

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 183/2008

Reserved on 10.12.2014

Pronounced on 24-12-2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

J.M. Prasad aged about 58 years son of late Sri H. Prasad, resident of 40 Kailash Nagar, Khargapur, Gomti Nagar, Lucknow.

Applicant

By Advocate: Sri Dharmesh Sinha

Versus

1. Union of India through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. The Secretary (Textiles), Ministry of Textiles, Udyog Bhawan, New Delhi.
3. Development Commissioner (Handicraft), West Block No. VII, R.K. Puram, New Delhi-110066.
4. Director, Central Region, Office of the Development Commissioner (Handicraft) Kendriya Bhawan, 7th Floor, Aliganj, Lucknow.

Respondents

By Advocate: Sri S.K. Awasthi

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

- (a) The Hon'ble Tribunal may kindly be pleased to quash/ set aside the impugned order dated 8/11.12.2006 contained as Annexure No. A-1 to the O.A.
- (b) The Hon'ble Tribunal may kindly be pleased to quash/ set aside the impugned order dated 3.4.2008 contained as Annexure No. A-2 to the O.A.
- (c) The Hon'ble Tribunal may kindly be pleased to direct the respondent to grant/ allow all the consequential benefits to the applicant in view of quashing/setting aside of the impugned orders.

(d) This Hon'ble Court may kindly be pleased to pass any order which deems fit and proper under the circumstances of the case in favour of the applicant.

2. The brief facts of the case are that the applicant while working on the post of Assistant Director (A&C) Carpet Weaving Training Centre, Allahabad was also head Incharge of the Regional Carpet Store. While working on the said post, there were certain complaints against him by Sri Dharm Raj Mishra and on the basis of said complaint, one Sri S.K.Sahgal, Dy. Director conducted a preliminary enquiry in which the statement of Sri R.Mishra, Store Keeper was also recorded. After the preliminary enquiry, Sri Sahgal submitted his report before the respondent No. 3 and after receiving the preliminary enquiry report, the disciplinary authority issued the charge sheet on 27/28.11.2003 to the applicant and asked the applicant to submit his explanation. After issuing the charge sheet, the enquiry officer was appointed in which Sri Dharm Raj Mishra as well as one Sri R.P. Mishra appeared before the enquiry officer as prosecution witnesses and gave the statement and have admitted this fact that the amount so claimed by the applicant was not given to him. It is also pointed out by the learned counsel for the applicant that after completion of enquiry, the applicant submitted his defence brief before the enquiry officer.

3. The enquiry officer observed that the Article of Charge No. 1 and 2 stand proved. The learned counsel for applicant has also pointed out that the enquiry officer travelled beyond his scope by advising further investigation. This makes the whole enquiry perverse and submitted that the same is unsustainable in the eyes of law.

4. The learned counsel for applicant vehemently argued that after receiving the enquiry officer's report, the applicant sent a letter dated 10.6.2006 to the respondent No. 3 requesting him to furnish the copy of the second stage advice of the CVC and views of

the disciplinary authority so that he could file comprehensive representation to the respondent No. 3. But instead of furnishing the views of the disciplinary authority along with the second stage advice of the CVC, the applicant was asked to submit his reply.

5. The applicant again reminded the respondent No. 3 regarding the necessity of second stage advice along with the views of disciplinary authority but the applicant was forced to submit his explanation. The applicant was served with the copy of punishment order of compulsory retirement by means of order dated 8/11.12.2006. Feeling aggrieved by the said order, the applicant preferred an O.A. before the Allahabad Bench of this Tribunal vide O.A. No. 50/2007 which stands disposed of by means of order dated 2.1.2008 with the direction to the applicant to prefer an appeal before the competent authority within a period of two weeks from the order and appellate authority is directed to consider and decide the same in the light of grounds taken by the applicant in the O.A. within a period of three months from the date, the appeal is filed.

