

**Central Administrative Tribunal
Principal Bench, New Delhi**

**OA No.114/2015 with
MA No.831/2015**

This the 8th day of March,2016

**Hon'ble Mr.JusticeM.S.Sullar,Member, (J)
Hon'ble Ms.Nita Chowdhury, Member (A)**

Vijay Kumar,
Group 'D'
Aged 38 years,
S/o ShriJawaharLal,
R/o Qaurter No.A-5,
HauzKhas,
New Delhi-110016. ... Applicant

(By Advocate:ShriAshishNischal)

Versus

National Institute of Public
Co-Operation and Child Development,
Through Its Director,
5, Siri Institutional Area,
HauzKhas,
New Delhi-110016. ... Respondent

(By Advocate: ShriH.D.Sharma)

ORDER(ORAL)

By Hon'ble Ms. NitaChowdhury,M(A):

The challenge in this OA filed by the applicant Vijay Kumar is to an impugned orderdated 17.04.2013 in which the Respondent has

passed an order with regard to Quantum of punishment to be awarded to him in a disciplinary proceeding.

2. A brief narration of facts in this case bring out that the applicant was a Chowkidar from 18.7.1995 till 22.4.1999 in the National Institute of Public Cooperation and Child Development at Regional Centre, Lucknow. He was suspended from service and an inquiry was instituted against him on 1.10.1999 for unauthorized absence from duty and on conclusion of this inquiry on 6.12.2000; he was awarded the penalty of removal from service vide order dated 26.12.2000. The appeal of the applicant was dismissed vide order dated 18.05.2001. He preferred an OA in the Lucknow Bench of the Tribunal against the penalty order. The Tribunal quashed the penalty order on 26.02.2013 in TA No.4/2010 and remitted the case back to the respondent to decide afresh on the quantum of punishment. The operative part of the order is extracted below:

"The punishment order is hereby quashed on the point of quantum of punishment only. But the findings in respect of charge are not being disturbed. The matter is being remitted to the respondents/authorities concerned to pass appropriate order afresh in respect of quantum of punishment after taking into consideration the aforesaid six points and also other facts and circumstances as discussed here in before. As the applicant is out of job for the last about 12 years, it would be appropriate if the entire exercise in this regard is concluded expeditiously say within 2 months from the date of this order."

3. The counsel for the applicant has pleaded the following to quash and set aside the impugned order dated 17.4.2013 with all consequential benefits:

"A. the respondent by passing the Impugned Order, has acted in contravention to the Order dated 26.02.2013 of the Lucknow Bench of the Central Administrative Tribunal. In fact, the sanctity of the Tribunal's Order has been given a go by;

B. the Impugned Order is again shockingly disproportionate to the alleged conduct of the applicant vis-a-vis the days for which the applicant remained absent i.e. 17.04.1999 and 23.04.1999;

C. act of the respondent by passing further order, under the grab of the Impugned order dated 17.04.2013 itself shows the malice of the respondent against the applicant. The respondent has in fact acted in contravention to the Order dated 26.02.2013 of the Lucknow Bench of the Tribunal, in as much as, the Tribunal remitted the matter back to the respondent to pass a fresh order with regard to the quantum of penalty only and did not ask the respondent to pass further orders."

4. The Learned Counsel for the respondent has reiterated his decision on quantum of punishment in the hearing. He contends that he has complied with the Tribunal's order dated 26.04.2013 and the punishment has been reconsidered and modified to another major penalty of stoppage of three increments with cumulative effect. And further conditions are just and proper.

5. The order of the Respondent was examined. The appreciation of the order passed on quantum of punishment shows that the respondent has stated that in terms of the operative part of the Hon'ble CAT's above said order, and keeping in view the grave

misconduct that Shri Vijay Kumar has indulged in, they imposed a penalty of stoppage of three increments with cumulative effect, earned after the date that said Shri Vijay Kumar joins duties at NIPCCD Hqrs. New Delhi. The respondent has received the charge sheet for two days unauthorized leave only.

