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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.251/2007

Date of decision: 16th March, 2011.

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar, Administrative Member.

Guman Singh S/o Shri Bhanwar Singh, aged 49 years, Ex-Leading Fireman 'B', Heavy Water Plant, Kota, Anushakti, District Chittorgarh, R/o C/o R.C. Srivastva, Block 20/120, Heavy Water Plant Colony, Rawatbhata, District Chittorgarh.

: Applicant.

Rep. By: Mr. Vijay Mehta, counsel for applicant.

Versus

1. Union of India, through the Secretary, Department of Atomic Energy, Chhtrapati Maharaja Shivaji Marg, Mumbai.
2. General Manager, Heavy Water Plant (Kota), Anushakti, District Chittorgarh.
3. Chief Executive, Heavy Water Board, 4th Floor, V.S. Bhawan, Anushakti Nagar, Mumbai.

: Respondents.

Rep. By: Mr. M. S. Godara, proxy counsel for
 Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Mr. Sudhir Kumar, Administrative Member.

This application has been filed by the applicant aggrieved by the order of imposition of penalty of dismissal from service, imposed upon him through Annexure-A/1 dated 27.09.2006, which flowed from the Annexure-A/2 dated 01.06.2006, the communication through which the report of the Inquiry Officer dated 29.04.2006, submitted on completion of the departmental enquiry conducted against him, had held him to have contravened

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the provisions of Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct), the provisions of Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct), Rules, 1964. The applicant has prayed for these orders to be quashed and set aside, and further directions upon the respondents to reinstate him in service, with full back wages and consequential benefits, and any other reliefs, apart from costs, to be awarded to him.

2. The applicant was working on the post of Leading Fireman at Heavy Water Plant, Kota, Anushakti Nagar, District Chittorgarh. While serving as such, a memo of charge dated 10.02.2005 under Rule 14 of CCS (CCA) Rules, 1965, was served upon him. In this memo, it had been stated that he had unauthorizedly remained absent from duty from 11.07.2004 to 10.08.2004 by misrepresenting the grounds of his absence by furnishing false reasons, and that he had suppressed the vital information about his arrest, and Police/judicial custody in connection with a criminal case, and that thereby, the work of fireman service section of Heavy Water Plant had been adversely affected, besides the image of the Department having been tarnished. The applicant submitted a reply to these charges, but a Departmental enquiry was ordered to be held. The Inquiry Officer then conducted the enquiry and submitted his report dated 29.04.2006, which was forwarded to the applicant through the impugned letter dated 01.06.2006, Annexure-A/2, asking him to submit a written representation or submission. The applicant submitted his reply to the Chief Executive, Heavy Water Board, Anushakti Nagar, Mumbai on 11.11.2006, Annexure-A/4, and also filed an appeal under Rule 26



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of CCS (CCA) Rules, 1965, on the same date. However, the Appellate Authority, the Chief Executive of the Heavy Water Plant Board, passed an order dated 22.08.2007, Annexure-A/5, affirming the order of the General Manager, Heavy Water Plant and Disciplinary Authority, imposing upon the applicant the penalty of dismissal from service with immediate effect.

3. The applicant has submitted through this O.A. that the enquiry report is neither well reasoned, nor has dealt with the defence submitted by the applicant, and is based on extraneous material, and is perverse. He has submitted that though it has been held that he was in prison and was granted bail on 30.07.2004, and that he informed the official on 01.08.2004, it has been incorrectly held that he is guilty of suppressing vital information about his arrest, which relate to his unauthorized absence from 11.07.2004 onwards. His submission is that he could have given information about his arrest only after his release on bail, which he promptly did. But still the Inquiry Officer has held that the charge of not informing the Department about his arrest is proved.

