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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.789/2012
Cuttack this the 20th of October, 2014

Pravanjan Mullick.....Applicant

-Versus-

Union of India & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓

R.C.MISRA
MEMBER(A)

A.K.PATNAIK
MEMBER(J)

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CORAM
HON'BLE SHRI A.K.P.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Pravanjan Mullick,
Aged about 36 years,
S/o-Late Madhabananda Mullick,
Ex-Senior Auditor,
Office of Accountant General (Formerly Civil Audit, presently
G & SSA), Odisha, Bhubaneswar,
Dist-Khurda.
Resident at-Kapil Plaza Apartment,
Flat No.A/101,
Sri Ram Nagar (Near State Bank),
P.S-Lingaraj,
Bhubaneswar-751002,
Dist-Khurda.

.....Applicant

By the Advocate(s)-M/s.Y.Mohanty
P.C.Biswal
S.K.Behura

-Versus-

1. The Accountant-General (General & Social Sector Audit),
Odisha, Bhubaneswar,
Dist-Khurda
2. The Senior Deputy Accountant General (Admn.),
Office of the Accountant General (General & Social Sector
Audit), Odisha,
Bhubaneswar,
Dist-Khurda
3. The Audit Officer-Cum-Inquiry Officer,
Office of Accountant General (General & Social Sector
Audit),
Odisha,
Bhubaneswar,
Dist-Khurda.

P
Patnaik

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4. The Union of India represented through
Controller & Auditor General of India,
New Delhi.

.....Respondents

By the Advocate(s)-Mr.S.Barik

ORDER

R.C. MISRA, MEMBER(A)

Applicant, while working as Senior Auditor in the Office of Accountant General(Civil Audit), Bhubaneswar, had been proceeded against under Rule-14 of CCS(CCA) Rules, 1965, vide Memorandum dated 02.09.2011(A/1). The Articles of Charge framed therein are as under.

Article-I

That the said Shri Mullick, while functioning as Sr.Auditor in the aforesaid office, remained on long unauthorized absence for 84 days from 31.5.2011 to 22.08.2011 without prior approval and submitted an application for Extra Ordinary Leave at the time of joining duty on 23.08.2011.

Article-II

That the said Shri Mullick did not promptly intimate to his official superior about his arrest in a Criminal Cse registered vide P.S.Case No.19 dated 14.02.2011 (G.R.No.456 of 2011) in Mahila Police Station, Bhubaneswar.

Article-III

That while working as Sr.Auditor in the aforesaid office, Shri Mullick was under suspension from 14.02.2011 to



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13.05.2011 in connection with his detention in a Criminal Case. Though, on revocation of suspension, the order to join duty immediately was delivered to him on 14.05.2011 through speed post, Shri Mullick didn't ^{join} immediately in utter disregard to the said order of the Competent Authority and he joined after a long lapse of 15 days, i.e., on 30.05.2011 F.N. and this period is deemed as unauthorized absence.

Article-IV

That the said Shri Mullick engaged himself in unofficial ^{cricketing} activities at home and abroad ^{without} obtaining permission of the authority with an intention of earning. While doing so he accepted the offer of appointment as coach of Ferguslie Cricket Club, U.K. without approval of the Competent Authority. This fact has been admitted in his petition in the Court of Hon'ble S.D.J.M., Bhubaneswar, when he sought leave of the court to move to United Kingdom and the said petition was allowed by the Hon'ble S.D.J.M. on the ground that Shri Mullick is earning his livelihood by coaching cricket. For this purpose, Shri Mullick did not seek proper permission from his appropriate Official Authority but left headquarters unauthorizedly. The fact of his absence from headquarters was disclosed when this office special messenger visited his house for serving a notice on him on 13.05.2011.

2. In response to the above Memorandum, applicant submitted his defence statement vide A/2 dated 12.09.2011 with a request to drop the proceedings. However, the

Recd.

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Disciplinary Authority, as it appears from the record, ordered an enquiry into the matter, whereupon, enquiry was conducted and the Inquiry Officer submitted ~~its~~ ^{his} report holding the charges proved. Applicant, thereafter was provided with a copy of the report of the I.O. requiring him to submit representation, if any, and the applicant, in response to this, so submitted vide A/5 dated 16.05.2012. The Disciplinary Authority, in consideration of the same imposed on the applicant punishment of dismissal from service with immediate effect, vide A/6 dated 11.6.2012. Applicant preferred an appeal against the said punishment vide A/7 dated 18.6.2012. A/8 dated 18.6.2012 is a representation made by the wife of the applicant to the Accountant General, Orissa, with a request to pardon her husband/applicant. The Appellate Authority, vide order dated 26.7.2012(A/9) modified and/or reduced the punishment of dismissal from service to that of compulsory retirement.

