

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 943 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Prakash Kumar Behera, Aged about 54 years, Son of Late Resab Behera, Resident of Plot No. G. A.-250, Sailshree Vihar, Chandrasekharpur, Bhubaneswar – 751 021 (Odisha)

.....Applicant.

VERSUS

1. Union of India, represented through the Secretary, Ministry of Micro, Small & Medium Enterprises, Government of India, Udyog Bhawan, New Delhi – 110 011.
2. Chief Executive Officer, Khadi & Village Industries Commission, Ministry of Micro, Small & Medium Enterprises, Government of India, 3, Irla Road, Vileparle (West) Mumbai-56.
3. Director, Khadi & V. I. Commission, State Office, Plo. J/16, Vimpur, Gandamunda, Khandagiri, Bhubaneswar – 751 030 (Odisha).

.....Respondents.

For the applicant : Mr. S. B. Jena, Advocate

For the respondents: Ms. P. K. Mohanty, Advocate

Heard & reserved on : 27.02.2020

Order on : 18.05.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Under the facts and circumstances of the case, it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to quash the impugned Memorandum of*

Charge under Annexure-4, Inquiry Report under Annexure-8, Order of punishment passed by the Disciplinary Authority in Annexure-12 & the order of the Appellate Authority in Annexure-14.

(ii) And/Or pass any other order/orders as this Hon'ble Tribunal may think fit and proper in this case;

2. The case of the applicant, as averred, is that he had joined as Accountant on 04.02.1991 in the State office at Jammu (J&K) under the Khadi & Village Industries Commission, Ministry of Micro, Small & Medium Enterprises, Govt of India and subsequently promoted to the post of Accounts Officer on 09.12.1996 and to the post of Deputy Director on 29.12.2020. While the applicant was working as Deputy Director in the Divisional Office at Meerut he had undertaken journey by rail during March, 2010 and had submitted a TA Bill wherein the cost of railway ticket submitted by the applicant was Rs. 7679/- instead of Rs. 679-/ and his TA Bill was passed for payment accordingly. It is stated by the applicant that after realizing the mistake the applicant vide letter dated 24.12.2010 requested the Director, KVIC, Meerut to allow him to deposit the differential amount of Rs. 7000/- by cash. The applicant submitted that he had purchased the ticket from an agent and after seeking clarification from the agent regarding the actual cost of the ticket he i.e. the applicant deposited cash of Rs. 7,000/-. Subsequently the Chief Vigilance Officer of Khadi & Village Industries Commission, Bombay in letter dated 11.01.2011 called for the detailed documents for verification of details of T.A. and the applicant complied with the requirement vide his letter dated 01.02.2011. A memorandum of charge dated 14/24.11.2011 was passed by Respondent No. 2 against the applicant with the charge that "Sri P. K. Behera, Dy. Director had fraudulently claimed TA of Rs. 7679/- as train fare for the journey between Patna and Hatia on 13.03.2010. Shri Behera altered the fare in the e-ticket from Rs.679/- to Rs. 7679/- and claimed and received Rs.7000/- excess from the office. The above act of Sri P. K. Behera, Dy. Director shows his ulterior motive and also indicates his lack of integrity and devotion to duty, which is in violation of

