IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

15

O.A.No.675 /1992 Date of Decision:24 - 3 -1998

Shri A.B.S. Kohli .. APPLICANT

(By Advocate Shri D.R. Gupta)

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri K.R. Sachdeva)

CORAM:

THE HON'BLE ~~SHRI~~ Smt. Lakshmi Swaminathan

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES ✓

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

(S.P.Biswas)
Member(A)

Cases referred:

1. Charanjit Singh Khurana Vs. UOI SLJ 1994(2) 360
2. Bhagat Ram Vs. State of H.P. (1993) 2 SCC 442
3. UOI Vs. Giriraj Sharma AIR 1994 SC 215
4. Gulzar Singh Vs. State of Punjab 1986 Suppl. SCC 738
5. UOI Vs. Parma Nanda (1989) 2 SCC 177
6. SBI Vs. S.K. Endow (1994) 2 SCC 537
7. UOI & Anr. Vs. G.Dhanayudham JT 1997(9) SC 572
8. Ramzan Khan V. Md. Ramzan Khan 1991 SCC (L&S) 612
9. MD, ECIL V. B.Karunakar (1992) 1 SCC 709
10. Ram Kumar V. State of Haryana 1987 Supp SCC 582
11. IIT, Bombay V. UOI 1991 Supp (2) SCC 12
12. N. Rajarathinam V. State of Tamil Nadu & Anr. 1997(1) ATJ 143
13. State of TN Vs. S.Subramaniam (1996) 7 SCC 509
14. B.C.Chaturvedi V. UOI (1995) SCC 749
15. State of TN Vs. T.V.Venugopalan (1994) 6 SCC 302
16. UOI V. Upendra Singh (1994) 3 SCC 357
17. State of TN V. A.Rajapndian 1995(1) SCC 216
18. State Bank of Patiala & Ors. V. S.K.Sharma JT 1996(3)SC 722

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.675/1992

New Delhi, this 24th day of March, 1998

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri A.B.S. Kohli
B-1/340, Janakpuri
New Delhi-110 058 .. Applicant

(By Advocate Shri D.R. Gupta)

versus

Union of India, through the
Secretary
Ministry of External Affairs
South Block
New Delhi .. Respondents

(By Advocate Shri K.R. Sachdeva)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Personal Assistant(PA for short) of the Ministry of External Affairs (MEA for short), is aggrieved by A-1 Presidential order dated 19.7.91 by which his revisional petitions dated 20.11.90 and 12.12.91 addressed to the President of India and Minister of State for External Affairs respectively, against the order of "Dismissal" from services have been rejected. Consequently, the applicant is seeking reliefs in terms of issuance of direction to the respondents to reinstate him in service. Other consequential benefits have also been sought.

2. During the period of May, 1978 to March, 1981, the applicant was working as PA in the Embassy of India at Washington, USA. On completion of his tenure, applicant was transferred on 10.3.81 to Consulate General of India, Basrah. The said order was subsequently changed

by an order dated 11.2.82 transferring the applicant to the office of High Commissioner of India, Dhaka(Bangladesh). This order was also cancelled vide an order dated 20.9.82 asking the applicant to return to MEA headquarters at New Delhi by 1.12.92. Non-compliance of these orders resulted in initiation of disciplinary proceedings against the applicant. Of the two charges, the one relating to wilfull disobedience to Government orders and unauthorised overstay in Washington was held proved.

Against the above, applicant "has been held responsible for exhibiting lack of devotion to duty and conduct unbecoming of a Government servant thereby violating Clauses (ii)(iii) of sub-rule (1) of Rule 3 of CCS(Conduct) Rules, 1964".

3. As per the second charge, "Shri A.B.S. Kohli did not comply with the Government orders transferring him to the Headquarters and the instructions conveyed to him by the Embassy of India, Washington, to proceed to India and report for duty in the Ministry of External Affairs, New Delhi". Here also the applicant has been held guilty for contravention of Rule 13 of Indian Foreign Service (Conduct and Disciplinary) Rules, 1961.

4. The Inquiry Officer's (IO for short) report dated 30.6.83 was agreed to by the disciplinary authorities and by an order dated 28.11.84, the penalty of "Dismissal" from services was imposed on the applicant. The order of penalty was re-confirmed by the impugned revisional order dated 19.7.91.

