CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/366/2016

Date of Reserve:07.01.2020
Date of Order: 04.02.2020

CORAM
HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Gagan Bihari Mantri, aged about 55 years, S/o. late Chaitanya Charan Mantri, permanent resident of Vill-Sahaspur, PO-Ostapur, Dist-Kendrapara – presently working as Senior Accountant, in the office of the A.G. (A&E), Odisha, Bhubaneswar.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

1. The Comptroller & Auditor General of India, Pocket-9, Deen Dayal UpadhayaMarg, new Delhi-110 124

2. The Accountant General (A&E), A.G.Square, Bhubaneswar, Dist-Khurda, Odisha, PIN-751 001

3. The Deputy Comptroller & Auditor General of India (Admn.)-cum-Appellate Authority, in the office of the Comptroller and Auditor General of India, Pocket-9, DeenDayalUpadhayayMarg, New Delhi-110 124.

...Respondents

By the advocate(s)-Mr.S.K.Patra

ORDER

PER SWARUP KUMAR MISHRA MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has challenged the disciplinary action taken against him and has prayed for the following reliefs:

i) To admit the O.A.

ii) To quash the order dated 28.08.2015 (Annexure-A/12) passed by the Disciplinary Authority (Respondent No.3) thereby quashing the entire proceeding from threshold.

iii) To quash the order of the Appellate authority dated 29.01.2016 (Annexure-A/14 series).

iv) To direct the Respondents to extend the consequential benefit to the applicant.

v) To pass any other order/orders as deem fit and proper for the ends of justice.

2. The brief facts of the case leading to filing of this O.A. are thus: The applicant while working as Senior Accountant in the office of the Principal Accountant General (A&E), Bhubaneswar, was issued with a Memorandum of Charge dated 15.04.2014(A/1), containing the following Article of Charge:

> "That, Sri Gagan Bihari Mantri, Sr.Accountant posted in Fund-3 Secion situated in the second floor in the office of thePr.Accontant General (A&E), Odisha, Bhubaneswar on 05.03.2014, when DAG Funds Mr.G.S.Suryawanshi was returning after solving intranet problems in Fund 10 Section at about 4.15 to 4.25 pm, stopped him at the gate of the fund hall and started questioning about his visiting fund section intermittently. Even after DAG Fund went to his chamber without any arguments Shri Mantri continued shouting slogans loudly and was calling other staff members to join him. The noisy and disrespectful behavior of Shri Mantri disturbed the peace of the office.
>
> Thus, Sri Mantri acted in a manner unbecoming of a Govt. servant, which amounted to misconduct, violating Rule 3(1)(ii) and (iii) of CCS(Conduct) Rules, 1964".

3. On being called upon thereby, the applicant submitted his written statement of defence vide A/2 dated 02.06.2014, whereafter vide order dated 11.07.2014 (A/3), the Disciplinary Authority appointed Shri Subhendra Mohanty, Retired District Judge, as the Inquiring Authority. However, since Shri Subhendra Mohanty declined to act as the I.O., at a later stage, vide order dated 21.10.2014 (A/4), Shri Jagajeeban Patra, District Judge (Retired) was appointed as the I.O. However, the Inquiry Officer submitted his report on 21.04.2015 (A/8) holding that the charges have not been proved. Since the Disciplinary Authority did not agree with the findings of the I.O., the matter was again remanded to the IO for further inquiry. The I.O. again submitted his report by stating that the report that had been submitted earlier was correct and appropriate. The Disciplinary Authority did not agree with the same and resultantly, issued a Memo of Disagreement dated 26.06.2015 (A/10) to the applicant requiring him to submit his representation to the divergent views. The applicant submitted his representation dated 14.07.2015 (A/11). Thereafter, the Disciplinary Authority vide Memorandum dated 28.08.2015 (A/12) imposed punishment reducing the applicant to a lower stage in the time-scale of pay for a period of one year from the date of this order and with further order that he will not earn increments of pay during the period of such reduction and after expiry of such period, the reduction will have the effect of

postponing the future increments of his pay". Against this order of punishment, the applicant submitted an appeal to the Principal A.G. (A&E), Odisha, Bhubaneswar vide A/13 dated 09.10.2015. The Appellate Authority vide Memorandum dated 22.01.2016 (A/14) modified and reduced the punishment as imposed by the Disciplinary Authority to the extent of "reducing to a lower stage in the time-scale of pay for a period of one year from the date of communication of earlier punishment order and with further order that he will earn increments of pay during the period of such reduction and after expiry of such period, the reduction will not have the effect of postponing the future increments of his pay".