6. In compliance with the order of the Tribunal dated 26.2.2013, the respondents passed a fresh order dated 17.4.2013. Now the applicant has challenged this order passed by the respondent on 17.04.2013, with regard to deciding the quantum of punishment. He submits that the Charge Sheet was issued to him for being unauthorisedly on leave for 14 days between the year 1995 to 1999 i.e. a period of about 4 years. Subsequently his unauthorized absence of 12 out of 14 days was regularized. And the charge sheet issued to him shows that only 2 days of unauthorized leave was treated as 'not regularized'. 7. In the charge sheet dated 1.10.1999, it clearly says at Para 2 that the applicant was asked about his absence in the office from 28.12.1994 and 15.1.1996 i.e. two days, the applicant gave application for his leave. Both the days of his absence were assumed as 'unauthorized' and he was also to suffer loss of salary for the same. With regard to his misconduct, he was informed vide Office Memo No. RCL-1/1/94-Vya/912 dated 6/7 August, 1996 and also warned that he should not repeat the same in future. Further, Para 3 of the Charge sheet states that he applied for urgent leave on 4.3.96 and later on 6.3.96, but this was not allowed by the Competent Officer. While

mentioning the reason of urgent work, the applicant gave an application for urgent leave which was not allowed by the Competent Authority and the duration of absence of two days was assumed as 'extravagant leave.' Again, Para 4 mentions that the Applicant remained absent on 24.12.1995 and on 1.1.1997 while mentioning the reason of urgent work, the applicant gave an application for Earned Leave, which was not allowed by the Competent Officer and the duration of two days was assumed as "Extravagant leave". Learned counsel for the applicant points out that instead of complying with the direction of the Tribunal on the quantum of punishment to be imposed to the applicant, the respondent has gone against its letter and spirit and instead has sought to pass an order to decide the entire matter afresh.

On the issue of compliance of court orders, the respondent in his order dated 17.4.2013 has pointed out that a Chowkidar has very onerous duties to maintain the safety and security of the belongings and effects in his place of duty and the quantum of punishment has been decided by the Disciplinary Authority as per his appreciation and consequences which may occur due to the unauthorized period of absence of a Chowkidar.

8. The respondent's order of 17.04.2013 lays down the following for the quantum of punishment imposed:

"5.Further, I in terms of the operative part of the Hon'ble CAT's above said order, and keeping in view the grave misconduct that Shri Vijay Kumar has indulged in I impose a penalty of stoppage of three increments with cumulative

effect, earned after the date that said Shri Vijay Kumar joins duties at NIPCCD Hqs. New Delhi.

6. I, in the facts of the case, also order that:

- i) The period of absence from 27.12.2000 till the date of joining of Shri Vijay Kumar at NIPCCD Headquarters shall not be treated as duty on the principle of *no work no pay*;
- ii) The above period shall also not be reckoned for any benefit such as leave, financial upgradation under ACP Scheme and MACP Scheme as applicable to the employees of NIPCCD.
- iii) The above said period i.e. from 27.12.2000 till his joining would not be counted towards any pension and other retirement benefits in future;
- iv) No representation or request from Shri Vijay Kumar shall be entertained regarding his posting at NIPCCD Headquarters;
- v) Shri Vijay Kumar's pay will be fixed on the date of his joining at NIPCCD Headquarters as per the Government rules and keeping in view his qualifications with reference to his pay drawn before his removal from service as per order dated 26.12.2000."

9. As per the Tribunal's order dated 26.12.2013, before passing the above orders, the respondent had to take into consideration six points and other facts. The operative part of the order is extracted below:

"The matter is being remitted to the respondents/authorities concerned to pass appropriate order afresh in respect of quantum of punishment after taking into consideration the aforesaid six points and also other facts and circumstances as discussed here in before."

10. The charge against the applicant was with regard to unauthorized leave of 14 different days. Out of these, 12 had been subsequently regularized and pay also deducted for two days. Hence, the charge against the applicant is of unauthorized leave for a period of only two days, on two different occasions.