5. Applicant has sought to challenge the aforesaid order on the following grounds:

(i) The disciplinary authority (DA in short) did not provide the applicant with a copy of the enquiry report, resulting in denial of reasonable opportunity thereby violating provisionsof Article 14 read with Article 311(2) of the Constitution. The applicant has also not been supplied a copy of the UPSC's advice before imposing the said penalty which is against law laid down by the CAT in the case of Charanjit Singh Khurana Vs. UOI SLJ 1994 (2) 360.

(ii) The order of dismissal is in violation of Government of India's instructions at Sl.No.3 below Rule 14 of CCS(CCA) Rules, 1965 wherein it is provided that the DA is required to appreciate properly the gravity of misconduct committed by the delinquent government servant and examine whether such cases would merit action of imposing one of the major penalties. Established cases of moral turpitude and failure to maintain integrity etc. having deleterious effect on the discipline of the organisation are to be viewed with real concern. Applicant's case does not fall in this category.

(iii) The counsel contended that penalty of dismissal imposed herein does not commensurate with the gravity of offence, it is too harsh shocking the conscience of a judicial person because of not only being disproportionate but also discriminatory. Cases of 10 officials who had

earlier faced similar charges of not returning to hqrs. and punished with "compulsory retirement" have been adduced. Applicant has been thus singled out for discrimination on ground of religion as he belongs to Sikh community. According to counsel for applicant, the Tribunal will be justified in interfering with the punishment in this case. He relied on the decisions of the Apex Court in **Bhagat Ram Vs. State of Himachal Pradesh (1983) 2 SCC 442** and **UOI Vs. Giriraj Sharma AIR 1994 SC 215.** To add strength to his contentions, learned counsel also cited the decisions of the Hon'ble Supreme Court in the cases of **State of Punjab & Ors. Vs. Gurdev Singh 1991(17)ATC 387** and **Kartar Singh Grewal Vs. State of Punjab 1991(2) SCC 635** wherein the apex court reduced the penalty of "Dismissal" to that of "compulsory retirement" keeping in view the unblemished services of the applicants therein. In yet another case of **Gulzar Singh Vs. State of Punjab, 1986 Suppl.SCC 738**, the apex court held that punishment of dismissal was disprportionate to the nature of charges framed. As per the counsel, applicant's case is well covered by these decisions.

(iv) Applicant further argued that his revisional petitions have not been dealt with as per rule 29(3) of the CCS(Conduct) Rules which provides that application for revision shall be dealt with in the same manner as if it was an appeal under these rules. The manner of dealing with an appeal has been prescribed in Rule 27 of the CCS(CCA) Rules. Sub-rule (2) of the said Rule requires that the

appellate authority should also deal with, inter alia, the points whether the procedure laid down in the rule has been complied with before the penalty has been imposed on the delinquent officer, whether the findings of the DA are warranted by the evidence on the record; and whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe. The applicant would contend that these three essential points have not at all been dealt with by the Revisional authority. That apart, A-1 order is not a speaking order.

(v) Applicant would further submit that the IO as well as the respondents have failed to appreciate the circumstances in which the applicant was forced to extend his stayin USA and could not join the place of posting at Dhaka (Bangladesh) as well as headquarters at New Delhi. These circumstances relate to serious illness of his son followed by hospitalisation and subsequent problems of settlement of medical bills over which he had no control.

6. In the counter, respondents have opposed all the pleas taken by the applicant. Applicant's contention that A-1 communication was the first one prior to his revision petitions has been strongly controverted by the respondents. Applicant had represented his case earlier to the Hon'ble Minister of EA on 8.5.85. Again, on behalf of the applicant Shri T.N. Kaul, former Foreign Secretary in MEA wrote to the then Secretary(West) requesting for revision of penalty on which a decision was taken with the approval of the Minister of State for

EA for not revising the order. Series of such decisions expressing the inability of the respondents to revise the order of dismissal were communicated by not less than the Secretary, MEA vide his letter dated 17.4.86 (Annexure R-A). Respondents, on the contrary, have argued that the applicant remained silent for four years after receipt of the above communication dated 17.4.86.