6. The applicant thereafter preferred the appeal strictly in accordance with the order of the Tribunal and the appellate authority passed further orders on 3.4.2008 upholding the punishment of compulsory retirement. The applicant submits that the appellate order is without proper application of mind to the facts and circumstances of the case and to the grounds taken in the appeal. The learned counsel for the applicant also pointed out that the appellate authority decided the appeal in arbitrary, illegal manner and the same is non-speaking order. Apart from this, the appellate authority also ignored the fact that the enquiry officer travelled beyond the jurisdiction by advising further investigation. On behalf of the applicant, it is once again vehemently argued that the impugned orders were passed by the respondents without complying the mandatory provision as the applicant was not

allowed to file his submission on the enquiry report as he was not provided the advice of second stage advice of the CVC, as such the impugned orders are not only illegal but without jurisdiction and the same is liable to be quashed. Another ground is taken that the impugned orders are passed without giving any reasonable opportunity of hearing to the applicant, therefore, it suffers from principles of natural justice and as per the Govt. of India's decision, the applicant was not provided the second stage advice of the CVC which is mandatory in nature.

7. On behalf of the respondents, detailed counter reply as well as few Supple. Counter replies are filed and reiterated the averments of the counter reply.

8. Through counter reply, it is indicated by the respondents that the applicant committed gross misconduct which resulted issuing of charge sheet to the applicant and the charges so leveled against the applicant stands proved by the enquiry officer. The applicant was afforded ample opportunity to defend himself and to disprove the allegations leveled against him by the complainant but applicant was deeply involved in the tainted incident of demanding bribe from one Sri Dharm Raj Mishra as such, the disciplinary authority had taken a right approach and appropriate decision in the present case to impose penalty of compulsory retirement upon the applicant.

9. It is also indicated by the respondents that the impugned orders passed by the respondents are speaking and reasoned orders and there is no illegality and infirmity in the same. Not only this, it is also indicated that after considering the entire enquiry officer's report, other relevant records of the enquiry, submissions of the applicant, other depositions of prosecution witnesses as well as the second stage advice of the CVC, the punishment order was imposed upon the applicant. Not only this, the appellate authority rejected the appeal after considering all material available on record and

there is no procedural irregularity as the detailed enquiry was conducted by the respondents.

10. On behalf of the applicant, Rejoinder reply is filed and through Rejoinder reply, mostly the averments made in the O.A. are reiterated and the contents of counter reply are denied. However, it is once again vehemently argued by the learned counsel for the applicant that the respondents has been falsely implicated to save the main culprit and he was punished on the basis of inconclusive enquiry as is apparent from the inquiry report itself. It is also argued by the learned counsel for the applicant that the applicant was not afforded the proper opportunity as he was not given opportunity to submit his explanation as second stage advice of CVC was not supplied to him nor any show cause notice was given to the applicant. Thus, the punishment of compulsory retirement is against the principles of natural justice.

11. Heard the learned counsel for parties and perused the records.

12. A complaint was lodged against the applicant while he was working on the post of Assistant Director (A&C) Carpet Weaving Training Centre, Allahabad where he was also the head in-charge of the Regional Carpet Store. On the basis of the said complaint, a preliminary enquiry was conducted and after preliminary enquiry, a charge sheet was served upon the applicant on 27.11.2013. In the said charge sheet, the following two charges are mentioned:-

Article -1

The said Sri J.M. Prasad while working as Assistant Director (A&C) Carpet Weaving Training Centre, Allahabad during the year 2002-03 has not issued the cash memos so far after sale of 3 loom sets to Sri Dharm Raj Mishra r/o Naya Balrahana, Allahabad and 2 loom sets to Sri R.C. Ojha,SK/ AC, CWISC, Allahabad from Regional Carpet Stores, Lekharajpur, Allahabad on 24.8.2002 after getting the cost of these loom sets from them through four bank

drafts. Not only this, the said Sri J.M. Prasad has also demanded commission @ Rs. 300/- per loom set from Sri Dharm Raj Mishra for issue of cash memo in his favour for above purchase of three loom sets.

