Reserved

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : ALLAHABAD BENCH
ALLAHABAD
...

Dated : ALLD. on this 30th Day of September 1997.

CORAM : Hon'ble Mr Justice B.C Saksena, V.C.
Hon'ble Mr S Das Gupta, A.M.

ORIGINAL APPLICATION No.1717 OF 1992

Shri Man Singh S/o Shri Har Dayal
resident of 78-C,
Tarintikli, Police Station : Sadar Bazar
District : Shahjahanpur.

.... Applicant

C/A Shri Ranjit Saksena

Vs.

(1) Union of India
Through The Secretary
Ministry of Defence
New Delhi.

(2) Union of India
Through General Manager
Ordnance Clothing Factory
Ministry of Defence
Disttrict : Shahjahanpur.
U.P.

(3) Union of India
Through Chairman
Ordnance Factory Board
10-A Auckland Road
Calcutta-1

(4) Union of India
Through Directorate General
Ministry of Defence, Ordnance
Equipment Group Hqrs, ESIC Bhawan
Sarvodaya Nagar, Kanpur

... Respondents.

C/R Shri A mit Sthalekar

ORDER

(By Hon'ble Mr S Das Gupta, A.M.)

Through this O.A. filed under section 19 of Administrative Tribunals Act, 1985, the applicant has assailed an order dated

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13.09.90 passed by the disciplinary authority imposing on the applicant penalty of reduction in pay to the minimum of the scale, the order dated 3.5.1991 and the order dated 25.5.1992 by which the appellate authority and the Reviewing authority confirmed the penalty imposed. He has sought quashing of all these orders and a direction to the respondents to pay the salary to the applicant ignoring the orders of penalty and also to give him promotion in accordance with law.

2. The applicant's case is that on 12.2.1989, one V N Shukla alongwith his associates met the applicant near the market and started beating him. The applicant lodged a report in the police station while the said V N Shukla also filed an FIR. The disciplinary authority thereafter placed the applicant under suspension on 13.2.1989. The various representation submitted to the respondents for revokation of the suspension even after the police gave a final report in the case, did not evoke favourable response and, on the other hand, the applicant was served with a charge sheet under rule 14 of CCS (CCA) Rules. Thereafter an Enquiry Officer was appointed who after enquiry, gave a report stating that the charge against the applicant was not established. The disciplinary authority disagreed with the findings of the Enquiry Officer and the applicant was given an opportunity to submit a representation. At this stage the applicant filed an O.A. No.416 of 1990 which was disposed of with a direction to the applicant to file his representation in reply to the show cause notice

after noting that prima facie delay in finalisation of the proceedings was on the part of the applicant himself. The respondents were directed to consider the representation of the applicant and to pass final order within a period of two months from the date of the Tribunal's order which was dated 5.7.1990. Thereafter, the impunged order was passed by the Disciplinary authority imposing the penalty of reduction in pay.

3. The applicant has assailed the order of the disciplinary authority mainly on the ground that although police had submitted a final report on an FIR lodged on the basis of the incident which also formed the basis of the disciplinary action, the applicant was found guilty of the charge. He has also pleaded that the procedure, as laid down in rule 14 of CCS (CCA) rule, was not followed and the appointing authority was biased against him as he had approached Tribunal earlier and obtained a direction to the respondents. The applicant has also pleaded that the penalty imposed was disproportionate to the gravity of misconduct and that in a similar case, one Raja Ram Batra was awarded a minor penalty.

4. The respondents have filed a counter affidavit in which it has been stated that the disciplinary authority could not agree with the findings of the enquiry authority on the ground which were recorded in the note of dis-agreement holding that the charge against the applicant stood established. Thereafter, the applicant was given an opportunity to represent and after considering his representation, order of penalty was imposed. His appeal

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was carefully considered by the appellate authority and was rejected. Subsequently, applicant preferred review petition to the Ministry of Defence and the same was also dismissed after careful consideration.

