

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A. No.475/94

Date of order: 16/12/99

Umedsingh, S/o Shri Munga Ram, R/o C/o Sh. Ganga Singh, Ex-Driver, Nangla Dhanni Bai, Near Railway Office Rent House, Bayana, W.Rly, last employed as Cellman under SEFO, New Delhi.

...Applicant.

Vs.

1. The Union of India through General Manager, W.Rly, Churchgate, Mumbai.
2. Senior Divisional Electrical Engineer(P), W.Rly, Kota Divn, Kota.
3. Additional Divisional Rly Manager, Western Railway, Kota.

...Respondents.

Mr.J.K.Kaushik) - Counsel for applicant.

Mr.Shiv Kumar)

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order of removal from service of the applicant dated 3.9.93 and 9.11.93 passed by the appellate authority by which the appellate authority has rejected the appeal.

2. In brief facts of the case as stated by the applicant are that he was initially appointed as Khallasi on 21.4.73 and was promoted on the post of Cellman B.T.M. He was sanctioned leave for one day i.e. 23.5.91, but due to mental diseases for which the applicant was under treatment of Dr.H.P.Singh. The applicant reported on duty only on 9.12.92. It is stated that he was further sent to Jagjeevan Ram Hospital for examination and remained there indoor patient w.e.f. 4.2.93 to 6.2.93. It is stated that the applicant was served upon a charge sheet. The enquiry was conducted and the Inquiry Officer submitted his report. On this report, respondent No.2 imposed a penalty of removal from service of the applicant vide order dated 3.9.93. The applicant submitted an appeal which was also rejected vide order dated 9.11.93. The applicant also preferred a Revision which is pending. It is stated that while conducting enquiry the applicant was denied the opportunity to defend his case and he was punished on the basis of surmises and conjectures. It is also stated that the order of the appellate authority is also nonspeaking one and the penalty imposed upon the applicant is disproportionate to the gravity of the charge. Therefore, the impugned orders dated 3.9.93 and 9.11.93 are not sustainable in law. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated that the applicant was granted one day

leave for 23.5.91 but thereafter neither he turned up on duty nor sent any information. Therefore, the notice dated 6.12.91 was sent to the applicant at his residential address but he only reported on duty on 9.12.92. It is stated that the reasonable opportunity of hearing was given to the applicant while defending his case. It is stated that the applicant was held guilty for wilful and unauthorised absence for more than 18 months. Therefore, the punishment of removal from service was rightly imposed and the same cannot be said to be disproportionate to the gravity of the charge and this O.A is devoid of any merit and liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that (i) the applicant remained ill during the period of his absence and during this period he took treatment from Dr.H.B.Singh. But this fact was not taken into consideration before holding the applicant guilty for wilful and unauthorised absence, (ii) that if he is at all found guilty of wilful and unauthorised absence, the penalty imposed upon the applicant is disproportionate to the gravity of the charge.

6. On the other hand the learned counsel for the respondents has submitted that the applicant remained absent for more than 18 months without any intimation/information to the departmental authorities and this Tribunal has no jurisdiction to appreciate/reappreciate the evidence produced before the departmental authorities as the Tribunal does not exercise the power of appeal. He has also argued that the punishment imposed upon the applicant is not disproportionate to the gravity of the charge. Moreover, the Tribunal has no jurisdiction to interfere on the ground of quantum of penalty. In support of his contention he has referred Union of India & Ors. Vs. Kulamoni Mohanty & Ors. (1999) 1 SCC 185 and Govt of A.P Vs. B.Ashok Kumar (1997) 5 SCC 478.

7. We have given anxious considerations to the rival contentions of both the parties and also perused the whole record.

8. Admittedly the applicant remained absent from 1.6.91 to 8.12.92 without any intimation to the department. A notice was also given to him dated 6.12.91 for reporting on duty but the applicant did not pay any attention to it and he only reported on duty on 9.12.92. It also appears that the Inquiry Officer considered the defence of the applicant and thereafter held the applicant guilty of wilful and unauthorised absence.

