Unreportable

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.12019 of 2006

DATE OF HEARING: 23.10.2007
DATE OF DECISION: 31.10.2007

IN THE MATTER OF:
R.K. AJMANI ..... Petitioner.

Thru. Petitioner in person.

- Versus -

UNION OF INDIA & ORS. ..... Respondents.

Thru. Nemo.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR.JUSTICE VIPIN SANGHI

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Having regard to the nature of issue raised before us it is not necessary to take note of the facts in detail, suffice is to state that the petitioner was served with the charge-sheet dated 7.7.2004 and inquiry initiated against him on the basis of said charge-sheet by appointing Inquiry Officer and Presenting Officer. On the ground that charge leveled in the said

charge-sheet was more than 15 years old, the petitioner filed O.A.No.1531/2005 for quashing of the charge-sheet and protection of his service rights including promotion. This OA was disposed of vide orders dated 7.11.2005 by the Tribunal. Charge-sheet was not quashed but the respondents were given two months' time to complete the inquiry failing which it was directed that the proceedings would abate. The petitioner even filed Revision Petition which was dismissed.

2. The inquiry could not be completed within two months and the respondents filed M.A.No.133/2006 seeking extension of further four months time to complete the inquiry. Vide orders dated 21.2.2006 three months' extension was granted to complete the proceedings and the Department was directed to hold the proceedings on day-to-day basis without fail. The petitioner sought review of this order as well which review application was dismissed. Aggrieved against this, the petitioner approached this Court and filed the writ petition which was disposed of vide orders dated 24.3.2006 observing as under:

> "We are of the view that since extension has already been granted, inquiry should be completed within the period of extension and no further time is required to be granted for completing the inquiry, provided the petitioner cooperates for expeditious disposal of the inquiry. The impugned order states that the disciplinary proceedings shall be held day-to-day. The petitioner shall co-operate with the inquiry."

3. The inquiry could not be completed even within the aforesaid extended time. The respondents again moved M.A.No.992/2006 on 31.5.2006 seeking further extension of one month's time.

This application came up for hearing on 12.7.2006 and was adjourned to 1.8.2006. In the meantime orders dated 18.7.2006 were passed by the Department imposing the penalty of censure upon the petitioner. On 1.8.2006 the M.A. filed by the respondents for further extension of time, taken up for hearing and taking note of the fact that the Disciplinary Authority had already passed orders dated 18.7.2006, extension of time up to the last date was granted. The operative portion of this order reads as under:

> "Applicant has objected to the passing of final orders beyond the stipulated period. He stated that period for the purpose should not be extended. We do not find any substance in the objection raised by applicant.
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> In the facts and circumstances of the case, final orders in the disciplinary proceedings against the applicant having been passed on 18.7.2006, extension of time up to 18.7.2006 is deemed to have been granted. MA.992/2006 as such is disposed of."

4. Challenging this order, present petition is filed. The contention of the petitioner is that vide orders dated 21.2.2006 time was extended by three months which expired on 21.5.2006. The respondents, however, did not complete the inquiry within this time even when the petitioner had fully cooperated. Therefore, inquiry proceedings abated on that date. After the said date the application M.A.No.992/2006 was filed on 31.5.2006. The impugned order was passed by the Tribunal without dealing with the objection of the petitioner. He submitted that specific attention of the Tribunal was drawn to orders dated 24.3.2006 passed by this Court wherein it was categorically stated that no further extension would be granted and contrary to

the said direction the Tribunal granted further extension. Not only that, without giving any reason, petitioner's contentions were brushed aside when he specifically submitted that he had fully cooperated in the inquiry and even reminded the Department about the orders of this Court and the inquiry was delayed because of the respondents, still benefit was given to the respondents by extending the time.

5. The respondents have filed a short affidavit explaining the reasons which led to the delay in completion of the inquiry. However, at the time of arguments nobody appeared on behalf of the respondents. While reserving the judgment on 23.10.2007, one week's time was given to the respondents to file written submissions. No such written submissions are filed. In any case, we have gone through the averments made in the affidavit filed by the respondents.

6. We find from the perusal of orders dated 21.2.2006 passed in MA.133/2006 that while granting extension of three months' time from the date of such orders to complete the inquiry, the Tribunal dealt with the contentions of the petitioner in opposition to the request of the Department as the said application was stoutly opposed by the petitioner herein. The Tribunal found that though some efforts were made by the Department as well as the Inquiry Officer to carry out the direction issued by the Tribunal, but it was not done either with vigor or complete sincerity. At the same time, some delay is also attributable to the petitioner herein as he made belated request for supply of eight additional documents as well as and he

also could not complete the formalities of appearing through the defence assistant. To some extent, the petitioner was also partially responsible for adjournment of proceedings.

7. The Tribunal also found that since the charges leveled against the petitioner vide Memo dated 7.7.2004 were of grave nature and it was appropriate that proceedings initiated are to be taken to its logical end.

