

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision: 12th April, 2004

OA No.214/2003

Bajrang Lal Mali s/o Shri Balu Ram Mali, aged about 54 years, r/o 3/343, Malviya Nagar, Jaipur, presently holding post of Assistant Audit Officer, Jaipur.

.. Applicant

Versus

1. The Comptroller and Auditor General of India, 10, Bahadur Shah Jafar Marg, Inderprasth Estate, New Delhi.
2. Deputy Controller and Auditor General, 10, Bahadur Shah Jafar Marg, Inderprasth Estate, New Delhi.
3. The Accountant General, Audit-I, Near Statue Circle, A.G.Office, Jaipur.

.. Respondents

Mr. Vinor Goyal, counsel for the applicant

Mr. Gaurav Jain, counsel for the respondents

CORAM:

HON'BLE MR. J.K.KAUSHIK, MEMBER (JUDICIAL)

HON'BLE MR. M.K.MISRA, MEMBER (ADMINISTRATIVE)

O R D E R (ORAL)

Shri Bajrang Lal Mali has filed this Original Application assailing the chargesheet dated 7.10.97 at Ann.A1, order dated 18.9.2000 at Ann.A2, order dated 10.8.2001 at Ann.A3, order dated 11.2.2003 at Ann.A4 and has, inter-alia, prayed for the consequential benefits.

2. Leaving out unnecessary details, the material facts necessitating filing of this Original Application are that the applicant while



holding the post of Assistant Audit Officer was issued with a chargesheet vide Memorandum dated 7.10.1997 wherein two article of charges were levelled against him as indicated at page 20 of the paper book. The applicant denied the charges and an oral enquiry was ordered into the matter. The applicant participated in the enquiry and the enquiry was concluded, wherein the Enquiry Officer has held the charge 2(i) as proved, which reads as under:-

"Second article of charge :

(i) of disertion of duty,
delinquency and dishonesty : Established
by way of leaving his duty
point without any written
intimation, preparing the
inspection report in advance
before completion of audit
and indicating false date
of transit to Jaipur in
respect of matter relating
to Government Secondary
School, Loha (Distt. Churu"

The applicant was supplied with a copy of the enquiry report and after giving him opportunity of filing representation, the Disciplinary Authority imposed the penalty vide order dated 18.9.2000 wherein the following penalty was imposed:-

" It is therefore, ordered that the pay of Shri Bajrang Lal Mali, AAO be reduced by one stage from Rs. 8700/- to Rs. 8500/- in the time scale of pay of Rs. 6500-200-10500 for a period of one year with effect from 1.10.2000 to

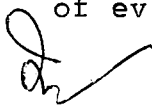
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30.09.2001. It is further directed that Shri Mali will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing of his future increment of pay.

It is further ordered that the T.A.Bills of Shri Mali for the months of April 1996, May 1996 and June 1996 be passed as per rules and period of 2 days for 6.6.96 and 7.6.96 is ordered to be treated as 'dies-non' without break in service. This will meet the end of justice."

The applicant preferred an appeal against the said penalty and the same has been turned down vide order dated 10.8.2001 (Ann.A3). He also preferred revision petition and that has also been rejected vide order dated 11.2.2003. The OA has been filed on diverse grounds mentioned in para 5 and its sub-paras, which we will deal with in the later part of this order.

3. The respondents have contested the case and have filed detailed counter reply to the Original Application. The facts and ground as narrated in the Original Application have been generally refuted. They have placed on record certain documents as Ann.R1, Ann.R2 etc. They have also referred to certain decisions in support of their contention as indicated at internal at page 4, page 54 of the paper book. It has been averred that the Enquiry Officer has correctly reached his findings after appreciation of evidence adduced and the material available on



record. It has also been averred that the applicant is trying to indulge the Hon'ble Tribunal in appreciation of evidence adduced during the course of enquiry, which is not permissible under the law. The order of 'dies-non' is not having any penal effect, since the applicant did not work during that period. The Appellate Authority has passed a speaking order and similar is the position regarding the Revisional Authority. The grounds have been generally denied.

4. A short rejoinder has been filed controverting the facts narrated in the reply.

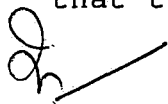
5. We have heard the learned counsel for the parties and have earnestly considered their submissions, pleadings and the record of this case.

