

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR**

Original Application No.200/612/2018

Jabalpur, this Friday, the 16th day of July, 2021

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

D.K. Ganguli, aged about 56 years, S/o Shri Late K.G. Ganguli, R/o Plot No.80, Harsh Nagar Housing Board Colony, Maharajpur, Jabalpur 482004.

-Applicant

(By Advocate – Shri Moharram Ali)

V e r s u s

1. The Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi – 110001.
2. The Chairman, Ordnance Factories Board, 10-A, SK Bose Road, Kolkata – 700001.
3. The Sr. General Manager, Vehicle Factory Jabalpur 482009.
4. Shri S.K. Mishra, Add. G.M. (Disciplinary Authority), Vehicle Factory Jabalpur 482009.
5. Shri Prem Chand, Jt. General Manager (Enquiry Officer) Vehicle Factory Jabalpur 482009.
6. Shri Gopal Dutt, Junior Works Manager (Presenting Officer) Vehicle Factory Jabalpur 482009

-Respondents

(By Advocate – Shri N.K. Mishra)

(Date of reserving order : 23.03.2021)



O R D E R

By Naini Jayaseelan, AM.

The present Original Application has been filed by the applicant against the impugned order dated 17.11.2016 (Annexure A-26) reducing his increments upto 5 stages for a period of three years with cumulative effect passed in the DE No.53/2012 initiated under Rule 14 of CCS (CCA) Rules, 1965.

2. The punishment imposed was a culmination of the chargesheet No.99/डीएलएस/अनौ/53/2012 issued to the applicant listing two articles of charge when he avoided escort duty/temporary duty. The appeal dated 08.12.2016 (Annexure A-25) was rejected vide order No.18412(862)/Per/Disc dated 06.07.2017 (page 111 of the Paper Book) by the Chairman, Ordnance Factory Board, Kolkata.

3. The applicant has sought for the following reliefs:

“8. Relief Sought

In view of the facts mentioned in para 6 above application prays for the following relief(s).

(A) The Hon'ble Tribunal be pleased to issue appropriate writ order commanding the respondents to set aside and quash the order dated 17.11.2016 passed by respondent No 3 in D.E. No. 53/12 and order dated 06.07.2017 passed by Respondent No.2 while deciding the appeal; be set aside and quash.

(B) The Hon'ble Tribunal be pleased to stay the operation of the orders dated 17.11.2016 passed in department enquiry 53/12 by the respondents No.3 order dated 06.07.2017 passed by respondent No.2.

(C) Cost of the petition be also awarded.

(D) Any other relief as the Hon'ble Tribunal deem fit and proper be awarded."

4. The applicant had filed an Original Application No.200/1000/2016 on 06.12.2017 before this Tribunal to stay the proceedings of DE No.53/12 initiated against the applicant and prayed that no coercive action be taken against the applicant till the decision of the OA. But during the pendency of the OA, punishment order dated 17.11.2016 (Annexure A-26) was passed by the General Manager (Disciplinary Authority) and the appeal was also rejected by the Chairman, Ordnance Factory Board (Appellate Authority) vide order dated 06.07.2017. Since the OA had become infructuous, therefore the applicant sought permission to withdraw the said OA with liberty to file a fresh OA, which was allowed and the Original Application was dismissed as withdrawn vide order dated 27.04.2018 (Annexure A-28). Hence the present OA.

5. It is the contention of the applicant that he has submitted application to the Inquiry Officer and General Manager alleging that the departmental enquiry was biased. But the respondents took no action and concluded the departmental proceedings at the behest of Shri S.K. Mishra, the then AGM. It is contended by the applicant that he also filed a police report against the said Shri S.K. Mishra, but these were not examined. The applicant also contends that the Vigilance Office working under the administrative control of Shri S.K. Mishra was biased against





the applicant. The applicant has even gone to the extent of stating a conspiracy was hatched for murdering him and, therefore, subsequently when escort duty was assigned to the applicant, he did not perform his duty. The applicant submitted an application requesting for an assurance of his life while performing the escort duty because the applicant apprehended that there was a larger conspiracy of his murder while performing the escort duty. Since no verbal or written assurance was given regarding the life security of the applicant, the applicant did not perform the escort duty nor the applicant was provided any TA/DA, movement order, stallion vehicle registration number, Gate Pass etc.

6. In their reply, the respondents have submitted that the applicant, along with 57 other employees, was nominated for escort duty vide letter No.017/86/Escort Duty/ CPP dated 10.10.2011 (Annexure A-2). However, instead of performing escort duty, the applicant made a complaint on 05.12.2011 against the respondent No.4 stating that respondent No.4 is having grudge against the applicant and he may also conspire for his murder. The complaint made by the applicant was investigated by the Vigilance Officer, who found the applicant's complaint false and was filed in order to avoid escort duty assigned to him. The respondents' contention is that this fact was also substantiated in the final report dated 16.02.2012 submitted by the police authority. Accordingly, a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 was served upon the applicant on



