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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2849/99

New Delhi this the 10th day of May, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Jaswinder Singh,
S/o Shri Jhanda Singh,
R/o WZ 843 Nangal Raya,
Near Railway Crossing,
New Delhi-110 046.

...Applicant

(By Advocate Mrs. S. Janani)

-Versus-

1. Union of India,
through Secretary,
Ministry of Defence,
South Block, New Delhi.

2. Director General of Ordnance Services,
Directorate General of Ordnance Branch,
Master General of Ordnance Branch,
Army Headquarter, DHQ, PO,
New Delhi.

3. The Commandant,
C.O.D. Delhi Cantt,
New Delhi.

...Respondents

(By Advocate Shri S.M. Arif)

ORDER

By Mr. Shanker Raju, Member (J):

This application is made against an order passed by the Director General of Ordnance Services on 14.10.99, whereby the appeal preferred against the order of compulsory retirement has been rejected by the appellate authority.

2. The applicant on account of certain allegations of misconduct and misbehaviour on several occasions has been proceeded against in a disciplinary proceeding and thereafter the enquiry officer through his enquiry report recommended a lesser punishment on the applicant by holding him guilty of the charge. The

disciplinary authority on the basis of the enquiry report vide an order dated 28.2.97 imposed the penalty of removal from service upon the applicant by order dated 22.7.96, which was confirmed in the appellate order dated 28.2.97. The applicant thereafter preferred OA-1519/97 before this Tribunal and vide an order dated 6.8.98 after meticulously dealing with all the legal contentions of the applicant and in view of the fact that the order of the disciplinary authority was mechanical without considering the recommendations of the enquiry officer or imposing the penalty of reduction of pay by two stages has proceeded to pass the penalty of removal from service keeping in view the charges levelled against the applicant and the penalty imposed the Tribunal was of the opinion that their conscience has been shocked and in this background the orders have been set aside and the disciplinary authority was directed to pass a fresh speaking order in the light of the observations made relating to quantum of punishment vide an order dated 6.8.98. The disciplinary authority in pursuance of the directions of the Tribunal passed an order on 4.9.98 and remitted back the case to the disciplinary authority for issuance of fresh and speaking order taking into account the observations of the Tribunal regarding proportionality of the punishment. Ultimately the disciplinary authority vide order dated 25.5.99 passed a reasoned order whereby a lesser punishment of compulsory retirement has been imposed upon the applicant. The punishment was gone into by the appellate authority and vide an order dated 14.10.99 impugned herein rejected the same.

3. The applicant in this OA challenges the order of punishment and the appellate order on the ground that despite the directions of the Tribunal acted arbitrarily and without considering the proportionality of the punishment again imposed the punishment of removal from service which shows that the disciplinary authority was biased and has not acted in accordance with law. The applicant has further contended that the orders of the appellate and the disciplinary authorities are non-speaking and his contentions have not been considered by them.

4. On the other hand, the respondents contended that the applicant is a habitual offender and has been awarded several punishment and had a chequered history. It is further contended that the Tribunal in its judgement dated 6.8.98 has in detail dealt with the legal contentions of the applicant taken in this OA again and only on the proportionality of the punishment the matter was remanded back to the disciplinary authority, as such the applicant is estopped from raising all those pleas and his OA is barred by res judicata. It is further contended that keeping in view the misconduct of the applicant of misbehaviour and using abusive language with the senior officers the punishment is on the lesser side but for the directions of the Tribunal he has been awarded the punishment of compulsory retirement. The applicant in his rejoinder re-iterated the pleas taken in his OA.

5. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the respondents that although liberty was given to the applicant by the Tribunal in

OA-1519/97 yet all his legal pleas have been meted out in the previous OA and no new plea has been taken by the applicant in this OA he cannot be allowed to raise the pleas which have already been adjudicated by the Tribunal. The case of the applicant is clearly barred by the doctrine of res judicata and also constructive res judicata as he had the opportunity to assail the order in the previous OA by taking legal pleas as some of them have been taken therein. As no plea has been taken by him different from the pleas taken by him in the previous OA this OA is barred by res-judicata as the matter had been finally adjudicated between the parties on the same grounds on which he is maintaining the present OA. Even though the opportunity was given with reference to being aggrieved by the order passed by the disciplinary authority in case the directions of the Tribunal are not carried out by the respondents pertaining to the proportionality of the punishment. As the punishment had already been reduced from removal to compulsory retirement the applicant has no cause of action to challenge the proceedings in the present OA.

6. Even on merits the contention of the applicant that the orders of the disciplinary and appellate authorities are not reasoned is absolutely incorrect. The disciplinary authority vide an order dated 25.5.99 ibid has taken into consideration all the contentions of the applicant and after recording sufficient reasons imposed a lesser penalty of compulsory retirement. It is a settled principle of law that the Tribunal will not act as an appellate authority over the findings of the departmental authorities by way of judicial review. There is no scope for re-appraisal of evidence by the Tribunal as held in

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Kuldeep Singh v. Commissioner of Police, JT 1998 (8) SC 603. The order of the appellate authority is a reasoned order and passed after taking into consideration all the contentions of the applicant.

7. No other valid grounds have been taken by the applicant to assail the proceedings.

8. Having regard to the above discussion and the reasons recorded we find no merit in the OA, which is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."

V.K. Majotra

(V.K. Majotra)
Member (A)