Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

Original Application No.200/00737/2011

Jabalpur, this Monday, the 15th day of February, 2021

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

Abid Ali S/o Shri Zahid Ali Aged about 56 years working as ex Machinist (Skilled) R/o 788 Rani Durgawati Ward Muzzawar Mohalla Garha Jabalpur M.P. 482003 **-Applicant**

(By Advocate **–Shri Rajesh Soni**)

V e r s u s

1. Union of India, through its Secretary Ministry of Defense, Defense House, New Delhi PIN Code No.110001

2. The Chairman Ordinance Factory Board 10-A Shaid Khudiram Bose Marg Kolkata West Bengal 700001

3. The Senior General Manager, Vehicle Factory Jabalpur M.P. PIN Code No.482001

4. General Manager, Vehicle Factory Jabalpur M.P. PIN Code No.482001 - **Respondents**

(By Advocate **–Shri S.S. Chauhan**)

(Date of reserving the order:-10.02.2021)

O R D E R

By Ramesh Singh Thakur, JM:-

The applicant has filed this Original Application for quashing of impugned order dated 28.05.2008 (Annexure A-1) whereby the applicant has been compulsory retired from service w.e.f.28.05.2008 (A/N), show cause notice dated 28.05.2008 (Annexure A-9) whereby the respondents have not treated the service period from 17.04.2004 to 06.02.2005 and order dated 27.05.2011 (Annexure A-12) whereby applicant's appeal has been rejected.

2. The applicant has prayed for the following reliefs:-

I. That the respondents be directed to produce entire relevant services record of the applicant, along with entire departmental proceedings of the inquiry, for perusal of this Hon'ble Court.

II. After perusal the record, the impugned order dated 28.05.2008 Annexure A-1, Show Cause notice dated 28.05.2008 Annexure A-9 and order dated 27.05.2011 Annexure A-12, be quashed and be pleased to direct the respondents to reinstate the applicant, with full back-wages, along with all other consequential and ancillary services benefits to which the petitioner is entitled till his superannuation.

III Cost of the petition also be awarded.

IV. Any other order/orders which this Hon'ble Tribunal deem fit and proper may kindly be given in favor of the applicant in the interest of justice and law full decision of the case."

3. The brief facts of the case are that the applicant was working as Machinist (Skilled) with the respondent-department and was issued a charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide memo dated 24.05.2004 for Gross Misconduct-attempted theft of Government property (i.e. 2 nos. Brass Bar Size approx.10" long x 01" radius/circle and one number steel angel place size 6"x 4'- conduct unbecoming of a government servant. Inquiry was held and inquiry officer did not establish the charge vide inquiry report dated 31.12.2007. Disagreeing with the findings of the inquiry officer, the disciplinary authority gave his own tentative reasons for disagreement with the inquiry report. The copy of same was served to the applicant dated 17.03.2008 to file his written representation. The applicant submitted his representation. The disciplinary authority after considering the representation and facts and circumstances of the case, held the applicant guilty of charges leveled against him and issued show cause notice dated

28.05.2008 (Annexure A/9) to the applicant whereby imposed punishments of compulsory retirement and the period from 17.04.2004 to 06.02.20005 be treated as suspension. The applicant submitted detailed parawise reply on 19.06.2008 (Annexure A/10). The applicant submitted revision/appeal dated 05.10.2008 (Annexure A/11) against the order of disciplinary authority. The applicant approached this Tribunal by filing O.A. No.514/2009 which was disposed of vide order dated 05.01.2011 (Annexure A/12) wherein the respondents were directed to decide his appeal/revision. On compliance of the said order, the revision/appeal was rejected by the appellate authority vide order dated 27.05.2011 (Annexure A/14). Hence this Original Application.

4. The respondents have submitted their reply wherein it is stated that the applicant was caught red handed on 16.04.2004 attempting theft of government property, by the Security Officer of the respondent-department. On seeing a prima-facie case, he was suspended and thereafter he was issued memorandum under Rule 14 of CCS(CCA) Rules, 1965 on 24.05.2004 for gross

misconduct. Enquiry was conducted by the inquiry officer and submitted his report on 31.12.2007 wherein the applicant was declared "not found guilty". After examination of the report and the evidences on record, the disciplinary authority issued dissenting findings in respect of the report along with the report thereby inviting submissions, if any, from the applicant. After considering his submissions on the aforesaid dissenting findings, penalty of compulsory retirement from service was imposed upon the applicant vide order dated 28.05.2008 (Annexure A/1).

