

**Central Administrative Tribunal  
Madras Bench**

**OA/310/01303/2013**

**Dated the 30<sup>th</sup> day of April Two Thousand Twenty One**

**P R E S E N T**

**Hon'ble Mr.S.N.Terdal, Member(J)**

**&**

**Hon'ble Mr.C.V.Sankar, Member(A)**

J.Kumar,  
No.3565, TNHC, Avadi,  
Chennai 600 054. ..Applicant  
By Advocate **M/s.R.Prabhakaran**

**Vs.**

1. The General Manager,  
Armoured Vehicles head Quarters,  
Avadi, Chennai 600 054.
2. Additional Director/Appellate Authority,  
D.G.O.F.  
YF Group Headquarters,  
G.T.Road, Kanpur.
3. Union of India, rep.  
by its under Secretary,  
M/o Defence,  
D/o Defence Production,  
New Delhi. ..Respondents

By Advocate **Mr.M.Kishore Kumar-SPC**

**ORDER**

[Pronounced by Hon'ble Mr.S.N.Terdal, Member(J)]

The relief prayed for in this OA is as follows:-

“To set-aside the order of Compulsory retirement issued by the first respondent in ref.1806/34/05/VIG dated 25.9.2006, confirmed by the second respondent by order in ref. No.OEF/HQ/VIG/8420/Appeal(JK), dated 7.3.2007, and by the third respondent in revision in ref. No.22(34)/II/2007/D(FY), dated 22.4.2008 as well as in the Review in ref. No.22(19)/II/2009/D(FY.II), dated 16.11.2009, and consequently, reinstate the applicant with all attendant and promotional benefits in the services of first respondent.”

2. Heard Mr.R.Prabhakaran for the applicant and Mr.M.Kishore Kumar for the respondents. Perused the pleadings.
3. MA 518/2019 for delay of 971 days in filing MA 519/2019 and MA 519/2019 to set-aside the order of dismissal of OA 1303/2013 for non-prosecution dated 8.12.2016 and restore the same on file are allowed for the reasons stated therein and in the interest of justice.
4. The relevant facts of the case are that the General Manager proposed to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. A Charge Sheet was issued to the applicant on 30.5.2005. Alongwith Charge Sheet, the substance of the imputation of misconduct, statement of imputation of misconduct, copy of each of the documents alongwith a list of documents by which the charges are proposed to be established and a list of witnesses by whom the article of charges are proposed to be established was also provided to the applicant. He was also given

reasonable time of 10 days to submit his written statement of defence. The article of charge is regarding forgery by submitting fabricated salary slip, fabricated Form-16 with a forgery signature of the issuing authority and availing housing loan on the basis of the said documents. The article of charges is extracted below:-

“ Article-I

That the said Shri J.Kumar, Tailor/HS., T.C.No.104066/4066/G.70/P-2, OCF Avadi, has committed the gross misconduct of “i) Dishonesty/forgery i.e., cheated the Financial institution and Bank of Baroda by submitting false/fabricated salary/pay slip of the factory, False declaration purported to have been issued by employer (OCF Avadi) and false/fabricated Form No.16 beside forging the signature of the issuing officer, Shri H.K.Paikra for availing wrongful gains; and ii) Availed housing loan from the above said Bank of Baroda, besides from bank of India, without getting permission from the Factory” thereby exhibited lack of integrity and conduct unbecoming of Government servant contravening Rule 3(1)(i)(iii) and Rule 18(2) of the CCS(Conduct) Rules, 1964.”