Aggrieved with this, the applicant has approached this Tribunal seeking for the reliefs as referred to above.

4. The applicant has based his prayer on the following grounds:

i) The entire proceeding is void ab initio since a person cannot become a judge of his own cause. The DAG(Admn.) himself was a party to the dispute and could not have issued the show cause notice against the applicant.,

ii) The action of the applicant was a part of ventilating grievance on behalf of theAssociation which is one of its legitimate activities. Since he acted in the capacity of an officer for common interest of the Members of the Association, it cannot be the subject matter of disciplinary proceedings. Action can be taken only against the Union.

iii) The authorities have relied upon the fact finding inquiry report submitted by the DAG(Admn.) and the report of theWelfare Officer. However, while preparing the report and causing any such inquiry, the applicant has never been called upon to participate.

iv) The disagreement Memo issued by the Disciplinary Authority is illogical and illegal.

v) The order of the Disciplinary Authority is not in consonance with the service rules. There is no recording of the findings on the charge based on any evidence available on record. One of the officials in the Group Shri UttamCh.Sahu was awarded lesser punishment whereas the applicant has been given a harsher punishment.

vi) The Appellate Authority has not applied his mind and taken into consideration the records before confirming the order of theDisciplinaryAuthority.

vii) The respondents have failed to grasp the full meaning of misconduct while proceeding against the applicant departmentally and imposing punishment on him.

5. The Respondents in their counter-reply have contested the claim of the applicant. According to them, the Disciplinary Authority after examining the report of the IO dated 21.04.2015 and the findings recorded thereon, found flaw with the same inasmuch as charge under Article-1 was not at all addressed by the I.O., the latter requested the former on 12.06.2015 to submit his definite conclusion in the report whether the charge is 'proved' or 'not proved'. The IO submitted his report again on 22.06.2015 without any change to his earlier conclusion. In the above backdrop, the Respondent No.3 in the capacity of Disciplinary Authority recorded the point of disagreement with the report of the IO and issued disagreement notice requiring the applicant to make his submission. On receipt of the submission made bythe applicant thereto, the Disciplinary Authority imposed punishment. On the appeal preferred, the Appellate Authority modified and reduced the punishment as

already mentioned above. The Respondents have clarified that in respect of Shri UttamCharanSahoo, he had been awarded a major penalty for his misconduct by the DAG(Admn.),as the Disciplinary Authority and the Respondent No.2 as the Appellate Authority had modified the punishment taking into account the serious health condition of his son. Respondents have pointed out that on the date of occurrence, the Association Members after entering in the chamber of DAG(Funds) started questioning him using intemperate language and created a lot of noise and commotion in and around his room which necessitated the presence of senior officers including In-charge DAG(Admn) to control the situation. The charge memo issued by the Disciplinary Authority was not issued either for his own cause, or the allegation was related to him directly or indirectly, fully or partially. In the background of this, the plea of the applicant that a person should not be a judge of his or her own cause has no relevance, the respondents have added. Respondents have stated that the applicant who was shouting loudly and chatting slogans against DAG(Fund) in front of his chamber was neither an Office Bearer/Union Leader nor a Member of the Executive Body of any Association during tye year 2013-14 and as such, his contention that he raised voice for betterment of the employees as a Union Leader is not correct. This amounted to misconduct and violation of conduct rules. Neither a meeting was pre-planned nor pre-fixed by the

administration with any of the Unions nor any permission was given by the Administration to any of the Unions to hold the meeting with the DAG (Funds) nor there was any specific agenda for discussion. On the date of occurrence of the incident some Association Members gathered in front of the DAG'S Chamber and having entered inside started questioning him using intemperate language. This warranted the presence of Sr.Officers including In-charge DAG(Admn.) to control the situation. In the complaint lodged by DAG(Funds), he stated that the Association Members were so aggressive that he would have become a victim of their attack had the Group Officers, Welfare Officer and B.O/Admn. Not entered in his room. The Respondents have challenged the contention of the applicant that one cannot be the judge of his own cause. It is their contention that the D.A.G. who has issued the Memorandum of Charge in the capacity of Disciplinary Authority was not a party to any meeting held between the staff side and the management. The respondents have submitted that the contention of the applicant that accompanying with the office bearers of recognized union for common cause/interest cannot be treated as cause for initiating departmental proceedings and the allegation levellled against him in the Memorandum does not come within the ambit of misconduct is not tenable inasmuch as, as per the provision, disciplinary action against an employee cannot be taken carrying out legitimate union

activities. The Disciplinary Authority can take action against the employee carrying out union activity if it violates the provision of CCS(Conduct) Rules, 1964.