9. High Court or Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion.

10. In B.C.Chaturvedi Vs. UOI, 1996(32) ATC 44 Hon'ble Supreme Court inter alia held that the Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive on its own independent findings on the evidence. The Court/Tribunal

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may interfere where the authority held the proceedings against the delinquent officer in a manner in consistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence.

11. In Indian Oil Corporation Vs. Ashok Kumar Arora (1997) 3 SSC 72, it was held by Hon'ble Supreme Court that High Court in such cases of departmental enquiry and findings recorded therein does not exercise the power of appellate court/authority. The jurisdiction of the High Court in such cases is very limited. For instance, where it is found that domestic inquiry is vitiated by non-observance of the principles of natural justice: (2) denial of reasonable opportunity, if findings are based on no evidence, (3) punishment is disproportionate to the proved misconduct of the employee.

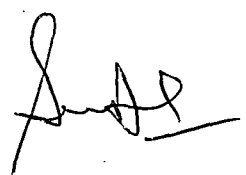
12. In Kuldeep Singh Vs. Commissioner of Police & Ors. 1998(9) Supreme 452 Hon'ble Supreme Court held that the Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

13. In the instant case the findings of the Inquiry Officer to hold the applicant guilty cannot be said to be based on no evidence or perverse. Therefore, the contention of the learned counsel for the applicant is not sustainable in law.

14. The learned counsel for the applicant has argued that the punishment of removal from service of the applicant is disproportionate to the gravity of the charge. The charge against the applicant which was held as proved by the Inquiry Officer regarding wilful and unauthorised absence for about 18 months or more.

15. In Ranjit Thakur's case Hon'ble Supreme Court has interfered with the punishment only after coming to conclusion that the punishment was in outrageous defiance of logic and was shocking.

16. In B.C. Chaturvedi Vs. UOI, 1995(6) SSC 719(3) it was held by the Apex Court that if the punishment imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of charge for High Court or Tribunal, it would be appropriately moulded to resolve by directing the disciplinary authority or appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself impose appropriate ~~penalty~~ punishment with cogent reasons in support



thereof.

17. A similar view was taken in Indian Oil Corporation Vs. Ashok Kumar Arora (1997) 3 SCC 72, it was held that the Court will not interfere unless the punishment is wholly disproportionate.

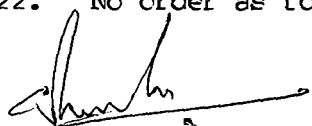
18. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 327, Hon'ble Dr.A.S.Anand, Chief Justice, has observed that High Court cannot substitute its own conclusion with record to the guilt of the delinquent for that of departmental authorities unless the punishment imposed by the authorities is either impermissible or such that it shocks the conscience of the High Court.

19. On the basis of the law laid down by Hon'ble Supreme Court, we can safely say that the Court/Tribunal can interfere with in the quantum of penalty if the same is disproportionate to the gravity of the charge or it shocks the judicial conscience.

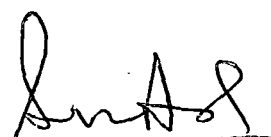
20. In the instant case, the applicant remained absent because of his mental depression as per the report of the Inquiry Officer. It is also evident that before passing the order of removal from service the applicant has completed about 19 years of service without any stigma. Therefore, looking to the conditions of the applicant and facts and circumstances of this case particularly in relation to the gravity of the charge proved against the applicant, we feel that end of justice will meet if the penalty of compulsory retirement is imposed upon the applicant in place of removal from service.

21. We, therefore, quash the order of removal of the applicant from service dated 3.9.93 and order of appellate authority dated 9.11.93 and direct the disciplinary authority to reconsider the quantum of punishment to be awarded to the applicant for the alleged misconduct in the light of the observations made above. The whole exercise must be completed within 3 months from the date of receipt of a copy of this order.

22. No order as to costs.

  
(N.P.Nawani)

Member (A)

  
(S.K.Agarwal)

Member (J)