

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.529/2014

Order Reserved on:05.05.2016

Pronounced on:12.05.2016.

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Anil Kumar Dhyani
S/o G.P. Dhyani
T.No.4828, Machinist
207-B, Pocket I, Mayur Vihar Phase I,
Delhi-110091.

... Applicant

(By Advocate: Ms. S.D. Raman)

Versus

Union of India- Ministry of Defence through:-

1. Secretary, Ministry of Defence
Appellate Authority,
Department of Defence,
South Block, New Delhi-110011
2. Master General of Ordnance
Disciplinary Authority,
Integrated Headquarter, MoD (Army),
Master General of Ordnance Branch,
New Delhi-110105
3. Commandant
Appointing Authority,
505 Army Base Workshop,
PIN-900106, C/o 56 APO

... Respondents

(By Advocate: Shri R.N. Singh)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985.

The main relief prayed for in the OA reads as under:

“B) Allow the instant application of the applicant and quash and set aside the impugned Memorandum/orders dated 23.10.2013 bearing No.7(7)/2009-D(Labour) passed by Respondent No.1 and 16.01/2013 passed by Respondent No.2 bearing No.37215/55/EME Civ (C-I) and further quash the final ex-parte enquiry report dated 8.9.2012 submitted by the inquiry officer with memorandum of charge sheet date 11.1.2002 bearing No.37215/55/EME Civ-3 issued by Respondent No.2 and direct reinstatement of applicant in service with full back wages and all other benefits; and the period of suspension preceding removal from service shall be treated as a period spent of duty.”

2. The brief facts of this case are as under.

2.1 The applicant is an ITI diploma holder in Machinist Trade. He was appointed as Machinist at Army Base Workshop, Delhi Cantt on 16.07.1997. During the period 28.07.1997 to June, 1998 he was posted in the Finance Section. He was made In-charge of preparing salary bills (Check Rolls) of the industrial

workers. The Audit deducted some discrepancies in the Check Rolls in May, 2001 for which a charge-sheet was issued to him on 11.01.2002. The Articles of charge read as under:

“ARTICLE-I

That the said Shri Anil Kumar Dhyani, T. No.4828 Machinist while functioning as Accounts clerk in Finance Section of 505 Army Base Workshop, Delhi Cantt- 10 during Jun 99 to Feb 2001 committed an act of Gross Misconduct, in that he misappropriated the Government money amounting to Rs. 1,63,917/- (approx.) by tampering the computer data and generated falsified excess amount in gross total of Check Roll Nos XII and XI from Jun 99 to Feb 2001. He used to draw excess amount from unit cashier through duty officer of pay disbursement of the relevant months on account of pay and allowances in respect of civilian industrial personnel. The above act on the part of Shri Anil Kumar Dhyani is an act of embezzlement of Government money and breach of trust violating the instructions contained in Para 707 of the Unit Standing Orders and the provisions of sub rule (1) (i), (ii) & (iii) of Rule 3 of the CCS (Conduct) Rules, 1964 which is a Gross Misconduct and thereby liable for disciplinary action under CCS (CC&A) Rules, 1965.

ARTICLE-II

That the said Shri Anil Kumar Dhyani, T. No.4828 Machinist while functioning as Accounts clerk in Finance Section of 505 Army Base Workshop, Delhi Cantt- 10 during Jan 2000 committed an act of Gross Misconduct, in that he misplaced or destroyed a Check Roll No.XII for the month of Jan 2000. The above act on the part of Shri Anil Kumar Dhyani, is an act of breach of trust, fraud, embezzlement of government fund violating the instructions contained in Para 707 of the Unit Standing Orders and the provisions of sub rule (1) (i), (ii) & (iii) of Rule 3 of the CCS (Conduct) Rules, 1964 which is a Gross Misconduct and

thereby liable for disciplinary action under CCS (CC&A) Rules,1965.

ANNEXURE II

Statement of imputation of misconduct or misbehavior in support of articles of charge framed against Shri Anil Kumar Dhyani, T.No.4828 Machinist of 505 Army Base Workshop, Delhi Cantt-10.”

