

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.12 of 1995.

Date of Order :- January, 1998.

BETWEEN:

K.N.KHULLAR,
Son of Kedarnath Khullar,
Aged about 42 years,
Occ: Fitter Elec. (HS-II).
R/o Yeddumailaram, Medak District. .. APPLICANT

A N D

1. The Ordnance Factory Board,
Rep. by Joint Director/Vig.,
Government of India,
Ministry of Defence,
10A, Auckland Road,
Calcutta-700 001.
2. The General Manager,
Ordnance Factory Project,
Medak, Yeddumailaram-502205.
3. The General Manager,
Ordnance Factory Project,
Itarsi- 461 122. (M.P.) .. RESPONDENTS

COUNSEL FOR THE APPLICANT MR. V. VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS : MR. N.R. DEVARAJ, Sr. CGSC.

C O R A M :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMINISTRATIVE)

HONOURABLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDICIAL)

...

O R D E R .

(Per Hon. Mr. B. S. Jai Parameshwar, Member (Judicial)).

1. Heard Mr. V. Venkateswara Rao, the learned counsel for the applicant and Mr. N.R. Devaraj, the learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the

Dr

Administrative Tribunals Act. The application was filed on 2.1.1995.

3. The facts giving raise to this O.A. may, in brief, be stated thus :-

(a) The applicant was working as Fitter (Electrical) HS-II (Token No.15/EM) under the respondent No.3 in Madhya Pradesh.

(b) On 19.7.1989 one Mohan Singh (Token No.56/EM), a co-worker of the applicant filed a complaint alleging that the applicant had assaulted and abused him in the morning.

(c) On the basis of the said complaint, the respondent No.3 by his order dated 19.7.1989 placed the applicant under suspension.

(d) On 27.7.1989 the respondent No.3 served a Memorandum of Charges as per Annexure-I Page 11 of the O.A. The charges levelled against the applicant read as follows :-

"That the said Shri K.N.Khullar, Fitter Elect.(S), T.No.132/EM/15, EM Section, Ordnance Factory, Itarsi committed Gross Misconduct (i) Assaulting and abusing a co-worker inside the factory, (ii) Habitual offender- Conduct unbecoming of a Government servant."

(e) The applicant submitted his reply dated 1.8.1989 denying the charges.

(f) The respondent No.3 ordered a detailed inquiry into the charges. The Inquiry Officer examined 14 witnesses on behalf of the disciplinary authority. Though the applicant proposed to examine two witnesses in his defence, he examined one witness and examined himself.

(g) While the inquiry was in progress, on 7.2.1990, the Ordnance Factory Board ordered the transfer of the applicant from Itarsi (MP) to Medak to work under the respondent No.2. Thereafter, on 17.2.1990 he was transferred to Medak. The respondent No.3 by his order dated 19.2.1990 revoked the order of suspension. Thus the applicant was under suspension from 20.7.1989 to

32

19.2.1990.

(h) Though the applicant was transferred to Medak, the same Inquiry Officer continued the inquiry. On 15.10.1990 the Presenting Officer submitted his written brief. Likewise on 2.11.1990 the applicant submitted his written brief.

(i) The Inquiry Officer recorded his findings holding that the charges levelled against the applicant are proved and submitted his report. A copy of the report of the Inquiry Officer is at pages 18 to 21 of the O.A.

(j) On 30.4.1991, the applicant submitted his explanation to the report of the Inquiry Officer. The copy of the explanation submitted by the applicant is at Pages 22 to 233 of the O.A.

(k) The respondent No.2 after considering the findings recorded by the Inquiry Officer and the explanation of the applicant, passed the impugned order dated 8.9.1992. The copy of the order passed by the respondent No.2 as disciplinary authority is at page 24 of the O.A. The respondent No.2 imposed the penalty of reduction of pay of the applicant by three stages, namely, from Rs.1320 to 1230/- per month with cumulative effect for a period of two years.

(l) Against the said order of punishment, the applicant submitted an appeal dated 10.3.1993. The copy of the appeal is at pages 26 to 33 of the O.A.

