

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 19 DAY OF 5 2010)

ORIGINAL APPLICATION NO. 249 OF 2002

Hon'ble Mr. A.K. Gaur, Member (J)

Hon'ble Mrs. Manjulika Gautam Member (A)

Nand Kumar Pathak Son of Sri B.N. Pathak Resident of 191/1, Shastri Nagar, Kanpur at present residing at permanent address village and Post-Barpar Mafi, District Gorakhpur.

..... Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence Department of Defence Production New Delhi.
2. The Chairman, Ordnance Factories Board 10/A, Auckland Road, Calcutta.
3. The General manager, Small Arms Factory, Kanpur.

..... Respondents

Present for Applicant : *Shri Swayamber Lal*
 Shri B.N. Singh

Present for Respondents : *Shri S. Singh*
 Shri S.N. Chatterji

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

By this Original Application the applicant has prayed for quashing the order dated 19.06.1995 (Annexure A-1 of O.A) passed by the respondent No. 2 and order dated 20.02.1997 (Annexure A-2 of O.A) passed by the respondent No. 3 coupled with direction to the respondent No. 3 to reinstate the applicant in service with full back wages and other consequential benefits.

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2. The extensive facts of the case are that the applicant while working as Machinist in Small Arms Factory, Kanpur was served with charge-sheet No. SAF/43/IE/G.M (VO)/14 dated 11.11.1993 for an attempt to theft. He filed reply dated 18.11.1993 (Annexure A-4 of O.A) denying the charges leveled against him. The Disciplinary Authority being not satisfied with the reply of the applicant proceeded against him and appointed Sri P.B. Mathur as Inquiry Officer. The applicant submitted his representation dated 14.01.1994 (Annexure A-5 of O.A) for the change of inquiry officer on the ground of biasness but the same was rejected vide order dated 31.01.1994 (Annexure A-6 of O.A) with further direction to the inquiry officer to complete the inquiry proceeding at the earliest. The applicant submitted another representation dated 04.04.1994 for change of the Sri P.B. Mathur as Inquiry Officer on the ground of non supply of documents, denial of opportunity to make his defence, denial of opportunity to produce his defence witness, denial of defence Assistant, denial of legal practitioner to defend the inquiry and Ex-parte proceedings completed in violaton of sub Rule (20) of Rule 14 CCS (CCA) Rules, 1965. On 05.01.1995 the Inquiry Officer directed the applicant to submit a panel of three names of defence Assistant, otherwise the inquiry would proceed ex parte. The applicant submitted an application dated 09.01.1995 for permission to engage a legal practitioner and also demanded Sri Hoshiyar Singh and two Labour Officer as a Defence Assistant . The respondents vide order dated 12.01.1995 rejected the request of legal practitioner without any

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order regarding Defence Assistant and directed the applicant to co-operate with inquiry (without defence assistant/LO).

3. The Applicant thereafter made a representation dated 28.01.1995 to the Secretary of Ministry of Defence (production) New Delhi highlighting his grievance and clearly stating that the Inquiry Officer is highly biased and prejudiced and he may be changed. However, Dy. G.M. (A) vide his letter dated 14.02.1995 directed the applicant to appear with Defence Assistant. The Inquiry Officer submitted inquiry report on 04.04.1995 (Annexure A-19), which is exparte and without giving reasonable opportunity to the applicant to defend the same. Aggrieved the applicant filed O.A. No.527 of 1995 before this Tribunal against the show cause notice dated 13.04.1995. During the pendency of the aforesaid O.A, the respondent No.3 passed removal order dated 19.05.1995 against the applicant. The applicant filed Amendment Application challenging the removal order dated 19.05.1995. Against the order of removal dated 19.05.1995, he also filed an appeal dated 28.07.1995 before Appellate Authority. According to the applicant, the O.A No. 527/1995 was decided with the direction to the Appellate Authority to decide the pending appeal within 3 months after hearing the applicant (Annexure A-22 of O.A). Thereafter the Applicant informed the respondents that the appeal has already been decided vide order dated 20.02.1997 and the said appellate order was also enclosed with order dated 13.11.2001 (Annexure A-2 of O.A).

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4. Learned counsel for the applicant submitted that action of the respondents is in violation of Section 19(4) of the A.T. Act, 1985, which provides that after admission of an O.A., the respondents cannot pass the order in relation to the subject matter of such application pending before Tribunal for decision. Learned counsel for the applicant would contend that in the instant case, the removal order dated 19.05.1996 and appellate order dated 20.02.1997 have been passed during the pendency of earlier O.A. Learned counsel for the applicant further submitted that the respondents have denied reasonable opportunity to defend him-self and also without providing the opportunity to produce his own defence and also the defence witnesses, which is contrary to rules and in violation of principles of natural justice. Learned counsel for the applicant would further contend that the penalty of removal from services is harsh as the applicant has already completed 31 years continuous services.

5. On notice, the respondents filed Counter Affidavit. Learned counsel for the respondents submitted that the applicant was caught red handed in stealing the government property on 29.08.1993. The Security Personnel lodged a complaint vide letter No.SO/SAF/19-B dated 19.08.1993 along with impound material to the competent authority, who decided to place the applicant under suspension with effect from 29.08.1993 (FN) and Disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 was initiated against him. Learned counsel for the respondents would contend that the applicant was

served with the charge sheet vide Memorandum No. SAF/43/C.I.E./GM/VO/14 dated 11.11.1993 along with relied on documents and list of witnesses and in response thereto, the applicant filed reply dated 23.11.1993 denying the charges leveled against him. Thereafter instead of availing the opportunity and to cooperate with the inquiry proceedings, the applicant filed repeated representation before the authorities , which were considered and rejected. Learned counsel for the respondents submitted that despite the opportunity being granted to the applicant, he did not participate in the inquiry proceeding , therefore, the Inquiry Officer was left with no other option except to complete the Inquiry proceeding. Learned counsel further submitted that after submission of Inquiry Report, the Disciplinary Authority forwarded a copy of the same to the applicant asking him to make submission, if any, within 15 days. Learned counsel for the applicant would further contend that the Disciplinary Authority after careful consideration of the entire record of the case and findings of the report of the Inquiry Officer as well as after carefully applying his mind passed the order dated 19.06.1995 imposing the penalty of removal from service. The appeal of the applicant dated 28.07. 1995 was also considered by the Appellate Authority, who has passed the reasoned order No.11291A/VIG dated 20.02.1997. Learned counsel for the respondents further submitted that there was no violation of the Principle of natural justice rather the applicant at every stage was afforded reasonable opportunity of hearing.

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6. Applicant has filed Rejoinder Affidavit in which nothing new has been added. However, counsel for the applicant has filed Written Arguments raising several grounds. Learned counsel for the applicant placed reliance on following decision in support of his contention that the Removal order dated 19.06.1995 and appellate order dated 20.02.1997 have been passed after admission of the earlier O.A. 527 of 1995, which is against Section 19(4) of Administrative Tribunals Act, 1985:-

- (i) *Prem Baboo Vs. Union of India & others ATR 1987 (2) Cat 13 (CAT Principal Bench)*
- (ii) *Venkat Raju Vs. Govt. of A.P. Revenue (Endts-1) Dept. Hyderabad & Ors. 1999(3) ATJ (Andhra Pradesh High Court) 221*
- (iii) *Gurdeep Singh Vs. Union of India & Ors 1991(2) ATJ (Chandigarh Bench) 627.*

7. Learned counsel for the applicant further submitted that the Inquiry Officer violated the provisions of sub rule (11) of Rule 14 of CCS (CC&A) Rules, 1965 as the applicant was not provided with the statements of Shri Hitender Singh and Shri R.K. Jain and other documents for his defence despite repeated request. In support of his contention, learned counsel for the applicant placed reliance on following judgment:-

- (i) *S.D. Bhardwaj Vs. Union of India & Others 1982 (2) SLJ (Himanchal Pradesh High Court) 515*
- (ii) *H.L. Sethi Vs. Municipal Corporation Simla and others 1982(2) SLJ (Himanchal Pradesh High Court) 694*

8. Learned counsel for the applicant contended that although the Applicant submitted representation dated 14.01.1994 for the change of

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inquiry officer on the ground of biasness, the disciplinary Authority as well as the Appellate Authority rejected the same in violation of the following judgment :-

- (i) *Registrar of Co-operative Societies, Madras & Anr Vs. F.X. Fernando 1994(2) SLJ Supreme Court 124.*
- (ii) *Indrani Bai (Smt) Vs. U.O.I. & Others 1994 ATC (27) 755*
- (iii) *Kota Rama Krishna Rao Vs. East Coast Railway and Ors 2006 (2) A.T.J. (CAT Hyderabad Bench) 319*

9. Learned counsel for the applicant also submitted that the punishment awarded to the applicant is too harsh as he has already completed 31 years of service and as such punishment deserved to be modified to Compulsory Retirement at least. In support of his contention, learned counsel for the applicant placed reliance on the decision rendered by Hon'ble Supreme Court reported in 1996 SCC (L&S) 80 - B.C. Chaturvedi Vs. Union of India & Others.

