

14

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00225/2014

Date of Decision: 10.3.2015

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A).**

Moti Ram son of Sh. Kanha age 56 years working as Assistant Binder (Token No.82) in the office of Government of India Press, Faridabad (Haryana).

...APPLICANT

BY ADVOCATE: Sh. D.R. Sharma, counsel for the applicants.

VERSUS

1. Union of India through Secretary, Ministry of Urban Development, Directorate of Printing, 'B' Wing, Nirman Bhawan, New Delhi-110001.
2. The Director, Directorate of Printing, 'B' Wing, Nirman Bhawan, Maulana Azad Road, New Delhi.
3. The Manager, Government of India Press, Faridabad, Haryana.

...RESPONDENTS

BY ADVOCATE: Sh. Deepak Agnihotri, counsel for the respondents.

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

1. Through the present O.A. the applicants have sought mainly the following reliefs:

- "8(i) That impugned punishment order dated 13.03.2013 (Annexure A-2) and appellate order dated 02.09.2013 (Annexure A-1) be quashed and set aside, in the interest of justice.
- (ii) That impugned inquiry report dated 11.02.2013 (Annexure A-4) be declared null and void, the same not adhering to

1

the basic principles of an enquiry and CCS (CCA) Rules, 1965.

- (iii) That the suspension period from 23.08.2012 to 17.02.2013 be ordered to be treated as duty period for all intents and purposes.
- (iv) That applicant be held entitled to all consequential benefits and relief/s including the arrears of emoluments alongwith the interest @18% per annum w.e.f. 23.08.2012 to 17.02.2013."

2. The applicant was placed under suspension vide order dated 23.8.2012 with immediate effect in contemplation of departmental proceedings. He was served with a charge-sheet on 07.09.2012 under Rule 16 of CCS (Classification, Control and Appeal) Rules, 1965 (for brevity "The Rules") to which he submitted reply on 10.09.2012. On 25.09.2012, the applicant requested the Department to supply charge sheet in Hindi. On 28.09.2012, the Disciplinary Authority appointed common Inquiry Officer and Presenting Officer to conduct the inquiry under Rule 14 of The Rules against the applicant and three other co-accused. The applicant was served with a memorandum in Hindi on 05.10.2012 to which he submitted a reply on 16.10.2012. He also requested the Disciplinary Authority to change the Presenting Officer. Inquiry Officer submitted his report of 12.02.2013, a copy of which was supplied to the applicant to file his defence, if any. The applicant submitted his defence on 26.02.2013. After considering the same, the Disciplinary Authority passed order on 13.3.2012, imposing punishment of withholding of next one

increment for a period of two years without any cumulative effect and also ordered that the suspension period from 23.08.2012 to 17.02.2013 will be treated as "Non Duty" for all purposes except pension. Aggrieved against the same, the applicant preferred a statutory appeal dated 23.04.2012. The appellate authority vide order date 02.9.2013 modified the punishment of withholding of next one increment for a period of two years to one year without cumulative effect but maintained the order treating the suspension period from 23.08.2012 to 17.02.2013 as "Non Duty". Hence this O.A.

3. Pursuant to the notice, the respondents filed a detailed reply contesting the claim of the applicant stating therein that the Charge sheet was issued to the applicant under Rule 16 of the Rules. Since the applicant denied the charges in toto and demanded inquiry, the Disciplinary Authority then issued orders for conducting the inquiry under Rule 14 of the Rules and the proceedings were conducted accordingly. The applicant had created indiscipline and instigated other employees at the Press to also behave in an indiscipline manner on the ground that there was insufficient water supply in Unit-II. The preliminary inquiry conducted on 4.9.2012 proved that there was sufficient supply of water for Unit II and water motors were running on 23.8.2012. Hence the suspension of the applicant was continued.

It is further stated that charges levelled by the applicant against Presenting Officer were found to be baseless by Inquiry Officer. Moreover, the Rules do not confer any right for change of Presenting Officer in the Disciplinary Proceedings. During the inquiry, it has been proved that the applicant had participated in the crowd gathered before the chamber of the Manager and he instigated other employees. He also misbehaved with the superior officer and used unparliamentarily language against him. After considering all the facts and circumstances, the Disciplinary as well as Appellate Authority awarded aforesaid punishment upon the applicant. The charges leveled against the applicant as per the Charge sheet had been proved and thus the suspension period had been treated as "non-duty" by the competent authority, after careful consideration of the facts and circumstances of the case.

4. We have heard Sh. D.R. Sharma, learned counsel for the applicant and Sh. Deepak Agnihotri, learned counsel for the respondents.
5. Sh. Sharma tried to persuade the Court that the impugned order inflicting punishment upon the applicant is bad in law but was unable to show any procedural defect or irregularity in concluding the Departmental proceedings which could be used as a ground to interfere with the order of punishment. We have perused the

pleadings minutely and examined the respective pleadings qua legality of disciplinary proceedings.