By the aforesaid act, the said Sri Prasad has failed to maintain the absolute integrity and acted as unbecoming of a Govt. servant thus violated Rule 391)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article II

The said Sri J.M. Prasad while working as Assistant Director (A&C) Carpet Weaving Training Centre, Allahabad during the year 2002-03 has not deposited the several bank drafts received in Regional Carpet Store Lekhrajpur/ CWTSC, Allahabaad on account of sale of looms etc., in the Govt. treasury in time deliberately and their validity period have been lapsed. The said Sri J.M. Prasad has knowingly delayed the deposition of bank drafts in Govt. account violating the receipt and payment rules causing financial loss to the Govt. exchequer.

By the aforesaid act, the said Sri J.M. Prasad has showed gross negligence and failed to maintain devotion to the duty thus violated Rule 391)(ii) of CCS (Conduct) Rules, 1964.”

13. The said charge sheet is supported by statement of imputation of misconduct which provides that on the basis of a complaint for demanding Commission @ Rs. 300/- per loom set , a preliminary enquiry was conducted and along with the charge sheet, list of documents as well as list of witnesses are also mentioned.

14. After the issuance of the charge sheet, the statement of one Sri Dharm Raj Mishra who was one of the witnesses in the list of witness enclosed along with the charge sheet as well as Sri R.P. Mishra were recorded. The applicant also submitted his defence brief and has indicated the procedure of sale on cash basis and

finally it is mentioned that the charges so leveled against the applicant are not provided.

15. The enquiry officer also submitted the report and while submitting the report it is indicated that while the applicant was working as Assistant Director (A&C) Carpet Weaving Training Centre, Allahabad in the year 2002-03 has not issued the cash memos so far after sale of 3 loom sets to one Sri Dharm Raj Mishra and two loom sets to Sri R.C. Ojha and also demanded commission @ Rs. 300/- per loom set from Sri Dharm Raj Mishra. Not only this, it is also indicated by the enquiry officer that the preliminary hearing of the case was taken up on 14.6.2004 where the charges were readout before the charged officer who denied the charges and desired to be heard in person. The enquiry officer also recorded in his enquiry report that the applicant i.e. charged officer was also directed to submit the list of additional documents and defence witnesses if any required by him for his defence. The officer submitted a list of 30 additional documents and 3 defence witnesses on 2.7.2004. It is also indicated by the enquiry officer that against the 30 additional documents requested by the charged officer, which were not mentioned in charge sheet and 23 documents have been provided and remaining documents were not provided as they were not available. The regular hearing commenced from 16.6.2005 with the recording of evidence of state witnesses and the oral evidence of state witnesses Sri R.C. Ojha and Sri Dharam Raj Mishra were recorded on 16.6.2005 whereas the evidence of Sri R.P. Mishra was recorded on 17.6.2005.

16. The enquiry officer finally came to the conclusion that both the article of charges stand proved. Apart from this, it is also indicated by the enquiring authority that late Sri S.K. Sehgal, Dy. Director (H) CRO, Lucknow and the CVC had therefore, rightly opined that the charges against the charged officer prima facie exist which needs to be investigated by initiation of major penalty

proceedings against the applicant. This is an additional remarks given by the enquiry officer.

17. Copy of the enquiry report was forwarded to the applicant vide letter dated 30th May, 2006 and soon thereafter, the applicant demanded the copy of second stage advice of the CVC which has not been supplied to him along with copy of the enquiry report. In response to the same, the respondents have written a letter to the applicant that he was supposed to give the reply to the enquiry officer's report but regarding providing of second stage advice of the CVC, the respondents failed to indicate any reason. Feeling aggrieved against the same, the applicant again wrote a letter on 3rd July, 2006 and indicated that the respondents have not given copy of the second stage advice of the CVC as well as disciplinary authority's view along with the enquiry officer's report and requested that the same may be provided so that he may submit his representation/ submission as desired by the authorities. The respondents again wrote a letter to the applicant on 25.7.2006 asking him to give the reply to the enquiry report within 7 days, failing which the case may be sent for further action. Along with the same, the respondents have annexed the copy of the page 21 of the CVC Vigilance Manual. In reply to the same, the applicant again wrote a letter to the respondents on 4th August, 2006 in which he has taken reliance of Govt. of India CVC's circular dated 28th September, 2000 and the said circular reads as under:-

