aforesaid order of dismissal from service, appellant preferred an O.A. No.116 of 2002 before the Tribunal which came to be allowed by Order dated 15.11.2002 and the order of dismissal

came to be quashed with the following observations and remitted the case to the disciplinary authority:-

> "**2**. In the enquiry that ensured, it was found that the assertions that applicant was living with another woman are not established but the other facts referred to above have been so established. Keeping in view the findings referred to above that applicant was not maintaining his wife and two children and they were driven to the starvation level, the disciplinary authority on the advice of the U.P.S.C. dismissed the applicant from service.
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> **3.** Before us, at the time of arguments, it was pointed out that no allegation against the applicant of extra marital relations has been established and this fact is not in dispute. Taking clue from aforesaid, it was argued that the punishment of dismissal so awarded, is disproportionate to the dereliction of duty of the applicant.
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> **4.** We are conscious of the decision that ordinarily this Tribunal is not to go in the said controversy. It is within the domain of the disciplinary authority to consider the relevant facts and pass appropriate orders imposing a particular punishment in a disciplinary authority.
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> **5.** However, the well-known exception to the said rule is that if the punishment awarded is totally disproportionate to the alleged dereliction of duty, in judicial review there can be interference.
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> **6.** In the present case, the assertions against the applicant established were that he had not been maintaining his wife and children. After dismissal, he cannot maintain his wife and children. When such is the situation, we have no hesitation in concluding that the punishment awarded is disproportionate to the allegations against the applicant that were established.
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> **7.** Accordingly we quash the impugned order and remit the case to the disciplinary authority to pass a fresh order in the light of what has been said above.
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> **8.** No opinion is expressed on the other contentions of the applicant for the present. O.A. is disposed of."

9. On matter being sent back to the disciplinary authority, appellant came to be reinstated into service on 09.04.2003 and an order dated

23.04.2004 came to be passed imposing minor penalty of stoppage of one increment of pay for a period of one year, without cumulative effect. Further order came to be passed on 02.08.2004 treating period of suspension as on duty for all purposes. However, no promotion was granted during the period of suspension. Seeking complete exoneration appellant filed a revision petition and same was said to be pending. On account of revision petition filed by the appellant having not been disposed of representations dated 27.07.2015, 16.03.2016 and 17.03.2016 was said to have been submitted by the appellant urging grant of promotion on par with his juniors who had already been promoted and prayed for grant of financial benefits in that regard by complete exoneration of charge levelled. In the meanwhile, appellant attained the age of superannuation and retired from service with effect from 31.10.2016.

10. O.A. No.1579 of 2017 came to be filed by the appellant seeking direction to the respondent authorities to consider his representation and same came to be disposed of by the Tribunal vide Order dated 08.05.2017 directing the respondents to dispose of the representation dated 27.07.2015 within a period of 90 days. This resulted in same being disposed of and intimation/communication was forwarded to the appellant on 09.11.2017 informing the appellant thereunder that representation dated 27.07.2015 has been considered & rejected. Appellant was also intimated that his

representations had already been disposed of and same had been intimated vide communication dated 20/22-11-2016 itself and also forwarded copy thereof to the appellant along with communication dated 09.11.2017. The communication dated 09.11.2017 came to be challenged by the appellant in O.A. No.3034 of 2018 as well as the communication dated 20/22.11.2016. The said O.A. is said to have been withdrawn by the Ld. Counsel appearing for the appellant purportedly without his consent and knowledge on 10.08.2018. The said order of the Tribunal dismissing the O.A. as withdrawn reads:

> "Learned Counsel for applicant seeks permission of the Tribunal to withdraw the O.A.
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> 2. Permission is accorded. The O.A. is dismissed as withdrawn without prejudice to the right of the applicant to pursue his remedy in accordance with law."

11. Appellant claims that he came to know about this fact namely withdrawal of his application before the Tribunal only in the last week of August 2019 and immediately thereafter he had applied for certified copy of the order dated 10.08.2018 and filed another O.A. No.2066 of 2020 before the Tribunal along with Miscellaneous Application No. 3679 of 2019 for condoning the delay in filing the O.A. as he had been given opportunity to pursue his remedy in accordance with law. The application for condonation of delay came to be rejected by the Tribunal vide order dated: 10.12.2020 by observing thus:

> "3. The delay involved is more than one year. It is not as if the applicant was not aware of the proceedings. As a matter of fact, the OA is filed against the order of dismissal, passed against him was allowed and relief was granted. It is in compliance with the order by the Tribunal, that the revised order of punishment was passed. The appellate authority rejected the appeal in the year 2016. It is not the case of the applicant that he did not receive the same. Further, the applicant was very much free to pursue the proceedings, ever since he retired. Except stating that his earlier counsel did not take proper steps, the applicant did not substantiate the reasons for delay.
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> 4. We are not convinced with the reasons given in the MA. The same is accordingly dismissed. The OA shall also stand dismissed."