10.10.2012/20.11.2012 (Annexure A-1) framing two charges, i.e. gross negligence of duty and tarnishing the image of senior officer. The applicant replied to the chargesheet and was given ample opportunity to defend his case. The Inquiry Officer submitted his report on 27.07.2016, wherein both the charges were proved against the applicant. However, instead of submitting any representation, the applicant approached this Tribunal by filing OA No.200/1000/2016 praying for stay of the proceedings. In the meantime, since there was no stay, the Disciplinary Authority vide order dated 17.11.2016 (Annexure A-26) awarded the punishment by reducing increments upto 5 stages for a period of three years with cumulative effect, which has also been affirmed by the Appellate Authority in its order dated 06.07.2017. The Appellate Authority has stated in his detailed order that the applicant neither clearly accepted nor clearly denied the charges imputed against him and a copy of the inquiry report was duly forwarded to the applicant. But the applicant chose not to submit any representation on the enquiry report and, therefore, the Disciplinary Authority has rightly imposed the aforesaid penalty. The Appellate Authority has also stated that since the applicant has raised certain allegation against Shri S.K. Mishra, the matter was referred to the Vigilance Officer, VFJ for investigation, which vide its report dated 22.12.2011 submitted that the applicant did not want to perform his duty and was finding some pretext or the other to avoid the same and also that the applicant is in habit of making false

complaints. None of the remaining 57 employees avoided the said duty. Moreover, the police personnel that the applicant wanted to list as witnesses were never enlisted as prosecution witnesses in the chargesheet and the Appellate Authority in its order has also stated that the applicant was given full opportunity to submit his representation to the inquiry report and even a reminder was issued. The Appellate Authority rejected the appeal and upheld the penalty imposed on the applicant as justified.

7. In the rejoinder, the applicant has filed the affidavit of three employees viz; K.M. Thakre, Bheem Singh and Rakesh Jain, who were also deployed for escort duty along with the applicant. It has been stated that there was no program and work for sending vehicles on escort duty and, therefore, the allegation that the applicant refused to perform the escort duty does not arise.

8. The respondents have filed additional reply to the rejoinder stating that there was no illegality or procedural flaw in the inquiry and that the applicant was adopting dilatory tactics to stretch the enquiry on one pretext or the other. The applicant was provided with all the necessary documents relating to the instant case as mentioned in Annexure-3 of the chargesheet and any additional documents other than those enlisted in the chargesheet needed requisition by the DGS from the IO within 10 days. The statement of Shri Rakesh Jain and Shri Bheem Singh do not absolve the applicant of his guilt.

9. We have heard the learned counsel for the parties and perused the pleadings and the documents available on record.

10. The scope of judicial review in disciplinary matters has been repeatedly explained by the Hon'ble Apex Court. In ***B.C. Chaturvedi vs. Union of India and others***, 1996 SCC (L&S) 80, it was held pithily:



"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 proceeding. Adequacy of evidence 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 support therefore, 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 reappreciate the evidence or the nature of punishment. 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 evident. 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 that case.”

11. In **Damoh Panna Sagar Rural Regional Bank and another vs. Munna Lal Jain**, (2005) 10 SCC 84, the Hon’ble Apex Court held as under:



“10. Lord Greene said in 1948 in the famous Wednesbury case² that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service*³ (called “CCSU case”) summarized the principles of judicial review of administrative action as based upon one or the other of the following viz. illegality, procedural irregularity and irrationality.”

12. In the matter of judicial review relating to the administrative decision of awarding punishment, the Hon’ble Apex Court in **Union of India vs. K.G. Soni**, 2006 SCC (L&S) 1568 has held 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. In view of what has been stated in Wednesbury case³, the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the

administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.”

13. In the instant case, we are of the view that though the Disciplinary Authority has adequately taken note of the findings and the conclusions arrived at by the Inquiry Officer. The Appellate Authority's detailed order is comprehensive both in nature and also content. As noted above, the power of Appellate Authority is coextensive with that of the Disciplinary Authority in evaluation of the evidence available and adequacy of the punishment. In paragraph 13 of his order, the Appellate Authority states:

“13. The points raised by the appellant in the instant appeal has been considered at length. However, it is observed that the appellant has repeated unfounded grounds/allegations to suggest malafide and conspiracy against Shri Mishra. None of the points mentioned by the appellant are substantiated by any facts or back-up evidence in the whole case. The appellant holds the post of Supervisor, which is a leadership role where it is expected from him to guide and motivate his subordinates. Considering the position of responsibility, it is felt that the penalty awarded to the appellant by the Disciplinary Authority is commensurate with his misconducts and there is no merit in appeal which calls for interference at the appellate stage.”

14. In the light of the above discussion, we feel that the punishment awarded by the Disciplinary Authority dated 17.11.2016 (Annexure A-26), which has been upheld by the Appellate Authority in its order dated 06.07.2017, is commensurate

with the gravity of the misconduct and due procedure has been followed at every level. Hence we are not inclined to interfere with the punishment awarded to the applicant. Accordingly, the Original Application is dismissed being devoid of any merit. No order as to costs.



(Naini Jayaseelan)
Administrative Member
am/-

(Ramesh Singh Thakur)
Judicial Member