2.2 For the said discrepancies three officials, namely, Shri V.K. Nagpal, Accounts Officer, Shri K.D. Hasija, Assistant and the applicant were suspected to be the culprits. Individual charge-sheets were also issued to Shri V.K. Nagpal and Shri K.D. Hasija. Enquiry Officer (EO) was appointed in all the three cases. Vide the Disciplinary Authority (DA) order dated 31.12.2008, the disciplinary proceedings against Shri Nagpal were dropped on the ground that nothing serious had been found in the enquiry and no charges had been substantiated against him. Similarly, the disciplinary proceedings were dropped against Shri Hasija on the same ground. In case of the applicant, however, the charges were proved in the enquiry report vide EO's report dated 08.09.2012 (Annexure A-24 colly.) The DA (respondent no.2) vide his Annexure A-15 (colly.) Dated

31.12.2008 imposed the penalty of removal from service on the applicant. The statutory appeal of the applicant was also dismissed by the Appellate Authority (AA) vide Annexure A-17 order dated 27.11.2009 of the AA (incidentally the AA for the applicant was the President of India).

2.3 Aggrieved by the orders of the DA and AA, the applicant approached this Tribunal in OA-171/2010 and challenged the said orders. The said OA was disposed of on 01.08.2011 with the following directions:

“8. In view of what has been stated above, we dispose of this OA by quashing and setting aside the impugned order dated 31.12.2008 passed by the disciplinary authority and the order dated 27.11.2009 passed by the appellate authority. The matter is remitted back to the inquiry officer to proceed in the matter afresh by supplying/making available the copies of listed documents to the applicant. The question whether the applicant would be entitled to the back-wages and other benefits from the date of removal from service to the date of his reinstatement, if ultimately ordered, will depend upon the final outcome of the disciplinary proceedings and will be decided in accordance with law. We wish to also observe that since the alleged misconduct relates back to the year 1999 onwards and charge sheet was also issued in January 2002, we expect that the inquiry proceedings shall be culminated expeditiously and the applicant shall render his full assistance in the said inquiry proceedings.”

2.4 Pursuant to the Annexure A-19 the order of this Tribunal, the DA observing the direction given by the Tribunal, passed the impugned Annexure A-2 order dated 16.01.2013 again imposing the penalty of removal from service on the applicant. The statutory appeal of the applicant was once again rejected by the President of India vide Annexure A-1 (colly.) order dated 23.10.2013. Aggrieved by the impugned Annexure A-1 (colly.) and Annexure A-2 orders, the applicant has filed the instant OA.

2.5 For the same charge, a criminal case was also filed by the CBI against the applicant in which the applicant has been convicted by the criminal court of Special Judge (P.C. Act) CBI-6, Patiala House Court on 30.05.2013. The operative part of the order of the criminal court is extracted below:-

“9. In the fact of the matter, Convict had the job profile of Check Roll Clerk in 505 Army Base Workshop and as public servant Convict was duly bound as Check Roll Clerk to prepare, get printed and put the Check Rolls with actual and correct sums of salary payable to employees of 505, Army Base Workshop but instead,

consequences were kept at bay by the convict while he had put up the Check Rolls, in quest in this matter, inflating the net pay therein to the extent of Rs.30,840/- in total and by such unlawful means, not only abused his position as a public servant, caused wrongful loss to his employer 505, Army Base Workshop. The proved acts amounting to criminal misconduct were committed by the convict, a public servant with cool calculation and deliberate design regardless of the consequence to the Government Exchequer and/or Community Convict had put the Government Exchequer at wrongful loss to the tune of Rs.30,840/- No glimpse of remorse was visible on the face of the Convict. Over all entire nation is suffering on account of misdeeds of such offenders who put Government Exchequer to such loss compromising with the economy of the nation. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book and suitably punished.

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11. Be that as it may, I cannot be oblivious of the fact that the convict has no bad antecedents and has already undergone undergone agony of trial for period of about 8 years. Keeping in mind overall facts and circumstances of the case, the Convict Anil Kumar Dhyani is sentenced to:

- (i) Rigorous Imprisonment for four years and fine of Rs.20,000/- in default thereof he would undergo Simple Imprisonment for a further period of 12 months under Section 420 of IPC
- (ii) Rigorous Imprisonment for four years and fine of Rs.10,000/- in default thereof he would undergo Simple Imprisonment for a further period of six months under Section 477 A of IPC.
- (iii) Rigorous Imprisonment for one year and fine of Rs.5,000/- in default thereof he would undergo Simple Imprisonment for a further period of three months under Section 201 of IPC.

