IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(28)

O.A. No. 473/1990 199

T.A. No.

DATE OF DECISION 21.3.1997

K.P. Sharma — Petitioner

K.L. Bhandula — Advocate for the Petitioner(s)

Versus

UOI — Respondent

K.C. Sharma — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese

The Hon'ble Mr. S.P. Biswas

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

(S.P. Biswas)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.473/1990

New Delhi, this 21st day of March, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri K.P. Sharma
s/o late Shri N.R. Sharma
112, North West Moti Bagh
New Delhi .. Applicant

(By Shri K.L. Bhandula, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi

2. Director General of Estates
Ministry of Defence
R.K. Puram, New Delhi .. Respondents

(By Shri K.C. Sharma, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, who retired from service as Deputy Assistant Director General (Group A) from the office of Directorate General of Defence Estates, is aggrieved by Annexure A-I order dated 19.1.89 by which a major penalty of reduction in pay by five stages from Rs.3700/ to Rs.3200 (as amended subsequently) has been imposed on him for a period of 3 years with cumulative effect.

2. The facts and circumstances that resulted in imposition of the aforesaid penalty lie in a narrow compass and could be briefly stated as hereunder. While working as Cantonment Executive Officer (CEO for short) Ramgarh between May, 1982 to August, 1985, the applicant approved a proposal of cantonment Storekeeper suggesting

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exchange of angle iron by size 3"X3"(weighing 690 KG) that was available in the stock of Respondents with angle iron of size 2.5" X 2.5" (weighing 691.3 KG) available with M/s Jain Hardware, a private local dealer reportedly having business dealings with the Cantonment Board for nearly 20 years. Angle iron of the size 2.5" X 2.5" were required by the Cantonment Board in connection with certain works. As the local dealer was readily agreeable for the exchange, 19 pieces of angle iron of 3" X 3" size were taken to the premises of the former and the exchange of the angle iron rods, as approved by the applicant, was effected on 16.1.85. As clarified by the applicant, the proposal for exchange was placed before the purchase committee for its approval on 7.1.85 and two out of three members approved the same. However, Shri Ram Dev Prasad-the third Member of the Board who did not attend the purchase committee meeting on 7.1.85 lodged an FIR with the local police alleging that angle iron consignments worth Rs.20,000 approximately have been delivered by the applicant in collusion with the storekeeper in a cantonment vehicle and the consignment has been illegally sold/exchanged with M/s. Jain Hardware thus causing huge losses to the respondents. Pursuant to the investigations carried out, a memorandum for major penalty was issued to the applicant vide Annexure A-VI dated 2.4.86. Out of 4 articles of charges, one relating to exchange of angle iron stood established.

3. Shri Bhandula, learned counsel for applicant assailed the Annexure A-I and A-VI orders on the basis of the following:

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(i) Copy of th enquiry report dated 26.10.88 was not supplied to the applicant, thereby denying reasonable opportunity for making effective representation; On this ground alone, the applicant would contend that the impugned order deserves to be struck down as held by this Tribunal in a full bench decision in the case of P.N.K.Sharma Vs. UOI 1988(6)ATC 904.

(ii) The appointing authority has failed to analyise the enquiry report and appreciate evidences/ documents on record resulting in imposition of the penalty in a mechanical manner. The punishment order dated 19.1.89 has been served on the applicant on 5.2.90, i.e. after more than one year from the date of issue and this delay was in contravention of the administrative instructions regarding expeditious disposal of the disciplinary proceedings.

(iii) The transaction was in the interest of cantonment Board as the consignments received by the board were needed by them and carried more weight and value vis-a-vis those received from the dealer, though a private one.

(iv) The findings of the enquiry officer has been alleged to be perverse, based on presumptions, surmises, conjuctures, and in contravention of facts on record. In support of this contention, the applicant has brought out a catalogue of important issues the enquiry officer failed to take into consideration. For example, the enquiry officer failed to notice that the complaint was lodged by an individual with whom the applicant had strained relations, that the prosecution failed to take details from the main witnesses who had come all the way from Ramgarh, that even stock registers were not made available and the complicity of the Driver who had taken out consignments in collusion with the Peon was ignored. Due to procedural irregularities committed by the enquiry officer, the applicant has been denied reasonable opportunities to defend himself resulting in failure of natural justice.

(v) The respondents have committed grave irregularity in resorting to disciplinary proceedings on the very issues which were still under investigation by police authorities. This is in violation of administrative instructions as stipulatd in Annexure A-5.

4. In the counter, Shri K.C. Sharma, learned counsel for respondents argued that the disciplinary proceedings were initiated as a result of the preliminary enquiry conducted by the Director General of Defence Estates

(DG-DE for short) and the enquiry was ordered under Rule 14 of CCS(CCA) Rules, 1965. The case with the police authorities progressed because of an independent complaint lodged by a member of the Cantonment Board and the Central Government had at no stage asked the police to investigate the same. The charge-sheet at Annexure A-I was served on completion of duly instituted enquiry proceedings wherein the applicant was held guilty of misdemeanour. The applicant was wrong in filing a case against one of the members of the Contonment Board in the local police. He should have instead requested the President of the Cantonment Board (i.e. Station Commander) to investigate the alleged misconduct of the member for appropriate action. The learned counsel for the respondents further contended that very need of exchange of angle iron consignments between the government department and a private organisation was questionable. The overseer had placed the demand for angle iron of the size 2.5 X 2.5" without any supporting estimate of work.

5. It has been further argued that the punishment order dated 19.1.89 could not be immediately served on the applicant because the DG-DE had requested the Ministry of Defence to give a ruling as to whether the applicant would be deemed to be a Group A officer or he would be reverted to Group B as a result of the punishment having been imposed on him. The Ministry of Defence ruled that the reduction in pay will be made applicable in the applicant's officiating (ad hoc) scale of Group A(JTS). A copy of the inquiry report was, however, made available to the applicant together with the order of punishment. Drawing support

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from the decisions of the Hon'ble Supreme Court in the cases of UOI Vs. Sardar Bahadur 1972-SLR-(Vol.7)SC 355, UOI Vs. Perma Nanda 1989(2) SLR 410 and State Bank of India & ors. Vs. Samarendra Kishore Endow & Anr. JT 1994(1)SC 217, the learned counsel argued that in a disciplinary proceeding the standard of proof required is that of preponderance of probability and not of proof beyond reasonable doubt. If the penalty can lawfully be imposed on the proved miscondut, the Tribunal has no power to substitute its own discretion for that of the competent authority and that Tribunal or the court are not to interfere in the findings of the enquiry proceedings held without any infirmities. That apart, having participated in the enquiry, the applicant cannot be allowed to question the proceedings as perverse at this belatd stage, the counsel would submit.

6. The question before us is whether there are justifiable grounds for this Tribunal to interfere with the penalty imposed by the competent authority in the background of the facts and circumstances of the present case. We now proceed to examine, in seriatim, those grounds adduced by the applicant.

7. We find that the order of punishment in the instant case is dated 19.8.89. Such orders prior to 20.11.90 (date of judgement in Mohd. Ramzan's case, JT 1990(4) SC 456) cannot be vitiated on the ground of non-supply of enquiry officer's report to the delinquent employee. The decision in Mohd. Ramzan's case was subsequently explained by the Constitution of the Apex Court in the case of Managing Director, ECIL, Hyderabad Vs. B.Karunakar & Ors., JT 1993(6)SC 1. It has been held

that when the order of punishment is made prior to the date of decision in Mohd. Ramzan Khan's case, non-supply of enquiry report would not invalidate the enquiry proceedings.

8. As regards the delay in serving the order of punishment, we find that the enquiry report dated 26.10.88 was duly sent to the disciplinary authority who, in turn, signed the order of punishment on 19.1.89. However, since the punishment involved reduction in pay by several stages, an apriori decision was to be taken by the Ministry of Defence as to whether the penalty was to be made effective in Group A service held by the applicant in ad hoc capacity or in Group B held by the applicant in a substantive capacity. The extent of penalty contemplated herein could have been effective only after the decision in respect of the above was taken before imposition. We do not find that the case of the applicant has been prejudiced in any way owing to delay in implementing the order of punishment.

9. The applicant has claimed that inquiry officer (a) did not care to examine the two members(Shri Ghanshyam Mahto and Suraj Prakash), (b) failed to take into account the written statements of the witnesses, (c) did not appreciate the relevant documents on record and (d) based his findings on surmises, conjectures, premises and materials contrary to those available on record. We are not in a position to support this contention of the applicant. In service matter, it has been held by the Hon'ble Supreme Court as far back as 1967 that;

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> "The High Court is not constituted 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 inquiry is held by an authority competent 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 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".

The apex court has reiterated the above stand while deciding the case of State Bank of India & Ors. Vs. Samarendra Kishore Endow & Ors. JT 1994(1)SC 217(supra).

10. The applicant has pointed out that there was no pecuniary advantage gained by him or any loss to the cantonment board. On the contrary, the board has gained something in the exchange process. We are also not in a position to appreciate this stand of applicant. This is because what has been established in the enquiry proceedings is that the transaction was not in public interest since angles of various sizes were already available in the stores and thereby the very need for exchange has been questioned.

11. We would like to mention that the disciplinary proceeding is not a criminal trial. In disciplinary proceeding, the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the materials reasonably support the conclusion of the disciplinary authority that the officer was guilty, High courts/Tribunals cannot review the material to arrive at an independent finding. If the enquiry has been properly held the question of

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adequacy or reliability of the evidence cannot be convassed before the High Court/Tribunal. We are supported in this respoect by the decision of Hon'ble Supreme Court in the case of UOI Vs. Sardar Bahadur (supra).

12. It must also be added that jurisdiction of the Tribunal to interfere with the disciplinary matter or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or of the 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. 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 competent authority. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence. If any authority is needed for this proposition, it is available in the judgement of the Apex Court in the case of UOI Vs. Perna Nand(supra).

13. Coming to the last submission of the applicant that he has been subjected to grave injustice because of two independent proceedings continuing simultaneously, we find that this contention is devoid of merits. The test

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to be applied in such cases has been laid down by the Hon'ble Supreme Court in the case of State of Rajasthan Vs. B.K. Meena, 1997(1) ATJ 137. The only valid ground for "staying" disciplinary proceeding is that the defence of an employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving question of fact and law. In our respectful opinion, it means that not only the charge must be grave but the case must involve complicated questions of law and facts. The same situation does not prevail here.

14. In view of the discussions aforementioned, the OA deserves to be dismissed and we do so accordingly with no order as to costs.

(S.P. Biswas)
Member(A)

(Dr. Jose P.Verghese)
Vice-Chairman(J)

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