The respondent while assessing the quantum of punishment ought to have taken into consideration the following six points as referred to in Para 13 of the order of the Tribunal dated 26.2.2013

- i) Gravity of misconduct
- ii) Past conduct
- iii) Nature of duties
- iv) Position in organization
- v) Previous penalty, if any
- vi) Kind of discipline required to be maintained

The Respondent in its order dated 17.4.2013 has made the following assessments:

- i) and iv). "The post of Chowkidar i.e. the applicant, though low paid is a fulcrum post and entire functioning of the office is depended upon his safely guarding the building as well as the material namely furniture, equipment and files etc. Thus, it is one of the important and crucial posts."
- ii) "The absence of CO (Shri Vijay Kumar) from duty without prior information/sanction resulted in disruption in Chowkidar's duty and caused inconvenience to the institute. He was advised to improve upon the performance and behavior from time to time but he has shown total disrespect to the rules and kept on remaining absent which shows indiscipline and thus amounts to dereliction of duties and lack of devotion to duty on his part."
- iii) "Shri Vijay Kumar's past conduct in the short spell of nearly 4 years of his service from 18.7.1995 to 22.4.1999 has also been very tardy. He would proceed on leave without any intimation or permission and it is only after being reminded

about the absence he would submit leave application. Even submitting leave application on the very next day does not absolve the applicant of- the charge of being absent.”

- v) “Shri Vijay Kumar during his short period of nearly 4 years of service as referred to above, has been issued memos for his misconduct with ShriRamsagar a daily wager. ShriRamsagar made a complaint against Shri Vijay Kumar that on 13.8.1995, alleging that Shri Vijay Kumar had beaten him on duty at office main gate. The matter was enquired into by the Regional Director and he was issued a warning vide Office Memorandum No. RCL/Admn/95-96/1649 dated 8.9.95 not to repeat such activity again. Beating a fellow employee is certainly a misconduct on his part violating the rule 3 (1)(ii) & (iii) of CCS (Conduct) Rules 1964. It is also a matter of record that he also allowed an outsider jeep at 6.30 a.m. on 18.9.95 without entering the particulars in the Register maintained for the purpose at office gate. This shows his irresponsible behavior while performing duties of Chowkidar and he was advised to be more careful in future vide memorandum No. RCL/94-95 dated 19.9.95.”
- vi) “Chowkidar’s behavior is expected to be exemplary one and call for no exception at all. It is a matter of record that during his short period of nearly four years in the Regional Centre he had lacked all attributes as referred to above and expected from him as a Chowkidar.”

11. The comments given by the Respondent on the six points which were required to be taken into consideration before deciding the quantum of punishment were reviewed.

(a). In Point No. i) and iv) the applicant is in fact a low paid, Class IV employee; who was apparently not imparted any formal training and sensitized to his duties, but has been evaluated by the respondent as being shown as – “performing against a fulcrum post” and Chowkidar has been depicted as one of the important and crucial posts. It is reflected that the entire functioning and safety of the office depends upon the Chowkidar.

This is a highly exaggerated depiction/evaluation of the role and responsibility of a Chowkidar. The responsibilities of an employee are linked with the position he holds in the organization.

(b). In the evaluation of Point (v) which had to be taken into consideration for deciding the quantum of punishment, previous punishments have been mentioned. It has been mentioned that for a previous misconduct, a warning has been said to have been issued to the applicant.

The Tribunal Order dated 26th February 2013 has been revisited. As per the orders “the punishment order is hereby quashed on the point of quantum of punishment only. But the findings in respect of charge are not being disturbed.”