“5. Para 12.4.4 of Special Chapter of Vigilance Management in Public Sector Banks and Para 22.6.4 of the Special Chapter on Vigilance Management in Public Sector Enterprises envisage that the inquiring authorities including the CDIs borne on the strength of the Commission, would submit their reports to the Disciplinary Authority who would then forward the IO's report along with its own tentative views to the Commission for its second stage advice. The

existing procedure in this regard may broadly continue. The Disciplinary authority may after examination of the inquiry report communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This along with the Disciplinary 's view may be available to the concerned employee. On receiving his representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration forward the same along with the records of the case, to the Commission for its reconsiderations. "

18. After giving reply to the applicant on 25.7.2006, the respondents passed an order on 8/11.12.2006 compulsory retirement of the applicant from Govt. service with immediate effect. The applicant challenged the said order by means of filing O.A. No. 50/2007 which stands disposed of with a direction to the applicant to prefer an appeal and if appeal is preferred, the same shall be decided by the authorities within a period of three months from the date the appeal is filed. Thereafter, the applicant submitted the detailed appeal to the authorities on 9th January, 2008 and the appellate authority rejected the appeal of the applicant by means of order dated 3.4.2008. It is also indicated by the appellate authority that during the course of hearing, the applicant emphasized that the signature of Sri Dharm Raj Mishra, the complainant are fake as his signature on all the listed documents do not match with the signature on his depositions as verified by Sri Anoop Sinha writing expert , engaged by the applicant. The applicant has also taken a plea that the disciplinary authority did not provide a copy of second stage advice of the CVC and his views to the applicant before seeking the submission on the findings of the enquiry report and passed the order of compulsory retirement in an arbitrary and illegal manner. Apart from this,

another ground is taken that the penalty of compulsory retirement is too harsh to be imposed upon the applicant.

19. While deciding the appeal, the appellate authority has categorically indicated that 6th edition of 2005 of Vigilance Manual Vol. I of CVC whereby advice of CVC at two stages is required in respect of Group A officers and applicability of the provisions under CVC circular dated 28.9.2000 are only confined to Group A officers and applicant being a Group B officer, therefore disciplinary authority is not bound to follow the CVC circular dated 28.9.2000 for providing the copy of second stage advice of the CVC along with the view of disciplinary authority to the applicant under the existing procedure laid down in the latest CVC Manual. Apart from this, the appellate authority has also taken a view that the disciplinary authority found the applicant involved in obtaining illegal gratification which is proved in the oral statement of the complainant and documentary evidence. Thus the penalty imposed upon the applicant commensurate with the gravity of the offence committed by him. For ready reference, the relevant provisions of CVC Vigilance Manual Vol. I 2005 above is reproduced below:-

“2.14.3. The Commission’s advice in respect of category ‘A’ officials is to be obtained at two stages; firstly on the investigation report in terms of para 2.14 .1(iv) and secondly on the inquiry report in terms of para 2.14.1(vii) supra. The CVO to ensure that the cases receive due consideration of the appropriate disciplinary authority before these are referred to the Commission and its tentative recommendation is indited in the references made to the Commission. The references to the Commission should be in the form of a self – contained note along with supporting documents viz the complaint , investigation report , statement /

version of the concerned employee(s) on the allegation s established against them and the comments of the administrative established against them and the comments of the administrative authorities thereon in first stage advice cases, and copy of the charged sheet , statement of defence submitted by the concerned employee, the report of the inquiring authority along with the concerned records and the tentative views/findings of the disciplinary authority on each article of charge in second stage advice cases.”

