

Central Administrative Tribunal, Principal Bench

O.A. No. 1163/2004

New Delhi this the 12th day of May, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

Bharat Singh
Supdt. (Education)
Retired Government Servant of Government of
NCT of Delhi
Address: C/o U-243, Shakarpur,
Delhi-110 092.

...Applicant

By Advocate: In person.

Versus

1. The Chief Secretary,
Government of NCT of Delhi, Delhi
Secretariat, I.P. Estate,
New Delhi-110 002.
2. The Desk Officer (Delhi-II)
M/o Home Affairs,
Government of India,
North Block,
New Delhi - 110 001.

...Respondents

By Advocate: Ms. Sumedha Sharma, Counsel for respondent No.1.

Mr. S.M. Arif, Counsel for respondent No.2.

ORDER

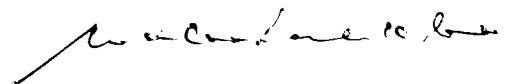
By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA for a direction to the respondents to pay pension and gratuity at full rates and for payment of full salary and allowances, minus suspension allowance, for the period from 5.1.1989 to 21.7.1994 during which the applicant was

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under suspension. He has also prayed for regularisation of the suspension period for all purposes and benefits, that he should also be given promotion to the higher post from the date his juniors were given promotion with effect from 30.4.2003 and lastly for awarding interest at the rate of 24% per annum on the amount payable to the applicant.

2. Briefly stated, the allegations in the OA are as follows. The applicant was appointed as Assistant Sales Tax Officer, on 20.10.1987. He was placed under suspension on 5.1.1989 in contemplation of disciplinary proceedings for major penalty under Rule 14 of CCS (CCA) Rules, 1965 (Rules 1965). The suspension order was revoked on 22.7.1994. A criminal case was registered against him and charge-sheet was submitted in the court on 23.12.1993 but the applicant has been discharged on 31.5.2002 for want of sanction by the competent authority. The applicant retired from service on attaining the age of superannuation on 31.8.1995. The memorandum of charge for holding disciplinary proceedings against him dated 28.8.1995 was served on him on 1.9.1995, i.e., after retirement. The President of India has awarded the penalty of withholding/ forfeiture of 50% pension and gratuity otherwise admissible to him on permanent basis vide order dated 28.4.2003. The applicant is aggrieved and has challenged the order of penalty dated 28.4.2003 in this OA. The applicant has challenged the penalty order on the ground that it is arbitrary and discriminatory; the pension and gratuity to the extent of 50% cannot be forfeited under Rule 9 of CCS (CCA) Rules, 1972; fundamental right of the applicant has been violated; the justice is denied as there was delay; the applicant has been working honestly and maintained absolute integrity and independence; he was exercising quasi judicial power as Assessing Authority; the ex-parte enquiry was biased; Chief Secretary was not competent under Rule 9 of CCS (Pension) Rules, 1972; there



was no sanction for conducting enquiry against the applicant; the applicant had sent 13 letters and 6 telegrams during the pendency of the enquiry to hold the enquiry in accordance with the rules and; the principles of natural justice have not been violated.

3. The respondent No.1, Government of NCT of Delhi in its reply stated that the disciplinary proceedings were initiated against the applicant under Rule 14 of the Rules 1965 and the charge-memo dated 28.8.1995 was served on him against acknowledgement on 29.8.1995 before the applicant's retirement on 31.8.1995. The disciplinary proceedings initiated against him before his retirement shall be deemed to have continued by virtue of Rule 9(2)(a) of CCS (Pension) Rules, 1972. The applicant was charge-sheeted by the Chief Secretary for grave misconduct committed by him in the Sales Tax Department and the Education Department. He had acted in a manner unbecoming of a Government servant. He had issued 925 statutory forms for claiming the tax exemption to a dealer within short span of 29 days without observing safeguard for government revenue which resulted in revenue loss of about 3.9 crores to the public exchequer. He had issued the forms without considering the adverse report against the dealer available on record and has also accepted the incomplete record from the lower functionaries as well as the dealers. The Chief Secretary of the Government of NCT was competent to issue charge-sheet to the applicant during his service. The applicant had tried to stall the enquiry proceedings from the very beginning on one pretext or the other. The applicant was Grade-I DASS Officer and the Chief Secretary, Government of NCT of Delhi was disciplinary authority in his case and no sanction of the Administrator was required for issuing charge sheet against him. The applicant was given full opportunity to defend himself. He tried to stall the enquiry proceedings. The proceedings had to be

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conducted against him ex-parte as per the procedure provided under Rules 1965. Request of the applicant for change of the Inquiry Officer was considered and rejected as no ground was made out. The President in exercise of the power under Rule 9 of the CCS (CCA) Rules, 1972 has imposed the penalty which does not suffer from any legal infirmity.

4. The respondent No.2 - the Ministry of Home Affairs of the Government of India has stated that the disciplinary proceedings against the applicant were initiated before his retirement on 31.8.1995 and they shall be deemed to have continued under Rule 9 of the Pension Rules after his retirement. The Joint Director (Transport) was appointed as Inquiry Officer to enquire into the charges. He submitted a report holding that two charges were proved and two other charges were not proved. Copy of the report was sent to the applicant, who submitted a representation against it. The Central Vigilance Commissioner accepted the enquiry report and suggested imposition of penalty in applicant's monthly pension. His disciplinary authority, i.e., the Chief Secretary, Government of NCT of Delhi after considering the enquiry report and the advice of the Central Vigilance Commissioner, representation of the charged official and the record of the case was of the view that the charges were proved on two counts and he recommended for imposition of cut in the pension for a period of 2 years. The Government of India on examination of the relevant record above mentioned and on the advice of the UPSC was of the opinion that two article of charges were fully proved which cast serious aspersions on the integrity of the applicant and the ends of justice would be met if 50% cut in pension and gratuity otherwise admissible to him was

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forfeited on permanent basis. Accordingly, the Presidential Order dated 28.12.2003 was issued to the applicant through Chief Secretary.

5. In the rejoinder the applicant has reiterated his own case and controverted the allegations of the respondents.

6. We have heard the applicant in person and the learned counsel for the respondents and have carefully perused the relevant record.

7. One of the contention of the applicant is that the Memorandum of Charge dated 28.8.1995 was served on him on 1.9.1995, i.e., after his retirement on attaining the age of superannuation on 31.8.1995. The allegation is repudiated by the respondents and it was stated that the Memorandum of Charge was served on the applicant against his acknowledgement dated 29.8.1995, i.e., prior to his date of retirement on 31.8.1995. A copy of the acknowledgement of the applicant has also been filed as Annexure R-I to the OA of respondent No.2. The applicant has no answer to this. Accordingly, this contention has no merit.

8. The enquiry, as such was initiated and the Memorandum of charge-sheet was served on the applicant on 29.8.1995 before the applicant had retired from service, therefore, by virtue of Rule 9(2) of the Pension Rules, the enquiry shall be deemed to have continued after his retirement. The Memorandum of Charge for major penalty served on the applicant reads as under:-

"Article No.-I

The said Shri Bharat Singh, while functioning as Assistant Sales Tax Officer in War No.39 (Old) from 23.6.1987 to 4.1.1989 committed misconduct in as much as he had issued 925 forms to M/s S.S. Electricals Corporation within 29 days without ensuring the safeguard of Government revenues, which caused heavy loss of about Rs.3.90 crores to the public exchequer plus

Not connected

interest thereon. He had issued these forms without considering the adverse reports available on record and had also accepted the incomplete reports from his lower functionaries as well as from the dealer.

Thus Shri Bharat Singh had shows negligence and dereliction to duty in the matter of issuing of forms to the above said non-functioning dealer that caused heavy loss to the Government revenue and failed to maintain absolute integrity and devotion to duty and acted in a manner, which is unbecoming of a Government servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article No.II

The said Shri Bharat Singh, while functioning as Superintendent GBSSS No.3, Sarojini Nagar, New Delhi refused to take delivery of a Government communication at his residence, when he was reported to be not attending his office during these days.

Thus Shri Bharat Singh, had shown utter disobedience in the matter of receiving the official communication, addressed to him, and acted in a manner, which is unbecoming of Government servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article No.III

The said Shri Bharat Singh, while functioning as ASTO in Ward No.39 (Old) committed misconduct in as much as he tampered with the official records by addition/overwriting/cutting/deletion to favour M/s Monica Industries Corporation, a registered dealer of Ward No.39 (old). He did not seek the proof of earlier period prior to the date of application by way of House rent receipt. He also misrepresented the facts before the competent authority. Thus he colluded with the dealer to cause heavy loss of revenue to the Government.

Thus, Shri Bharat Singh had shown negligence and dereliction to duty in the matter of tampering of records that caused heavy loss to the Government revenue and failed to maintain absolute integrity and devotion to duty and acted in a manner, which is unbecoming of Government servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

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Article No.IV.

The said Shri Bharat Singh, while functioning as Superintendent, GBSSS No.3, Sarojini Nagar, New Delhi was addressed a memorandum dated 14.8.1995 and the efforts were made to serve the said memorandum on him at his present place of posting as well as at his residence. It was reported that he was not attending his duties during these days and at his residence a person available at his residence had not only misbehaved with the messenger, but had also unsuccessfully tried to manhandle him. Thus it is evident that Shri Bharat Singh had tried his level best to avoid the disciplinary action against him and committed disobedience by arranging for the non-acceptance of the delivery of the Government communication addressed to him.

Thus Shri Bharat Singh had shown utter disobedience in the matter of receiving the official communication addressed to him and acted in a manner, which is unbecoming of a Government servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

9. The Joint Director (Transport), who was appointed as Inquiry Officer, conducted the proceedings. The applicant had initially participated in the proceedings but later on withdrew and allowed the proceedings to be conducted ex-parte against him. The applicant contended that he had sought for change of Inquiry Officer on account of his bias but has not been able to place on record any fact or material or bring to our notice any circumstance which may lead to an inference that the Inquiry Officer was not conducting the proceedings in a fair and just manner. The applicant has not been able to justify his allegation that the principles of natural justice were not followed and he was not provided opportunity for defending himself in the enquiry. The applicant was an officer in Grade-I (DASS) and the Chief Secretary was the competent disciplinary authority to initiate the proceedings, but in view of the provision of Rule 9 of the Pension Rules, the punishment order is passed by the President of India.. The applicant submitted

He is not a member of the staff.

that the allegations against him were false and that he ^{has been} discharging his function as Assessing Authority/Assistant Sales Tax Officer as per Rules. The parameters of the power and jurisdiction of the Tribunal for judicial review of the order of the disciplinary authority have been elaborately and succinctly laid down by the Hon'ble Supreme Court in Chaturvedi case of B.C. Chaturvedi Vs. U.O.I. and Others, (1995) 6 SCC 749. 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 enquiry 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, 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* this Court held at p.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."

Similar view was taken by the Hon'ble Supreme Court in Apparel Export Promotion

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Council Vs. A.K. Chopra, AIR 1999 SC 625 wherein again it was reiterated in para 17

of the judgment as under:-

“ The High Court appears to have over-looked 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 re-appreciate 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 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 of 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 or 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”.

10. To sum up the principles of law laid down by the Hon'ble Supreme Court in the above cited judgments it may be stated that judicial review of the order of disciplinary authority is the review of the manner in which decision has been arrived at and not the review of the decision itself. The Tribunal examines the decision making procedure. The power of judicial review is exercised to ensure that the delinquent has received a fair and

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just treatment and not to ensure that the decision ^{actual} of the disciplinary authority has reached is necessarily correct according to law. The Tribunal does not has power and jurisdiction to re-appreciate the evidence and come to the conclusion of its own. The order of the disciplinary authority may be interfered with only when it is based on no evidence, it is perverse, or the orders is the result of bias or the dictate of some superior authority.

11. Viewed in the background of the law enunciated by the Hon'ble Supreme Court, we do not find that the applicant has been able to substantiate any of the grounds pleaded in the OA or submitted orally at the bar.

12. Rule 9 (1) of the Pension Rules, has provided as under:-

- (1) The President reserved to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five (Rupees One thousand two hundred and seventy five from 1.1.1996 – see GID below per mensem}”.

13. The President is the competent authority to withdraw pension or gratuity both either in full or part in consultation with the Union Public Service. The impugned order has been passed by the President. The order of the President dated 28.4.2003 has extensively discussed the report of the Inquiry Officer and agreed with finding of Inquiry Officer that Article of Charges No.1 and III were proved and the other Article of

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Charges Nos. II and IV were not proved. It was also observed that the charges reflected against the integrity of the applicant and his misconduct had resulted in huge revenue loss of about 4 crores to the public exchequer.

14. As regards the quantum of the punishment the applicant has argued that it is excessive. The Hon'ble Supreme Court in *Devi Singh vs. Punjab Tourism Development Corporation Ltd. and another* (2003) 8 SCC 9 has observed and relied upon the judgment in *Bhagat Ram vs. State of H.P.* 1983 SCC (L&S) 342, *Ranjit Thakur vs. Union of India* 1988 SCC (L&S) 1 and *U.P. SRTC vs. Mahesh Kumar Mishra* 2000 SCC (L&S) 356 observed as under:-

"6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

15. In *Damoh Panna Sagar Rural, Regional Bank and another vs. Munna Lal Jain* 2004 (10) SCALE 590, Hon'ble Supreme Court on the question of judicial interference in the quantum of punishment awarded by a disciplinary authority for examining the case law had observed as under:

"14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.

Munna Lal Jain

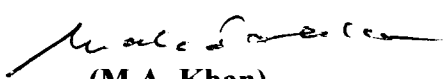
18. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law."

16. The Inquiry Officer have recorded finding that two out of four charges were proved against the applicant which had reflection on the integrity of the applicant. They have held that the applicant is guilty of grave and serious misconduct. Considering the facts of the case and the nature of the charges proved, the punishment imposed upon the applicant, by no stretch of reasoning, can be said to be not commensurate to the proven charge. It is not at all shocking to the conscious of the court. The Tribunal does not have any jurisdiction to interfere with in view of the principles laid down by the Hon'ble Supreme Court in the above cited cases.

17. Keeping in view the facts and circumstances of the case, we do not find any merit in the OA which is dismissed. No costs.


(S.A. Singh)
Member (A)

Rakesh


(M.A. Khan)
Vice Chairman (J)