8. Insofar as extension of time beyond 21.5.2006 is concerned, this extension was sought vide MA.No.992/2006. It was mentioned in the application that the respondents had been making all out and sincere efforts to pursue the inquiry proceedings vigorously and inquiry proceedings before the Inquiry Officer had since been completed and the Inquiry Officer had submitted his report to the Disciplinary Authority under his letter dated 5.5.2006. The Disciplinary Authority after going through the report had decided to accept the findings of the Inquiry Officer and vide letter dated 11.5.2006 the petitioner was afforded an opportunity to make representation, if any, in the matter giving him 15 days time as prescribed in CCS(CCA)Rules. This letter was served upon the petitioner along with a copy of the Inquiry Report on 12.5.2006 and since the reply was awaited and after reply some time was needed to complete further procedure to conclude the disciplinary proceedings inasmuch as reference to the Chief Vigilance Officer in the office of respondents as well as reference to Chief Vigilance Commission for its second stage advice, if necessary, was required before taking final decision. It is thus clear that when the extension was sought, the proceedings

before the Inquiry Officer had already been completed; inquiry report submitted; inquiry report forwarded to the petitioner giving him an opportunity to make representation. All this had happened before the date extended earlier and before the last date as per extension given earlier i.e. 21.5.2006. In such circumstances, allowing the inquiry to lapse and order abatement only because the time granted earlier had come to an end and proceedings were at the last leg would not have been proper. We may state at this stage that though petitioner's case is that he had cooperated with the inquiry and had even reminded the Department time and again, the inquiry was not completed by 21.5.2006, the respondents have filed a short affidavit in this Court wherein the respondents have given the details of hearing before the Inquiry Officer. Various dates which were fixed before the Inquiry Officer and proceedings conducted therein are mentioned. It would show that the inquiry was held regularly by giving short dates of two to three days and it cannot be said that the approach of the Inquiry Officer or the Disciplinary Authority was lackadaisical. Rather the proceedings show that the authorities wanted to rap up the proceedings within minimum possible time. If some time, more than the time granted earlier, is taken that is because of the reason that due procedure laid down under CCS(CCA) Rules was followed by giving full opportunity to the delinquent petitioner. The inquiry cannot be brought to an abrupt end showing helplessness in the matter only because on an earlier occasion it was stated that no further time would be granted. Such orders are passed in order to ensure that these proceedings are concluded

without delay. That would not mean that even when justifiable reason for further extension is shown, the Court would show its helplessness in granting further time only because some pre-emptive order is passed earlier. Procedure is handmaid of justice and the endeavour is to give substantial justice in the matter.

9. *The petitioner had informed during the course of hearing that he had challenged the order passed against him. It would be open for him to pursue the said remedy. Insofar as impugned order is concerned, we are not inclined to exercise our discretion while sitting in judicial review of the said order as we do not find any illegality or irrationality in the said order which are the common grounds on which said orders of the Tribunal should be interfered with. The Full Bench of this Court in Ravinder Kumar Vs. Union of India & Ors. 2002 VIII AD (Delhi) 252 speaking through Hon'ble Mr. Justice S.B. Sinha, Chief Justice (as he then was) observed as under:*

> *"The Court in exercise of its power of judicial review has a limited role to play in this behalf. In* **A.Ratnam & Ors. Vs. Government of Andhra Pradesh, Education Department, Hyderabad** *2001 (6) ALT 661, (of which one of us was a Member), it has been held thus:-*
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> *51. It is also equally settled that a Court of judicial review would not ordinarily interfere with the finding of facts however grave they may be. This Court is only concerned with grave error of law which is apparent on the face of record. The error of law for instance may arise when a Tribunal wrongfully rejects admissible evidence or considers inadmissible evidence and records a finding. However, as observed by a Constitution Bench of the Supreme*

Court in Syed Yakoob v. Radhakrishnan, AIR 1964 SC 477, "it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record and the same must depend on the facts and circumstances of each case and upon the nature and scope of the legal provisions which is alleged to have been misconstrued or contravened." The principles of judicial review of decisions of the Tribunals noticed hereinabove were accepted by the Supreme Court in Syed Yakoob's case (30 supra). It is apposite to excerpt the following passage which is educative:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals; these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously

admitted inadmissible evidence which has influenced the impugned finding.

52. The decision in Syed Yakoob's case (30 supra) was also followed in Jagdish Prasad v. Angoori Devi, AIR 1984 SC 1447. In view of the binding authorities, the law is well settled that-

(i) The High Court is not an appellate authority over the decision of the Administrative Tribunals;

(ii) While exercising the power of judicial review, the High Court cannot be oblivious to the conceptual difference between appeal and review;

(iii) The petition for a judicial review would lie only on grounds of grave errors of law apparent on the face of the record and not on the ground of error of fact, however grave it may appear;

(iv) When the Tribunal renders a decision after determining the facts, no application for judicial review could be maintainable only on the ground that the Tribunal committed an error of fact, however grave it may appear, unless it is shown that such a finding of the Tribunal is based on no evidence and the error of fact itself can be regarded as error of law in the sense that admissible evidence was rejected and inadmissible evidence was relied on;

(v) The orders passed by the Tribunal by exercising discretion which judicially vests in it cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal in the sense the Tribunal did not follow an earlier decision of the Tribunal or binding authority of the High Court or the Supreme Court with reference to finding of facts and law;

(vi) When the Tribunal disposes of the original application by applying the binding precedents of the High Court as well as the Supreme Court, it cannot be said that the Tribunal has committed any error of law apparent on the face of the record; in such cases the limited review before the High Court would be

whether the binding principle has been appropriately applied or not; the Tribunal's decision which is rendered in ignorance of the statutory law including subordinate legislation as well as the law laid down by the Supreme Court must be held to suffer an error apparent on the face of the record and requires judicial review;

(vii) Whether or not an error is error of law apparent on the face of the record must always depend upon the facts and circumstances of each case and upon the nature and scope of legal provision which is alleged to have been misconstrued or contravened;

(viii) The three parameters of judicial review of administrative action -illegality, irrationality and procedural impropriety with necessary changes are equally applicable to cases of judicial review of the Tribunal's decision; and

(ix) A mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 227; the supervisory jurisdiction conferred on High Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice."

The writ petition stands dismissed.

(A.K. SIKRI)
JUDGE

October 31,2007. *(VIPIN SANGHI)*
skk *JUDGE*