Ministry Of Finance & Anr vs S.B. Ramesh on 2 February, 1998

Equivalent citations: AIR 1998 SUPREME COURT 853, 1998 (3) SCC 227, 1998 AIR SCW 602, 1998 LAB. I. C. 623, (1998) 1 JT 319 (SC), 1998 (1) SCALE 285, 1998 (1) ADSC 573, 1998 (2) UPLBEC 1087, 1998 (1) UJ (SC) 466, 1998 (1) JT 319, 1998 UJ(SC) 1 466, (1998) 2 SERVLJ 67, (1998) 2 APLJ 5.1, 1998 ADSC 1 573, (1998) 78 FACLR 700, (1998) 1 LAB LN 968, (1998) 1 SERVLR 618, (1998) 1 SCALE 285, (1998) 1 ESC 491, (1998) 1 CURLR 659, (1998) 2 SCJ 698, (1998) 2 UPLBEC 1087, (1998) 1 SUPREME 387, 1998 SCC (L&S) 865, (1998) 1 SCT 738

Author: K.Venkataswami

Bench: K. Venkataswami, A.P. Misra

PETITIONER:
MINISTRY OF FINANCE & ANR.

Vs.

RESPONDENT:
S.B. RAMESH

DATE OF JUDGMENT: 02/02/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K.Venkataswami. J.

The appellants impugn the order of the Central Administrative Tribunal, Hyderabad Bench, dated 9.8.94 in O.A. No. 27/94.

Before proceeding to consider the issues, we want to observe the following:

> This Court while granting special leaven on 28.2.95 expedited the hearing of the appeal and directed the counsel to complete the paper books within ten weeks. In spite of passing of nearly three years after the leave was granted, no steps have been taken to complete the paper books and we have to go only by order of the Tribunal. In the SLP paper book, only a copy of the judgment of the Tribunal, apart from the special Leave Petition and the Counter Affidavit filed by the appellant before the Tribunal. Is available and no other documents were included. Hence, leave was granted by this Court to complete the paper book. Even then the appellants did not care to avail the opportunity.
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> Now on merits.
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> The respondent in this appeal was working as an Income Tax Officer, Group `B', during the relevant period. He was proceeded departmentally by filing a charge-sheet dated 7.5.87 for alleged irregularities in the income-tax assessment. For reasons with which we are not concerned, that was not pursued after certain stage dater on, the respondent was served with another charge-sheet dated 25.3.88. The article of charge reads as follows:-
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> "Shri S.B. Ramesh. Income Tax Officer. Group-B. Andhra Pradesh (now under suspension) has contracted a second marriage with Smt. K.R. Aruna while his first wife. Smt. Anusuya is alive and the first marriage has not been dissolved. By this act, Shri S.B. Ramesh has violated Rule 21(3) of CCS (Conduct) Rules. 1964. In any case, Shri S.B. Ramesh has been living with Smt. K.R.Aruna and has children by her. Thereby Shri S.B. Ramesh has exhibited a conduct unbecoming of a Government servant and has accordingly violated rule 3(1) (iii) of the CCS (Conduct) Rules 1964."

As the respondent denied the charge, an Enquiry was conducted in which the respondent did not participate. The Report of the Enquiry Officer was to the effect the first part of the charge was not proved and that the second part of the charge, namely, that the respondent, by living with Smt. K.R. Aruna and having children by her, Exhibited a conduct unbecoming of a Government servant violating Rule 3(1) (iii) of CCS (Conduct) Rules, 1964 was established. This report of the Enquiry Officer was accepted by the Disciplinary Authority, who by his order dated 23.4.92 imposed on him the punishment of compulsory retirement from service. Aggrieved by that, the respondent preferred an appeal on 4.6.92 which was kept pending without disposal for an unduly long time which obliged the respondent to file an application before the Tribunal challenging the punishment of compulsory retirement.

Before the Tribunal, the respondent challenged the order of compulsory retirement by contending that the Enquiry has not been held unconformity with the principles of natural justice, that the findings of the Enquiry Authority, which were acceded by the Disciplinary Authority, were all absolutely perverse and based on no evidence and that sub-rule (18) of rule 14 of the CCS (CCA)

Rules was not complied with. It also appears that the respondent raised a preliminary point before the Tribunal contending that his conduct, which has no relation to the discharge of official duties, cannot form a basis for departmental proceedings to charge him under rule 3(1)(iii) of the Conduct Rules. This as without merit in the light of a judgment of this Court in Govinda Menon Vs, Union of India (AIR 1967 SC 1274).