(iv) Rigorous Imprisonment for four years and fine of Rs.10,000/- in default thereof he would undergo Simple Imprisonment for a further period of six months under Section 13 (1) (d) of the Prevention of Corruption Act, 1988 and punishable under Section 13 (2) of The Prevention of Corruption Act 1988.”

3. Pursuant to the notices, the respondents entered appearance and filed their reply. The applicant filed his rejoinder thereafter. With the completion of the pleadings the case was taken up for hearing the arguments of the parties on 05.05.2016. Ms. S.D. Raman, learned counsel for the applicant and Shri R.V. Sinha, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant besides highlighting the issues raised in the OA and the rejoinder by the applicant, submitted that the applicant has not committed any irregularity and is being victimized for nothing. She said that two of his seniors namely Shri Nagpal, Accounts Officer and Shri Hasija, Assistant were also issued charge-sheets for the same charge but the DA has dropped the DE proceedings against them whereas the applicant has been singled

out for punishment. She said that the EO was biased. Although the applicant had participated in the enquiry but on 07.09.2012 he walked out of enquiry due to the attitude of the EO and the very next day the EO concluded the enquiry, which goes to show the predetermined mind of the EO. It was also submitted that the applicant was only preparing the Check Rolls and as such he could not have made any excess payment to any individual and that no linkage has been established by the DA between the applicant and the individuals who are alleged to have got excess payments. Concluding his arguments, the learned counsel submitted that the impugned orders are based on 'no evidence' and as such they may be quashed and set aside and the prayers made in the OA may be allowed.

5. Per contra, the learned counsel for the respondents submitted that the applicant walked out of enquiry on 07.09.2012 on his own volition and as such he cannot claim before this Tribunal that principles of natural justice have not been followed by the

respondents in the conduct of the DE. The learned counsel also drew our attention to Annexure A-20 letter dated 17.01.2012 of the applicant to show that the applicant has been indulging into dilatory tactics with the sole purpose of prolonging the enquiry on some pretext or the other. The learned counsel also drew our attention to the reply filed on behalf of the respondents and said that at para-4 of the reply it has been submitted that the applicant has accepted his guilt before the 'court of enquiry' and the same has not been controverted by the applicant in the rejoinder. The learned counsel further stated that the enquiry was conducted in 12 sittings out of which applicant have participated in 11. Hence, it can be inferred that the EO has provided sufficient opportunities to the applicant to put-forth his case. The learned counsel also placed reliance on the following two judgments of the Hon'ble Supreme Court in which the Hon'ble Supreme Court has held as under:

- i) **Union of India and Others v. P. Gunasekaran,** [(2015) 2 SCC 610];

Held:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

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13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;*

(ii). *interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*

(iii). *go into the adequacy of the evidence;*

(iv). *go into the reliability of the evidence;*

(v). *interfere, if there be some legal evidence on which findings can be based.*

(vi). *correct the error of fact however grave it may appear to be;*

(vii). *go into the proportionality of punishment unless it shocks its conscience.*

(ii) **B.C. Chaturvedi v. Union of India & Others,**
[JT 1995 (8) SC 65].

Held:

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation

of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

6. Concluding his arguments, the learned counsel submitted that the applicant has committed grave irregularities causing huge loss to the respondent-organization. He has already been convicted by the criminal court for the said offence and hence he has rightly been punished by the DA and AA vide Annexure A-1 and A-2 impugned orders. He prayed for dismissal of the OA.

7. We have considered the arguments of the learned counsel for the parties and have gone through the pleadings and the documents annexed thereto. The scope of judicial intervention in a departmental enquiry is highly limited. Judicial intervention can be done only in the following situations:

i) If the enquiry has not been conducted as per the laid down procedures.

ii) If the principles of natural justice have not been followed in the conduct of the enquiry.

iii) If the punishment awarded is disproportionate to the offence committed so as to shock conscience.

8. We find from the instant case that the DA has observed the principles of natural justice at every stage of the enquiry and that the applicant has participated in the enquiry. We also find that the punishment meted out to the applicant by the DA and duly confirmed by the AA does not shock conscience. The applicant has already been convicted by the criminal court for the offence committed by him. Taking all these factors into consideration, we are of the opinion that the impugned orders do not invite any interference from this Tribunal and they are found to be absolutely in order.

9. In view of the foregoing discussions, we dismiss the OA, which is found to be devoid of merit.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

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

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