3. This is the background against which applicant has moved this Tribunal seeking the following relief.

" ...to admit the Original Application

...to ask the Respondents to show cause as to why the Applicant shall not be allowed to continue as Senior Auditor in his services under the Respondents, and as to why the orders under Annexure-

A/6 & Annexure-A/9 shall not be quashed.

And, if they fail to show cause, or show insufficient or false cause, after hearing the Applicant, the Original Application be allowed and the orders under Annexure-A/6 & Annexure-A/9 be quashed.

And pass such order/orders as the circumstances justify".

4. In support of his contentions, applicant has at the outset, urged that the findings of the Disciplinary Authority are unwarranted by the materials & evidences on record. According to applicant, the penalty imposed is too severe, extreme and harsh.

5. It is the case of the applicant that the Disciplinary Authority as well as the Appellate Authority have committed gross errors in law in imposing major penalty without taking into consideration the materials on record in its proper prospective, so also his performance and public image. It is the further case of the applicant that while passing orders at A/9, the Appellate Authority should have taken into consideration his present age which, debars him from entering into Govt. Services and in view of his qualification, he will not be entitled for a good job in private Sector^l.

6. Applicant has brought to the notice of the Tribunal that the orders awarding major penalties under A/6 & A/9 are illegal, unjust, contrary to law, arbitrary, whimsical & harsh in

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nature, causing extreme hardship to the Right to life & livelihood.

7. Applicant has assailed the order of the Appellate Authority at A/9 as cryptic one. According to him, the Appellate Authority has miserably failed to take into consideration the right to life & livelihood in its proper prospective. It has been contended that the Appellate Authority having found the order of dismissal too severe leading to cause extreme financial hardship, could have reduced it to minor penalty instead of modifying the punishment to compulsory retirement. According to applicant, the nature of offence not being heinous or grave, imposition of major penalty is uncalled for.

8. It is the further case of the applicant that the disciplinary proceedings has been conducted in a very perfunctory manner. No sufficient opportunity was afforded to the applicant to examine the S.Ws. nor to peruse the documents nor was the applicant given a chance to take assistance of Defence Assistant and as such, there is violation of the principles of natural justice. According to applicant, the Appellate Authority has, therefore, failed to appreciate this fact in the light of the relevant rules and instructions in the matter of disciplinary proceedings.

9. Applicant has submitted that when the Constitution guarantees right to live with human dignity, the action of the

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Respondents throwing the applicant out of employment at this age and situation, without any heinous or grave allegation, amounts to denial of livelihood and therefore, orders under A/6 & A/9 are violative of Article- 21 of the Constitution, since Right to Life includes Right to livelihood.

10. Applicant has urged that when the State is providing reservations & different liberal legislations for the socio-economic development including the persons involved with sports & games in order to safe-guard their rights & interests, applicant having been employed under sports-quota, should not have been thrown out from his services, which amounts to exploitation. According to him, his achievements in Cricket, which are laurels to the organization, ought to have been taken into consideration; especially when his recruitment was under Sports quota.

11. On the above grounds, applicant has prayed that the orders at A/6 and A/9 should be quashed with the grant of consequential benefits.

12. Per contra, Respondents have filed a detailed counter reply. They have submitted that the applicant in his representation against the Inquiry Report has never brought to the notice of the authorities any procedural defect/ lacuna in conducting Inquiry Proceedings. He had not even objected to any of the findings of the Inquiry Officer. Moreover, he

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attributed his misconducts to the unwarranted situation in his domestic front. However, it has been submitted that the applicant had accepted the coaching assignment of a foreign cricket club without permission of his employer and took liberty of the Hon'ble Trial Court to travel abroad by making misleading statement that he was earning his livelihood by coaching cricket. Further, he did not seek "No Objection Certificate" from the authority while obtaining visa for travelling to U.K., which, according to Respondents, ^{means that} ~~means that~~ applicant had concealed the fact of his employment in a Central Government Office.

13. It is the case of the Respondents that the Disciplinary Authority could not be convinced with the representation of the applicant that he had acted bona fide and since the charges against him, were grave and serious, applicant was dismissed from Govt. service in terms of Rule-11 (ix) of CCS (CCA) Rules.