10. We have heard learned counsel for either sides and perused the pleading as well as the Written Argument filed by the learned counsel for the applicant.

11. We are not convinced ^{with} the argument of learned counsel for the applicant that by passing of Removal order dated 19.06.1995 and appellate order dated 20.02.1997 during pendency O.A. 527 of 1995 is against Section 19(4) of Administrative Tribunals Act, 1985 because from the pleading on record, we find that O.A No. 527/1995 was disposed of vide judgment

and order dated 11.09.2001 with direction to the respondents to decide the appeal of the applicant dated 28.07.1996.

12. We are also not convinced with the argument of learned counsel for the applicant that the Inquiry Officer violated the provisions of sub rule (11) of Rule 14 of CCS (CC&A) Rules, 1965 as the applicant was not provided with the requisite documents and statement of relied upon witnesses. From the pleadings of the applicant itself we find that the applicant did not cooperate with the inquiry proceeding and continued ^{to} ~~the~~ prefer representation on one ground and the other. We also find that the applicant was served with the Inquiry Report alongwith requisite documents to which he has filed his reply.

13. We have also gone through the orders passed by the Disciplinary Authority as well as Appellate Authority and ^{noticed} ~~find~~ that while passing the order, respective authorities have considered each and every points raised by the applicant and passed order in accordance with the provisions of Rule and Law and there is no illegality in the same. It is settled principle of law held by Hon'ble Supreme Court reported in **AIR 2010 SC State of U.P. Vs. Man Mohan Nath Sinha**, that it is wholly improper for the Court to re-appreciate the evidence led before Inquiry Officer. It is also observed that the power of Judicial Review is confined to decision making process alone.

14 Learned counsel for the respondents also submitted that It is settled principle of law that judicial review is not an appeal from decision but a review of the manner in which the decision is made the power of

judicial review is meant to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court, when an enquiry is conducted on charge of misconduct by a public servant, the Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether Rules of Natural Justice are complied with, whether the findings or conclusion are made on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power or authority to reach a findings of fact or conclusion. Neither the Technical rule of evidence Act nor strict proof of fact apply to disciplinary proceedings adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before court/Tribunal. The Disciplinary Authority is the sole judge of facts. The Appellate Authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Tribunal in its power of judicial review does not act as an Appellate authority to re-appreciate the evidence and arrive at its own independent findings on evidence.

In support of the aforesaid contention, the decisions reported in **1996 SCC (L&S) 80 B.C. Chaturvedi Vs. Union of India** has been relied upon by the respondents.

15. Learned counsel for the respondents would contend that if there is some evidence and the findings recorded by the disciplinary authority are not perverse, the Tribunal is not competent to interfere with the same like a court appeal. In support of this plea reliance has been placed on the decision of Hon'ble Supreme Court reported in **JT 1998 (III) SC 603 Kuldeep Singh Vs. Commissioner of Police** .

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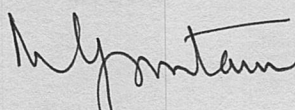
16. Learned counsel for the applicant on the other^{hand} in para 25 of Original Application has clearly and specifically stated that punishment awarded to the applicant is harsh and excessive in view of the fact that the applicant has already rendered more than 31 years of service, therefore matter may be remitted back to the Appellate Authority for reconsideration of quantum of punishment.

17. It is also settled principle of law that if the relevant factors were not taken in to consideration, which have some bearing on the quantum of punishment, the court can certainly direct for reconsideration. This view gets support from the decision rendered by Hon'ble Apex Court reported in 2007[✓](1) SCC (L&S) 135 – U.O.I & Ors. Vs. Dwarka Prasad and JT 2003 (3) (SC) page 322 – Kailash Nath Gupta Vs. Inquiry Officer.

18. In view of the above observation, we do not want to interfere with impugned orders on merits. But at the same time, as the applicant has already rendered 31 years of service and has a big family to support, matter requires sympathetic consideration. Accordingly we remit the matter back to the Appellate Authority for reconsideration of quantum of punishment in accordance with provision and rule and pass appropriate reasoned order within a period of three months on receipt of certified copy of the order.

19. With the above observation, the O.A is disposed of.

There will be no order as to costs.


Member-A


Member-J

/Anand/