The argument advanced on behalf of the appellants before the Tribunal were to the effect that all resonable opportunity was given to the delinquent officer and all rule shave been followed and complied with. According to the learned counsel for the Department, the findings rendered by the Enquiry Officer, accepted by the Disciplinary Authority, were all based on evidence and, therefore, well-founded.

The Tribunal, on a consideration of the pleadings and documents placed before it, found that the findings were rendered on surmises and presumptions and the documents marked as exhibits were not properly proved and the non- examination of Smt. Aruna was also fatal to the case of the prosecution. The Tribunal was aware of the well settled position that the degree of proof required in the departmental disciplinary proceedings need not be of the same standard as the degree of proof required for establishing the guilt of an accused in a criminal case. However, the Tribunal found that there was a total dearth of evidence to bring home the charge that the delinquent Officer has been living in a manner unbecoming of a Government servant or that he has exhibited adulterous conduct by living with Smt. K.R. Aruna and begetting children. On that basis the Tribunal set aside the order impugned before it, namely, the order of compulsory retirement of the delinquent officer. The Tribunal could have rested its decision on the basis of the conclusion as set out above. Instead the Tribunal, purporting to give additional reason, inter alia, observed as follows:-

> "Though it would be ideal if sexual relationship is confined to legal wedlock, there is no law in our country which makes sexual relationship is confined to legal wedlock, there is no law in our country which makes sexual relationship of two adult individuals of different sex. unlawful unless the relationship is adulterous or promiscuous. If a man and woman are residing under the same roof and if there is no law prohibiting such a residence, what transpires between them is not a concern of their employer. Such a life, if accepted by the society at large, without any displeasure or grudge, then it cannot be said that there is any moral turpitude involved in their living in this case, there is no case that on amount of the applicant living with Smt. K.R. Aruna, his reputation among the general public has been lowered or that, the public has been looking down on his conduct as immoral one, Therefore, even if factually, the allegation that the applicant who is already married to another woman is living with Smt. KR Aruna is proved to be true, we are of the considered view, that, that alone will not justify a finding that the applicant is guilty of misconduct deserving departmental action and punishment."

Immediately we prefer to record our total disapproval with the above observations of the Tribunal. We propose to deal with and rest our decision on the merits with reference to the findings of the Tribunal rendered on the basis of the facts relating to the case.

Against the order of the Tribunal which set aside the punishment of compulsory retirement, this appeal has been filed.

The learned counsel appearing for the appellants placed strong reliance on the latter part of the judgment of the Tribunal, extracted above, which related to additional/alternative reason given by the Tribunal to its decision. We have already expressed our disapproval to the later part of the judgment of the Tribunal.

We must observe that no serious attempt was made by the learned counsel for the appellants to attack the findings of the Tribunal rendered in the first part of the judgment. The respondent. who appeared in person. presented his case by pointing out the portions of in the first part of the judgment of the Tribunal and also placed his written arguments.

It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting full the evidence of SW-1. the only witness examined on the side of the prosecution. and after extracting also the proceedings of the Enquiry Officer dated 18.6.91. observed as follows:-

"After these proceedings on 18.6.91 on the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18.6.91. Under Sub-Rule 18 of Rule 14 of the CCS (CCA) Rules. It is incumbent on the Enquiry authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry authority. The learned counsel for the respondents argued as the applicant did not appear in response to notice. It was not possible for the Enquiry authority to question the applicant. This argument has no force because. on 18.6.91 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry officer has set the applicant ex-parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the inquiry authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule 18 of Rule 14 of CCs (CCA) Rules. The omission to do this is a serious error committed by the enquiry authority. Secondly, we notice that the enquiry authority has marked as many as 7 documents in support of the charge. while SW-1 has proved only one document: namely, the statement of Smt. K.R. Aruna alleged to have been recorded in his presence. How the other documents were received in evidence are not explained either in the report of the Enquiry authority or in the proceedings. Even if the documents which were produced along with the charge sheet were all taken on record. unless and until the applicant had requested the Enquiry officer to mark certain documents in evidence on his side. the enquiry authority had no jurisdiction in marking all those documents which he had called for the purpose of defending himself on the side of the applicant while he has not requested for making of these documents on his side. It is seen that some of these documents which is marked on the side of the defence not at the instance of the

