RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **16th** day of August 2018.

Original Application No. 731 of 2011

PRESENT:
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER -A
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER –J

Nand Kumar Pathak aged about 66 years, son of Shri B.N. Pathak, Resident of Village and Post Barpur Mafi, District Gorakhpur (U.P).

…….Applicant

By Advocate: Shri Swayamber Lal

Versus

1. Union of India through its Secretary, Ministry of Defence, Department of Defence Production, New Delhi.
2. The Chairman, Ordnance Factories Board 10/A, Auckland Road, Calutta.
3. The General Manager, Small Arms Factory, Kanpur.

…….Respondents

By Advocate: Shri S.N. Chatterji

O R D E R

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER –J

1. The present Original Application has been filed by applicant Shri Nand Kumar Pathak seeking following reliefs:-

(i) To issue a writ, order or direction in the nature of certiorari to quash the order

dated 19.06.1995 (Annexure A-1 to compilation No.1) passed by respondent No.3, appellate order dated 19 Feb. 1997 (Annexure A-2 to compilation No.1) and also appellate order dated 20 Nov 2010 (Annexure A-3 to compilation No.1) passed by respondent No.2.

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to treat the applicant in service till the date of his retirement with back wages and with all consequential benefits available to him and thereafter pensionary benefits be granted to him, or the Hon'ble Tribunal may mould the punishment to the lesser punishment being excessive punishment awarded to the applicant by the respondents.

(iii) To issue another writ, order or direction in favour of the applicant as deem fit and proper in the circumstances of the case.

(iv) Award the cost of application in favour of the applicant".

2. Applicant Nand Kumar Pathak case is that while serving as Mechanist in Small Arm Factory Kanpur was served with the charge sheet dated 11.11.1993 for attempting to steal Government store. The enquiry report went against the applicant. The copy of the finding of enquiry officer dated 4.4.1995 was forwarded to the applicant and was directed to make submission within 15 days on the findings of the enquiry officer. The applicant submitted his reply to the enquiry report pointing out the illegalities committed by the enquiry officer during the enquiry.

3. Applicant filed O.A. NO. 527 of 1995 against the show cause notice dated 13.4.1995 in this

Tribunal which was admitted vide order dated 7.6.1995 (Annexure A-24). The Disciplinary Authority imposed punishment vide order dated 19.6.1995 by which the applicant was removed from service. The punishment was imposed after admission and during the pendency of O.A. NO. 527 of 1995 violating the provisions of section 19 (4) of the Administrative Tribunals Act, 1985 (hereinafter referred to as the 'Act'). Applicant seeks the quashing of punishment being in violation of Section 19 (4) of the Act.

4. Applicant had also filed an appeal dated 28.7.1995 before the Appellate Authority for quashing the order of punishment passed by the Disciplinary Authority. Meanwhile O.A No. 527 of 1995 was disposed of by order dated 11.9.2001 directing the respondents to decide the appeal in accordance with law. The respondent No. 3 vide letter dated 13.11.2001 forwarded the order of appellate authority dated 20.2.1997 informing him that the appeal had already been decided but which facts were not disclosed during the pendency of O.A. No. 527 of 1995 before the Tribunal.

5. Thereafter, the applicant challenged the order of removal dated 19.6.1995 and the appellate order dated 20.2.1997 in O.A No. 249 of 2002 which was disposed of by the Tribunal vide order dated 19.5.2010 by observing that :-

> “18. In view of the above observations, we do not want to interfere with impugned orders on merits. But at the same time, as the applicant has already rendered 31 years of service and has a big family to support, matter requires sympathetic consideration. Accordingly, we remit the matter back to the appellate authority for reconsideration of quantum of punishment in accordance with provision and rule and pass appropriate reasoned order within a period of three months on receipt of certified copy of the order”.

6. Applicant’s further case that despite remit the case back to the Appellate Authority for reconsideration of the quantum of punishment and pass reasoned order, the Appellate Authority maintained the order of removal from service.

7. A bird eye of the relevant dates in the case are:

A. Charge sheet :11.11.1993
B. Enquiry report :04.04.1995
C. Institution of O.A No.527/1995 : 07.06.1995
D. Disciplinary Authority :19.06.1995
E. Appellate Authority :20.02.1997
F. Disposal of O.A No.527/1995 : 11.09.2001
G. Disposal of O.A. No. 249/2002 : 19.05.2010
H. Re-consideration of Punishment order:24.11.2010

8. Hence, the present O.A. challenging the Disciplinary Authority order dated 19.6.1995,

the appellate order dated 20.2.1997 as well as order dated 24.11.2010 re-affirming the order of punishment or Tribunal may itself modify the order of punishment.

9. One thing is clear that in view of the order dated 19.05.2010 passed by the Tribunal in O.A. No. 249/2002 filed by the applicant against the order of Disciplinary Authority and the appellate order, there can be no further challenge to the impugned orders on merit. The only questions which need to be decided in the present O.A and argued by LC for applicant are:-

1. Whether during the pendency of O.A. NO. 527 of 1995 filed by the applicant, the order of punishment dated 19.6.1995 passed by the Disciplinary Authority stood abated being violative of Section 19 (4) of Administrative Tribunals Act, 1985;

2. Whether the Tribunal can mould and reconsider the quantum of punishment by reducing it.

10. I have heard and considered the arguments of counsel for the parties and gone through the pleadings.

11. The plea of abatment as per Section 19 of the Act raised by applicant is devoid of force of law and to be rejected. This plea was raised in O.A. No.249/2002 and rejected by the Tribunal by observing that “We are not

convinced with the argument of learned counsel for the applicant that by passing of Removal order dated 19.06.1995 and appellate order dated 20.02.1997 during pendency O.A. 527 of 1995 is against Section 19 (4) of Administrative Tribunals Act, 1985 because from the pleading on record, we find that O.A. No. 527/1995 was disposed of vide judgment and order dated 11.09.2001 with direction to the respondents to decide the appeal of the applicant dated 28.07.1996".

12. Therefore, the plea of Section 19 (4) of the Act was raised and decided by the Tribunal and therefore, barred by principle of res judicata.

13. The second prayer of applicant is to reduce the punishment of removal of applicant from service. It is argued that the punishment is disproportionate to the charges against the applicant.

14. Insofar as the question of quantum of punishment is concerned, the Hon'ble Supreme Court taking note of various earlier judgments, in Jai Bhagwan v Commissioner of Police, (2013) 11 SCC 187 held as under:

> "10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any

such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior Courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when Courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court."

15. Thus, it is for the competent disciplinary authority to impose the penalty as may be required on the basis of the material before it. It is not for the court to interfere in the quantum of punishment unless it pricks the conscience of the court and is so disproportionate to the offence committed as

to defy prudence. In the present case, we find that major charge against the applicant has been proved. The penalty of removal from service under the facts and circumstances of the present case cannot be said to be disproportionate. We do not feel that this is a fit case where the doctrine of proportionality is attracted. No infirmity can be inferred from the order dated 20.11.2010 of the Disciplinary Authority maintaining the punishment imposed upon the applicant.

16. It would be profitable to refer to Management of Bharat Heavy Electricals Ltd v/s M.Mani, (2018) 1 SCC (L&S) 178 wherein the Hon'ble Apex Court observed that "An act of theft committed by an employee while on duty is a serious charge. This charge once proved in enquiry, the employer is justified in dismissing the employee from service".

17. Looking to the facts and circumstances of the case, we are of the view that there is no merit in the applicant and is accordingly dismissed. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-