5. We heard the learned counsel for both the parties and perused the pleadings on record.

6. Although applicant has alleged contravention of the procedure laid down in rule 14 of the CCS(CCA) rules, on careful examination of the case, we did not find any procedural lacuna in the proceedings. No doubt the enquiry authority held that charge was not established but it was not incumbent on the disciplinary authority to accept this findings. Rule 15 (2) of the CCS (CCA) rules very clearly states that the disciplinary authority has a right to disagree with the findings of the enquiry authority but in the case such a disagreement, the reasons for disagreement must be recorded while recording its own findings on the charges levelled provided the evidence on record is sufficient for the purpose.

7. We have noticed that while disagreeing with the findings of the enquiry authority, the disciplinary authority recorded the reasons for such disagreement and also recorded its own findings on the charge. The statutory requirement of recording reasons for disagreement has thus been met. The only question is whether the finding of the disciplinary authority is based on evidence on record or not. In our view, the finding of the disciplinary authority is based on some evidence which has come in the

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enquiry. It is, therefore, neither based on no evidence nor the reasons recorded for disagreement can be stated as perverse. It is well settled that the courts and Tribunals do not have any appellate jurisdiction in respect of the orders of the disciplinary authority. The courts & Tribunals can only see whether the action has been taken in accordance with the law. They have no jurisdiction to enter into an assessment of the evidence unless the findings of the enquiry authority or disciplinary authority are either perverse on the face of the evidence on record or are based on no evidence. In the present case, we see no reasons to reassess the evidence in order to see whether disciplinary authority was justified in arriving at a conclusion different from the conclusion arrived at by the enquiry authority. In any case, the plea that there was contravention of rule 14 of the CCS (CCA) rules, does not appear to have any force.

8. The applicant's plea that he could not have been found guilty of the charge as the police had given a final report on the FIR, also has no force. The Hon'ble Supreme Court of India in the case of Nelson Motis Vs U O I AIR 1992 SC 1981 had specifically held that even an acquittal in a criminal case cannot conclude the disciplinary proceedings. In the case before us, the applicant was not acquitted after trial by a criminal court. All that happened was that police did not proceed on the basis of FIR. Even in their final report, the applicant has not been exonerated. It has only noted that a complaint was lodged by both the parties against each other and the departmental authorities were

investigating the complaints. This report of the police cannot, therefore, conclude the disciplinary proceedings.

9. So far as the plea regarding disproportionate penalty is concerned, it is sufficient to cite the decision of the Hon'ble Supreme Court in the case of Balbir Chand Vs. F C I 1997 SCC (L & S) 808 in which it was held that Article 14 of the constitution cannot be invoked seeking parity in award of penalty. Moreover there is nothing in averment to indicate that the case of Raja Ram Batra with whom the applicant claims parity, was on all fours with that of the applicant in respect of the gravity of misconduct.

10. The applicant's plea that the disciplinary authority was biased against him, is very perfunctory. Moreover, disciplinary authority has not been impleaded by name. The plea of malafide has been taken on the basis the factum of his having earlier filed an O.A. We have, however, seen that in the decision of the Tribunal in that O.A., there is an adverse observation regarding the dilatory tactics of the applicant. We see no reason why such an order will prejudice the disciplinary authority against the applicant.

11. We finally come to the plea of the applicant regarding quantum of penalty imposed on him. It is settled law that Courts/Tribunals cannot trench upon the Jurisdiction of the disciplinary authority to determine the quantum of penalty to be imposed in a particular case unless the penalty imposed is so disproportionate to the gravity of misconduct as to make it wholly arbitrary and perverse.

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In this regard, the decision of Hon'ble Supreme Court in the case of S B I Vs. Samarendra Kishore Endow (1994) 27 A T C 149 may be referred to. Keeping in view the misconduct for which applicant was charged, we do not consider the penalty imposed as disproportionate and therefore, we see no reason to interfere in the penalty imposed.

12. In view of the foregoings, this application fails and the same is accordingly dismissed. The parties shall bear their own costs.

A.M. V.C.

/snt/