(m) On 26th November, 1993 the Joint Director (Vig.) Ordnance Factory Board, the respondent No.3 considered the appeal and observed as follows :-

"... It is seen from evidences on record that before imposing penalty on him, the authority had carefully scrutinised the evidences adduced in the enquiry- and the charges framed against him

3

were proved as per statement of prime prosecution. While coming to the conclusion, the Inquiry Officer had believed the statement of PW-I which was clear and consistent throughout. The statements/allegations made in his appeal are not based on facts and hence are not acceptable.

Thus the appeal came to be rejected.

(n) The order of the appellate authority was communicated through the letter dated 22.12.1993.

(o) It may be stated that the respondents 1 and 2 while considering the report of the Inquiry Officer and the appeal filed by the applicant had not indicated in their impugned orders as to how the period of suspension of the applicant from 20.7.1989 to 19.2.1990 could be treated. Therefore, on 31.10.1994 a show cause notice was issued to the applicant to explain as to why the said period shall not be treated as the period of suspension. The applicant, it appears, has not submitted any reply to the said show cause notice but has challenged the same in this O.A.

(p) The applicant has filed this O.A. for the following reliefs :-

" To call for the records pertaining to order No.10.114/A/Viq., dated 26.11.'93 issued by the 1st respondent confirming the Order No.02/00058/Estt., dt. 8.9.'92 issued by the 2nd respondent and the notice No.2/00058/Estt. dt.31.10.'94 issued by the 2nd respondent and set aside the same by declaring that the punishment of reduction by three stages i.e. from Rs.1320 to 1230/- for two years with cumulative effect imposed on the applicant is illegal, arbitrary and unconstitutional with all consequential benefits, such as, arrears of pay and all allowances etc."

4. The applicant has challenged the impugned orders

3

on the grounds that the complaint filed by Mohan Singh was a false one; that Mohan Singh was not included as one of the witnesses in the Annexure to the Charge Memo and that he was examined; that the charge levelled against him was baseless; that the then General Manager, Ordnance Factory Board, Itarsi was determined to harass and punish the applicant; that the Charge Memo was signed by the Works Manager who, according to the applicant, was not competent and that he had not been delegated to sign the Charge Memo.; that after issue of the Charge Memo the respondent No.3 had issued a general circular dated 25.7.1989 to create ill-will and scare among the co-employees of the Ordnance factory; that the inquiry was held in utter violation of the principles of natural justice and procedure according to law was not followed; that the material witness, namely, Gopal Singh was not examined during the enquiry; that the Inquiry Officer was biased and prejudiced; that his transfer from Itarsi to Medak during the pendency of the inquiry could itself be regarded as a punishment transfer; that deliberately the inquiry was conducted at Medak with the earlier Inquiry Officer and the Presenting Officer; that the Inquiry Officer submitted his report as late as on 11.2.1991; that the Inquiry Officer had not analysed the evidence properly and that therefore, the punishment imposed on him is not sustainable in law.

5. The respondents have filed their counter justifying his transfer from Itarsi to Medak and also contending that all opportunities were given to the applicant during the inquiry; that his transfer was not a punishment order and that the authorities have taken into

consideration the findings recorded by the Inquiry Officer and have passed the orders justifiably and hence there are no reasons to interfere with the impugned orders.

6. The first contention of the applicant is that the Charge sheet signed by the Works Manager was not proper. According to him, the Works Manager was not competent to issue the Charge Memo. To rebut this, the learned counsel for the respondents relied upon the observations made by the Jaipur Bench of this Tribunal in the case of Baba Ranjan Das v. Union of India, reported in 1980/11/ST/1/363. The learned counsel also in support of his contention relied upon a number of decisions which we feel are not necessary to refer in the view we have taken to remit the matter to the appellate authority for consideration of the appeal of the applicant afresh.

7. The order of the appellate authority is at page 34 of the O.A. We have extracted above the reasons adopted by the appellate authority. The applicant in his Memorandum of appeal had raised contentions which are raised in this O.A. The appellate authority is a quasi-judicial authority. His order must disclose that he has applied his mind to the facts of the case and also considered the main grounds of challenge to the order of the disciplinary authority. It is also his duty to consider whether the principles of natural justice had been adhered to in conducting the inquiry; whether the disciplinary authority had considered and analysed the evidence on record and whether the punishment imposed by the disciplinary authority is commensurate with the

3

gravity of the charge or not. These are the basis duties of the appellate authority for considering the appeal against a punishment.