7. Respondents further submitted that the applicant had actually no intention to move to Dhaka since his son was hospitalised in November, 1982, much later than the extension of leave asked for and that he stayed for an unduly longer time even after November, 1984. The question of settlement of medical bills was only a vague plea taken by the applicant for prolonging his illegal stay in Washington. After the expiry of sanctioned ex-India leave, government's liability for settlement of bills pertaining to the period of unauthorised absence, had ceased. The bills which originated much later i.e. in November, 1982 could not have been settled by the Government in the normal course. Respondents have submitted that even if it is conceded that question of settlement of applicant's medical bills required further consideration, applicant could have come back to headquarters and pleaded for settlement of dues. In other words, his presence in Washington was not necessary for persuading the Government to consider the settlement of his medical bills. His statement that he apprehended embarrassment to the Government was yet another pretext to prolong his stay in USA. The fact that the applicant did not want to leave USA at that

time was evident as he continued staying there even after dismissal in November, 1984 as is obvious from the appeal dated 8.5.85 sent from his USA address.

8. We have heard the learned counsel for both parties and have gone through the pleadings and relevant records/files handed over to us by the respondent department.

9. The scope of judicial review in respect of a departmental disciplinary action is very limited. A court/Tribunal cannot normally enter into the area of assessment of evidence unless the finds of the IO would appear to be totally perverse. In the leading case of UOI Vs. Parma Nanda (1989) 2 SCC 177, the Hon'ble Supreme Court inter alia held:

> "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 IO 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"

11. Similarly, Courts/Tribunals are not to interfere with the order of penalty on the ground of its quantum being excessive unless the quantum is so disproportionate to the gravity of misconduct that the order would appear to be of a vindictive nature. The Hon'ble Supreme Court has unequivocally delineated the confines of judicial review in respect of quantum of penalty in disciplinary matters. In the case of SBI Vs. S.K.Endow.(1994) 2 SCC 537, their Lordships had held

that imposition of appropriate punishment is within the discretion and judgement of the DA. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administraive Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226, for judicial review. It is not an appeal from a decision but a review of the manner in which the decision has been made. Similar observations were also made by the Lordships in Parma Nanda's (supra) case. We quote the relevant extract:

> "If there has been an enquiry consistent with the rules and in accordance with the 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. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter".

The judicial review as regards "proportionality of punishment" has again been reiterated by the Apex Court in UOI & Anr. Vs. G.Dhanayudham, JT 1997(9) SC 572.

In view of the above, the grounds taken by the applicant regarding quantum of penalty have no force. A few submissions like the leave asked for was due to the applicant and yet not granted though Dy. Chief of the Mission recommended the same etc. do not also justify our interference in the matter.

12. The applicant has also taken the plea that he was not given a copy of the inquiry report before imposition of penalty and was not given opportunity to represent. After 42nd amendment to the Constitution, the second opportunity to show cause is no longer available to delinquent employee. However, the Supreme Court has ruled in the case of Ramzan Khan(UOI V. Md. Ramzan Khan, 1991 SCC (L&S) 612, that non-furnishing of the report to the delinquent employee would be violative of the principles of natural justice rendering the final order invalid but also held that the decision in Ramzan Khan case will only have prospective application. This was affirmed by the Constitution Bench in Managing Director, ECIL V. B. Karunakar(1992) 1 SCC 709. In the case before us, the enquiry report is dated 30.6.83 and the impugned order of penalty was passed on 28.11.84 — both prior to 20.11.90. We cannot, therefore, hold that the disciplinary proceedings were vitiated by not giving a copy of the enquiry report to the applicant before imposition of penalty. As regards supplying a copy of UPSC's advice, the applicant has not indicated the relevance of the documents required by him.

13. As regards the plea that A-1 order is non-speaking, we find that the impugned order clearly states that "Your representation has been carefully examined by the Ministry. It is observed that you have not produced any material or evidence which has the effect of changing the nature of the case against you. As such, it is regretted that it has not been found possible to revise this Ministry's order of even number dated 28.11.84". On perusal of records, we find that the authorities, for reasons recorded in writing inJuly, 1983 have come to

the conclusion that "Shri Kohli's case is similar to several other cases of desertion. In such cases of desertion, we have been imposing the penalty of dismissal from service. In this case, there are no extenuating circumstances warranting lesser penalty". This clearly indicates an application of mind on the part of the DA before issuing the order of penalty. Moreover, in the case of Ram Kumar V. State of Haryana 1987 Supp SCC 582, the Supreme Court held:

> "In our opinion, when the punishing authority agrees with the findings of the IO and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to same findings as that of the IO and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order, the punishing authority has accepted the findings of the IO and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order".