14. Besides his unauthorized absence in the office, applicant had been also charged for leaving headquarters or for that matter, leaving the country without prior approval of his employer. According to Respondents, applicant had accepted an assignment of coach of an overseas club for pecuniary gain without intimating the office. It is the case of the Respondents that applicant's false averment in the Court of S.D.J.M., Bhubaneswar that he was earning his livelihood by coaching



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cricket had been viewed seriously. However, applicant was required to furnish his employer's no objection at the time of obtaining visa for flying abroad, but he never sought consent of his employer for leaving the country and concealed the fact that he was an employee under the Government of India.

15. Respondents have submitted that the appeal filed by the applicant was duly considered by the Appellate Authority. In his appeal, the applicant had neither pointed out any procedural defect during the inquiry proceedings nor had he challenged the inquiry report. He only prayed for remission of penalty on sympathetic ground.

16. Since the penalty of dismissal would not fetch any terminal benefit to the applicant, the Appellate Authority reduced the extreme penalty of "Dismissal" to "Compulsory Retirement", so that the applicant would be entitled for all terminal benefits, i.e. monthly pension, gratuity, etc. Such action of Respondent No.1 was intended to mitigate the future financial hardships of the applicant. Therefore, according to Respondents, punishment as imposed is commensurate with the gravity of offence committed.

17. Be that as it may, the main thrust of the counter is that there being no procedural irregularities nor violation of the principles of natural justice during the course of the disciplinary proceedings, the O.A. deserves no consideration.

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18. We have heard the learned counsel for both the sides and perused the pleadings. We have also gone through the written notes of submission filed by the learned counsel for the parties. Before considering the matter in its proper perspective, it would be expedient to quote hereunder the representation made by the applicant in response to report of the I.O.

"To

The Senior Deputy Accountant General
(Admn)And Disciplinary Authority,
Odisha,
Bhubaneswar

Ref: Letter No. Admn.
(GSSA)/Vig/D.P-1/2011-12/383 dated-
1.05.12

Sub: Representation of the charged official Pravanjan Mullick on the Inquiry Report dated 27.4.12 regarding.

Hon'ble Sir,

I faced the Inquiry under Rule-14 of the Central Civil Services (Classification, Control & Appeal) Rules 1965 under 4 charges of remaining unauthorized absence for 84 days from 31.05.2011 to 22.08.2011 without prior approval; non intimation of arrest in a criminal case; Non joining in duty on revocation of suspension order for 15 days and involvement in unofficial cricketing activities at home and abroad without intimation and prior approval of the authority with intention to earn.

The charged official submitted his written statement of defence, Participated in the proceeding and also submitted his written submission at the conclusion of the inquiry.



It is humbly that my world took a U turn with my arrest on 14.02.2011 in a matrimonial matter on the allegation of my wife which shattered my life and left me in a state of shock and disbelief for which I could not reconcile myself and my life and the events that occurred there after were beyond my control and good reasoning for some period. Due to my arrest and judicial custody I was mentally not in a position to face the society around me and was in a state of withdrawal syndrome for such stigma.

As regards the charge under article (1), as I humbly that disturb mind and for sudden deterioration in health condition of my mother I could not personally intimate the matter of remaining on leave as I had not anticipated the period required for the treatment of my mother and reported the matter by sending a letter in a ordinary post to my authority in haste. As such any delinquency committed by me may be condoned and I undertake not to commit such type of delinquency in future.

As regards the charge under article (ii) I humbly submit that on 14.02.11 suddenly the Mahila Police, arrest, me on the report of my wife and I was sent to judicial custody on production before the court of SDJM, Bhubaneswar which was reported in the print media and electronic media and on my release on 17.02.11 I got the order of suspension of my authority as such I was on impression that my authority was aware of the facts of arrest. AS I was placed under suspension for my arrest which add further to my misery and could not though that I had to intimate my authority any more. As such the delinquency committed in the score may be condoned considering my plight and I assure my authority not to repeat such matter in future.

As regards the charge under article (iii), I humbly submit that due to deterioration of health condition of my mother and my anxiety to get her well soon I could not join immediately for which considering my situation at that time and the fact that I am the only male member of my family to take all the burdens and in consideration of my bona fide intention my authority may condone the delinquency on such charge.

As regards the charge under article (iv), I humbly submit that since I was under suspension and was not in a good mental state for my arrest and suspension thereafter and the health condition of my mother, I accepted the offer of UK cricket club to change my mental state and have the opportunity to consult specialist doctors of UK for treatment of my mother in the garb of negotiation with the cricket club at UK. However, I did not accept their offer to work as a coach and did not earn from that tour. The plea taken by my advocate for seeking permission from the court of SDJM Bhubaneswar was not of mine but by the advocate only to obtain permission.