6. The applicant in his rejoinder has reiterated his earlier stand that the Disciplinary Authority has acted in a biased manner and her action is illegal. The authority who issued the Charge Memo is not the competent authority to do so. The show cause notice was issued by the DAG(Admn.), who is not the Disciplinary Authority. The nomination of I.O. was just an eyewash and the action of the Disciplinary Authority is pre-determined.

7. We have heard the learned counsels for both the sides and perused the records. During the course of hearing learned counsel for the respondents brought to our notice a common order dated 30.01.2018 passed by this Tribunal inO.A.Nos.169, 122,154, 182 & 197 of 2016 wherein a similar proceedings had been drawn up as that of the applicant in the instant O.A. and this Tribunal did not interfere with the same.

8. We have taken into account the case laws cited by the respondents and accept their view that the findings of the IO are not binding on the disciplinary authority and that there is no bias in the Disciplinary Authority's action in taking the entire facts into account and following the legal provisions in passing of the order. We also do not find any irregularity in the action of the Disciplinary Authority in so far as disagreement

with the report of the IO is concerned. The Disciplinary Authority has made elaborate recording of the reasons for disagreement as well as the circumstances which she found to be relevant to establish the charges framed against the applicant. We also find that the Disciplinary Authority's order is quite reasoned and detailed. We do not agree with the applicant's contention that there is no application of mind on her part. Similarly, the Appellate Authority has also analyzed in detail the legal points and passed an order which is reasoned as well as detailed. We are convinced that there has been a due application of mind while passing the order and therefore, we do not find any illegality in the order passed by the Appellate Authority. The Appellate Authority after considering the grounds of appeal has rejected it after coming to the conclusion that the Disciplinary Authority has taken into consideration all aspects of the case and recorded detailed reasons for rejecting the finding of the I.O. Therefore, the allegations that the Disciplinary Authority has passed the impugned penalty order without application of mind and without specifically indicating which action of the applicant was an unbecoming conduct are baseless and untenable.

9. We have examined the facts and points of law raised in the instant O.A. The Disciplinary Authority has acted within the framework of law and imposed the punishment after recording detailed reasons for his disagreement in the report of the

Inquiring Authority and after due consideration of the defence statement. However, the Appellate Authority having taken a lenient view has reduced the punishment as imposed by the Disciplinary Authority.

10. The Hon'ble Supreme Court in a number of cases has emphatically defined the scope of judicial interference in a disciplinary matter. In **Surender Kumar vs. Union of India (2010) 1 SCC 158**, the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

11. In **Hombe Gowda Educational Trust vs. State of Karnataka (2006) 1 SCC,** the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. In **Coal India Ltd. vs. Mukul Kumar Choudhury (2009) 15 SCC 620**, the Hon'ble Apex Court made the following observations.

> "13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and that power of judicial review is not directed against the decision, but is confined to the decision-making process. In a case such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the inquiry officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the cha5ges against the delinquent stood proved and warranted no interference".

13. In **Bank of India vs. Degala Suryanarayana (1999) 5 SCC 762,** the Hon'ble Apex Court had laid down an important principle:

> "11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectively may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of the fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or where a finding is not that no man acting reasonably and with objectively could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained".

14. In **M.V.Bijlani vs. Union of India (2006) 5 SCC 88,** the Hon'ble Supreme Court established a similar position:

> "25 ...Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record".

15. Similarly, in **B.C.Chaturvedi vs. Union of India (1995) 6 SCC 749**, the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceedings as under:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act or of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mold the relief so as to make it appropriate to the facts of each case.

16. In **Union of India vs. G.Ganayutham (1997) 7 SCC 463** the Hon'ble Supreme Court has held:

> "To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was

> illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters has not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test"
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> "...Disciplinary Authority's order should be speaking if he does not agree with the findings of the Inquiry Authority. National Fertilizers Ltd. P.K.Khanna (2005) 7 SCC 597
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> The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with the finding of the enquiry officer. Appellate Authority's order must reflect that it was passed with full application of mind and should give reasons for the decision". Ram Chander vs. Union of India (1986) 3 SCC 103).

17. Considering the facts of the case and viewed in the context of judicial pronouncements, we find that there is no scope for interference in the orders of the Disciplinary Authority as well as the Appellate Authority, since there is no procedural impropriety or illegality in the orders passed. Besides the above, we are of the view that this not a case of no evidence. In view of the above, we do not find any merit in this O.A. which is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA) (GOKUL CHANDRA PATI)
MEMBER(J) MEMBER(A)

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