The decision of Ram Kumar's case (supra) was followed with approval by the Hon'ble Supreme Court in the case of IIT, Bombay V. UOI 1991 Supp (2) SCC 12.

14. Taking all the facts and circumstances of the case, the DA accepted the findings of the IO. Preponderance of evidence has established that the applicant had deliberately overstayed and thereby committed a misconduct. If all the relevant facts and circumstances and evidence on record are taken into consideration and it is found that the evidence established misconduct against a public servant, the DA is fully empowered to take appropriate decision as to the nature of the offence and proof of guilt. Once there is a finding as

regards proof of misconduct, what should be the nature of punishment to be imposed is for the DA to consider. While making a decision to impose punishment of dismissal from service, if the DA had taken the totality of the facts and circumstances into consideration, it is for that authority to take a decision keeping in view the discipline in service (see N. Rajarathinam Vs. State of Tamil Nadu & Anr. 1997(1) ATJ 143). We find proved allegations are sufficient to impose the penalty of dismissal in the present case. A list of six such cases has ben provided to rebut the charge of discrimination against the respondents. We find no illegality in the order of penalty.

15. The applicant has also alleged that respondents have failed to appreciate the evidence and circumstances compelling the applicant to extend his stay in USA. Applicant originally applied for four months leave (two months home leave and two months ex-India leave) in May, 1982. He was only granted 30 days' ex-India leave. The IO observed that had he been granted four months leave that would have expired by September, 1982, whereas his son was operated upon in November, 1982. Hence there was a time gap. So applicant's requsts for further extension of leave in order to enable him to stay on in USA upto the time when his son was operated upon, was an after-thought and had no direct bearing with his original leave applications. In para 6(c) of his report, the IO says even the Embassy could settle the bills. Applicant's main plea of overstaying, on grounds of settlement of bills, therefore falls onthe ground. In judicial review, it is settled law that the court or the Tribunal has no power to trench on the jurisdiction

to appreciate the evidence and to arrive at its own conclusion. The Tribunal is not a court of appeal. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct. When conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence. {see State of Tamil Nadu Vs. S.Subramaniam (1996) 7 SCC 509; B.C. Chaturvedi Vs. UOI (p.759-60) (1995) 6 SCC 749; State of Tamil Nadu Vs. T.V.Venugopalan (para 7) (1994) 6 SCC 302; UOI Vs. Upendra Singh (para 6)(1994) 3 SCC 357 and Govt. of Tamil Nadu Vs. A. Rajapandian (para 4), 1995(1) SCC 216}.

16. The applicant has claimed that his petitions dated 20.12.90 and 14.2.91 should have been treated as appeal. It may be mentioned here that President cannot exercise his revisionary powers in a case in which the power had already been exercised after full consideration of the facts and circumstances of the case. There is, however, no objection providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Accordingly, rule 29 of the CCS(CCA) Rules, 1965 has ben amended to make it clear that the power available under that rule is the power of revision. But the new rule i.e., rule 29A, introduced with effect from 6.8.1981, vests in the President only to make a review of his own order passed earlier. The

applicant in the aforesaid two petitions has not come out with any new points/facts that would warrant review of the orders taken already.

17. We find that fair treatment has been given to the applicant in the enquiry. There has been no abuse of power. It is not a case of there being no evidence. Neither is it a case of 'no hearing', 'no opportunity' or 'no notice'. What is crucial in such cases is to ensure that there was no violation of procedural provisions causing prejudice to the case of the delinquent officer. The Hon'ble Supreme Court in State Bank of Patiala & Ors. V. S.K. Sharma (JT 1996(3) SC 722) has catalogued the "Tests" to be carried out in identifying "prejudice" in disciplinary proceedings. While applying these principles, we hold that no prejudice has been caused to the applicant herein in conducting the entire proceedings.

18. In the light of reasons aforequoted, we are of the firm view that the applicant has not made out a case warranting our inteference in the matter. The application is devoid of merits and deserves to be dismissed and we do so accordingly, but in the circumstances of the case, without any order as to costs.

(S.P. Biswas)
Member(A)

(Mrs.Lakshmi Swaminathan)
Member(J)

/gtv/