The applicant submitted his reply to the said charge sheet, after delay, on 22.11.2005. The Disciplinary Authority (DA) after considering his defence appointed the Presenting Officer (PO) and the Court of Enquiry to hold the enquiry. The Enquiry Officer (EO), after holding the enquiry as per the rules governing the enquiry proceedings and after taking on the file the defence submitted by the applicant as well as the statement by the PO and after considering the entire evidence before him and taking into account all the documents produced before him, came to the conclusion that the charge framed against the applicant is established. The Enquiry Report was furnished to the applicant on 20.7.2006 and the applicant submitted reply to the said Enquiry Report on 4.8.2006. The DA, after considering the Enquiry Report as well as the reply filed by the applicant and after carefully considering the grounds raised

by the applicant, imposed penalty of 'compulsory retirement from service'. The relevant portion of the order of the DA is extracted below:-

“4. AND WHEREAS a copy of the Inquiry report was forwarded to the DGS for his submission, if any, on the Inquiry report vide memo No.1806/34/05/Vig., dt. 20.07.06. The DGS vide his reply dt. 04.08.06 while denying the charges has alleged that he had not drawn any loan from the Bank and finding fault on him for the forged documents given by the Broker to the Bank was not proved in the Inquiry since no documentary evidence was produced by the Bank in the Court of Inquiry for cross verification by the Inquiry Officer as well as by the DGS. He also stated that he had not been allowed to see any documents in original connected with the Inquiry with an Assistant since he is an illiterate person. Finally, he has also stated that he doesn't know the rules being an illiterate otherwise he would have taken permission from the factory before applying for any loan.

5. AND WHEREAS after careful consideration of the entire documents relevant to the case, it is observed that the contention of the DGS that he didn't give the fake documents to the Bank but by Broker is not acceptable as the DGS during the entire proceedings couldn't submit any proof that he hasn't submitted false/fabricated salary/pay slip and form No.16. Further, the other contention of the DGS that he had not drawn any loan from the Banks is also not correct as he himself affirmed in the fifth hearing held on 09.03.06 that he had availed housing loan of Rs.6 Lacs from Bank of Baroda, Triplicane Branch, Chennai. As regards the allegation of the DGS that no documentary evidence was produced by the Bank of Baroda in the Court of Inquiry and he was not allowed to see any documents with an Assistant is not acceptable as original documents were produced by the Bank authorities in the Court of Inquiry held on 22.03.2006 and the DGS did not raise this point at that time and the DGS himself expressed his desire not to have any Defence Assistant during the proceedings held on 06.01.2006. Finally, with regard to the contention of the DGS that he was ignorant of the rules being an illiterate otherwise he would have taken permission from factory before applying for any loan, it is observed that any act committed by him knowingly or unknowingly cannot be taken as having not committed the misconduct and he himself admitted during the very first hearing that he had not intimated and obtained prior permission before applying for housing loan with the financial institutions viz. Bank of Baroda, Bank of India and M/s.DHEL Vysya Housing Finance Ltd., Chennai. The undersigned is therefore fully satisfied that the charges framed against the DGS are correct and hold that the same have been established. The gravity of offence committed by the DGS i.e. dishonesty/forgery is a gross

misconduct and calls for deterrent action against the individual. Hence the undersigned considers that the individual is not a fit person to be retained in Govt. service and therefore decided to impose on him the penalty of “compulsory retirement from service”.

6. NOW, THEREFORE, the penalty of 'COMPULSORY RETIREMENT FROM SERVICE WITH EFFECT FROM 25.09.2006 (A.N.)' is accordingly imposed on Shri J.Kumar, Tailor/HS., T.C.No.104066/4066/G.No.70, P-2 Section OCF., Avadi by the undersigned.”

The applicant filed an Appeal. The Appellate Authority (AA) also, after considering all the grounds raised by the applicant in his Appeal, rejected the Appeal by order dated 7.3.2007. The applicant filed a Revision Petition to the President of India. After carefully considering all the points raised by the applicant and after carefully perusing the entire enquiry file, the said Revision Petition was also rejected by order dated 22.4.2008. The following portion of the order demonstrates that the Revisional Authority (RA) considered every aspect raised by the applicant. The relevant portion is extracted below:-

“ ORDER

.....  
 .....  
 .....