4. He further submitted that after the enquiry had been initiated, during the course of the enquiry, he had submitted an application on 04.07.2005 for supply of five additional documents for his defence, which would have thrown light as to whether the work of fire service section can be adversely affected by leave or absence of a single employee, but that these documents relating to the leave and absence of fire service section were not allowed to



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be produced. The applicant further submitted that while passing the impugned order of the applicant's dismissal on 27.09.2006 as his su. Disciplinary Authority, while agreeing with the enquiry report, the respondent No.2 had relied upon that undisclosed available record. The applicant further submitted that the respondent no.3 had dismissed his appeal without granting him a personal hearing, and without considering and dealing with the grounds submitted in his memo of appeal.

5. It was further submitted by the applicant that even though he had mentioned his Rawatbhata address in the memo of appeal, yet the final order of the appellate authority dated 22.08.2006, Annexure-5, was sent to him by registered post addressed to his native place, where he does not live, and because of which it was eventually delivered to him only on 13.09.2007. The applicant had in the meanwhile already filed his earlier O.A No.21/2007, in which a direction was issued by this Tribunal on 17.09.2007 to the respondent no.3 to decide the appeal filed by the applicant within a period of three months. But, since, in the meanwhile, the appeal ~~had already~~ ^{been} decided before disposal of OA No.21/2007 by this Tribunal on 17.09.2007, the applicant approached this Tribunal again in the present O.A.

6. The applicant submitted that the respondents are biased against him, since when on an earlier occasion he was denied promotion to the post of Leading Fireman, he had filed an O.A. before this Tribunal in which he had succeeded, and even though the respondents were not inclined to consider the case of the

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applicant for promotion, he had to be called for interview because of the directions of this Tribunal.

7. The applicant assailed the impugned orders Annexure-A/1 and Annexure-A/5 on the ground that the Inquiry Officer had wrongly rejected his application for supply of documents, and that it was not in the domain of the Inquiry Officer to decide whether the documents sought for were relevant, or not, and, therefore, he was prevented from presenting a proper defence to meet the charges. He submitted that he was also deprived from being able to prove that the work in fireman service section could not have been adversely affected due to his absence alone, and that the respondents have failed to consider this vital aspect. He denied that when he was in police/judicial custody, he had any opportunity to inform the respondents about his arrest, and that when he was released on 30.07.2004, he had promptly informed the respondents regarding his arrest, and the finding arrived at against him on this aspect is, therefore, perverse.

8. The applicant submitted that he had performed his duties in the morning shift on 11.07.2004, and, after performing his duties, he had decided to avail casual leave on 12.07.2004 due to most urgent work, and, therefore, he submitted an application for leave. After returning home, he came to know about the illness of his mother, and he prepared another application for longer period of leave on 11.07.2004 itself, mentioning the ground of his mother's illness, and there was no misrepresentation regarding the ground of his proposed absence. The applicant submitted that since he



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was arrested soon thereafter, on 13.07.2004, the reason of arrest could not have been mentioned by him in the application of leave prepared on 11.07.2004, and, therefore, the finding of the Inquiry Officer, as confirmed by the Disciplinary Authority, is thus not borne out from the record. He alleged that both respondents no.2 & 3 have fallen in error in agreeing with the Inquiry Report, and that the impugned orders have ^{been} passed in a mechanical manner, and in utter violation of Rules and principles of natural justice, and that the actions of the respondents are arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India, since the applicant has been punished without any reasonable grounds. He further submitted that since the appeal order Annexure-A/5 dated 22.08.2007 had been passed by the respondent no.3 without affording a personal hearing to him, that order deserves to be quashed on this ground alone, as his appeal has not been considered in accordance with Rule 27 of the CCS (CCA) Rules. He submitted that more than 24 years of his honest and efficient service, and the bias of the respondents on the basis of his previous O.A. before this Tribunal, were sufficient grounds for the O.A. to be allowed.

9. In the reply written statement filed on 29.11.2007, the respondents submitted that judicial review can only be of the process of departmental enquiry, and not of the decision arrived at by the departmental authorities, as that does not fall in the domain of judicial review. They submitted that neither any infirmity, irregularity nor lacuna has been committed by the respondents,



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and nor has it been pointed out by the applicant, and, therefore, this Tribunal may not like to re-appreciate the evidence for a review of the decision.