20. It is also undisputed to the fact that on account of not providing of second stage advice of the CVC to the applicant, he has not submitted the reply to the enquiry report despite opportunity being provided to him. It is also pointed out that the enquiry officer proved the charges leveled against the applicant, as such the grounds of the applicant in regard to alleged incident is false is not tenable. It is also to be pointed out that the enquiry officer submitted the report on 9.5.2006 and the CVC circular dated 28.9.2000 stipulates decision of the referred para has been superseded after the O.M. of 2005 wherein it is clearly stated that neither CVC advice is required to be obtained on receipt of enquiry officer's report nor to be furnished to the charged officer before seeking statement of charged officer on the findings made by the enquiry officer in respect of Group B officers. It is also indicated by the respondents that the copy of which was duly furnished to the applicant and also categorically indicated that according to the latest vigilance manual, the second stage advice of the CVC is sought only in the cases of Group 'A' officer. Since the applicant is not a Group A officer as such the same is not sought for in respect of the applicant. Not only this, it is also vehemently argued by the learned counsel for the respondents that by way of a reasoned and

speaking order, the applicant was given ample opportunity to defend his case but he failed to do so. The disciplinary authority passed the final order of compulsory retirement. After the order passed by the Tribunal in O.A. No. 50/2007, the appeal of the applicant was also considered and decided and decision so taken was also communicated to the applicant.

21. Be that as it may. **The Tribunal or the Court cannot sit as an appellate authority as observed by the Hon'ble Apex Court in the case of State of Uttar Pradesh v. Raj Kishore Yadav reported in 2006(5) SCC 673.** The Hon'ble Apex Court has been further pleased to observe as under:-

“4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is noting but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service.”

22. The Hon'ble Apex Court in the case of B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749 again has been pleased to observe that "**the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence.**"

23. In another case the Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3)SCC 357 has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

“ In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.”

24. Not only this the Hon'ble Apex Court has even observed in regard to scope of judicial review as well as in regard to the quantum of punishment and in the case of State of Rajasthan v. Md. Ayub Naaz reported in 2006 (1) SCC 589. The Hon'ble Apex Court has been pleased to observe as under:-

“10. This Court in Om Kumar v. Union of India while considering the quantum of punishment / proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was

awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for.”

25. The Hon’ble Apex Court in another decision of **State of UP v. Saroj Kr. Sinha reported in 2010 (2) SCC 772** has been pleased to observe that the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him. In the instant case the entire proceedings were carefully considered by the disciplinary authority and full opportunity was given to the applicant in conducting the enquiry and applicant also his defence submitted the reply etc.

26. As stated above that the Tribunal or the Court cannot sit in appeal over the decision of disciplinary authority nor can substitute its view in place of the said authority. The disciplinary authority was within his right to issue appropriate punishment as he may have deemed fit and proper. The Tribunal is not competent to go into the quantum of punishment inflicted by the disciplinary authority unless it is shockingly disproportionate.

27. In the case of **Mani Shankar v. Union of India & Ors.** reported in **(2008)1 SCC(L&S)-819** “The procedural fairness in conducting the departmental proceeding is a right of an employee. However, in this case the Hon’ble Supreme Court has also pleased to observe that the scope of judicial review in disciplinary proceedings is very limited. The Administrative Tribunals are to determine whether relevant evidences were taken into consideration and irrelevant evidences are excluded.

28. The Hon’ble Supreme Court in the case of **U.O.I. & ors. v. G. Annadurai reported in (2009) 13 SCC 469** has held that Courts are not for interfering with dismissal order passed against respondent employee, it has further been observed by the Hon’ble

"4. A memo of charges dated 23.12.1997 was drawn up, the charge memo was sent to the respondent by registered post at his home address. The respondent did not respond to the charges leveled and the charge memo was sent back undelivered. An enquiry officer was appointed and after issuance of notice to the respondent to appear before him on 26.1.1998 along with his written statement, reminder was sent to him on 10.2.1998. As the respondent did not respond to the notices issued, an order was passed ex parte.

12. The factual scenario shows that ample opportunities have been given to the respondent in order to enable him to effectively participate in the proceeding. He has failed to avail those opportunities. That being so the Division Bench of the High Court ought not to have interfered with the order of the learned Single Judge which according to us is irreversible. The appeal is therefore allowed and the impugned judgment is set aside."

29. Considering the observations of Hon'ble Apex Court and submissions of the learned counsel for the parties and after the perusal of record, we do not find any justification to interfere in the present case. Accordingly, O.A. is dismissed. No order as to costs.

J.Chandra
(JAYATI CHANDRA)
MEMBER (A)

Navneet Kumar
(NAVNEET KUMAR)
MEMBER(J)

HLS/-