

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ALLAHABAD, THIS THE 28th DAY OF Sep, 2005.

QUORUM : HON. MR. D. R. TIWARI, A.M.
HON. MR. K.B.S. RAJAN, J.M.

ORIGINAL APPLICATION NO. 928 OF 2002

Brijendra Singh Verma, son of Late R.C. Sharma, T.No. 5866, Electro-Depositor, Resident of C-21/1, Rana Pratap Colony, Sadar Bazar, Agra Cantt.

.....Applicant.

Counsel for applicant : Sri A. Gaur.

Versus

1. Union of India through Commander, Base Workshop Group, Meerut Cantt/Appellate Authority.
2. The Commandant, 509, Army Base Workshop, Agra Cantt/Disciplinary Authority.

..... Respondents.

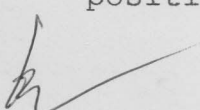
Counsel for respondents : Sri S. Singh.

O R D E R

HON. MR. K.B.S. RAJAN, J.M.

This matter relates to disciplinary proceedings and the contention of the applicant is that he has been visited with the penalty as a matter of victimization as the applicant had been involved in union activities.

2. Before proceeding with the facts of the case, it is appropriate, and necessary too, to have a look at the ambit and reach of the Tribunal in interfering with the decisions in disciplinary matters. The position has been succinctly brought out by the Apex



Court in the case of *Principal Secretary Govt. of A.P. v. M. Adinarayana*, (2004) 12 SCC 579, at page 587 as under :

"24. The order of the Administrative Tribunal interfering with the well-considered order of TDP is unwarranted. APAT cannot sit as a court of appeal over a decision based on the finding of the enquiry authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supported the conclusion reached by the disciplinary authority, it is not the function of APAT to review the same and reach a different conclusion. So, it is well settled that if the findings recorded by the tribunals or of the disciplinary authorities, are found to be perverse, which are not based on the legal evidence, then the Administrative Tribunal or the court is empowered to treat such flaw as a legal flaw and quash the impugned action. In the instant case, the fact-finding authority has based its findings on legally permissible substantive evidence. And, therefore, such a finding on fact based on substantive evidence is not permissible to be interfered with.

25. In our opinion, the Administrative Tribunal cannot ignore the findings of the disciplinary authority or the tribunals. The truth or otherwise of the charge is a matter for the disciplinary authority to go into. The finding of the court or tribunal under judicial review which, in our opinion, cannot extend to the re-examination of all evidence to decide the correctness of the charge. In our view, the Administrative Tribunal cannot sit as a court of appeal over a decision based on finding of the enquiry authority in disciplinary proceedings. This Court, time and again, categorically stated that court should not interfere with the quantum of punishment where there is some relevant material which the disciplinary authority has accepted and which material has reasonable support, the conclusion reached by the Disciplinary Tribunal. It is not the function of the Administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority.

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made."

3. Now, a silhouette of the facts of the case.

The applicant at the material point of time was functioning as Electro Depositor and by an order dated 2nd Jan 1999 he was kept under suspension on a contemplated disciplinary proceedings. On 18th January, 1999 he was served with a charge sheet and the article of charge reads as under:-



"ARTICLE OF CHARGE I

The following official letters were sent to T.No.5858 Electro-Depositor Shri Birendra Singh Verma through OIC P&P for delivery to him as per procedure :-

- (a) This office memo No.21208/5858/Est/IND/LO DATED 26 Nov.98.
- (b) This Office Memo No.21208/5858/LO/PC-5/EST dated 27 Nov.98.
- (c) This office Memo No.21208/5858-EST-IND dated 30 Nov.98.

However, he refused to receive the above letters in presence of Sub RPF Chauhan and SCM Shri Jaswant Singh. As such these letters were received back undelivered through OIC P&P vide their letter No.24502/C-2/P&P dated 04 Dec.98.

Thereafter, the following letters were also sent to him through OIC P&P, since these were addressed to him :-

- (a) This office Memo No.21208/5858/EST-IND/4/LC dated 15 Dec.98.
- (b) This office letter No.23406/8/EST-IND/LC dated 18 Dec.98.

The above letters were also refused to be accepted by him in the presence of SCM Shri Jaswant Singh on 17 Dec.,98. As such these letters were also received back undelivered through OIC P&P vide their letter No.24502/C-8/P&P dated 17 Dec.98.

Therefore, a charge sheet under Rule 16 of CCS (CC&A) Rules,1965 vide this workshop Memo No.21208/5858/EST-IND/LC dated 24 Dec.98, was issued to him for disobeying the above administrative order. This charge sheet was sent to him through OIC P&P.

Shri Brijendra Singh Verma further disobeying the orders of his Group OIC refused to report to his Group DIC. When called through T.No.8490 Moulder Shri N. Mohan of R&I on 26.12.98. He refused to come and to receive the above charge sheet in presence of :-

- (i) Foreman Shri Devi Dayal.
- (ii) Sub RK Sharma.
- (iii) UDC Shri Santosh Singh.
- (iv) T.No.6490 Moulder Shri N. Mohan.

Thus, he willfully disobeyed the orders and refused to accept the official letters sent to him through OIC P&P. He acted subversive to discipline and created a bad example of indiscipline in the workshop while acting as unbecoming of a Government servant violating the provisions of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964. The above charge sheet now has been converted into a major penalty proceedings under Rule 14 of CCS(CC&A) Rules, 1965, due to repeated gravity of offence committed.

