Central Administrative Tribunal
Principal Bench

OA No.721/2018

New Delhi, this the 22nd day of February, 2018

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Uday Kumar Varma, Member (A)

Dr. Madhu Dalela, Aged 60 years
d/o Sh. R.N. Dalela,
11 UF, Tansen Marg,
Mandi House,
New Delhi – 110 002. ...Applicant

(By Advocate: Sh. Vinay Gupta)

Versus

1. Union of India through Secretary,
Ministry of Information & Broadcasting,
A-Wing, Shastri Bhawan,
New Delhi-110 001.

2. Shri S.N. Panigrahi,
Deputy Director & CPIO, Dte. Of Field Publicity,
5th Floor, Soochna Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

3. Secretary,
Union Public Service Commission,
Dholpur House, Shazahan Road,
New Delhi – 110 001. ...Respondents

(By Advocate: Shri Acharya Santosh Prasad)

ORDER (Oral)

By Hon'ble Mr. Uday Kumar Varma, Member (A):

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief(s):-

(i) To quash/set aside the impugned final order dated 12.06.2017 (Annexure A-7 supra) issued by respondent no.1 against the applicant, as to confirmation of penalty.

(ii) To pass appropriate orders or directions, thereby to quash/set aside all consequential and earlier occurred incidental proceedings against applicant in relation to and commencing from the issuance of

Memorandum of Charge till final order as to penalty, viz as to all the following and thereby declaring all same as null and void, having no legal or valid enforceable value and status in law;

a. *Issuance of the impugned Memorandum of charge dated 11.10.2013 of respondent no.1 (Annexure A-1 supra) against the applicant;*
b. *Issuance of the impugned suspension order dated 14.10.2013 and all subsequent orders related to suspension issued by respondent no.1 (Annexure A-2 (Colly, (supra).*
c. *Issuance of the impugned disagreement note dated 21.08.2014 issued by respondent no.1 (Annexure A-3 supra) and to declare it as null and void.*
d. *Issuance of the impugned communication 29.09.2014, relating to cancellation of three RTI Documents (Annexure A-4 supra) issued by respondent no.2 and declare it as null and void.*
e. *Issuance of respondent no.3's impugned advices dated 17.04.2015 and 01.06.2016 regarding disciplinary proceedings (Annexure A-5 (colly) (supra).*
f. *Issuance of the impugned penalty order dated 08.08.2016, as to increment reduction (Annexure A-6 supra) issued by respondent no.1.*

2. Brief facts of the case are that the applicant initially joined the Song and Drama Division [S&DD] as an Actress and thereafter worked as Manager under the direct recruitment category in the year 1989 and then got elevated to the level of Deputy Director on 01.08.2000 and continued on that post till her retirement on superannuation on 30.06.2017. While posted in Delhi, she was allotted government accommodation which she occupied on 12.01.2005 and, therefore, was not entitled to

House Rent Allowance (HRA) since 13.01.2005. The prescribed licence fee was recoverable from her as per rules directly by the Pay & Accounts Officer (IRLA). The applicant submits that while posted in the Directorate of Field Publicity [DFP], she noticed that she was being paid HRA and licence fee was being deducted from her salary, she wrote letters to the PAO (IRLA) to stop payment of HRA and deduct licence fee which, however, did not happen till 2012. It is further submitted that on 13.06.2012, while the applicant was posted in S&DD, she again wrote letter to the PAO (IRLA) in this regard, which was forwarded to the S&DD by the PAO(IRLA) vide letter dated 10.12.2012. Accordingly, the due amount of licence fee for the period from 13.01.2005 to 31.05.2012 was recovered in lumpsum from the salary of December, 2012. The PAO (IRLA) calculated the excess amount of HRA at Rs.6,37,893/- for the above period as per the recovery schedule. The recovery commenced from the salary of April, 2013 @ Rs.19000/- per month and a total sum of Rs.1,14,000/- was recovered from her salary from April to September, 2013. She was also placed under suspension on 14.10.2013. The applicant submits that taking adverse view of the matter against the applicant, a preliminary enquiry was conducted in May, 2013 without

summoning the relevant records and witnesses from the office of DFP where the applicant was posted at the time of allotment of accommodation and no enquiry was made from the Directorate of Estates to know the reasons for non-recovery of licence fee and non-remittance of the amount to them for the period in question.

