(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 787/89

~~Transfer Application No~~

DATE OF DECISION: 2.8.1994

Shri Kashinath Rama Kadam Petitioner

Shri V.B. Rairkar Advocate for the Petitioners

Versus

~~Union of India and others~~ Respondent

~~Shri R.K.Shetty.~~ Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ?

(B.S. Hegde)
Member (J)

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 787/89

Shri Kashinath Rama Kadam ... Applicant.

V/s.

Union of India
Represented by the
Secretary,
Govt. of India
Ministry of Defence
Dept. of Defence
Production and Supplies
New Delhi.

General Manager,
Ammunition Factory
Khadki, Pune

D.G. of /Chairman
Joint Director/VIG
Ministry of Defence
Ordnance Factory Board
10-A, Auckland Road,
Calcutta. ... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri V.B. Rairkar, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT Dated: 2-8-94.

(Per Shri B.S. Hegde, Member (J))

The applicant in this OA has challenged the removal order passed by the competent authority (General Manager) vide order dated 10.8.87 on the basis of the findings of the Enquiry Officer holding that the articles of charges are proved against the applicant. Against this order the applicant preferred an appeal dated 31.8.87. In that appeal, he had admitted the charges stating that the matter may be considered "sympathetically and give him a last chance to improve and save his family from any calamity and even ready to give his statement in writing to improve myself but request your goodself to kindly give him a final chance."

The Appellate Authority by order dated 23.5.88 considered the appeal of the applicant. However the appellate authority has observed that in the appeal the applicant has admitted the charges and begged to give him a last chance; however the evidences on record shows that he was a chronic absentee and earlier he was given sufficient chances to improve. But he failed to improve, therefore the penalty was imposed by the Disciplinary Authority which is inaccordance with the procedure of Rules and the appeal was dismissed. Against which he preferred a Review Appeal under Rule 29 of the CCS(CC&A) Rules. The Review Appeal was considered by the Reviewing Authority by order dated 14.2.89 which rejected the Review Appeal and upheld the order passed by the Disciplinary Authority.

The applicant was initially appointed as Fireman on 26.12.73 and was confirmed in the post in 1975. He was promoted as Fireman Grade I on 5.4.78 and has put in 15 years of service. His main contention is that his absence from duty was not intentional. He met with a scooter accident and was hospitalised for some considerable time. Owing to Physical impediment, thus caused, he continued to remain absent from duty. As there was no male member in the family he was not able to communicate about his illness to his superiors. However he reported for duty on 17.10.86 and has submitted medical certificate in support of his inability to attend to work owing to his illness. On his joining duty, Competent Authority issued a Charge sheet in November 1986. An Enquiry was effected and the Enquiry Officer gave his report stating that the charges levelled against

....3...

the applicant are proved. Counsel for the respondents submitted that the applicant himself admitted during the course of Enquiry the charges levelled against him . It is evident that the applicant was continuously absenting himself from duty with effect from 29.8.86 without prior sanction of leave. The applicant was issued charge sheet under Rule 14 of the CCS (CCA) Rules of which Article I and II were as below:

> Article I : Gross Mis-conduct viz. wilful neglect of duty i.e. un-authorised absence from duty without prior sanction of leave with effect from 29.8.86 onwards.
>
> Article II: Irregular in attendance from 1.1.84 to 25.8.86.

The contention of the learned counsel for the applicant is that applicant's leave has been regularised. As a matter of fact the applicant was on leave for 226 days in 1984 and he was found to be very irregular in attendance.

Learned counsel for the applicant draws our attention to the case of Bhagat Ram V/s. State of Himachal Pradesh and others (1983) 2 SCC 422, wherein the Supreme Court observed that the Punishment must be proportionate to the gravity of misconduct Dismissal on a trivial charge of negligence which resulted in no loss to the Department was held, disproportionate and excessive. With due respect to the counsel for the applicant, the facts in that case are distinguishable from the present case. In that case, there was a very minor infraction of duty leading to a trival charge of negligence in performance of duty of checking hammer-marks of trees (assuming that the invariable rule is that no tree could be felled without hammer-mark.)

But the negligence, if any, caused no loss to the Government, for the man who resorted to unauthorised felling of trees had compensated the Department. Considering all factors, it was held that it would not be fair to this low-paid Class IV government servant to face the hazards of a fresh enquiry. Therefore the Court further observed that keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. The principle laid down in that case depends upon the facts of that case which cannot be extended to this case. In the present case, the facts are entirely different. In the present case, the charges levelled against the applicant are proved. The Supreme Court in the case of Union of India V/s. Parma Nanda AIR 1989 SC 1185 held that:

> " We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Inquiry Officer of Competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impse penalty on the delinquent officer is conferred on the competent authority either by an Act of legislation or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that

(13)

of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In the light of the above, it is not open to the Tribunal to go beyond the findings of the disciplinary authority or the appellate authority . It is a well established principle that the Tribunal cannot sit in judgement over the decision of the Disciplinary Authority or the Appellate Authority.

The learned counsel for the applicant has not pointed out any loop holes or lacuna in the Disciplinary authority. He agreed with the findings of the aforesaid charges ,there is nothing to be proved further. Therefore, we are of the view that the contention raised by the applicant is not relevant.

In the result there is no merit in the OA, accordingly OA is dismissed but no order as to costs.

(M.R. Kolhatkar)
Member(A)

(B.S. Hegde)
Member (J)

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