4. AND WHEREAS, after careful consideration of the points raised by Shri J.Kumar, in his petition, the President is fully satisfied that none of the points as raised by him the preceding paras are tenable since:-

- i. The petitioner had participated in the enquiry with full cooperation and answered the questions of Inquiry Officer/Presenting Officer as such it is not maintainable that he could not understand what transpired in the enquiry. Further, it is observed from the Inquiry proceedings that in the first learning itself Inquiry Officer had specifically asked Charged Officer whether he would utilize the services of defence assistant when Charged Officer had replied that he

did not want any Defence assistants.

ii. The petitioner has been provided reasonable opportunity to defend his case during the court of inquiry in accordance with the principle of natural justice.

iii. The charge sheet was dispatched to the petitioner on 20.9.2005 through registered post for which the acknowledgement was received on 1.10.2005. His reply to the charge sheet was received on 22.11.2005 just after the dispatch of order for constituting Court of Inquiry. The reply to the charge sheet was forwarded to the Inquiry Officer for consideration.

iv. The petitioner has referred to two cases of other two employees of the factory stating that they have committed the offence of similar nature but they have been given lesser penalty. Both the persons were charged for misconduct of dishonesty i.e. cheated Bank of Baroda by submitting false/fabricated salary/pay slip for availing wrongful gains/housing loan. They accepted the charge and accordingly they were imposed of penalty for reduction of pay by one stage for six months with cumulative effect. But the petitioner was charge sheeted not only for dishonesty but also for forging the signature of the Issuing Officer of Form 16 i.e. Works Manager and submitted this false/fabricated salary/pay slip and Form No.16. The petitioner on 6.1.2006 himself had categorically stated that he did not want any defence assistant. As regards the contention of the petitioner that he could not understand the proceedings since these were conducted in English, it is noted from the daily proceedings that he was questioned only in Tamil and where necessary the proceedings were conducted only in Tamil. Further commencing from the stage of written submission of Defence (WSD) on charge sheet the appellant has made his submission only in English. He had never brought to the notice of Inquiry Officer that he was unable to understand the documentation made in English. The petitioner has attended the inquiry proceedings and never raised any doubts/clarifications at that time but now claimed that he blindly signed as required is just to escape from the misconduct and to obtain sympathy.

v. The petitioner's contention that neither the bank authorities produced any documentary evidence nor the middle man was summoned by the prosecution side. During the course of

inquiry proceedings on 22.3.2006 one officer Shri P.Kumar attended the enquiry and produced the original documents pertaining to release housing loan to him. As far as middle man/broker is concerned, he was known to the petitioner only and he did not make any effort to produce him during the Court of Inquiry to defend his case.

vi The petitioner has tried to gain sympathy by mentioning the tragic death of his daughter. The misfortune in the family occurred in October 2003 and he applied for loan in March 2004 with the intention of acquiring property/flat which has no relationship with the incident that had occurred in the family nor can justify falsification of documents.

vii. The petitioner was placed under suspension w.e.f. 6.8.2005 keeping in view of seriousness of the misconduct committed by him.

5. The charges against the petitioner have been duly established during the inquiry when the representatives of the Banks participated in the proceedings and had presented the original documents submitted by him for verification of Inquiry Officer. In his revision petition, Shri Kumar has effectively repeated the same grounds which he had made during defence submission on inquiry report as also in his appeal and no fresh facts have been brought out in his revision petition. Since the gravity of misconduct forging of signature in a sensitive organization is indefensible, the petition deserves to be rejected.

6. NOW, THEREFORE, the President in exercise of the powers conferred on him under Rule 20 of CCS (CCA) Rules 1965 hereby rejects the Revision Petition dated 14.5.2007 of Shri J.Kumar, Ex-Tailor, Ordnance Clothing Factory, Avadi.

(By order and in the name of the President of India)

(Ashok Kumar)

Under Secretary to the Government of India

Shri K.Kumar,  
Ex-Tailor,  
Ordnance Clothing Factory, Avadi.”