3. The applicant further submits that on 11.10.2013, the respondent no.1 issued Memorandum of Charge containing two articles of charge in violation of Rule 317-B-13 of F.R. & S.R. read with Rule 3(1)(i) and (ii) of CCS (CCA) Rules, 1965. The charges levelled against the applicant reads as under:-

> *(i) The applicant violated SR 317-B-13 and embezzled the licence fee from 13.01.2005 to 31.05.2012; and*
>
> *(ii) She concealed the fact relating to occupation of Govt. accommodation with mala fide intention and obtained wrongful gains for illegitimately overdrawing the HRA during the period from 13.01.2005 to 31.05.2012.*

4. The applicant was suspended by the respondents vide order dated 14.10.2013 which continued till 21.05.2015. However, the suspension was revoked w.e.f. 22.05.2015, vide order dated 09.06.2015 during the pendency of OA No.4058/14 earlier preferred by the applicant. This OA was disposed of with the following order:-

> *"4. In view of the above position, in our considered view, it is not proper on the part of this Tribunal to*

> *interfere with the proceedings at this stage. We, therefore, dispose of this Original Application with direction to the respondents to ensure that the rest of the proceedings in the matter are finalized as early as possible but in any case, within three months from today…"*

The enquiry against the applicant was completed. The finding of the IA is reproduced as under:-

> *"For both the articles of charges against Dr. Madhu Dalela as contained in the Memorandum of Charge No.C-13111/6/2013-Vig. dated 11.10.2013, the finding as a result of the disciplinary proceeding is that the charges have not been proved conclusively beyond reasonable doubt due to lack of sufficient and adequate evidence and witnesses, and in absence of service records of the CO. There are multiple agencies involved in the case, omission and commission by who seems to have resulted in the case under consideration. The charged officer is one of these agencies. Holding the charged officer solely responsible for the charges as contained in Memorandum No.C-13111/6/2013-Vig. dated 11.10.2013, without taking into account the role the other government agencies seems to have played at different points of time, tantamount to violation of the principles of natural justice."*

5. After conclusion of the enquiry, the disciplinary authority disagreed with the findings of the inquiry officer and prepared a disagreement note dated 21.08.2014 and supplied a copy to the applicant for submission of his representation, if any. The applicant submitted his representation dated 22.09.2014 against the disagreement note. The respondent no.1 took up the matter with respondent no.3 [UPSC] vide letter dated 02.12.2014 which, in turn, tendered their advice vide letter dated 17.04.2015 to impose penalty of '*reduction to a lower time scale of pay by one stage for a period of one year with*

direction that the applicant shall not earn increment of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of her pay' on the applicant.

6. While pursuing and finalizing the disciplinary proceedings against the applicant, the respondent no.1 later ordered Preliminary Enquiry [PE] against the alleged interpolation of documents by the applicant at the time of inspection of file before the respondent no.2 under the RTI Act, 2005 to which the applicant submitted her reply dated 10.08.2015. The applicant was also supplied a copy of advice dated 17.04.2015 given by the respondent no.3 to which the applicant submitted her replies vide letters dated 08.12.2015, 28.12.2015 and 27.01.2016. However, the respondent no.3 vide letter dated 01.06.2016 gave further clarification to their advice dated 17.04.2015 which was supplied to the applicant to which she filed her reply dated 28.07.2016. The applicant contends that she was issued the impugned order dated 08.08.20916 imposing penalty as advised by respondent no.3 but without considering her basic defence plea. In response to the above penalty order, the applicant submitted her reply dated 29.08.2016 but the respondent no.1 issued the impugned order dated 17.06.2017 imposing the impugned penalty, which, the

applicant contends, is violative of rules and against the principles of natural justice.

