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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 10.5.2000

O.A. No. 37/1998

Girwar Singh son of Shri Man Singhji aged about 47 years resident of near Railway Station, Banar, District Jodhpur (Ex-Mazdoor, 19 FAD, C/o. 56 APO).

... Applicant.

versus

1. Union of India through the Secretary to the Government of India, Ministry of Defence, New Delhi.
2. Directorate General of Ordnance Services, Army Headquarters, DHQ po, New Delhi.
3. Commandant, 19 FAD, C/o. 56 APO.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. Ram Narain, Brief Holder for Mr. P.P. Choudhary, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This O.A. is filed by the applicant being aggrieved by the order of removal vide Annexure A/1 dated 20.11.93 passed by the disciplinary authority and confirmed vide Annexure A/2 dated 13.4.97 by the appellate authority. The learned counsel appearing for the applicant contended that the impugned orders are illegal and contrary to the evidence on record. He submitted that the appellate authority has not considered the appeal in accordance with the Rule 27 of CCS (CCA) Rules, 1965 (for short, the CCA Rules), as directed by this

Tribunal vide order dated 13.5.96 in OA No. 49/1995. He further contended that the findings of the authorities are based on no evidence. The appellate authority also had passed a non-speaking order without following the Rule 27 of the CCA Rules. He relied upon the judgement of Hon'ble the Supreme Court reported in (1998) 6 SCC 651. He also submitted that the punishment is disproportionate to the charges levelled against the applicant and such punishment is liable to be set aside in view of the law laid down by Hon'ble the Supreme Court in 1995 (31) ATC 475. He has, therefore, prayed for setting aside the impugned orders at Annexures A/1 and A/2.

2. On the other hand, the learned counsel appearing for the respondents submitted that the applicant belongs to a civilian in the Defence Establishment and the Rule 27 of the CCA Rules does not apply to him by Article 311 (2) of the Constitution of India, as held by Hon'ble the Supreme Court in AIR 1989 SC 662. Even otherwise, the appellate authority has considered all the aspects while passing the order. Moreover, in view of the judgement in 1995 (5) SLR 181, confirming the order of the disciplinary authority does not require detailed justification. Therefore, neither any illegality nor irregularity has been committed by the respondents in passing the impugned orders. He has further submitted that as directed by order dated 13.5.96 passed by this Tribunal in O.A. No. 49/95, the appellate authority considered the case taking into account all the three ingredients contained in Rule 27 of the CCA Rules. He also stated that this is not a case in which finding has been given without any evidence, and whatever material has been relied upon the applicant has been furnished, and as stated by the appellate authority, the applicant also was given an opportunity to peruse the documents. He further submitted that whatever the applicant has submitted before the appellate authority, the same have been considered by the appellate authority and ultimately, the appellate authority dismissed the appeal. He, therefore, submits that this is not a fit case in which any interference is required by the Tribunal.

3. In order to appreciate the rival contentions of both the parties, it would be appropriate to note brief facts of the case. Applicant, Girwar Singh, was a mazdoor. A departmental proceeding was started against him on 2 charges - (i) The applicant while functioning as Mazdoor on 23.8.83 committed an offence involving gross misconduct by refusing to show his identity card, on being asked by the orderly of the day, for routine check. Applicant also made an attempt to use Criminal force against the orderly NCO and thereafter, entered the

Depot violently at mustering hours on 26.9.83. (ii) The second charge was that on 23.9.83 the applicant while functioning in the aforesaid office, violently entered the Depot and started misbehaving by shouting undesirable words. Later on at about 0840 hrs on 26.9.83 when the routine mustering report was given by the Senior JCO in the presence of Senior Officer, the applicant again got up and started speaking in rude and unparliamentary language and when the senior officer Major N.K. Singh asked him to keep quite and to put grievances if any, to him in office, he made an obscene gesture by showing obscene signs by his fingers and uttered obscene words. This act of the applicant exhibited a conduct of unbecoming of a Government servant in violation of Rule 3 of the CCS (Conduct) Rules, 1964. (iii) The third charge was that the applicant despite repeated warning of misconduct/misbehaviour was not showing any improvement and he had no concern with the disciplinary aspect, which should be adhered to, by a Government servant in terms of CCS (Conduct) Rules. With reference to these charges, 6 witnesses were examined and on the basis of the enquiry and the evidence on record, the disciplinary authority imposed a punishment of removal from service on the applicant vide order Annexure A/1 dated 20.11.93 and the said order was confirmed by the appellate authority vide Annexure A/2 dated 13.4.97. Hence, the applicant has approached this Tribunal with the present O.A.