12. Being aggrieved by the same appellant filed Writ Petition (Civil) No.5350 of 2022 before the Delhi High Court which dismissed the writ petition by impugned order while affirming the order of the Tribunal and observed that justifiable penalty had been imposed by the disciplinary authority. Hence, this appeal.

CONTENTIONS OF LEARNED ADVOCATES

13. It is the contention of Shri Vardhman Kaushik, learned counsel appearing for the appellant that High Court on the one hand having opined not to entertain the writ petition on the ground of alleged unexplained delay, yet proceeded to deal with the matter on merits of the case, that too without affording an opportunity to the appellant and as such the appeal deserves to be allowed by setting aside the impugned order. He would

further elaborate his submissions by contending that Tribunal had committed an error in not condoning the delay of 425 days in filing O.A. No.2066 of 2020 and the delay was due to the mistake of the counsel, who without the knowledge and consent of the appellant had withdrawn the earlier O.A. No.3034 of 2018 and also without prejudice to the right of the appellant to pursue his remedy in accordance with law and it is on account of lack of knowledge of the appellant's application having been withdrawn and on acquiring knowledge about such unilateral withdrawal appellant had taken immediate steps to prosecute his legitimate claim before the Tribunal by filing O.A. No.2066 of 2020 afresh along with an miscellaneous application No.3679 of 2019 for condonation of delay and as such Tribunal ought to have condoned the delay which refused to do so and same has been erroneously affirmed by the High Court. He would submit that a party should not suffer for the mistake of his counsel or the conduct of the counsel and he has placed reliance on *Rafiq and Another* Vs. *Munshilal and Another* (1981) 2 SCC 788 and *N. Balakrishnan* Vs. *M. Krishnamurthy* (1998) 7 SCC 123.

14. He would further contend that term '*sufficient cause*' ought to receive liberal construction by the constitutional courts to advance substantial justice and the facts obtained in the instant case were sufficient to hold that the delay in filing fresh O.A. was not attributable to any laxity

exhibited by the appellant. On merits the learned counsel appearing for the appellant would contend that it is an undisputed fact that complainant (wife of appellant) had withdrawn her complaint and an affidavit to the said effect had been filed before the Inquiry Officer itself and she had also not deposed before inquiry though cited as a witness on behalf of employer and as such the finding of the enquiry officer holding appellant guilty of alleged misconduct was an erroneous finding and liable to be set aside. Hence, he prays for appeals being allowed.

15. Per contra Shri N. Visakamurthy, learned counsel appearing for the respondents would support the impugned orders and submits that purported representations submitted by the appellant vide letters dated 19.10.2004, 16.03.2016 and 17.03.2016, had been examined by the Ministry and had been rejected vide OM dated 20/22-11-2016 and this was challenged in O.A. No.3034 of 2018 and same had been withdrawn by the appellant unconditionally and as such no fault can be laid at the doors of the respondents. Hence, he prays for dismissal of the appeals.

16. Having heard the learned advocates appearing for the parties and after bestowing our careful and anxious consideration to the rival contentions raised at the bar, we are of the considered view that the impugned orders are not sustainable and they are liable to be set aside for the reasons assigned hereafter.

DISCUSSION AND FINDINGS

17. It is an undisputed fact that appellant was issued with the article of charge alleging that he had deserted his wife and two school going children and was residing along with another lady. The said disciplinary proceedings came to be initiated on account of a complaint lodged by the wife of the appellant. When the Inquiry Officer commenced the inquiry, she filed an affidavit stating thereunder that she had filed the complaint under mistaken notion and she withdrew the complaint. In fact, in the articles of charge issued to the appellant she was cited as a witness by the respective authority and neither she appeared before the Inquiry Officer nor she had deposed in the inquiry proceedings. Though, she had already filed an affidavit withdrawing her complaint against the appellant, yet the Inquiry Officer proceeded with the inquiry and submitted the report as already noticed herein above, holding appellant guilty of the charge of deserting his wife and children and exonerating him of charge of residing with another lady. This resulted in order of dismissal being passed against the appellant and same was challenged before the Tribunal in O.A. No.116 of 2002 by the appellant which came to be allowed and matter was remitted to the disciplinary authority to pass fresh order, which resulted in reinstatement of appellant into service and imposing of minor penalty

namely, stoppage of one increment of pay for a period of one year without cumulative effect.

18. On account of the said penalty having been imposed on the appellant representation was submitted to the authorities for complete exoneration and grant of promotion on par with his juniors. In the meanwhile, appellant attained superannuation and thereafter O.A. No.1579 of 2017 was filed for a direction to the respondents to consider the representation which was unattended and a direction came to be issued by the Tribunal on 08.05.2017 directing the respondents to dispose of the representation within a period of 90 days and accordingly it was disposed of as already noticed herein supra and intimated to the appellant by communication dated 09.11.2017.