applicant. has been made use of by the enquiry authority to reach a finding against the applicant. This has been accepted by the disciplinary authority also. We are of the considered view that this is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with law should nor have been received in evidence and that, any inference drawn from these documents is misplaced and opposed to law, we further find that the enquiry authority as well as, the disciplinary authority have freely made use of the statement alleged to have been made by the statement alleged to have been made by Smt Kr Aruna in the presence of SW1 and it was on that basis that they reached the conclusion the applicant was living with Smt. K.R. Aruna and that, he was the father of the two children on Smt. K.R. Aruna. The S.W.1 in his deposition which is extracted above, has not spoken to the details contained in the statement of Smt. K.R. Aruna which was marked as Ex.1. Further it is settled law that any statement recorded behind the back of a person can be made use of against him in a proceeding unless the person who is said to have made that statement is made available for cross-examination, to prove his or her veracity. The disciplinary authority has not even chosen to include Smt. K.R. Aruna in the list of witnesses for offering her for being cross-examined for testing the veracity of the documents exhibited at Ex.1 veracity of the documents exhibited at Ex.1 which is said to be her statement.

Therefore, we have no hesitation in coming to the conclusion that the enquiry authority as well as, the disciplinary authority have gone wrong in placing reliance on Ex.1 which is the alleged statement of Smt. K.R. Aruna without offering Smt. K.R. Aruna as a witness for cross-examination. The applicant's case is that the statement was recorded under coercion and duress and the finding based on this statement is absolutely unsustainable as the same is not based on legal evidence. The other documents relied on by the Enquiry authority, as well as by the disciplinary authority for reaching the conclusion that the applicant and Smt. K.R. Aruna were living together and that they have begotten two children have also been not proved in the manner in which they are required to be proved."

Then. again after extracting the relevant portions from the disciplinary authority's order, the Tribunal observed as follows:-

> "We have extracted the fore-going portions from the order of the disciplinary authority for the purpose of demonstrating that the disciplinary authority has placed reliance on a statement of Smt. K.R. Aruna. without examining Smt. K.R. Aruna. without examining Smt. Aruna as a witness in the inquiry and also on serval documents collected from somewhere without establishing the authenticity thereof to come to a finding that the applicant has conducted himself in a manner unbecoming of a Government servant. The nomination form alleged to have been filed by Sri Ramesh for the purpose of Central Government Employees' Insurance Scheme, was not a document which was attached to the memorandum of charges as one on which the Disciplinary Authority wanted to rely on for establishing the charge. This probably was one of the documents which the applicant called for, for the purpose of cross-examining the witness or for making proper defence. However, unless the Government servant wanted this document to be exhibited in evidence, it was not proper for the Enquiry Authority to exhibit it and to rely on it for reaching the

> conclusion against the applicant. Further, an inference is drawn that S.B.R.Babu mentioned in the school records (admission registers and Sh.Ramesh mentioned in the Municipal records was the applicant, on the basis of a comparison of the hand-writing or signature or telephone numbers are only guess work. which do not amount to proof even in a disciplinary proceedings. It is true that the degree of proof required in a departmental disciplinary proceedings, need not be of the same standard as the degree of proof required for establishing the guilt of an accused in a criminal case.
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> However, the law is settled now that suspicion, however strong, cannot be substituted for proof even in a departmental disciplinary proceeding. Viewed in this perspective we find there is a total dearth of evidence to bring home the charge that the applicant has been living in a manner unbecoming of a Government servant or that, he has exhibited adulterous conduct by living with Smt. K.R.Aruna and begetting children."

On a careful perusal of the above findings of the Tribunal in the light of the materials placed before it. we do not think that there is any case for interference, particularly in the absence of full materials made available before us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental Enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it.

In the result, the appeal fails and is dismissed accordingly with no order as to costs.