Thereafter, T.N.5858 E/Dep Shri Brijendra Singh Verma, on 19.12.98 was called in the office of Col Adm vide this office Memo

No.21208/5858/EST-IND dated 19 Dec.98. He refused to accept this letter through Offg. OIC P&P (Capt RN Sangeetha). Shri Brijendra Singh Verma also refused to speak on telephone when Capt RN Sangeetha (Offg. OIC P&P) tried to contact him on telephone. Shri Brijendra Singh Verma refused to accept the above letter in presence of SCM Shri Jaswant Singh.

T.No.5856 E/Dep Shri Brijendra Singh Verma was subsequently placed under suspension vide this workshop Order No.21208/EST-IND/LC dated 02 Jan.99. He refused to accept the above suspension order though he was on duty on 02 Jan.99. Consequently, the following three personnel were detailed to call him to Col.Adm's office on 02 Jan.99 :-

- (i) JC-747782 Sub RK Sharma. - Duty JCO.
- (ii) No.14573219 NK Prakash Kumar
- (iii) T.No.6942 Lab Shri Mahendra Singh.

All the above named personnel conveyed him the message at 1140 hrs. on 02 Jan.99, but Shri Brijendra Singh Verma defying the above order refused to come to the office of Col Adm. Thus, Brijendra Singh Verma, has repeatedly been disobeying and defying the orders of administrative authorities, and creating an indiscipline situation in the workshop not expected from a Government servant. Subsequently, on 04 Jan.99, the following official made a last ditch effort to deliver the suspension order by going to delinquent official personally :-

- (i) IC- 36985W Maj VK Sharma, OIC P&P
- (ii) Shri RK Chopra, CASO
- (iii) CM I Shri Devidayal.

Again, the delinquent official refused to accept the suspension order, as conveyed in writing by Maj.VK Sharma, OIC P&P vide his Memo No.24502/C-2/P&P dated 04 Jan.98.

Thus, T.No.5858 E/Dep Shri Brijendra Singh Verma willfully and repeatedly disobeyed legal orders and refused to accept official communication time and again, acting totally as unbecoming of Government servant. He also acted inconsistent to the relation of Government servant and master. His devotion to duty was considered susceptible in view of such impossible state created by him. His retention in the workshop is considered not in the public interest lest similar misconduct perpetuate in the workshop. Thus, he violated the provisions of Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964."

4. Inquiry was conducted and the Inquiry officer had furnished his report 01-01-2001 holding the applicant guilty of the above charges. This was communicated to the applicant in response to which the applicant had

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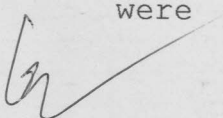
furnished his representation on 27th Jan 2001. The Disciplinary Authority had considered the entire case including the representation made by the applicant and agreeing with the findings of the Inquiry authority, he had through a comprehensive order, imposed on the applicant the penalty of *"Reduction in pay by one stage from his pay of Rs 5,200 p.m. to a lower stage at Rs 5,100/- I the time scale of pay of Rs 4,000 - 100 - 6000 for a period of one year with cumulative effect viz he will not earn the increment of pay during the period of reduction and that on expiry of the period of reduction it will have the effect of postponing the future increment of pay"*.

5. The applicant had preferred an appeal and the appellate authority had considered the same and to a specific ground that the applicant has been victimized on account of his union activities, the appellate authority has specifically held, *"The misconduct of the individual is not at all related to his union activities"*. The appellate authority, by an equally comprehensive order, upheld the decision of the Disciplinary authority. It is against the afore said orders of suspension, as well as the penalty/appellate orders that the applicant had moved this O.A.

6. After the exchange of pleadings, arguments were advanced and the entire records perused. Though the applicant had filed an application for calling for the documents, it was not felt necessary as the requisite documents have been meticulously annexed by the applicant himself in his OA and whatever was omitted have been annexed to the Counter filed by the respondents.

7. Written argument has also been filed on behalf of the applicant.

8. We have given our anxious consideration to the entire facts of the case, the oral and written arguments. In the written arguments, nothing new had been brought out and all that were spelt out therein were submission as contained in the OA but in




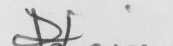
different words and all these were also canvassed during the course of oral arguments.

9. However, dexterity and eloquence of the learned counsel for the applicant alone would not suffice to have the OA allowed. What is to be seen is whether the applicant could make out a strong case. The misconduct is fairly accepted when the applicant goes to say that he had plucked only one flower and that his having come late had been witnessed by Brigadier Saini but his grievance and contention is that Brig. Saini was intolerant to the union activities of the applicant and as such, the entire exercise and punishment was a matter of vindictiveness.

10. We find that the inquiry report has been elaborate and comprehensive and did not omit any point of law or facts. The Disciplinary Authority has taken into account the inquiry report on the one side and the retort to it by the applicant on the other and has come to a just conclusion and imposed the penalty which he felt as appropriate. The appellate authority too has taken the pain of reflecting all the relevant grounds of appeal and met with each of them and upheld the decision of the disciplinary authority. Thus, the entire procedure has been systematically followed and there is absolutely no flaw in the decision making process.

11. Under the above circumstances, keeping in view the ratio of the Apex Court, we have no hesitation to hold that the applicant has miserably failed to make out any case which justifies our interference in the decision taken by the respondents and we accordingly dismiss the O.A. with no order as to costs.


J.M.


A.M.

Asthana/