The applicant filed the Review Petition. The Review Petition was also dismissed

after considering the grounds raised by the applicant by order dated 6.5.2010 of the President of India. The applicant thereafter filed a representation on 7.4.2011 before the Chief Commissioner for Persons with Disabilities after obtaining a disability certificate on 8.10.2011. The said representation was also dismissed by the Chief Commissioner by an order dated 24.1.2012.

5. The counsel for the applicant vehemently and strenuously urged that the applicant was a disabled person and he could neither hear or speak, that he is a illiterate person and he does not understand English, and that he should have been given an interpretor and an assistant to enable him to effectively participate in the Departmental Enquiry. He further submitted that it is only the brokers of the Bank who prepared the documents and as such he has not forged or fabricated any documents.

6. The counsel for the respondents also vehemently and strenuously submitted that the respondents have conducted the departmental enquiry following meticulously all the provisions concerned for holding the departmental enquiry, after giving sufficient and reasonable opportunity to the applicant at every stage of the conduct of the departmental enquiry. And that the Enquiry Officer, Disciplinary Authority, Appellate Authority, Revisional Authority and the Reviewing Authority have all passed elaborate, reasoned and speaking order after carefully considering all the grounds raised by the applicant before them.

7. From the perusal of the entire records and the various orders passed and the extracted portion of the orders passed by the Disciplinary Authority and the



Revisional Authority, it is crystal clear that many of the submissions made by the counsel for the applicant have been carefully considered by the Disciplinary Authority and other Appellate and Revisional Authorities. Regarding his disability, he has urged it for the first time before this Tribunal . He has not urged this ground before any of the Disciplinary Authorities. Inspite of repeatedly requesting the counsel for the applicant, counsel for the applicant did not point out any procedural irregularities in conducting the disciplinary enquiry except stating that the applicant was a disabled person i.e. deaf and dumb and he has studied in the school meant for such people and that he should have been given an interpreter and an assistant and adequate opportunity to defend his case. But, however, from the perusal of the entire para 4(i) of the order of the Revisional Authority extracted above, it is clear that the applicant refused to take any defence assistant and despite that at every stage of the departmental enquiry the applicant was given reasonable and adequate opportunity to defend his case. He did not point out any violation of any provision of the CCS (CCA) Rules in conducting departmental enquiry.

8. Regarding the scope of judicial review to be exercised by the Tribunal in so far as the departmental enquiries are concerned, the Hon'ble Supreme Court has laid down the law in several cases, which have been enumerated below:-

*"(1). In the case of K.L. Shinde v. State of Mysore MANU/SC/0126/1976 : (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-*

*"9. Regarding the appellant's contention that there was no*

*evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S.I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our*

*opinion, covered by a decision of this Court in **State of Mysore v. Shivabasappa, (1963) 2 SCR 943 : AIR 1963 SC 375** where it was held as follows:-*

*"Domestic Tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.*

*2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a*

*position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."*

*Again in the case of **B.C. Chaturvedi v. UOI & Others** (MANU/SC/0118/1996 : AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed 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 eye of the Court. When an inquiry is conducted on charges of a 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 be 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 on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 of 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 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** MANU/SC/0271/1963 : (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".*

*Recently in the case of **Union of India and Others v. P. Gunasekaran** (MANU/SC/1068/2014 : 2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-*

*"Despite the well-settled position, it is painfully disturbing to note*

*that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:*

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at*

*such conclusion;*

*g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*

*h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

*i. the finding of fact is based on no evidence."*

9. In view of the law laid down by the Hon'ble Supreme Court and in view of the fact that the counsel for the applicant has not pointed out any violation of any of the specific provision on holding departmental enquiry, we are of the view that there is no need to interfere with the impugned orders passed in this OA.

10. Accordingly, this OA is dismissed. No costs.

(C.V.Sankar)  
Member(A)

(S.N.Terdal)  
Member(J)

30.04.2021

/G/