Regulation 3(1)(i) (ii) and 3(2) (v) of KVICE (Conduct Regulations, 2003". The applicant, after receiving the Memorandum submitted his written statement of defence pointing out inter-alia that no manipulation was made by him and that he purchased the ticket from agent and when he came to know of the irregularity committed by the agent, he deposited the amount and he claims that there evolved no irregularity and he had not made fraudulent claim of TA and prayed to exonerate him from the charge. Thereafter, vide Memorandum dated 19.11.2012 the respondents appointed Mr. R. D. Tawte a retired Deputy General Manager as Inquiring Officer to enquire into charge framed against the applicant and a copy of the memorandum was endorsed to Sri M. K. Jadhav, Accounts Officer (Finance) of the Commission, Mumbai to act as Presenting Officer. The Inquiry Officer submitted his report on 19.03.2013 and in its report held that violations (charges) levelled against the applicant under Regulation 3 (1) (i) (ii) are fully established/proved and regulation 3 (2) (v) as not established/proved. The Commission in its meeting held on 22.04.2013 accepted the inquiry report and a copy of the same was sent to the applicant vide letter dated 27/30.05.2013. Central Vigilance Commission in their letter dated 26/30.09.2013 had agreed with the recommendation of DA and CVO and advised imposition of a suitable major penalty on the applicant which was communicated to the applicant on 09/11.10.2013 directing to submit his reply/representation on second stage advice of the CVC within 15 days of receipt of the memo. The applicant submitted his reply on 05.11.2013 stating that "The mistake was depicted by myself before administrative action upon me from the higher ups and deposited the excess amount on T. A. head for Rs. 7,000/- (Rupees seven thousand) only to the Commission. As such I may not be punished legally. Intentionally I have not done mistake." The Commission by order letter dated 11/13.02.2014 imposed major penalty on the applicant stating the following:

“8. AND WHEREAS the Commission being the Disciplinary Authority after due consideration of the findings of I.O., reply of Shri Behera on the Inquiry Report and taking cognizance of the gravity of the misconduct, noted that the charge relates to fraudulent T. A. claim. The act of Shri Behera indicates his lack of integrity and devotion to duty. Considering the entirety of facts and in view of the above guidelines of the Govt. of India, the Disciplinary Authority decided to impose major penalty of ‘reduction to the lower post as specified in Pat-V, Clause-9(vii) of KVIC E (CCA) Regulations, 2003. The Disciplinary Authority also considered Shri Behera’s reply on CVC’s second stage advice.

9. NOW THEREFORE, the Commission being Disciplinary Authority hereby imposes the Major Penalty of ‘reduction to the lower post of Accounts Officer with the basic pay of Rs. 22,290/- in the pay band of Rs. 15600-39100 with Grade Pay of Rs. 5400/-. The Disciplinary Authority also decided that Shri Behera will not be considered for promotion/selection for a period of 3 years from the date of issue of the order. During this period of 3 years, Shri Behera will not earn increments of pay and that on the expiry of this period; the reduction will not have the effect of postponing his future increment of pay.”

The applicant appealed on 08.07.2014 before the Hon’ble Minister, Micro Small & Medium Enterprises for withdrawal/cancellation of order of reversion since he has not violated any of the clauses of Sec 3 of KVIC Employees Conduct Regulation, 2003. Appellate Authority dismissed the appeal of the applicant vide order dated 03.02.2015. Subsequently vide order dated 31.08/03.09.2015 the respondents imposed a major penalty of “compulsory retirement” on the applicant from the services of the Commission. Hence this OA.

3. The respondents vide their counter inter alia averred that enquiry proceedings was conducted as per extant guidelines in KVIC E (Conduct) Regulations 2003 and the Enquiry Officer was

appointed from the panel of Inquiry Officers and Presenting Officers as per guidelines and the applicant participated in the enquiry proceedings and at no time made any objection to the appointment of Presenting Officer and Inquiry Officer at the time of hearing. It was further mentioned that it was held that applicant has violated KVIC Conduct Regulation 3 91) (i) and 3 (1) (ii) and the punishment imposed on the applicant, as to the reduction to lower post and subsequently decision not to consider promotion/selection and thereafter postponement of future increment of pay, does not amount to illegal, arbitrary and disproportionate to the charge and penalty was imposed as per KVIC E CCA Regulation 2003. Further it was averred that the Disciplinary Authority after due consideration of all material facts decided to impose penalty in terms of KVIC E CCA Regulations 2003 and the Appellate Authority i.e. Hon'ble Minister, MSME, Govt of India also vide speaking order dated 03.02.2015 rejected the appeal of the applicant after considering all material evidence and finding no fresh grounds in the appeal which merit interference in the disciplinary action taken and penalty imposed by the Disciplinary Authority.