6. The Hon'ble Supreme Court of India in the cases of **State Bank of India Vs. Samarendra Kishore Endow** [1994 (i) SLR 516] and **UOI Vs. Upendra Singh** (1994-27 ATC 200), has made it clear that a High Court or Tribunal has no power to substitute its own decision for that of the disciplinary authority. The jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226, which is one of judicial review. The Tribunal has no jurisdiction to go into the correctness or otherwise of the charges and can interfere only if, on the charges framed, no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law or are vague.
7. In the case of **Commissioner of Income-tax, Bombay & Ors. v. Mahindra & Mahindra Ltd. & Ors.**, AIR 1984 SC 1182, the Apex Court held that various parameters of the court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held that "It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a

1
↓

wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same".

8. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure, as held in Tata Cellular v. Union of India, AIR 1996 SC 11.
9. In the case of Air India Ltd. v. Cochin International Airport Ltd. & Ors., AIR 2000 SC 801, the Apex Court explaining the scope of judicial review held that the court must act with great caution and

should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not. It has been held that the court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. Reference is made to High Court of Judicature at Bombay's decision in **Registrar v. Udaysingh s/o Ganpatrao Naik Nimbalkar & Ors.**, AIR 1997 SC 2286; **Government of Andhra Pradesh & Ors. v. Mohd. Nasrullah Khan**, AIR 2006 SC 1214; and **Union of India & Ors. v. Manab Kumar Guha**, (2011) 11 SCC 535).

10. The question of interference on the quantum of punishment, has been considered by the Apex Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. In **Ranjit Thakur v. Union of India & Ors.**, AIR 1987 SC 2386, the Apex

Court has held that "but the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review." Reference is also made to Union of India & Anr. v. G. Ganayutham through Lrs.), AIR 1997 SC 3387; State of Uttar Pradesh & Ors. v. J.P. Saraswat, (2011) 4 SCC 545; Chandra Kumar Chopra v. Union of India & Ors., (2012) 6 SCC 369; and Registrar General, Patna High Court v. Pandey Gajendra Prasad & Ors., AIR 2012 SC 2319).

11. In the case of B.C. Chaturvedi v. Union of India & Ors., AIR 1996 SC 484, the Apex Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the

court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority.

12. In V. Ramana v. A.P.S.R.T.C. & Ors., AIR 2005 SC 3417, the Apex Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards" In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the

Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof.

13. In State of Meghalaya & Ors. v. Mecken Singh N. Marak, AIR 2008 SC 2862, this Court observed that a Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review.
14. It is, thus, apparent that the role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. A perusal of the pleadings of

the parties in this case would disclose that there does not appear to be any irregularity or illegality in conduct of the proceedings and the applicant has been given due opportunity to defend himself. The impugned orders are also found to be speaking one and meet the requirement of law.

15. The learned counsel for the applicant, however, submits that similar issue qua the suspension period has already been considered in the case of **Narinder Singh Vs. UOI & Others** in O.A. No.1167/HR/2013 and requested that the case of the applicant qua suspension period may also be decided in the same terms.
16. Learned counsel for the respondents vehemently opposed prayer of counsel for the applicant stating that in the light of order passed in Narinder Singh's case, this O.A. deserves dismissal.
17. We have given our thoughtful consideration to the entire matter and perused the material on record. Since while deciding the Narinder Singh's case, the co-ordinate bench has upheld the punishment orders dated 13.3.2013, appellate order dated 10.07.2013 and inquiry report dated 11.02.2013 while recording reasons therefor in Para No.9 of the order that the applicant had failed to point out any irregularity in the inquiry proceedings. However, while considering the relief with regard to regularization of suspension period, the Court came to the conclusion that action of the respondents is contrary to

DoPT OM No.11012/15/85-Estt.(A) dated 03.12.1985. Considering this, the O.A. has been partly allowed by recording reasons in Para 10 and 11.

18. In view of the above, the applicant being similarly situated like Narinder Singh (Supra) and for the parity of reasons given therein, the prayer of the applicant to treat suspension period from 23.08.2012 to 17.02.2013 "as duty" is allowed in the same terms. Relevant Paras of the order dated 26.9.2014 in Narinder Singh's case (Supra) are reproduced as follows:-

"9. Perusal of the material on record shows that there is no defect in the conduct of disciplinary proceedings as these have been carried out in accordance with Rule 14 of CCS (CCA) Rules, 1965 and the Disciplinary and Appellate Authority have passed their orders imposing penalty of withholding of increment without cumulative effect after due consideration of the findings in the inquiry. Hence there is no cause for judicial interference in this regard.

10. However, it is seen that the period of suspension of the applicant from 23.8.2012 to 17.2.2013 has been ordered to be treated as "Non Duty" for all purposes except for pensionary benefits. This is clearly in violation of DoPT OM No.11012/15/85-Estt.(A) dated 03.12.1985 wherein, it has been stated that where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee

concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

11. Hence this OA is allowed to the extent that the respondent Disciplinary/Appellate Authority are directed to treat the period of suspension of the applicant w.e.f. 23.08.2012 to 17.02.2013 as duty period for all intents and purposes keeping in view the fact that minor penalty of withholding of one increment without cumulative effect has been imposed on the employee with reference to the Chargesheet dated 21.9.2012 (Annexure A-11). Action in this regard may be taken within a period of two months from the date of a certified copy of this order being served upon the respondents and arrears due to the applicant may be released accordingly."

19. No costs.

(RAJWANT SANDHU)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated: 10.3.2015

'KR'