5.1 The learned counsel for the applicant has reiterated his pleadings on charge No. 2(i) which has been bifurcated from the original charge No.2. The learned counsel for the applicant submitted that the applicant fell ill on 5.6.96 and the sickness was such as he had to rush to Jaipur ~~and~~ due to unusual situation, he could not inform his controlling authority at the same time. On the very next date, he sent a communication through the post card for asking leave for two days. Thus, there was no question of disertion of duty. He has also submitted that the statement of the Principal of the particular

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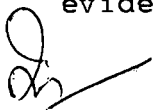
school also supports his contention, but the charge against the applicant has been held to be proved without there being any reason. He has also submitted that the penalty imposed on the applicant is ex-facie disproportionate to the alleged misconduct and, therefore, the same cannot be sustained.

5.2 On the contrary, the learned counsel for the respondents has strenuously opposed the contentions raised on behalf of the applicant and has submitted that the facts which have been narrated on behalf of the applicant are diametrically opposite, inasmuch as, the applicant has himself shown in his Travelling Allowance bill his move from Loha to Jaipur on 8.6.96 at 5.00 PM whereas in the statement he is showing that on 5.6.96 itself, he moved to Jaipur and then posted the letter for leave. The learned counsel for the respondents has also drawn our attention to Ann.R2 which is weekly diary report as on 8.6.96. This very clearly indicates a different situation and different version than that of the applicant. In this, the applicant has been shown on leave on 6th and 7th June, 1996 and his move is also shown on 8.6.96, whereas the version of the applicant is that he moved to Jaipur on 5.6.96 itself. The learned counsel for the respondents have further submitted that the scope of the judicial review is very limited and this Hon'ble Tribunal would not like to appreciate the evidences. He has also submitted that the orders passed by various authorities are



speaking order and in view of the citations which have been averred in the reply, the Tribunal would not like to interfere in the instant case and the OA deserves to be dismissed.

5.3 We have considered the rival contentions put forward by the learned counsel for the parties. As far as the scope of judicial review of concerned, we are conscious that the Tribunal has very limited power of judicial review, which would not endeavour to appreciate the facts or to ascertain the sufficiency or otherwise of the evidence. However, the Tribunal is not powerless and it can intervene, in case it is a case of no evidence or the findings are perverse and can examine the decision making process, of course, not the very decision itself. The principle of law has been laid down in the case of Commissioner and Secretary to the Government and Ors. vs. C. Shanmugam reported in (1998) 2 SCC 394 and in the case of Union of India and Anr. vs. B.C. Chaturvedi, reported in (1995) 6 SCC 750. In these cases, their Lordships of Hon'ble the Supreme Court has held that the Tribunal cannot re-appreciate the evidence and substitute its own findings. While, there is no quarrel on the statement of law on the scope of judicial review, we are very clear in our mind regarding the scope of judicial review that we do not have any power to appreciate or re-appreciate factual aspect and to substitute our own judgment for that of the competent authority. It is only when the conclusion upon consideration of evidence reached by the authorities concerned is



perverse or suffers from patent error on the face of record or based on no evidence at all or the decision making process was faulty or the order is otherwise perverse, the intervention of the Court may be warranted.

5.4 In examining the instant case on the touch stone of the above principle, we find that the applicant has been making different statements quite contrary to the records and the same can be amply described as plea of volte-face. We have no reason to disbelieve the documentary proof which have been placed on record and remain un-refuted, wherein a different version has been clearly indicated. One thing is very clear, if the applicant has moved only on 8th June and during two days he was on leave and he did not infact moved on 5th June as is evident from the record, even his version that he sent an application on 6th June from Jaipur, would not be true. However, there is no allegation of malafide against anybody in the matter and we do not find that there is any perversity in the findings of the Enquiry Officer or it is a case of no evidence.

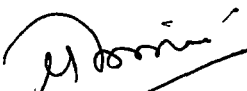
5.5 We have also perused the orders which have been passed by various authorities. We find that the order which has been passed by the Disciplinary Authority is quite elaborate and reasoned order. Once the Disciplinary Authority has passed a reasoned order, it is not necessary for the Appellate Authority or the Revising Authority to pass a speaking order until there is



any dis-agreement and this proposition of law has been settled by the Constitutional Bench of the Hon'ble Supreme Court in S.N.Mukherjee vs. Union of India reported in AIR 1990 SC 1984. In this view of the matter, no interference is called for in any of the impugned orders and we do not find any impropriety, illegality or arbitrariness in the action of the respondents.

5.6 As regards the contention of disproportionate penalty, we find that various authorities have already extended leniency in the matter, otherwise it was a matter where a false TA alleged to have been claimed and besides that the falsification of the report which could lead to serious consequences. Thus, we are not impressed with the contention of the applicant and the same cannot be sustained.

6. In the circumstances of the aforesaid decision, we reach to an inescapable conclusion that the OA does not have any merit or substance and the same fails and stands dismissed. However, the parties are left to bear their own costs.


(M.K.MISRA)

Member (A)


(J.K.KAUSHIK)

Member (J)