19. Being aggrieved, appellant challenged the same in O.A. No.3034 of 2018. However, the counsel appearing for the appellant is said to have withdrawn the said O.A. On the one hand appellant claims that he had not authorized his counsel to withdraw the O.A. No.3034 of 2018 and on the other hand, learned counsel appearing for the respondents has submitted that OA had been withdrawn by the appellant through his counsel without prejudice to the right of the appellant to pursue his remedy in accordance with law. This oath against oath cannot be tested in absence of any proof.

The fact remains that there was no memo duly signed by the appellant came to be filed for withdrawal of the application before the Tribunal.

20. Be that as it may. On account of liberty having been granted to the appellant to pursue his remedy in accordance with law, yet another O.A. No.2066 of 2020 along with an application for condonation of delay came to be filed. The delay was not condoned by the Tribunal on the ground that it was filed more than one year after the impugned order came to be passed. No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "*sufficient cause*", irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.

21. In this background when we turn our attention to the facts on hand, it would emerge from the records that appellant being aggrieved by the dismissal of the O.A. No.2066 of 2020 on the ground of delay had approached the Delhi High Court challenging the same. The High Court on the ground of penalty imposed being a minor penalty, refused to entertain

the writ petition or in other words confirmed the order impugned before the Tribunal on merits. This Court in *Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara and Another* reported in 2009 (3) SCC 525 has taken a view that while deciding an application for condonation of delay the High Court ought not to have gone into the merits of the case. It has been further held:-

> "**5.** While deciding an application for condonation of delay, it is well settled that the High Court ought not to have gone into the merits of the case and would have only seen whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. We ourselves have also examined the application filed under Section 5 of the Limitation Act before the High Court and, in our opinion, the delay of 178 days has been properly explained by the appellant. That being the position, we set aside the impugned order of the High Court. Consequently, the appeal filed before the High Court is restored to its original file. The High Court is requested to decide the appeal on merit in accordance with law after giving hearing to the parties and after passing a reasoned order."

22. If negligence can be attributed to the appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court deserves to be accepted. However, if no fault can be laid at the doors of the appellant and cause shown is sufficient then we are of the considered view that both the Tribunal and the High Court were in error in not adopting a liberal approach or justice oriented approach to condone the delay. This Court in *Municipal Council, Ahmednagar and Anr. Vs. Shah Hyder Beig and Ors.* 2000 (2) SCC 48 has held:

> "**6.** Incidentally this point of delay and laches was also raised before the High Court and on this score the High Court relying

> upon the decision in *Abhyankar case* (*N.L. Abhyankar* v. *Union of India* [(1995) 1 Mah LJ 503]) observed that it is not an inflexible rule that whenever there is delay, the Court must and necessarily refuse to entertain the petition filed after a period of three years or more which is the normal period of limitation for filing a suit. The Bombay High Court in *Abhyankar case* [(1995) 1 Mah LJ 503] stated that the question is one of discretion to be followed in the facts and circumstances of each case and further stated:
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> > "The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."

23. Applying the aforesaid principles which we are in complete agreement to the facts on hand and test the same it would not detain us for too long to set aside the impugned orders, in as much as the delay of 425 days in filing fresh O.A. No.2066 of 2020 has been succinctly explained by the appellant before the Tribunal, namely, it has been contended that there was no intimation of withdrawal of the earlier OA by his counsel and the order of withdrawal dated 10.08.2018 does not reflect that such withdrawal was based on any memo duly signed by the appellant. Further, The High Court has proceeded to confirm the order of the Tribunal on the footing that penalty imposed on appellant is only a minor penalty namely withholding of one increment without cumulative effect, by completely ignoring the fact that in the earlier round of litigation it had been clearly

held that punishment of dismissal imposed on the appellant was totally disproportionate to the alleged act.

24. In the normal circumstances we would have remitted the matter back to the Tribunal or High Court or to the disciplinary authority for reconsideration of the matter but we desist from doing so for reasons more than one ***firstly,*** the age of the appellant is 68 years (as on date); and, ***secondly***, there being no evidence whatsoever available on record to arrive at a conclusion that appellant is guilty of the charge; ***Thirdly***, the complainant herself had withdrawn the complaint made and she was not even examined on behalf of the employer to prove the charge. Thus, the findings of the enquiry officer cannot be sustained by any stretch of imagination as it is contrary to the facts and records on hand. There cannot be judicial review of nature of penalty to be imposed by disciplinary authority. Hence, we set aside the impugned orders and hold that appellant is entitled for all consequential benefits flowing from the setting aside of the orders of penalty and respondents are directed to take steps in this regard expeditiously and at any rate within 3 months from the date of receipt of copy of this order. Accordingly appeals stand allowed with no order as to costs.

…….…………………..J.
(ARAVIND KUMAR)

…….…………………..J.
(SANDEEP MEHTA)

New Delhi,
August 05, 2024