8. Rule 27 of the CCS(CCA)Rules lays down certain guidelines for consideration of the appeal. The said rule came up for consideration before the Jodhpur Bench of this Tribunal in the case of Udai Saiju v. Union of India and others, reported in 1992)19 ATC 397. The Bench observed that the order of the appellate authority must satisfy the assumption and exercise of such power while enhancing the punishment. In this case, the appellate authority enhanced the punishment imposed on the applicant therein. The Bench considered the scope of the power of the appellate authority under Rule 27(2) Proviso (ii) of the Rules. In para 15 of the Bench observed as under:-

"15. The jurisdiction of the appellate authority in a case like this is a special one, as discussed above. In the appellate order exercising such jurisdiction, it is of fundamental importance that the appellate authority must specify the assumption and exercise of such power under Rule 27(2) proviso (ii). It is also essential for the appellate authority to specify whether he would himself hold the enquiry, or directs a statutorily authorised person to hold the said enquiry, in accordance with Rule 14 and other relevant rules. The CCS(CCA) Rules contain specific provisions in regard to the authorities competent to issue charge-sheet and to appoint Enquiry Officers, etc. These provisions should be complied with and the appellate authority must give sufficient directions in this regard. There must be also clear indication that, after the enquiry is held, the appellate authority would consider the proceedings of the enquiry and make final order in the case."

9. In the case of M. Abdul Karim v. Dy. Director General, NCC(K&L), Trivandrum and others, reported in (1993)23 ATC 637, the Ernakulam Bench of this Tribunal considered the duties of the appellate authority in

R

deciding the appeal. In that case the Hon'ble Judicial Member felt that the appellate authority had not properly considered the appeal and formed an opinion to remand the matter to the appellate authority for consideration of the appeal afresh. However, the Hon'ble Administrative Member disagreed with the view. Hence the matter was placed before the third Hon'ble Member for his opinion. Per majority, it was held that the appellate authority had not considered the appeal as per Rule 27 of the CCS(CCA) Rules. In para 8 the Bench observed as under :

"8. I agree with the Hon'ble Judicial Member that Rule 27 of the CCS(CCA)Rules makes it obligatory on the part of the Appellate Authority to consider the appeal on all the three counts (a), (b) and (c) quoted above irrespective of whether these points have been raised in the appeal or not. In this regard the Appellate Authority in the CCS(CCA) Rules is not merely a quasi-judicial body but also a superior administrative authority supervising the quality of the performance of the Disciplinary Authority and his perception of the impugned order of the Disciplinary Authority cannot be blinkered or criped by the points raised or omitted in the appeal. For instance under Rule 27 of the CCS(CCA)Rules, the Appellate Authority can enhance the punishment also on points which cannot possibly be raised by the appellant. Because no appellant would file an appeal for enhancing the punishment awarded by the Disciplinary Authority. Thus in exercise of its power to enhance the punishment, the Appellate Authority cannot but go much beyond the limits of the content of the appeal. The Appellate Authority under Rule 29(1)(v) is empowered on its own to call for the records of an enquiry and confirm, reduce or enhance or set aside the punishment even though the delinquent official has not filed an appeal. In the same light, the Appellate Authority under sub-rule 2 of Rule 27 of the CCS(CCA) Rules is obliged when an appeal is filed before him to consider whether the procedure laid down in the rules has been complied with, whether the findings of the Disciplinary Authority are warranted by evidence on record and whether the penalty imposed is appropriate. The obligations flow not from the contents of the appeal but from the mandate of the statutory rules and the quasi-judicial-cum-supervisory power which the Appellate Authority is expected to exercise in the maintenance of

proper discipline and compliance with the statutory rules in his organisation. The requirement of Rule 27 is self-contained and cannot be linked with the form and content of appeal prescribed in Rule 26 thereof."

10. From the various contentions raised by the learned counsels, the following points arise for our consideration :-

- (a) Whether the issue of charge sheet was by the proper authority as per the rules then in force?
- (b) Whether non-indicating the name of the complainant as a witness in Annexure to the Charge Memo. is fatal in the case?
- (c) Whether it is a case of no evidence? and
- (d) Whether any of the statements which were not shown to the applicant were relied upon or taken into account for deciding the charge sheet?

11. On the basis of the material available on record, we could have answered the above points in one --- way or the other. But having found that the appellate authority has not applied its mind properly to the facts of the case and has not considered any of the grounds raised by the applicant in his appeal dated 10.3.1993, we feel it proper to remand the matter to the appellate authority for proper consideration of the appeal and also the points indicated in course of this order. We feel so because it is for the appellate authority to consider those points and to take a decision. Then if the applicant is aggrieved, he can approach the competent judicial forum.

12. Since the appellate authority in his order dated 26th November, 1993 had not at all considered the various grounds raised by the applicant in his appeal dated

74

10.3.1993 and also has not followed the guidelines issued under Rule 27 of the CCS(CCA) Rules, we feel that justice demands consideration of the appeal afresh by the appellate authority.

make certain observations regarding Item No.(ii) of the Charge Memo. Item No.(ii) states that the applicant is a habitual offender. It appears that the applicant was imposed a penalty of censure vide order dated 20.4.1983 and in another inquiry reduction in the rank from Fitter, Electrical (HS-II) to Fitter, Electrical (S) was 30.12.1988. Because of these two punishments imposed on the applicant, the disciplinary authority has categorised the applicant as a habitual offender. Service jurisprudence is quite different and distinct from Criminal Jurisprudence. Any misconduct or misbehaviour of an employee will lead to disciplinary action. Any person committing an offence may have to face prosecution before a competent court of law. Service Jurisprudence mainly rests on the relationship of master and servant. An employee cannot be categorised as an offender much less a habitual offender, merely because the punishment was imposed on him more than once.

Section 110 of the Code of Criminal Procedure provides procedure for obtaining security bond ^{for} ~~of~~ good behaviour from the habitual offenders. In that Section, certain persons have been categorised as habitual offenders, in Clauses (a) to (h) of Section 110. Mere imposition of a censure and reduction of pay on the applicant cannot be considered the applicant ~~as~~ ^{as} a habitual

R

offender. We feel that the disciplinary authority was not justified in categorising the applicant as a habitual offender. We are afraid whether imposition of punishment on an employee more than once can be the subject matter of another misconduct and another disciplinary action. If that is so, then the disciplinary authority can initiate disciplinary proceedings on any employee who was imposed punishment minor or major, as the case may be. We, therefore, feel that the Charge No.(ii) may not stand to the advantage of law. It is for the appellate authority to bear these observations in mind while deciding the appeal relating to Charge No.(ii).

14. Hence we pass the following order :-

(a) The order bearing No.10,114/A/Vig. dated 26.11.1993 passed by the respondent No.1 is hereby set aside.

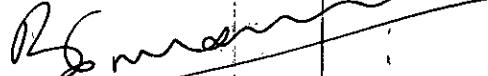
(b) The matter is remitted back to the appellate authority (respondent No.1) for consideration of the appeal of the applicant dated 10.3.1993 in accordance with law afresh. The respondent No.1 shall record findings on the points formulated in course of this order and consider and decide as to how the period of suspension of the applicant from 20.7.1989 to 19.2.1990 should be treated.

(c) The respondent No.1 shall decide the appeal within four months from the date of receipt of a copy of this order. The appellate authority shall provide an opportunity of being heard, if the applicant so desires.

14. With the above directions, the O.A. is disposed of. No order as to costs.

32

The file containing the inquiry records and decisions of the concerned authorities produced by the learned counsel for the respondents perused and discussed.



(B.S.JAI PARAMESHWAR)



(R. RANGARAJAN)

DATED

9th JANUARY, 1998.


DJR

DJ/

99

..13..

Copy to:

1. The Director, Ordnance Factory Board, Min.of Defence,
10A, Auckland Road, Calcutta.
2. The General Manager, Ordnance Factory ~~Maxdy~~ Project,
Medak, Yeddumailaram.
3. The General Manager, Ordnance Factory Project, Itarsi-M.P.
4. One copy to Mr.V.Venkateswara Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
6. One copy to HBSJP, M(J), CAT, Hyderabad.
7. One copy to D.R(A), CAT, Hyderabad.
8. One duplicate copy.

YLKR

Replies
3/2/98
8

TYPED BY

CHECKED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED :

9/1/98

ORDER/JUDGMENT

M.A./R.A./C.A. NO.

in

C.A. NO.

12/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