10. On the factual aspects of the matter, the respondents pointed out that there was no bias against the applicant, and that he had been promoted to the post of Leading Fireman 'B' on 01.05.2001. The news regarding the applicant's arrest by the police on 13.07.2004 was published in the newspapers on 14.07.2004, and he remained in custody till he was released on bail granted by the Hon'ble Rajasthan High Court, Jaipur Bench. They pointed out that the applicant had submitted leave application for only one day's Casual Leave on 12.07.2004 before he left the respondent department, and he, thereafter, did not report for duty on 13.07.2004, and on the same day he was arrested. However, for the purpose of keeping the departmental authorities in dark, the applicant had prepared another application, seeking one month's leave from 11.07.2004 to 10.08.2004, and his son, infact, handed over this application to the Section Head on 15.07.2004. Therefore, the respondents had come to the conclusion that the applicant had willfully failed to apprise the employer about his arrest by the police, and he was placed under suspension from service w.e.f. 13.07.2004, the date of his arrest, for a period of 90 days upto 10.10.2004, which suspension was further extended from time to time upto 30.09.2006.

11. The respondents further submitted that correct procedure was adopted in the disciplinary proceedings, while issuing the

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memo of charge on 10.02.2005, to which the applicant submitted his written defence on 21.02.2005, and, thereafter, the Disciplinary Authority appointed an Inquiry Officer on 04.03.2005. The respondents submitted that the Inquiry Officer conducted the enquiry properly and afforded all reasonable opportunities to the applicant to present his case before submitting his report on 29.04.2006 holding the charges levelled against the applicant to have been proved. The applicant was then directed to make a representation for his defence vide memorandum dated 01.06.2006, and he submitted his representation against the Inquiry Report on 15.06.2006. Thereafter, the Disciplinary Authority, after considering the entire material produced before him, imposed the penalty of dismissal from service with immediate effect upon the applicant through the impugned order dated 27.09.2006. They also submitted that even the Appellate Authority had objectively considered the appeal dated 11.11.2006 filed by the applicant against the impugned order dated 27.09.2006, and had dismissed the appeal vide a detailed order dated 22.08.2007.

12. The respondents submitted that the arrest of the applicant on the charge of transporting 457 Kgs. of opium husk, and publication of the news regarding that arrest in the newspapers had lowered the image of the department in the eyes of the public. Therefore, they submitted that the charges levelled against the applicant, and the Departmental enquiry conducted thereafter, were appropriate and legally correct and that all principles of natural justice as prescribed under CCS (CCA) Rules, 1965, had been followed

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scrupulously and complied with. It was further submitted that since the applicant had vacated his departmental accommodation on 11.07.2004, and no other local address of his was available, therefore, the order of the Appellate Authority passed on 22.08.2007 had to be sent to his native place.

13. The respondents submitted that the O.A. was not maintainable on any ground whatsoever. They submitted that when the applicant had filed the application on 04.07.2005 for supply of documents, he was asked by the Inquiry Officer to show or prove the relevancy of the documents asked for, but that the applicant failed to show the relevancy of the documents, and, therefore, the contention of the applicant that he was not supplied with the material documents is not sustainable. It was further submitted that this point had not been raised as a ground by the applicant even in his representation dated 15.06.2006 submitted before the Disciplinary Authority, and had been newly introduced in the present O.A.

14. It was further submitted that when on 15.07.2004 the hand written application of the applicant for grant of earned leave from 11.07.2004 to 10.08.2004 was delivered by his son to the Chief Fire Officer, the news regarding his arrest on 13.07.2004 had already been published in the newspapers on the previous date, i.e. on 14.07.2004, and, despite that, the failure on the part of the applicant to inform his official superior about the correct position rendered him liable to disciplinary action on this ground alone. It was only when the applicant was asked by the Administrative



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Officer, Heavy Water Plant, Kota, on 24.08.2004, to submit the details about his arrest etc., that the applicant had confirmed those facts through his letter dated 27.08.2004. The respondents, therefore, submitted that all the charges levelled against the applicant had been proved on the basis of sufficient evidence, and that the orders passed had taken into account all the relevant information, and that there has been no violation of Articles 14 & 16 of the Constitution of India, as alleged by the applicant, and that the principles of natural justice, as well as provisions laid down under CCS (CCA) Rules, 1965, had been scrupulously followed. In the result, they had submitted that none of the grounds raised in the O.A. is sustainable in the eyes of law and, therefore, the O.A. deserves to be dismissed as being devoid of merit.