4. In the rejoinder the applicant further averred in Para 10 that:

“That in reply to the averments made in para 15 to 27 of the counter it is respectfully submitted that Part-VII of KVICE (CCA) Regulations, 2003 deals with appeal which inter-alia postulates under Rule -23 that in the case of an appeal against an order imposing any of the penalties specified in Regulation 9 or enhancing any penalty imposed under the said Regulation, the Appellate Authority shall consider:

- a) Whether the procedure laid down in these Regulations has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;*
- b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and*

- c) *Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and pass orders –*
- (i) *Confirming, enhancing, reducing or setting the penalty*
 - (ii) *Remitting the case to the authority which imposed or enhanced the penalties or to any other authority with such direction as it may deem fit in the circumstances of these cases;*

In view of settled position as embodied under the CCA REgln, 2003 the appellate authority should not have dismissed the appeal, without complying with the statutory provisions of the Regulations, 2003.

It has been specifically mentioned in para 10 of the rejoinder that the said aspect was also reiterated by learned counsel for the applicant during the course of argument by referring to the specific ground taken in this regard in para 9 of the rejoinder.

5. In the Memorandum of Appeal vide Annexure 13 (page 61) the appellant had inter alia mentioned that:

“As per the direction of the competent authority, while I was working as Accounts Officer at State Office, KVIC, Bhubaneswar, I had travelled from Bhubaneswar to Patna via Gaya and returned to Bhubaneswar via Ranchi, since there are no direct train and also due to non availability of ticket on that particular date.

Accordingly, T.A. advance was drawn on the basis of estimated calculation. Also I am an Officer who is entitled to travel by Air. As such the advance taken was a bonafide amount, otherwise the State Director, S.O. KVIC, Bhubaneswar who would not have sanctioned the same, as he felt on prima facie was genuine. It might be less or above since some times the authority may direct to go elsewhere because in case of emergency or extra work may be performed. The T.A. Advance has not been drawn with malafide intention.

That, in the said T.A. Bill, a printing mistake over a Train Ticket (E-Ticket) bill from Patna to Hatia Jn (RajendranagarHatia Express) was find out later on. The actual cost of the ticket value was Rs. 679/- whereas the ticket value was wrongly/inordinately printed as Rs. 7,679/- instead of Rs. 679/-. In fact, the said ticket was not booked by me, the ticket was booked through e-ticketing service of IRCTC by an agent Sri Suresh Chandra Dash in his ID. Sri Suresh Chandra Dash also admitted his unwilling mistake. A xerox copy of the opinion of Sri Suresh Chandra Das in this respect is also enclosed herewith in Annexure-II for your ready reference.

That the T.A. Bill was prepared by some other official due to work load and closure of the financial year 2009-2010 and ultimately the bill was passed by the then Director who was the Head of the Department of KVIC Office, Bhubaneswar. In this context I had no fault alone although I was the Accounts Officer.

That on realising the mistake at my level before establishing any inquiry by the Competent Authority regarding the aforesaid wrongful T.A. Bill, I have already refunded the excess amount of Rs. 7,000/- and deposited by Cash vide Money Receipt No. 2772 dt. 24.12.2010, the copy of which is also enclosed once again for your ready reference vide Annexure-III. As such no pecuniary loss to the commission.

That I have much integrity and devotion towards the office as well as my duty. I do not violate any of the clauses of section – 3 of KVIC Employees (Conduct Regulation 2003).

That before this inexcusable incident in my official career I had not faced trial before any inquiry Authority for such ignorable mistake.”

6. The appellate authority in his order date 03.02.2015 vide annexure 14 has mentioned about initiation of proceeding against applicant, the inquiry initiated against him, major penalty

proceeding and conclusion reached. He has also mentioned about the conclusion reached in the enquiry report as mentioned in para 7 of his order vide annexure A/14. In order to show the manner in which appeal has been disposed of by the appellate authority it is required to quote the entire order passed by him as follows:

“ Shri P. K. Behera, Accounts Officer, KVIC has filed an appeal dated 08.07.2014 against the imposition of penalty by the Disciplinary Authority reverting him from Deputy Director to Accounts Officer.

2. Shri P. K. Behera, Accounts Officer, KVIC has been penalized (reduction to lower post of Accounts Officer) for deliberately claiming excess amount (Rs. 7,679/- ticket fare instead of actual ticket fare of Rs. 679/-

3. As per details received, KVIC had taken a decision in commission's meeting No. 592 dated 29.04.2011 in which CEO, KVIC was authorized to seek first stage advice from Central Vigilance Commission (CVC) of the issue.

4. CUC had advised KVIC to initiate major penalty proceedings against Shri Prakash Behera vide their letter no. 011/IND/006 dated 17.10.2011.

5. KVIC accordingly has initiated an inquiry against Shri P. K. Behera under Regulation No. 10 of KVIC Employees (CCA), Regulation, 2003 and informed Shri P. K. Behera to submit within 10 days of the receipt of this memorandum a written statement of his defense and also to state whether he desires to be heard in person.

6. KVIC appointed Shri D. R. Tawte, Retd. Dy. General Manager, HPCL, A-4/66, Rutu Complex, R.W. Sawant Marg, Thane (W)-400601 as Inquiry Officer vide Memo order no. Vig/DP/0/38/2012-13/255 dated 19.11.2012 to enquire into the charges framed against Shri P. K. Behera.

7. Inquiry Officer submitted enquiry report in this regard wherein it has concluded that the following violations (charges) levelled against Shri P. K. Behera as fully established/proved:-

Regulation 3 (1): Every Employee shall at all times:

- (i) Maintain absolute integrity*
- (ii) Maintain devotion to duty*

8. KVIC as Disciplinary Authority had in its 615th meeting dated 25.07.2013 decide to impose major penalty of reduction to the lower post as specified in part – v clause (vii) of the KVIC CCA Regulations-2003 and sought the comments of the CVC vide their letter no. 011/IND/006/227192 dated 26.09.2013 agreed to the decision of the Commission to imposition of a suitable major penalty against Shri P. K. Behera. Accordingly, Shri P. K. Behera was informed the decision of the Commission vide their O.M. NO. VIG/DP/O/136 dated 09/11/10.2013 and also directed to submit his reply/representation within 15 days on receipt of the memorandum. However, Shri P. K. Behera did not bring any fresh ground against the penalty, in his representation.

9. Thereafter, KVIC in its 621st meeting dated 28.01.2014 decided to impose penalty of “reduction to the lower post” of Accounts Officer in terms of penalties as specified in Part – V Clause-9 (vii) of the KVIC, CCA Regulation, 2006. Commission further decided that Shri P. K. Behera will not considered for promotion and increment for further period of 3 years and also not to be posted in the field offices. In this regard, KVIC has issued an order no. VIG/DP/O/38/2013-14/201 dated 11/13.2.204.

10. Under KVIC (Conduct, Discipline and Appeal) Regulation, 1961, Hon’ble Minister is Appellate Authority for the disciplinary proceedings of officers at the level of Dy. Director and above. Shri P. K. Behera has submitted an appeal dated 08.07.2014 to the Hon’ble Minister, MSME for

cancellation/withdrawal of the penalty of “reduction to lower post”. The appeal has been examined and the Appellate Authority has found that no fresh grounds have been brought in the appeal which merit interference in the Disciplinary action taken and penalty imposed on him by the Disciplinary Authority. Therefore, there is no reason for Appellate Authority to interfere with the order passed by the Disciplinary Authority. Hence, the appeal is hereby dismissed.

11. Issued by order and in the name of Hon’ble Minister, MSME, Govt. of India.”

7. Thus from the said order it clear that there has been total non application of mind by the appellate authority. The grounds taken by the applicant in his appeal have not been considered and the appeal has been disposed of in a very cryptic manner. In the circumstances this tribunal is satisfied that appellate authority has not done his duty in accordance with law and has not acted in the manner as provided under Rule 23 of KVIC Employees Conduct Regulation, 2003 (Par – VII).

8. Accordingly, order of punishment passed by the Disciplinary Authority at Annexure – 12 and order of the appellate authority at Annexure - 14 are quashed. The matter is remanded back to the appellate authority (Hon’ble Minister, MSME) for fresh consideration in accordance with the law. The appellate authority shall consider the appeal and communicate his order to the applicant within a period of three months from the date of receipt of copy of this order.

9. Accordingly, this OA is allowed with no orders as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)