In the above premises I fervently pray before my disciplinary authority to sympathetically look into the facts and circumstances which led to the delinquencies committed if any by me and condone the same and exonerate me from the charges. I undertake before my authority not to commit any delinquency in future and would be careful not to commit such mistake any more and for which act of kindness of my authority. I would remain ever grateful.

Pravanjan Mullick, Sr. Auditor"



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19. A careful perusal of the above quoted reply of the applicant to the report of the I.O. brings to fore that at no point of time ever the applicant had made an objection regarding infringement of any rules or instructions or even violation of the principles of natural justice in the matter of conduct of the disciplinary proceedings. Not even a single word ~~was~~ ^{was} uttered by the applicant that the charges leveled are vague, unspecific and baseless or the decision arrived at is perverse and based on no evidence.. It is also not the case of the applicant that he has been deprived of any opportunity or any documentary evidence to effectively put up his defence. Idea that the aforesaid representation ~~exchanges~~ ^{conveys} is that the applicant has accepted his guilt without remonstration and at the same time, he has prayed to the Disciplinary Authorities to condone and exonerate him of the charges with an undertaking that he would not commit any such delinquency in future. In the above backdrop, the Disciplinary Authority having imposed punishment of dismissal from service, applicant had preferred an appeal before the Appellate Authority, which is extracted hereunder.

"To
The Accountant General,
Bhubaneswar, Odisha

Sub: Appeal against the order of
punishment of dismissal passed
on dated 11.6.2012.

Respected Sir,





With due humility, favour and folded hands, I beg to put forth before your good self the following few lines for your kind benign consideration and necessary favourable action.

That at the outset, I beg to state that I was not aware of the relevant rules and more importantly was completely in oblivion, regarding the failure to comply with the same would tantamount to such action which will leave me begging on the stress.

That a Disciplinary Proceeding was initiated against me vide Memo No.Admn (CA)/vig/DP-1/2011-12/1174 dated 02.09.11 under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules-1965, on charges of unauthorized absence of 84 days, not intimating my superior about my arrest in a criminal case, failure to join duty after revocation of suspension for a period of 15 days which was deemed as unauthorized absence and engaging myself in unofficial cricketing activities at home and abroad without obtaining permission of the authority.

That I humbly beg to state that the charge-sheet came as a complete shock to me in the few months prior to the issuance of charge-sheet, I have going through deep mental trauma and torture on my domestic front and was subjected to embarrassment on various places at public. Be it as it may I on 12.09.11 submitted a written statement of defence to the charges to the Sr. Deputy Accountant General, (Admn. Odisha, Bhubaneswar) putting forth with my limited knowledge, the various grounds of the reasons for the alleged acts of misconduct and also prayed to consider my case sympathetically and to drop the charges.



That it is humbly submitted that a enquiry was conducted on various dates after submission of my written defence and witnesses were examined and I also gave my deposition and categorically stated that I was not aware of the complexities and more importantly as it was my 1st mistake, I may be forgiven as in the months prior to the issuance to the charge sheet I was subjected to deep mental trauma, agony and torture and also the deteriorating condition of my ailing mother took a toll on my mental condition.

That I have also submitted a reply to the 2nd Show Cause notice reiterating the facts stated in the written note of defence which I had submitted and therein also prayed for exonerating me from the charges.

That on 11.6.2012, Sr. Deputy Accountant General in a detailed manner inflicted the order of Punishment of dismissal from service.

That I beg to humbly pray before your Honour that the alleged acts that have been done by me was not intentional or deliberate. The alleged acts were done in good faith as I did not even know that non-adherence to these would be detrimental to my continuance in the august office or else I would not have done the same and I also assure you that in future I will not do any such act which will jeopardize my service career.

That it is humbly prayed before your Good Self at the cost of repetition that was in deep mental stress, strain and agony prior to the issuance of the charge-sheet on all fronts of my life. My public image was on street due my arrest in the criminal case owing to huge continuance of media coverage and to top it up the deteriorating



condition of my ailing mother and I have not done the alleged acts knowingly but in a negligent manner as I was not aware of the complexities involved due to non adherence of the same for which, with folded hands I beg to seek your forgiveness, needless to say the punishment has put me in the ~~streets~~ stress and I have nowhere to go to seek your benign indulgence in this matter for which I will remain ever grateful to you till my last breath.