4. At the outset, we must make clear that this is the 5th round of litigation. Earlier, number of times, the matter came to this Tribunal and was remanded back from time to time. The last order of the Tribunal is dated 13.5.96 passed in O.A. No. 49/1995. From the reading of the said order, we find that the order of the appellate authority was challenged mainly on the ground that the three ingredients contained in Rule 27 of the CCA Rules have not been followed while passing the said order, and there was no order regarding payment of subsistence allowance for the intervening periods from 9th April, 1985 onwards. This Tribunal vide order dated 13.5.96 disposed of the O.A. with the direction to the appellate authority to dispose of the appeal afresh keeping in view the three ingredients contained in Rule 27 of the CCA Rules. Thereafter, the appellate authority had passed the present impugned order vide Annexure A/2.

5. From going through the appellate order, we find that the appellate authority considered the entire issue keeping in view the three ingredients of Rule 27 of the CCA Rules. All the points raised



by the applicant before the appellate authority were considered in paragraph 15(a) to 15(g) of the appellate order Annexure A/2 and ultimately, in paragraph 19, the appellate authority considered that the punishment awarded to the applicant is commensurate with the offence committed by him. This Tribunal is not constituted as a second appellate forum to the order of the appellate authority.

5. From the reading of the order, we find that all the points raised by the applicant in this OA were the same which were raised before the appellate authority. One of the contentions now before us is that certain documents were not given to the applicant. The said point also was raised before the appellate authority and the appellate authority stated that the entire case was based on testimony of the witnesses and not on documentary evidence. The other documents listed at Annexure III to the charge-sheet were shown to the applicant during the enquiry. Proceedings and copies of other documents listed at Annexure III to the charge-sheet were already available with him. At any rate, the appellate authority stated that the applicant did not make any requisition to the disciplinary authority for furnishing the documents. If the applicant wanted certain documents, it should be on a specific request in writing, that the applicant himself has not done.

6. The other contentions that were raised before us by the applicant is that he was denied the opportunity to take assistance of a Government servant of his choice. This aspect has been dealt with by the appellate authority in paragraph 15(d) of the appellate order at Annexure A/2. The appellate authority has stated that the applicant was given adequate opportunity to nominate defence assistant of his choice. However, he has defended his own case ~~and in case~~ the applicant wanted to take assistance of a Government servant of his own choice and if it was refused, he should have approached the appellate authority for redressal in terms of Government of India's Instruction No.16 under Rule 14 of the CCA Rules, and that he has not done. Evidence on record shows that the applicant willingly presented his case and he did not protest against non-summoning of defence assistant of his choice.

7. Regarding the next allegation that the applicant abused the orderly NCO Hav. Madan Lal, and used unparliamentary language and criminal force against him, it was a matter which entirely based on evidence on record. Even before us, copies of the evidence recorded was made available. Evidence is recorded in question and answer

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method. In all 6 witnesses have been examined. On the basis of this oral evidence, the disciplinary authority held that the charges have been proved and the same has been confirmed by the appellate authority. In these circumstances, we do not find any error apparent on the face of the record which calls for any interference by us.

9. In view of the findings recorded by the appellate authority, we find that the law laid down by Hon'ble the Supreme Court in (1998) 6 SCC 651 is not violated by the authority. In that case, Hon'ble the Supreme Court has held that neither the copies of documents indicated to be relied upon in charge-sheet were supplied nor delinquent was allowed to inspect the record. In the instant case, it is not in dispute that the applicant was permitted to inspect the documents. Even otherwise, the entire matter is based on oral evidences only.

10. Regarding quantum of punishment, the appellate authority has specifically stated that the applicant has been punished by imposing the penalty of 'removal from service' on the basis of his past bad record as well as on the oral evidences. Therefore, the quantum of punishment awarded is commensurate with the offence committed by him. We cannot substitute our ~~decision~~ decision to the decision of disciplinary authority and the appellate authority. Moreover, a person belonging to the Defence Establishment has to maintain the discipline so that the entire Establishment function effectively. In these circumstances, the orders of the disciplinary authority and the appellate authority awarding the penalty of 'removal from service' upon the applicant is just and proper. We, therefore, do not find any infirmities in the impugned orders at Annexures A/1 and A/2. At any rate, as pointed out by the learned counsel for the respondents that as per the judgement of Hon'ble the Supreme Court in AIR 1989 SC 662, the CCS (CCA) Rules and the protection given under Article 311 (2) also are not available to a civilian in the Defence Establishment. However, we find that the CCA Rules have been complied with in this case and the applicant has been given sufficient opportunities to defend his case. The impugned order, therefore, do not call for any interference by us. The orders of the disciplinary authority and the appellate authority are speaking orders and sufficient reasons have been given in those orders.

11. After going through both the orders of disciplinary authority and the appellate authority, we find that those orders do not call for any interference by us. For the reasons stated above, we find



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that there is no illegality or any irregularity in the orders at Annexures A/1 and A/2. In these circumstances, we have no other option but to pass the order as under:-

"Application is dismissed. But in the circumstances, no order as to costs."

Gopal Singh

(GOPAL SINGH)
Adm. Member

B.S. RAIKOTE

(B.S. RAIKOTE)
Vice Chairman

cvr.