CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

T.A.No.06 of 2019

Present: **Hon'ble Mr.Gokul Chandra Pati, Member(A)**

Kamal Kumar Panigrahi, aged about 49 years, S/o. late Sarat Chandra Panigrahi, Sr.Telecom Operating Assistant (Phone), Mohana Exchange, At/PO-Mohana, Dist-Gajapati.

...Petitioner

VERSUS

1. Chief General Manager, Bharat Sanchar Nigam Limited (BSNL), Orissa Telecom Circle, Bhubaneswar, Dist-Khurda.
2. General Manager, Telecom District (BSNL), Berhampur Telecom Division, Telephone Bhawan, At/PO-Berhampur, Dist-Ganjam.
3. Dy.General Manager, Telecom District (BSNL), Telephone Bhawan, At/PO-Berhampur, Dist-Ganjam.

Opp.Parties

For the Applicant: - Dr. J.K. Lenka, Counsel

For the Respondents: Mr.P.R.Barik, Counsel

Reserved on : 20.08.2020 Order Pronounced on:

ORDER

Mr.Gokul Chandra Pati, Member(A):

The applicant had filed the Writ Petition No. 11163 of 2009 before Hon'ble High Court, being aggrieved by the order dated 20.3.2009 (Annexure-6 of the petition) passed by the Appellate Authority (respondent no.2) modifying the punishment of stoppage of six increments for six years with cumulative effect imposed by the disciplinary authority (respondent no.3) to stoppage of three (3) increments for three (3) years without cumulative effect. Vide order dated 29.1.2019 of Hon'ble High Court, the said petition was transferred to this Tribunal for adjudication and it has been registered as Transfer Application (in short TA) No. 6 of 2019.

2. The factual background of the case is that the applicant, while working as Sr.Telecom Operating Assistant (Phone) under the Respondent-BSNL, had purchased a Maruti Alto Car on 8.11.2004 by availing loan from ICICI Bank. The respondents alleged that he failed to inform the authorities and then took disciplinary action against the applicant, who avers that the disciplinary authority (respondent no.3) passed the order dated 31.3.2006 (Annexure-2) imposing punishment of stoppage of six increments for six years with cumulative effect without any inquiry and without serving imputation of cahrges. The order dated 31.3.2006 stated as under:-

> *"On the basis of the documents and records of the case, I, C.R.Mohapatra, Deputy General Manager Telecom, office of the General Manager Telecom District, Berhampur, hereby orders imposition of penalty of stoppage of 06 (six) increments for 06 (six) years with cumulative effect on Shri K.K.Panigrahi, Sr.TOA(P), for the aforesaid lapses. The punishment shall be carried out with immediate effect".*

3. Being aggrieved by above order, the applicant submitted an appeal dated 20.05.2006 (Annexure-3) to the respondent no.2. Since the appeal was not disposed of, the applicant submitted a representation dated 09.03.2007 to the Chief General Manager Telecom, Orissa Circle (Respondent No.1) followed by another representation to the respondent no.2. He also approached Hon'ble High Court of Orissa in W.P.(C) No.14624 of 2008 since no action was taken by the respondents in disposing of his appeal. Hon'ble High Court, vide order dated 02.12.2008 (Annexure-5 of the TA), disposed of the said writ petition with the following observations and directions:-

> "Since the appeal filed by the petitioner is pending, instead of entertaining this writ petition, we think it appropriate to direct the Appellate Authority to dispose of the same.
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> Learned counsel for the petitioner at this stage submits that the Opp.Party No.2 may be directed to treat the averments made in the writ application as a part of the appeal memo.
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> Accordingly, we dispose of the writ application directing the Opp.Party No.2 to treat the averments made in the writ application as a part of the appeal memo filed by the petitioner and dispose of the appeal by passing a reasoned order within a period of three months from the date of communication of this order".

