

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 30th day of July, 2010

ORIGINAL APPLICATION No.178/2006

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.K.S.SUGATHAN, ADMINISITRATIVE MEMBER

Satish Kumar Meena,
Chowkidar,
O/o District Opium Officer,
Kota.

... Applicant

(By Advocate : Ms.Ashish Joshi)

Versus

1. Union of India through
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Commissioner, Narcotics,
Government of India,
Central Bureau of Narcotics,
19, the Mall, Marar,
Gwalior (MP).
3. Member (P&V),
Central Board of Excise & Customs,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
4. Dy. Commissioner,
Narcotics,
Mahaveer Nagar-I,
Jhalawar Road,
Kota.


... Respondents

(By Advocate : Shri T.P.Sharma)

ORDER

PER HON'BLE MR.K.S.SUGATHAN

The applicant is working as a Chowkidar in the respondent's department. In the year 2004, when he was posted as Chowkidar in the office of District Opium Officer, Chittorgarh, the applicant was placed under suspension on 3.3.2004. A charge-sheet was issued to him on 23.7.2004 under Rule-14 of the CCS (CCA) Rules, 1965. The charges against the applicant were that; (i) on the night of 16.2.2004 he had left his place of duty at 0015 hrs. without informing his superiors and without taking their permission; (ii) on 28.2.2004 also he remained absent from duty without taking permission. The applicant denied the charges. An inquiry officer was appointed on 6.8.2004. In the meanwhile, suspension of the applicant was revoked and he was posted to Kota. The inquiry officer submitted his report on 9.12.2004 holding the charges against the applicant as proved. A copy of the inquiry report was made available to the applicant. After considering the report of the inquiry officer, the disciplinary authority imposed the punishment of reduction to a lower stage in the time scale from Rs.2720/- to Rs.2550/- for a period of one year with cumulative effect. The said penalty was imposed vide order dated 19.1.2005 (Ann.A/1). The applicant preferred appeal against the said penalty but the same was dismissed vide order dated 8.4.2005 by the Commissioner of Central Bureau of Narcotics, Gwalior (Ann.A/2). Revision Petition submitted by the applicant was also dismissed vide order dated 3.2.2006, issued by the Member (P&V), Central Board of Excise & Customs (Ann.A/3). Aggrieved by the punishment imposed, the applicant has filed this OA seeking the following relief :



"i) By an appropriate order or direction, the impugned order dated 19.1.2005 (Annex-A/1) passed by the Deputy Commissioner, Narcotics, Kota; order dated 8.4.2005 (Annex-A/2), passed by the Commissioner Narcotics; and the impugned order dated 3.2.2006 (Annex-A/3) passed by the Member (P&V), Central Board of Excise and


Customs, New Delhi may kindly be quashed and set aside and the applicant be exonerated from the charges levelled against him.

(ii) By further appropriate order or direction, after quashing the aforesaid impugned orders, the respondents be directed to fix the applicant in the scale of Rs.2720/- as it was prior to passing of the impugned order, alongwith grade increments and all other consequential benefits follow therefrom.

(ii) Or any other appropriate order or direction may kindly be passed which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."


2. It is contended by the applicant that the inquiry conducted against him was not fair and proper. The applicant had to leave the place of his duty on the night of 16.2.2004 on account of an emergency namely illness of his mother. The story about the breaking of lock of the godown on that day is fabricated. He had informed two sepoys in the control room that he was leaving. On 28.2.2004 he telephonically informed one Mr.Mangi Lal that he will not be able to attend his duty because of the illness of his wife who was pregnant. The punishment imposed upon him is disproportionate to the gravity of the misconduct.