The order of the respondent dated 26th December 2000 whereby the penalty of removal from service has been imposed upon the applicant has been examined. Para -8 of the order refers to advisory been issued to the applicant on 6/7 August 1997, 1st May 1998 and 17th December 1998 to improve upon his attitude and behavior in performance of his official duties. The order does not refer to any misconduct for which warning was issued to him. But the examination of impugned order dated 17th April 2013 shows that other unrelated

issues have been added to justify the punishment. However, no formal charges were shown to have been drawn against him for the same. Though a Warning is not a penalty under CCS (CCA) Rules, 1964

This proves that the respondent by passing further order, under the garb of the Impugned order dated 17.04.2013 itself shows the malice of the respondent against the applicant. The respondent has in fact acted in contravention to the Order dated 26.02.2013 of the Lucknow Bench of the Tribunal, in as much as, the Tribunal remitted the matter back to the respondent to pass a fresh order with regard to the quantum of penalty only and did not ask the respondent to pass further orders.

Besides, the respondent has listed many consequences as listed in para-6 above following from the major penalty of stoppage of three increments with cumulative effect like:- the period of absence from 27.12.2000 till the date of joining of Shri Vijay Kumar at NIPCCD Headquarters shall not be treated as duty on the principle of *no work no pay*; This period shall also not be reckoned for any benefit such as leave, financial upgradation under ACP Scheme and MACP Scheme as applicable to the employees of NIPCCD and this period i.e. from 27.12.2000 till his joining would not be counted towards any pension and other retirement benefits in future.

12. The only charge against the applicant is absence from duty without prior intimation. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization etc., but in such case the employee cannot be held guilty of failure of devotion to or behavior unbecoming of a Government servant.

13. The previous misconduct of the applicant has been highly exaggerated simply to enhance the quantum of punishment. Principles of Natural Justice demand that all accused be given a fair opportunity to know all the allegations leveled against them and get ample opportunities to place their view points and defend themselves. Clearly, in this matter, the applicant has been harshly punished and imposed with major penalty for a very minuscule period of two days of unauthorized leave. There is no evidence to show that he was given an opportunity to give his defense before revised order of major penalty of 17th April, 2013 was awarded against him. Clearly, the respondent has not followed the CAT Order of 24.2.2013 in letter and spirit as was expected from the respondent. Further, a fair opportunity was not given to the applicant to submit his view point before the revised order of penalty dated 17.4.2013 was imposed. As a low paid employee, the applicant was not aware of the prescribed procedure to be followed in Disciplinary proceedings. However, the Respondent cannot take advantage of such a situation.

The relevant portion of the Apex Court judgment in the case **State of U.P V/s. Saroj Kumar Sinha** 2010 (2) SCC 772 reads as under:

"28. When a department enquiry is conducted against the Government Servant, **it cannot be treated as a casual exercise.** The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may

culmination imposition of punishment including dismissal/removal from service. In the case of **Shaughnessy v. United States**, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

14. Further, this order of major penalty for two days of unauthorized absence shows lack of appreciation on quantum of punishment. The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances. An absence from duty for two days cannot be regarded as grave misconduct from a low-placed, 'D' Group employee. Neither can an absence from duty for 14 days during a period of four years be treated as excessive for which a person can be termed a 'habitual' unauthorized leave taker. The penalty imposed for the established charge would appear unconscionable and actuated by malice.

15. In this regard the Hon'ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India and Others in AIR 1996 Supreme Court Cases 484, the Larger Bench of Hon'ble Supreme Court comprising three Hon'ble Judges has laid down as under:-

"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."

16. In view of the above, the impugned order dated 17th April, 2013 is hereby quashed. The matter is again being remitted to the respondents/authorities concerned to pass appropriate order afresh in respect of quantum of punishment after taking into consideration the nature of the charges which have been proved. This is the second time the Case is remitted to the respondent. It is expected that justice will be rendered to a Group 'D' employee for his 2 days of absence.

17. As the matter is under litigation for about 15 years, it would be appropriate that the entire exercise is completed expeditiously say within 2 months from the date of this order. As a matter of natural justice due opportunity be given to the applicant to place his view point before final order is imposed.

With these observations OA is allowed.

No order as to costs.

(Nita Chowdhury)
Member(A)

/rb/

(Justice M.S. Sullar)
Member (J)