4. In compliance of the above direction, the Appellate Authority (respondent no.2) passed the impugned order dated 28.03.2009 (Annexure-6 of the TA) with the following order as under:-

> "In view of the findings and taking all the aspects of the case into consideration, especially, giving prominence to the points raised by the appellant, the undersigned is of the view that there was lapse on the part of the charged official in maintain absolute integrity and thereby unbecoming of an employee of BSNL, which should not be a precedence for others and hence, the undersigned is of the view that the Punishment Orders passed by the Disciplinary Authority are justified. However, taking the unambiguous admission of the chargted officer into consideration, the undersigned passes the following Order:
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> "I, B. K. Nayak, Appellate Authority and General Manager Telecom District, Berhampur, in exercise of Appellate powers conferred on me vide Rule-46 of BSNL, CDA Rules, 2006, which comes to effect on 10.10.2006, modify the orders passed by the disciplinary authority and DGM Telecom, Berhampur vide Order No.X-4/DGMT/BER/2005-06/18 dated 31.03.2006 and order the penalty of 'reducing his pay by 03 (three) increments for 03 (three) years without cumulative effect on Shri K. K. Panigrahi, Sr.TOA(A)".

The applicant had challenged the above order dated 28.3.2009 in the writ petition which has been transferred to this Tribunal for adjudication.

5. In this TA, the applicant has prayed for the following reliefs:

> ***"The petitioner, therefore, most humbly prays that your Lordships would be graciously pleased to issue a Rule Nisi calling upon the opp.parties to show cause as to why the impugned order of the Appellate Authority at Annexure-6 should not be quashed with consequential benefits.***
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> ***If the Opp.parties fail to show cause or sufficient cause, the rule be made absolute.***
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> ***Issue any other order or direction which would afford complete relief to the petitioner……..."***

6. The respondents had issued a letter dated 22.03.2006 to the applicant asking him about the details of purchase of the Car, that was stated to have been purchased without prior intimation to the competent authority. The said letter was returned undelivered with a postal remark 'door locked'. It is the respondents' stand that since the applicant was continuing on medical leave, the letter was deemed to have been delivered to the applicant. Thereafter, on receipt of the details of ownership of the vehicle and the cost thereof from the R.T.O., Chatrapur as well as the report of the Sub Divisional Engineer Telecom (HRD) stating that no prior intimation regarding purchase of vehicle is available, a notice was published in the newspaper on 09.03.2006, giving another opportunity to the applicant to explain the reasons for purchase of the movable property without permission/intimation. Since no explanation was received, a disciplinary proceeding was initiated against the applicant and while the inquiry was in progress, the applicant sent a letter dated 22.03.2006 (Annexure-1 of the TA) stating that he had given intimation about the purchase of car to the D.E. Telecom (Administration) on 10.11.2004. This letter dated 10.11.2004 was considered by the respondent no.3 as not authentic one and then passed the punishment order dated 31.03.2006 instead of going ahead with the inquiry.

7. The averment of the applicant is that in response to notice dated 9.3.2006 published in the newspaper, he had submitted his explanation on 22.03.2006 (Annexure-1) enclosing thereto a letter dated 10.11.2004 by whixh he claimed to have intimated the details of purchase of car, which was marked by the SDE, DEE(HRD) to the office to do the needful.

8. The applicant, in support of the reliefs sought for in the TA, has urged the following grounds:

i) Since the applicant had sent his reply on 22.03.2006 in response to the notice dated 9.3.2006, it cannot be said that no communication was possible with him and to this effect, the findings of the Disciplinary Authority in the punishment order is perverse and not based on the materials on record.

ii) The punishment order makes a mention that the vehicle should have been purchased obtaining prior approval or giving intimation. Therefore,the applicant is required to inform the authority, which is a mere formality and such intimation was sent on 10.11.2004.

iii) Copy of statement of imputation of misconduct or misbehavior was not served on the applicant. No inquiry was conducted, resulting in violation of the rule-16 of CCS (CCA) Rules, 1965.

iv) As per settled position of law as enunciated by the Hon'ble Supreme Court, the punishment order should have been passed after complying with the principles of natural justice, which has not been done in the instant case. Further, the order of punishment passed by the Disciplinary Authority did not disclose any reason as to why it was not reasonably possible to hold an inquiry. Since Appellate Authority overlooked such violation of rules, the order dated 28.03.2009 (Annexure-6) passed by the Appellate Authority does not stand to judicial scrutiny.

9. In the Counter-reply filed by the respondents, it is submitted that after holding due enquiry, the Disciplinary Authority held that the charged officer had violated the rules in not seeking permission and therefore, imposed penalty of stoppage of six increments for six years with cumulative effect after dispensing with the inquiry since the minor penalty is imposed under the rule 16 of the CCS (CCA) Rules, 1965. The Appellate Authority disposed of the appeal vide the impugned order dated 28.3.2009 (Annexure-6) reducing the penalty to stoppage of three increments for three years without cumulative effect with the finding that the applicant had violated Rule-18 of CCS(Conduct) Rules, 1964. It is contended that the Appellate Authority in Paragraph-7 and 8 of the order dated 28.3.2009 has held that the intimation by letter dated 10.11.2004 as claimed by the applicant, was found to have not been received in the office of the respondent no. 2. It is further stated that although the applicant had sought for permission for purchase of a car, it was declined in view of his "meager take-home pay."

10. No Rejoinder has been filed by the applicant. Learned counsel for the applicant and the respondents were heard in the matter on 6.2.2020 and 10.8.2020 and written notes of arguments/submissions were also filed by learned counsels for both the parties, reiterating the contentions in their respective pleadings. The applicant contends that due procedures have not been followed by not conducting the inquiry and the finding of the Appellate Authority in paragraph-9 of the impugned order that due procedure has been adhered to by the Disciplinary Authority, is not sustainable.

11. One of the applicant's ground is that the order dated 31.3.2006 (Annexure-2) of the Disciplinary Authority imposing the punishment of stoppage of six increments for six years with cumulative effect vide order is not sustainable since no reason was mentioned in the said order for dispensing with the inquiry and hence, it violated the rules and the Appellate Authority

has overlooked this fact. The order dated 28.3.2009 passed by the Appellate Authority has modified the punishment to stoppage of three increments for three years without cumulative effect, which is a minor penalty. For imposing minor penalty, the Disciplinary Authority has the discretion to hold the inquiry or to dispense with it under the rule 16 of the CCS (CCA) Rules, 1965. Hence, it cannot be said that holding of the inquiry was mandatory for imposing minor penalty. Under the rule 27 of the CCS (CCA) Rules, 1965, the Appellate Authority has the power to confirm or modify the punishment order after considering whether proper procedure as per the rules has been followed while imposing penalty. Therefore, the finding in order dated 28.3.2009 regarding adherence of the rules cannot be said to be incorrect.

12. The settled position of law regarding disciplinary proceedings is that this Tribunal cannot re-appreciate the evidence or interfere with the penalty imposed in a disciplinary proceeding like an appellate forum unless there is violation of the statutory rules or the findings are perverse and/or not based on any evidence. In the case of **Union of India etc. vs. Parma Nand etc. reported in 1989 AIR 1185**, it was held by Hon'ble Apex Court that the power of the Tribunal to adjudicate the disputes pertaining to disciplinary proceedings does not include interference with the findings of the competent authority unless such findings are utterly perverse or arbitrary. Furhter, the Tribunal cannot function as an appellate forum.

13. In the case of **The State of The Karnataka & Anr. vs. N. Gangaraj in Civil Appeal No. 8071 of 2014,** the respondent-employee was dismissed from service by the authorities and simultaneously he was criminally prosecuted. In the criminal case, the concerned employee was acquitted. He had challenged the order of dismissal before Karnataka Administrative Tribunal and the order of punishment was set aside by the Tribunal. Hon'ble Karnataka High Court confirmed the order of Karnataka Administrative Tribunal. The order of Hon'ble High Court was challenged by the State of Karnataka in the above Civil Appeal. After reviewing the case laws on the scope of judicial review in disciplinary proceedings, the appeal was allowed and the punishment was restored by Hon'ble Apex Court in the judgment dated 14.02.2020 in Civil Appeal No. 8071 of 2014, with the following observations as under :-

> "7. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.
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> 8. In **State of Andhra Pradesh & Ors.** v. **S. Sree Rama Rao2**, a three Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to

determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under:

> "7. …The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence…."

9. In **B.C. Chaturvedi** v. **Union of India & Ors.3**, again, a three Judge Bench of this Court has held that power of 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 eyes of the court. The Court/Tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under:

> "12. 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 nor 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 where 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 mould the relief so as to make it appropriate to the facts of each case.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

10. In **High Court of Judicature at Bombay through its Registrar** v. **Shashikant S. Patil & Anr.4**, this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of

such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under:

> "16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

11. In **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya5**, this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi vs. Union of India - 1995 (6) SCC 749, Union of India vs. G. Gunayuthan - 1997 (7) SCC 463, and Bank of India vs. Degala Suryanarayana - 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil – 2001 (1) SCC416).
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> 12. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

13. In another judgement reported as **Union of India** v. **P. Gunasekaran6**, this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings:

> "13. Under Article 226/227 of the Constitution of India, the High Court shall not:
> (i) re-appreciate the evidence;
> (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
> (iii) go into the adequacy of the evidence;
> (iv) go into the reliability of the evidence;
> (v) interfere, if there be some legal evidence on which findings can be based.
> (vi) correct the error of fact however grave it may appear to be;
> (vii) go into the proportionality of punishment unless it shocks its conscience."

14. On the other hand learned counsel for the respondent relies upon the judgment reported as **Allahabad Bank** v. **Krishna Narayan Tewari7**, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the Writ Court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct."

14. Applying the legal principles laid down by Hon'ble Apex Court in the aforesaid judgments to the present OA, it cannot be said that the findings of the respondents in the disciplinary proceedings are perverse or arbitrary or not based on any evidence. It is noticed that in para 14 of the TA, the applicant has admitted that the intimation sent by him on 10.11.2014 about purchase of a car was not in proper format, which was stated to be a minor lapse. Assuming his contention that he had intimated to the authorities in letter dated 10.11.2004 to be correct, it was clearly not in proper format. Hence, it cannot be said that the findings of the Appellate Authority in the impugned order at Annexure-6 are perverse or not based on any evidence.

15. The applicant has advanced a ground that no imputation of charge was delivered to him (para 9 of the TA). It is seen that in the appeal dated 20.5.2006 (Annexure-3 of the TA), no such ground was taken by the applicant. In the reply of the applicant dated 22.3.2006 (Annexure-1 of the TA), he has referred to the Office Memo dated 8.3.2006, copy of which was not enclosed with the TA. The Appellate Authority in the impugned order dated 28.3.2009 has stated that ***"a notice was published on 09-03-2006 giving an opportunity to explain the reasons for purchasing a car without proper intimation."*** There is nothing on record to disprove such finding of the Appellate Authority. In such factual background, it cannot be said that no imputation of charge was communicated to the applicant.

16. The applicant has also mentioned about a number of deficiencies in the punishment order of the disciplinary authority, alleging that no inquiry was conducted. The Appellate Authority in his order dated 28.3.2009 has stated that the disciplinary authority has followed the procedure under the rule 19(ii) of the CCS (CCA) Rules, 1965 to dispense with the inquiry and the punishment was modified in his order dated 28.3.2009 to stoppage of three increments without cumulative effect, which is a minor penalty and under the rules, inquiry is not mandatory for imposing minor penalty, since the rule 16 of the CCS (CCA) Rules, 1965 (which has been quoted by the applicant in the TA) provides that in a minor penalty proceeding, whether inquiry is required or not, is decided by the Disciplinary Authority. Hence, by not holding inquiry before imposing minor penalty, no rule has been violated as held by the Appellate Authority in the order dated 28.3.2009.

17. Other grounds mentioned by the applicants to challenge the impugned order dated 28.3.2009 (Annexure-6 of the TA) of the Appellate Authority are not acceptable in the light of the legal principles laid down by Hon'ble Apex Court discussed in paragraphs 12 and 13 of this order.

18. For the reasons discussed above, there is no justification for this Tribunal to interfere in the matter. Therefore, the TA is liable to be dismissed and it is accordingly dismissed. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)