3. The respondents have opposed the prayers in the OA. It is stated in the reply that the applicant had been given full opportunity to prove his innocence during the course of inquiry. The disciplinary authority had also given him a personal hearing. Whatever might have been the emergency, it was the duty of the applicant to inform the superior officials before leaving the place of duty. Even if the District Opium Officer was out of station, there were other officers such as Inspector & Sub Inspector who could have been informed and they could have made alternative arrangement for guarding the godown in which sensitive material namely Narcotics were stored. Leaving the duty of guarding such a godown in which sensitive material was stored required a more severe penalty but the disciplinary authority has taken a lenient view.



4. We have heard learned counsel for the applicant Ms. Ashish Joshi and learned counsel for the respondents Shri T.P. Sharma. We have also perused the record carefully.

5. Following the judgement of the Hon'ble Supreme Court in **B.C. Chaturvedi v. Union of India** [1996 SCC (L&S) 80], and **Hon'ble High Court of Judicature at Bombay v. Shashikant Patil** [2000 SCC (L&S) 144], the scope of judicial review in departmental proceedings is limited to the examination whether there has been any violation of rules or procedures, whether there is any violation of the principles of natural justice or whether there have been extraneous considerations which vitiated the proceedings. We have examined the pleadings of this case by keeping in mind the aforesaid scope of judicial review. The applicant had himself admitted that he left the place of his duty in the midnight of 16.2.2004 because of illness of his mother. It is also proved that he did not inform or take permission from his superiors. The charge-sheet has been issued by the competent authority and the punishment is also imposed by the authority that is competent to do so. The disciplinary authority in its order dated 19.1.2005 has elaborately discussed the contentions of the applicant and we do not see any non-application of mind. It is seen from the record that the applicant has been given sufficient opportunity to disprove the charges against him. We have gone through the inquiry officer's report and we do not find that there is any violation of the principles of natural justice. It is also to be noted that the punishment order mentions that on earlier occasion also the applicant was given memo for absenting himself without permission..



6. The applicant has raised issue that the punishment is excessive. We have examined this contention. It is now the well settled law that the Court/Tribunal should not interfere with the quantum of punishment unless the punishment is so disproportionate to the offence as to shock the conscience and

amount in itself to conclusive evidence of bias. [**Ranjit Thakur v. Union of India & Ors.** – AIR 1987 SC 2386]., In **B.C. Chaturvedi** (supra), the Hon'ble Apex Court has held that disciplinary/appellate authorities are appropriately placed to exercise the discretion regarding imposition of the proper penalty. Following extract of the judgement of the Apex Court is relevant :

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

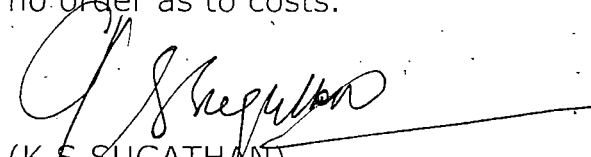
7. We have also perused two cases in which courts have considered the penalty as disproportionate. In **Rajesh Kumar Tripathi v. State of U.P. & Anr.** [1993 (2) SLR 447] the Hon'ble High Court of Allahabad considered removal from service for the misconduct of unauthorized absence as disproportionate and directed the institution for fresh proceedings. In **Avinash Chandra Gupta v. Municipal Corporation of Delhi** [1993 (3) SLR 29] Hon'ble High Court of Delhi felt that dismissal was not warranted as the charge proved against the employee was only dereliction of duty.


8. In the present case, the applicant has not been imposed a penalty of removal or dismissal. Considering the nature of the offence namely the applicant, in the midnight, left the place of duty of guarding a godown, which stored sensitive material,

without informing his superiors, it appears that the respondents have already taken a lenient view and imposed a lesser punishment.

9. In view of the above discussion, we are of the considered opinion that there is no violation of any statutory rule or procedure. There is also no violation of the principles of natural justice. Quantum of punishment imposed on the applicant does not appear to be disproportionate to the gravity of the misconduct.

10. For the reasons stated above, the OA is dismissed with no order as to costs.


(K.S. SUGATHAN)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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