5. Aggrieved, applicant preferred revision petition dated 05.10.2008 to the appellate authority under Rule 29 of the Rules. The respondents have denied that respondent No.3 has not perused the enquiry report. In fact dissenting findings have been issued by respondent No.3 Senior General Manager/VFJ and General Manager/VFJ both have been the disciplinary authorities in the present case due to change of designation of the appointing authority on account of change of personnel holding the post. The respondents have also denied that the appellate authority did not consider the appeal in a proper manner. The appellate authority

pursuant to the order passed by Tribunal have decided the appeal preferred by the applicant after giving an opportunity of hearing to the applicant by passing a reasoned and speaking order and after giving a detailed consideration to all the facts of the case. But on the basis of contradictory statements of the witnesses, the enquiry report declared him not guilty. Further the inquiry officer did not notice that findings in a disciplinary case are based on preponderance of probability and not on strict proof. Also detailed reasons for disagreement from the enquiry report have been given in the dissenting findings issued by the competent authority. Further the documents relied upon for proving charges leveled against the applicant, were supplied with the charge sheet. If other essential documents were required, the applicant could have asked for but he neither choose to ask for any such document nor to produce any defence witnesses before the inquiry officer.

6. The respondents submitted that for regularization of suspension period was issued as per statutory requirement and since the applicant was found guilty of the charges leveled against

him, the period has rightly been regularized as not spent on duty. It is submitted by the respondents that regarding the assessment of witnesses done by the applicant, reassessment of evidences is not permissible at this stage. The enquiry was conducted as per laid down procedure and the applicant was given every opportunity of being heard.

7. The respondents further submitted that Shri Masih was produced as PW-1 during the court of enquiry as felt necessary by the IO and the applicant was given every opportunity to cross examine the witness which he did. The applicant did not raise any objection, regarding his presence as witness during the enquiry. Regarding Shri M.P.Garg being listed as witness No.6 in the memorandum, it is denied being contrary to the facts of the case as he was never enlisted as a witness in the chargesheet. The respondents submitted that the seized material was kept in a sealed cover and was opened in front of all those present in the enquiry and also shown to the applicant. The material was found to be the same as seized. No objection was taken either by the applicant nor his DA regarding the authenticity/weight of the

material during the enquiry. It is submitted that the applicant has himself submitted in his statement that he had lifted the seized material from the garbage in front of Plant-II/VFJ. So, there has been no violation of the principles of natural justice. Seeing the gravity of misconduct i.e. attempting theft of government property, the applicant ought to have been dismissed from service but a lenient view has been taken and he has only been punished with penalty of compulsory retirement.

8. The applicant has filed the rejoinder to the reply filed by the respondents wherein the applicant has reiterated his earlier stand taken in the O.A. It is submitted that the enquiry officer in his conclusion has mentioned that it could not be established that the applicant had indulged in the attempt of theft of the government property. Therefore applicant is not found guilty and charges cannot be established against the alleged accused (applicant). The applicant further submitted that disciplinary authority without any basis established the charges. But the true fact is that no persecution witness says to applicant left the bag, bag seized from the applicant, every witness given the contrary statement to each

other and security staff with pressure to take the signature of the statement of the witness. Therefore enquiry officer rightly exonerated to the applicant. It is submitted by the applicant that respondent No.3 is not competent authority to pass the order dated 28.05.2008 and without application of mind wrongly analyzed the evidence and overlook the statement and cross examination of Dharneder Pal, Sudhir Darwan and Gaya Prasad. After perusal of the statement which clearly shows that there is no fault on the part of the applicant. It is also relevant to see the statement of Mr. P.K.P. Naidu he is co-employee and stated on oath and mention that applicant has not committed any misconduct. Therefore, the order of disciplinary authority dated 28.05.2008 and appellate authority dated 27.05.2011 is liable to be set aside. It is submitted by the applicant that disciplinary authority misused the power and procedure and gave the baseless dissenting finding. As per the procedure prescribed by the law "charge must be established through evidence as well statement of the witness. The only ground of preponderance of probability

to make the scapegoat to the applicant and punishment imposed by the disciplinary authority is bad in law.

9. Heard the learned counsel for both the parties and perused the pleadings and documents annexed with the O.A.

10. From the pleadings it is admitted fact that the applicant was charge sheeted under Rule 14 of the CCS (CCA) Rules, 1965 for gross misconduct of attempted theft of Government Property. Inquiry was held and inquiry report was submitted vide Annexure A/2 dated 31.12.2007. The disciplinary authority has issued the disagreement note vide Annexure A/7 and the applicant has given response to said disagreement note to the disciplinary authority. The disciplinary authority passed the punishment order of compulsory retirement. It is also admitted fact that the applicant has preferred revision petition to the respondents but the respondents have intimated that the appeal is maintainable. The applicant had also approached the Tribunal by filing O.A. No.514/2009 which was decided on 05.01.2011 with a direction to respondent No.2 to treat the applicant's petition dated 05.10.2008 (Annexure A/10) as an appeal of the applicant against

the penalty order dated 28.05.2008 and to deal with the same as per rules. Thereafter the appellate authority passed the detailed and speaking order vide Annexure A/14 dated 27.05.2011. Now the applicant has approached this Tribunal against the said impugned order dated 27.05.2011.