15. The applicant filed a rejoinder on 27.02.2008, reiterating his stand that the departmental proceedings were held in utter violation of the Rules and the principles of natural justice, since the documents requested for by him were refused. He had further tried to explain the circumstances about his leave application not mentioning the ground of absence correctly, and stated that the department has failed to establish that when he made an application for leave, his mother was not ill, and that he was under arrest. He again took the ground of the order of Appellate Authority being incorrect and improper, as it was not passed after giving a personal hearing to him, and had prayed for the O.A. to be allowed.

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16. Heard. During the course of the arguments, the learned counsel for the applicant relied upon the judgment of Rajasthan High Court in ***Prabhu Lal Agarwal vs. State of Rajasthan & others***: 1993 LAB I.C. 1000, in which it has been held that the orders of the Disciplinary Authority should be reasoned, and reasons must be communicated to the delinquent officers by passing a speaking order, and that even in the stages of appeal and review, the orders passed by the authorities have to indicate the application of mind by the authority concerned. He further submitted that in the case of ***Gadadhar Rambin vs. Food Corporation of India & others*** : 1989 (4) SLR page 724, it had been held that denial of legal assistance in departmental enquiry amounts to violation of rules of natural justice. The learned counsel further cited this case to say that if the delinquent feels that a particular document would help him to establish his innocence, or to build up his defence, the Inquiry Authority cannot refuse such document to him, as its amounts to violation of rules of natural justice, and that the Inquiry Authority cannot decide the relevancy of the documents and refuse such document to delinquent officers on the ground that it was not relevant. He submitted that the case of the applicant was squarely covered under the law as laid down by the Rajasthan and Calcutta High Courts in the above two cases. The learned counsel for the applicant also relied upon the judgment in the case of ***Har Govind Sharma vs. Union of India & others*** in O.A. No.148/1994 passed by this Bench of the Tribunal itself on 28.10.1999, in which the question of relevancy of the documents in the course of disciplinary enquiry



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had been discussed, and it had been held that if the question of relevancy or irrelevancy of documents has to be decided by the Disciplinary Authority, then the applicant should have been asked to justify his demand of such documents by showing the relevancy thereof, and that the action of the Disciplinary Authority in neither supplying the copies of the demanded documents to the applicant, nor providing an opportunity to the applicant for inspecting the documents, had prejudiced the applicant in respect of his defence, and for this simple reason the impugned order had been held to be deserving to be quashed.

17. On the other hand, the learned counsel for the respondents denied these averments, and submitted that full opportunity had been given to the applicant to present his defence, which he had availed of. He further submitted that once the procedure for conducting the Disciplinary Authority had been followed correctly, what remains was the appreciation of determination of quantum of punishment awarded to the applicant on the basis of the findings of the disciplinary inquiry. He relied upon the case of **Bharat Petroleum Corporation Ltd. & others vs. T.K. Raju** : (2006) 3 SCC 143, wherein the Hon'ble Apex Court had laid down the law that the scope of judicial review regarding the quantum of penalty/punishment is limited, and that interference to the quantum of punishment should not be done in a routine manner. This judgment of the Hon'ble Apex Court had followed the earlier case law on this point in **V. Ramana vs. A.P. SRTC**, (2005) 7 SCC 338: 2006 SCC (L&S) 69; and **State of Rajasthan vs. Mohd. Ayub**

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Naz, (2006) 1 SCC 589: 2006 SCC (L&S) 175: (2006) 1 Scale 79.