PRAYER

Under the facts and circumstances enumerated above, I humbly pray and beg your Good Self to be kind and benign enough to pardon me for my acts and forgive me for such acts and I also assure you that such acts will be never be repeated in future and till the end of my service career, I will always remain a honest, dutiful, truthful and rule abiding employee. I further also assure you that I will not violate any Rule in future and,

For this act of kindness the appellant as on duty bound shall ever pray.

Thanking you

Pravanjan Mullick"

Dt.18.6.12

20. Perusal of the appeal as quoted above undoubtedly makes it clear that there has not been an iota of allegation made by the applicant regarding any of the procedures being violated by the Disciplinary Authority while imposing punishment. What more the appeal reflects is that the applicant has expressed his plight before the authorities and prayed to pardon him with a commitment that any such lapse would not recur in future.



21. It is the settled principle of law the Tribunal in judicial scrutiny cannot outstrip the bounds which otherwise falls *l* within the domain of the administrative authorities. In so far as disciplinary proceedings are concerned, the scope of interference by the Tribunal is ~~wide~~ ^{defined} *l*. In such matters the Tribunal can interfere only where the charges are vague, unspecific and based on no evidence or the charges have been framed by an authority who is not competent to do so. Apart from the above, the Tribunal can interfere if the proceedings ~~is~~ ^{are} *l* infected with violation of the principles of natural justice or the decision arrived at is perverse and based on no evidence. There is another area where there is a ~~ray of hope~~ ^{scope} *l* for the Tribunal to interfere is if the punishment imposed is shockingly disproportionate.

22. On examination of the case in hand, we do not find any such complaints or grievances to have been made by the applicant. Whatever averments have been made by the applicant in the O.A. regarding violation of the principles of natural justice, the orders of the Disciplinary Authority as well as the Appellate Authority are bald and sketchy and that the applicant was not supplied with relevant documents to defend his case or even allowed to engage his defence assistant during the enquiry are all based on conjecture and surmises. Above all, this is a case which appears to have been grounded ^l ~~upon~~ more on admission than on evidence. However, the punishment of

dismissal from service, on being appealed of, has been modified and/or reduced to that of compulsory retirement by the Appellate Authority from the date the punishment of dismissal came into effect.

23. We have gone through the decision of the Hon'ble Supreme Court in Civil Appeal No.2106 of 2012 (arising out of SLP © No.15381 of 2006) decided on 15.02.2012 (Krushnakant B.Parmar vs. Union of India & Anr.) relied on by the applicant in support of his case. Appellant therein was working as Security Assistant, who was proceeded ^{against} departmentally as he unauthorizedly absented himself from duty at different spells and was ultimately, imposed punishment of dismissal from service. In that matter, the Hon'ble Supreme Court set aside the order of dismissal passed by the disciplinary authority, affirmed by the appellate authority; Central Administrative Tribunal and the High Court, inter alia, on the ground that the disciplinary authority therein had failed to provide that the absence from duty was willful, no such finding had been given by the Inquiry Officer or the Appellate Authority. Apart from the above, the I.O., based on irrelevant fact and surmises, had held the appellant guilty.

24. Those are not the circumstances herein. Besides the imputation of misconduct due to unauthorized absence, the applicant has been found guilty of misconduct of suppression of material information from the competent authority in so far as

charges under Article- II and IV are concerned. Therefore, by no stretch of imagination the facts of the present case could be said similar to ~~that of~~ the facts before the Hon'ble Supreme Court in Krushnakant B.Parmar(supra) case. Therefore, reliance placed by the applicant on that decision is of no help.

23. As regards the decision of the Hon'ble Supreme Court in Civil Appeal Nos.6142/2013 (arising out of SLP Petition(Civil) No.10025 of 2012) (Lucknow K.Gramin Bank (Now Allahabad, U.P.Gramin Bank) & Anr. Vs. Rajendra Singh) decided on 29.07.2013, it is to be noted that the delinquents having admitted their guilt and tendered unconditional apology with undertakings not to commit such mistake in future, the matter was left open to the authorities to consider in response to representations to be made in that behalf. In the instant case, the Disciplinary Authority as well as the Appellate Authority having taken care of the similar situation have passed orders respectively. Judged from this angle, the order of the Appellate Authority modifying and/or reducing the punishment of dismissal to that of compulsory retirement, does not leave any room for judicial scrutiny.

In the result, the O.A. is dismissed. No costs.


(R.C.MISRA)
MEMBER(A)

BKS


(A.K.PATNAIK)
MEMBER(J)