11. As per inquiry report Annexure A/2 the inquiry officer has come to the conclusion that the applicant has not been found guilty and charge cannot be established. As per dissenting findings given by the disciplinary authority vide Annexure A/7 dated 17.02.2008, the authority has given the detailed reasons, which was made available to the applicant. Vide Annexure A/8, applicant has made the representation against the dissenting findings of the disciplinary authority. Ultimately the appellate authority has passed the punishment order of compulsory retirement.

12. The main thrust of grounds put forth by the applicant is that the statements of witnesses are contrary in nature and the charges are not proved. It is relevant to mention that from the pleadings in the grounds the counsel for the respondent failed to establish the

perversity of the findings while passing the punishment order and also while deciding the appeal preferred by the applicant. It is admitted fact that earlier the applicant had moved revision petition but after interference by the Tribunal, the revision has been treated as an appeal and as per appellate authority order, the appellate authority has passed the detailed order and has dealt with each and every aspect of the grounds taken by the applicant. From the close scrutiny of the order passed by the appellate authority it is found that the detailed order has been passed and it has been held by appellate authority that all the PWs have clearly corroborated the fact that government materials were recovered from the applicant as the applicant was carrying them out of factory without any proper authority and was caught in the act of attempting theft of Government materials. The appellate authority has dealt with the statement of various witnesses. In the O.A and in the arguments put forth by the counsel for the applicant, no material has been shown and indicated which proves the perversity of the finding of the disciplinary authority and the appellate authority. The counsel for the applicant has failed to

indicate that violation of principle of natural justice and also the applicant is not able to show the prejudice caused to the applicant in any manner.

13. The scope of judicial review in the disciplinary proceedings is limited. The settled position of law has been dealt with by Hon'ble Apex Court in the matter of ***B.C. Chaturvedi*** vs. ***Union of India*** (1995) 6 SCC 749. This Tribunal has also dealt with a similar issue in the case of ***Prashant Kumar David*** vs. ***Union of India and others*** (O.A. No.942/2013) decided on 21.12.2017. The relevant Paragraphs are as under:-

> *"9. Law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in* ***B.C.Chaturvedi*** *Vs.* ***Union of India****, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, wherein it has been observed as under:-*
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> > *"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 proceedings. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In 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 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), 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.

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18. The disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. ***The High Court/Tribunal, while exercising the power of judicial review, can not normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof"****.*

(emphasis supplied)

10. Further, the Hon'ble Supreme Court in the matters of ***Rajasthan Tourism Development Corporation Limited and another*** *vs.* ***Jai Raj Singh Chauhan****, (2011) 13 SCC 541: (2012)2 SCC (L&S) 67 has considered various case law on the subject, relevant paragraphs of which are reproduced below: -*

*"(19) **In Union of India** Vs. **Parma Nanda** (1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30, this Court while dealing with the scope of the Tribunal's jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under: -*

> *"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."*

*(20) In **B.C. Chaturvedi** Vs. **Union of India**, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44*

the Court reviewed some of the earlier judgments and held:

> *"18. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."*

(21) ***In Apparel Export Promotion Council*** *Vs.* ***A.K. Chopra*** *(1999) 1 SCC 759: 1999 SCC (L&S) 405 the Court again referred to the earlier judgment and observed:*

> *"16. The High Court appears to have overlooked the settled position that in*

departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the

learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans (1982) 1 WLR 1155:(1982) 3 All ER 141 (HL) observed:-

> *"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."*

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

11. Thus, it is settled law that jurisdiction of courts in disciplinary matters and imposition of penalty is very limited. In the instant case we find that all the procedural requirements have been duly complied with by the respondents. The disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have duly considered the evidence placed on record and with a view to maintain discipline they imposed appropriate punishment keeping in view the magnitude and gravity of the misconduct. The decision has been arrived at by the competent authority after following the principles established by law and the rules of natural justice and the applicant has received a fair treatment to meet the case against him. The applicant has totally failed to substantiate his case and he has also not

even pointed out any glaring mistake in the conduct of enquiry against him warranting our interference. The only ground taken by him that he was on leave at the time incident does not absolve him from the charges levelled against him. Therefore, we do not find any ground to interfere with the orders passed by disciplinary and appellate authorities.

12. In the result, the Original Application is dismissed, however, without any order as to costs."

14. In the instant case we do not find any illegality and ambiguity in the proceedings before the disciplinary authority and appellate authority. The disciplinary authority has proceeded as per law. Therefore, we do not find any reasons to interfere with the order passed by the respondent-department.

15. In view of the above, this Original Application is dismissed. No costs.

(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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