He also cited the case of ***Syndicate Bank & others vs. Venkatesh Gururao Kurati: (2006) 3 SCC 150*** wherein the Hon'ble Apex Court had laid down the law in regard to the concept of natural justice in the context of departmental/domestic enquiry, and it was held that when documents neither forming part of the charge, nor relied on by prosecution, had been asked for, non-supply of such documents ~~per se~~ was not prejudicial, so as to violate the principles of natural justice, and the applicant has to satisfy about the nature of documents, non-supply whereof may cause him prejudice, and that it was the liability of the delinquent official to establish the likelihood of prejudice even in the cases of the documents sought for by him. In the same case, the Hon'ble Apex Court has also discussed the proportionality of punishment, and had held that on compassionate grounds alone, interference with the punishment / penalty levied was impermissible.

18. We have given our anxious consideration to the facts of the case. It is clear that when the son of the applicant presented on 15.07.2004 the applicant's leave application requesting leave for one month from 11.07.2004 to 10.08.2004, neither the son informed the superior officers about the arrest of the applicant, and nor the applicant had mentioned the fact of his arrest, the newspapers reports regarding which had already been published on the previous date. Therefore, we are not surprised that the respondents came to the conclusion that the applicant could have, at least through his son, informed the respondent authorities about

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the fact of his having been arrested, and they have therefore come to the conclusion that he had willfully suppressed the information regarding his arrest.

19. Also, since the news regarding an official of the Department of Atomic Energy being arrested while transporting huge quantity of opium husk had appeared in the newspapers, it must have certainly lowered the image of the Department in the eyes of the public. We are not, therefore, surprised that the respondent authorities have based this as one of the charges levelled against the applicant, and have ultimately held it to have been proved.

20. The applicant had asked for certain documents, and he was asked to prove the relevancy of the documents for the presentation of his case. He could not present any statement regarding his having been able to prove the relevancy of those documents in support of his defence. His main contention, during arguments also, was that mere absence of one person/official could not have adversely affected the fire service section. However, this is an aspect of administrative propriety, and cannot be adjudicated upon by this Tribunal in this O.A. If the respondent authorities have felt that the continued long absence of the applicant has adversely affected the functioning of the particular section/division of the Heavy Water Plant, perhaps due to non availability of sufficient persons for shifts duties etc., this Tribunal today cannot consider sitting in judgment over the judgment of the Disciplinary Authority and the Appellate Authority on this aspect.

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21. This Tribunal can only go into the aspects of adequacy of the quantum of punishment, and as to whether any procedure or principles of natural justice have been violated by the respondents before passing the impugned orders. We find that none of the three orders/judgments cited by the learned counsel for the applicant (discussed in para 16 above) come to his rescue in this regard, since the procedure for conducting the disciplinary enquiry appears to have been followed strictly and correctly by the respondent authorities before passing the impugned orders for the applicant's dismissal from service by the Disciplinary Authority, and the order of its affirmation by the Appellate Authority.

22. It has been held by the Hon'ble Apex Court in a number of cases that providing personal hearing to a delinquent officer at the stage of appeal in disciplinary proceedings, is not a necessity, the absence of which may fatally impinge upon the validity of the orders passed by the Appellate Authority. In this connection, the summary of the law laid down by the Court in this regard, as given in the Swamy's Compilation of CCS (CCA) Rules, may be reproduced as follows:-

Swamy

"7. The principle of right of personal hearing applicable to a judicial trial or proceedings even at the appellate stage is not applicable to departmental enquiries, in which a decision of the Appellate Authority can generally be taken on the basis of the records before it. However, where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the Appellate Authority may, after considering all the relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing taking the assistance of Defence Assistance."

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23. In the result, it appears that none of the grounds taken by the applicant in filing this O.A. survive, and, that this Tribunal cannot now re-appreciate the evidence and change or alter the quantum of punishment awarded to the applicant by the Disciplinary Authority and affirmed by the Appellate Authority.

24. In the result, the O.A. is dismissed. No order as to costs.



[Sudhir Kumar]
Administrative Member



[Justice S.M.M. Alam]
Judicial Member

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में से उपर्युक्ति में दिनांक ०९-६-६
को अन्न-II के III नष्ट किया गया ।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर