CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : AT HYDERABAD

O.A. No.1019 of 1996.

Date of Order :- 9th September, 1998.

Between :

M. Ratnaiah, s/o Sivaiah
aged about 33 years,
Ex-Fitter (SS) in OFP
R/o Anantasagar (V),
Kondapur Mandal,
Medak District. ... Applicant

And

1. Director General of
Ordnance Factories,
10-A, Auckland, Calcutta.

2. The General Manager,
Ordnance Factory Project,
Yeddumailaram,
Medak District. ... Respondents

Counsel for Applicant : Mr. V. Jagapathi.

Counsel for Respondents : Mr. V. Bhimanna, CGSC

Coram :

The Honourable Mr. Justice D.H. Nasir, Vice-Chairman.

The Honourable Mr. H. Rajendra Prasad, Member(Admn.)

O R D E R.

(Per Hon.Mr.Justice D.H. Nasir, Vice-Chairman)

1. Heard Mr. V. Jagapathi, learned counsel for the applicant and Mr. V. Bheemanna, learned Standing Counsel for the respondents.

2. By order dated 16th July, 1996, the appellate authority (Joint Director (VIG), Ordnance Factory Board) held that the competent authority had passed the order of penalty by proper application of mind and without being influenced by any extraneous circumstances and rejected the appeal of the applicant, which is challenged in this proceeding.

3. The short facts before us are that the applicant was appointed as Fitter (SS) on 20.4.1988 in the Ordnance Factory Project, Yeddumailaram, Medak on regular basis. According to the applicant, a false complaint was made to the Foreman, HTF Section Sri E.D.Gopinath and a charge sheet dated 01.8.1990 was issued with the following charges :

1. Unauthorised entry into Admn. buildings.
2. Missing from the place of duty.
3. Sleeping while on duty.
4. Failure to maintain devotion to duty.

According to the applicant, he had gone to the Administration buildings for official purpose. He was directed to wait outside the office for some time and he having found that there was no other place to wait, occupied his seat on a Sofa in the Visitors room in the Administration buildings awaiting call from the concerned official for collection of warrants and demand notices, but he did not sleep or did not do any other act amounting to sleeping in the Visitors' room. Further according to him, in the departmental inquiry held against him, the Inquiry Officer recorded a finding that the charges Nos.2, 3 and 4 had been proved. According to the applicant, there was no evidence for arriving at a conclusion that the said charges were proved. Further according to him, since all the charges emanated from Charge No.1, which was not proved, the remaining charges did not survive. Further according to the applicant, the charges levelled against him were of insignificant character and no prudent person or authority could have awarded any punishment other than a warning to the delinquent. However, according to the applicant, at the instance of TSVSR Suri, who was an influential person in the factory and who had an easy access to the senior officers in the factory, prevailed upon the Inquiry Officer to recommend a stringent action against him. The disciplinary authority also, according to the applicant, without properly applying his mind, mechanically accepted the findings of the

Inquiry Officer and imposed the penalty of dismissal.

4. Aggrieved by the said order dated 14.8.1995, the applicant preferred O.A.No.1062 of 1995 in this Tribunal and the Tribunal by its order dated 8.9.1995 allowed the applicant to file an appeal and directed the appellate authority to dispose of the appeal within three months. However, the appeal was dismissed by the appellate authority (first respondent) by order dated 16.7.1996.

5. Learned counsel for the applicant during the course of his argument submitted that the applicant had been directed by his superior officer Sri M.A.Haleem, Store-Keeper to attend to some official work in the Administration buildings and therefore, it could not be said that the applicant was missing from the place of his duty and therefore, the second charge was baseless. With regard to the charge of sleeping, it was urged before us that one V.K.Balakar,AWH, who was alleged to have witnessed the applicant sleeping on the Sofa, was not examined by the department in support of the complaint made by Mr.Suri. Further according to the learned counsel for the applicant, even if it was believed that the charges were proved, the punishment of dismissal was grossly disproportionate or was not commensurate with the charges levelled against him and therefore, the same deserved to be quashed and set aside.

6. According to the applicant himself, he was appointed as a regular employee on 20.4.1988. He had hardly put in 7 years of service; and that except the alleged charges, the applicant was never found to have committed any default either before or after the alleged incident and he had been discharging his duties with utmost care and devotion to duty.

7. In the counter affidavit, the respondents point out that the applicant did not submit any written statement of defence within the prescribed time limit and therefore, in terms of Rule 14 of the CCS(CCA)Rules, an Enquiry Officer was appointed to inquire into the charges. The applicant along with his Defence Assistant attended the Court of Inquiry from time

time. The Inquiry Officer submitted his report on 10.5.1993 from which it was clear that the charge of unauthorised entry into the Administration buildings was not proved because the applicant had taken a pass-out from his Store Keeper (who was not authorised to issue the pass-out). However, the remaining charges, particularly the charge relating to sleeping while on duty on 1.8.1990 at about 11.00 AM in the Administration buildings had been conclusively proved. Further according to the respondents, the coduct of the applicant was in utter disregard of his responsibility and discipline and therefore, a serious view was taken by the disciplinary authority treating the misconduct to be a grave misconduct and the penalty of dismissal from service was awarded.

8. Learned Standing Counsel for the respondents drew out attention to the fact that the applicant was earlier punished by withholding of one increment without cumulative effect for missing from place of duty vide order dated 23.12.1992. It was further urged before us on behalf of the respondents that two disciplinary proceedings were pending against the applicant at the time of imposition of the penalty of dismissal from service, out of which one related to habitual irregular attendance during the period from 2/93 to 9/93 and unauthorised absence from duty from 1.10.1993 to 19.2.1994. By Memorandum dated 25.7.1995 the applicant was charged with continued unauthorised absence from duty from 31.3.1995 onwards.However, those disciplinary proceedings could not be concluded in view of the imposition of penalty of dismissal with effect from 14.8.1995. As already stated earlier, the applicant filed the appeal dated 11.9.1995 to the appellate authority, but his appeal was dismissed vide order dated 16.7.1996 and it was against the said order that the present O.A. is filed by the applicant.

9. A great emphasis was laid by the learned counsel for the applicant on the proposition that the disciplinary authority as well as the appellate authority took into consideration the

past misconduct as well as the misconduct allegedly committed by the applicant at a stage when the appeal was under consideration and therefore, the impugned order of dismissal stood vitiated on account of the fact that extraneous considerations were taken into account for awarding the penalty of dismissal and that the applicant would have been left with a minor punishment if such extraneous considerations were not allowed to influence the mind of the disciplinary authority as well as the appellate authority.

10. In the case of Ashok Kumar v. Union of India and another (1988(2) SLR(SC) 209) the Hon'ble Supreme Court held that the punishment imposed was grossly disproportionate to the charge levelled against the appellant of having absented himself from duty for three days without leave. However, in the case before us, the allegation is not that simple and it was not an isolated incident of misconduct committed by the applicant, and therefore, this decision of the Supreme Court does not come to the rescue of the applicant.

11. In the case of Bhagatram v. State of Himachal Pradesh and others (AIR 1983 SC 454) the Hon'ble Supreme Court observed that it was well established that in a disciplinary inquiry the delinquent had a right to cross-examine the witnesses examined on behalf of the disciplinary authority. It was further observed that if the delinquent officer was not informed of his right and an over all view of the joint inquiry of the delinquent and his superior officer disclosed that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and a superior officer, co-delinquent, was also represented by an officer of his choice to defend him, the absence of anyone to assist such a Government servant belonging to the lower echelons of service would, unless it was shown that he had not suffered any prejudice, vitiated the inquiry. In fact, justice and

fairplay demanded that where in a disciplinary proceeding the department was represented by a Presenting Officer, it was incumbent upon the disciplinary authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry; and at any rate the Inquiry Officer whether he would like to engage any one from the department to defend him and when the delinquent was a Government servant belonging to the lower echelons of service, he would further be informed that he was entitled under the relevant rules to seek assistance of another Government servant belonging to the department to represent him.

12. The fact that these opportunities were afforded to the delinquent in the instant case is not in dispute. What is emphatically urged before us is that the past misconducts were taken into account while conducting the inquiry into the current misconduct. Surprisingly, however, the applicant suppressed the material fact that by an order dated 23.12.1992 he was awarded punishment of withholding one increment for having been found missing from the place of duty and indulged into misrepresenting facts before this Tribunal in para 5(g) of the O.A. which reads as follows :

> "5(g). The applicant was appointed as regular employee on 20.4.1988 and he has hardly put in only seven years of service and he has a long way to go. Except the alleged charges, the applicant was never found fault at any point of time either before or after the alleged incident and he had been discharging his duties with utmost care sincerity, dedication and devotion to duty. The applicant is married and is having children. He is having a big family who are all dependant on the applicant's earnings. The applicant has no other income except the salary he gets for his service. Without considering the above and with vindictive attitude, the disciplinary authority has imposed severe punishment of dismissal from service on the applicant and therefore, the dismissal proceedings are malafide and are illegal."

13. From this conduct of the applicant it is evident that he has not come with clean hands before this Tribunal and the equity is not in his favour. The applicant is also totally silent about two inquiries pending against him when the impugned order was passed.

14. In our opinion, if the misconduct alleged against the applicant in the present case was an isolated one-time misconduct, there is no doubt that a lenient view could have been taken and the Tribunal would not have hesitated in arriving at a conclusion that the punishment of dismissal was grossly disproportionate to the misconduct committed by the applicant. However, we cannot expect the disciplinary authority to shut their eyes totally to the past misconduct in view of the fact that the gravity of misconduct in question takes a serious proportion in view of the fact that strong reason emerges to believe that the applicant was a habitual offender, when one past misconduct had already been proved which was not altered or set aside by any superior authority in the department or by any court of law. If a view is taken that for no purpose whatsoever, the past misconduct could be taken into consideration, the element of habitual misconduct would disappear from the scene and give a clean chit to the delinquent by letting him believe that he need not bother about the past misconduct even for examining whether the punishment for the present misconduct would stand aggravated on account of similar misconduct committed in the past. The disciplinary authority indeed should not be allowed either to alleviate or to enhance the severity of punishment exclusively on that ground, but he cannot be prevented from taking note of the conduct of the delinquent in his short tenure of 7 years of service with the present department. In such cases, if the delinquent is let off with a minor punishment, it would amount to putting a premium on the misconduct and the deterrent potential of punishment would

take a back seat inducing the delinquent to have no compunction in repeating such acts of misconduct.

15. Learned counsel for the applicant led us through the oral evidence recorded in the departmental inquiry with a view to pointing out that there was no evidence of the delinquent sleeping in the visitors room. It would not, however, be correct to say so. Of course, the person accompanying the complainant of the misconduct in question has not been examined by the department nor even by the delinquent. But no effort is made by the delinquent to satisfy this Tribunal that the oral evidence of Sri TSVSR Suri in that regard was unbelievable. Sri Suri deposed in clear terms that the delinquent was found sleeping. The statement made by him in his examination-in-chief has not been controverted. Not even a suggestion was made to him in the cross-examination that his statement that the delinquent was found sleeping was not a correct statement or that it was falsely made out on account of the alleged malice against the applicant. There could, therefore, be no constraint on arriving at a conclusion that the delinquent was found sleeping while on duty. It is an undisputed fact that the pass-out which the applicant had obtained was for entering the adjoining buildings and it was not for the purpose of enabling the delinquent to leave the premises for any personal work and therefore, the act of sleeping while on duty stands amply borne out of the evidence on the record of the case and in that view of the matter, we do not agree with the submission made by learned counsel for the applicant that there was no evidence whatsoever regarding the misconduct committed by the delinquent or that any false story was made out by Sri Suri.

16. It becomes evident from the above discussion that the misconduct alleged against the delinquent has been proved beyond all reasonable doubts. The allegation that he was found

sleeping while on duty does not suffer from any infirmity and assumes a serious proposition, as stated earlier leaving no reason to believe that a lenient view is required to be taken on the ground that the charge was of minor character or that the punishment of dismissal from service was highly disproportionate to the misconduct committed by the applicant. In a short period of 7 years of service, this was not the only occasion but in the past, similar misconduct had been committed and in the given facts and circumstances of the case, it would be a misplaced sympathy to say that the past misconduct should not have at all been referred to for giving a colour of misconduct having been aggravated eventually leading to the dismissal of the delinquent from service. We are, therefore, not inclined to interfere with the punishment of dismissal of the applicant from service awarded by the competent authority.

16. The O.A. is, therefore, dismissed; however, in the circumstances of the case, without costs.

(H.RAJENDRA PRASAD)
MEMBER(ADMN.)

(D.H. NASIR)
VICE-CHAIRMAN.

DATED THE 9TH SEPTEMBER, 1998.

Deputy Registrar

DJ/

To

1. The Director General Of Ordnance Factories,
   10-A Auckland, Calcutta
2. The General Manager,
   Ordnance Factory Project,
   Yeddumailaram, Medak Dist.
3. One copy to Mr.V.Jagapathi, Advocate, CAT.Hyd.
4. One copy to Mr.V.Bhimanna, Addl.CGSC. CAT.Hyd.
5. One copy to DR(A) CAT.Hyd.
6. One copy spare.
7. Copy to All Reporters,

pvm.

23/9/98

I COURT.

TYPED BY CHECKED BY

COMPARED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVETRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE D.H.NASIR

VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

DATED: 9-9-1998.

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No. 1019/96.

T.A.No. (w.p.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.