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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 339 of 1993

Dated: 29 March, 1995

Hon.Mr. Justice B.C. Saksena, V.C.
Hon. Mr. S. Das Gupta, Member (A)

Sri Osihar, son of Shri Ram Pujan
R/o Care of Shri Chunni Lal, 6/2 Devence
Colony, Bhagwat Das Ghat,
Kanpur.

... ... Applicant.

( By Advocate Sri Gautam Chaudhary )

Versus

1. The Union of India through the Secretary of Defence, Ministry of Defence, New Delhi.
... ...

2. The General Manager, Ordnance Equipment Factory, Kanpur.

3. The Additional Director General Ordnance Factories, Ordnance Equipment Factory, Group Headquarters,

... Respondents.

( By Advocate Km. S Srivastava )

O R D E R

( By Hon. Mr. S. Das Gupta, Member(A) )

In this application filed under Sec. 19 of the Administrative Tribunals Act, the applicant has challenged the order passed by the disciplinary authority compulsorily retiring him from service and also the revisional order confirming the penalty imposed. The applicant was a regular class-IV employee in the Ordnance Equipment Factory, Kanpur. He was served with a charge-memo dated 24.9.1988 for major penalty. The gravamen of the charge was that he

was found in unauthorised possession of a packet of brass Nails which was recovered from beneath the seat cover of his bye-cycle and thus he attempted theft of Government material. An inquiry was held and the inquiry officer found the charges against the applicant as established. Agreeing with the findings of the inquiry officer, the disciplinary authority, vide the impugned order dated 2.11.1989( Annexure- A 1) imposed on the applicant the penalty of compulsorily retiring him from service. This order was appealed against by the applicant and the said appeal was dismissed by the appellate authority by its order dated 21.2.1990.

2. The applicant, thereafter filed a revision petition which was also dismissed by the impugned order dated 25.5.1992 (Annexure- A 6).

3. The impugned order of the disciplinary authority has been challenged on the following grounds;

(i) The disciplinary authority did not give an opportunity to the applicant before passing the impugned order of penalty and the inquiry report was sent to him for the first time along with the impugned order dated 2.11.1989.

(ii) The impugned order of the disciplinary authority is a non-speaking order which does not show an independent application of mind.

(iii) The evidence on record was not sufficient to establish the charges. There were contradictions in the statement of witnesses.

(iv) The quantum of penalty is excessive.

4. The revisional order has also been challenged on the ground that it has been wrongly mentioned there in that the applicant has been found guilty of theft second time , whereas, the applicant was never involved in any theft case and thus, the observation of the revisional authority is incorrect.

5. The respondents have filed a counter affidavit in which it has been submitted that on 16.9.1988, when the applicant was mustering out of the factory after the duty hours, his bye-cycle was searched on suspicion and a polythene packet containing brass nails weighing 500gms. was recovered from beneath the cover of the bye-cycle. The applicant was, therefore, charge-sheeted for major penalty and the inquiry officer after recording evidence concluded that all the charges have been proved beyond doubts. The disciplinary authority agreed with the findings of the inquiry officer and imposed the penalty of compulsory retirement. Neither the appellate authority nor the revisional authority considered it necessary to interfere with the disciplinary authority's order and the same was confirmed by the appellate order and the revisional order. They have submitted that the grounds taken by the applicant are not valid and the application should be rejected.

6. The applicant has filed a rejoinder affidavit reiterating the contentions made in

original application.

7. We have heard the learned counsel for the parties and have gone through the pleadings of the case.

8. The scope of judicial review in respect of a departmental disciplinary action is very limited. A Court/Tribunal cannot normally interfere into the realm of assessment of evidence unless the findings of the inquiry officer would appear to be totally perverse. In the leading case of Union of India Vs. Parma Nand, (1989) 10 ATC , 30, the Supreme Court interalia 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 jurisdic--tion. The Tribunal cannot interfere with the findings of the Inquiry Officer of compete--nt 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."

Similarly Courts/Tribunals will also not interfere in order of penalty on the ground of its quantum being excessive unless the quantum is so disproportionate to the gravity of the misconduct that the order would appears to be of a vindictive nature. The Hon'ble Supreme Court has unequivocally deliniated the confines of judicial review in respect of

quantum of penalty in disciplinary matters.

In the case of State Bank of India and others Vs. Samarendra Kishore Endow and another, (1994)27ATC,149 Their Lordships had held in this case that imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Art.226. The power under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. Similar observations were also made by their Lordships in Parma Nand (Supra). 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 malafide 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 Inquiry Officer or the competent authority is based on evidence even if some of itis found to be irrelevant or extraneous to the matter."

9. In view of the above, the grounds taken by the applicant which referred to the validity of the findings of the inquiry officer and the quantum of penalty have no force. A few contradictions in the evidence of the prosecution witness with regard to the time of occurence, as pointed out by the applicant, apart from being minor in nature, are not of much significance unlike in criminal proceedings in which exact time of occurence of the alleged crime has some importance.

10. As regards the grounds taken by the applicant that he was no 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 nolonger available to delinquent employee. However, the Supreme Court has ruled in the case of Ramjan Khan that a report of the inquiry must be given to the delinquent but the decision in Ramjan Khan's case has no retrospective application as decided by the Supreme Court in the case of Managing Director E.C.I.L. Vs. B. Karunakar, 1993(25)A.T.C. 704. In the case before us, the impugned order of penalty was passed prior to 20.11.1990. We cannot hold that the disciplinary proceedings were vitiated by not giving a copy of the inquiry report to the applicant before imposition of penalty.

11. As regards the plea that the order of the disciplinary authority is non-speaking, we find

from the impugned order that the impugned order dated 2.11.1989 clearly states that the disciplinary authority has carefully considered the inquiry report and has agreed with the findings of the inquiry officer and held that the charges levelled against the applicant are established beyond doubt . It also states that the disciplinary authority has taken a lenient view while imposing the penalty of compulsorily retiring him from service. This clearly indicates an application of mind on the part of the disciplinary authority before issuing the order of penalty. Moreover, in the case of Ram Kumar Vs. State of Haryana, AIR 1987 SC,2043, the Supreme Court held;

> "In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer 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 the same findings as that of the Enquiry Officer 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 and does not contain any reason. When by the impugned order, the punishing authority has accepted the findings of the Enquiry Officer 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."

12. The decision in Ram Kumar's case was followed with approval by Hon'ble Supreme Court in the case of Indian Institute of Technology, Bombay Vs. Union of India and others, 1991 Suppl. (2) SCC 12.

13. The revisional order has been challenged interalia on the ground that the revisional authority had wrongly referred to a commission of theft by the applicant for the second time. It has been averred by the respondents in their counter affidavit that there has been no mistake committed by the revisional authority as the misconduct for which the applicant has been compulsorily retired is the second such misconduct. There is no doubt that the word 'theft' has certain connotations under the Indian Penal Code and elements of the crime of theft may not have been present in the alleged misconduct. However, this is beside the point since the connotation of this word would be different in the context of the disciplinary proceedings. This technical aspect in the revisional order, we are of the view, cannot be considered to have vitiated the impugned order of revision. No other point has been urged.

14. In view of the foregoing, we find that the application lacks merits and deserves to be dismissed. We, accordingly dismissed the application. There will be no order as to costs.

Member (A)

Vice-Chairman

(n.u.)