7. At the time of arguments, learned counsel for the applicant very vociferously pleaded that one of the grounds for imposing punishment on the applicant was that she has made interpolation in the records. However, the act of alleged interpolation by the applicant has not been conclusively proved as the PE ordered in this respect has not been concluded till now. He drew our attention to the Show Cause Notice dated 30.07.2015 issued to the applicant and submitted that this preliminary enquiry was still to be concluded. He further contended that as this enquiry was still under way, therefore, any conclusion with respect to the charge of interpolation against the applicant was still to be reached by the respondents and, hence, it will be against the law to impose punishment on the applicant without this aspect of the charge being fully established against her.

8. We have gone through the records and find that the applicant has taken this very ground in her second representation before the respondents and the respondent no.1 had dealt with this aspect in detail in their order dated 12.06.2017. The issue raised in the representation is

contained in para 3 (ii) of the order, which is reproduced below:-

> "*3(ii) In her second representation against Ministry's penalty Order dated 08.08.2016, Ms. Madhu Dalela has stated that the penalty order has been issued without considering the fact that the theory of interpolation of documents or validity of documents produced by her for her defence has not been proved/disproved and the PE ordered in the matter is still pending. Hence, she has requested to consider her representation as Review Petition under Rule 29 of CCS (CCA) Rules, 1965 and to exonerate her."*

The response to the above issue is contained in para 4(ii), which is also reproduced below:-

> "*4(ii) In her second representation dated 29.08.2016, Ms. Madhu Dalela has contended that the penalty Order dated 08.08.2016 has been issued without considering the fact that the theory of interpolation of documents or validity of documents produced by her in her defence has not been proved/disproved and the PE ordered is still pending. She has made request to consider the matter as Review Petition under Rule 29 of CCS (CCA) Rules, 1965. In this regard, it is stated that in the disciplinary case against Ms. Madhu Dalela, PAO (IRLA) had confirmed that there are no records with them which can support her claim of having informed them about deducting her licence fee and stopping payment of HRA in lieu of allotment of Government accommodation to her. In support of her claim of having informed the Department in writing, she submitted three documents during the course of inquiry, as obtained from the CPIO/Deputy Director, DFP through her RTI application. On verifying the authenticity of these documents from DFP, the concerned Deputy Director of DFP (CPIO) vide his letter dated 29.09.2014 had categorically stated that she had interpolated these three documents and these letters were not part of the original files of DFP. He had cancelled the certification given to the three documents and declared that the document(s) are not the part of original file(s) and therefore non est in the eyes of law. Once the CPIO, who is the custodian of the documents under RTI Act, 2005, has cancelled the authenticity of the documents, these three documents could not be taken on record as defence documents by the Disciplinary Authority in the disciplinary proceedings against Ms. Madhu Dalela.*
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> *As regards request of Ms. Madhu Dalela to consider her representation under Rule 29 of CCS (CCA) Rules, 1965, it is stated that the Penalty Order dated 08.08.2016 has been passed by the President and there is no provision under Rule 29 of CCS (CCA) Rules, 1965 for consideration of Revision Petition by the President on the penalty imposed by him. Revision under Rule 29 of CCS (CCA) is done by President on*

the order passed by its subordinate authority and not of its own order. Hence, her representation for Revision under Rule 29 of CCS (CCA) Rules, 1965 cannot be considered."

9. A reading of the view recorded by the respondent no.1 on this specific issue clearly reveals that the respondent no.1 has applied his mind and dealt with the same comprehensively. It must be noted here that the enquiry pertaining to interpolation was in the nature of preliminary enquiry and not an enquiry under CCS (CCA) Rules, 1965 and, therefore, it does not have the legal and statutory force in that sense. In any case, the detailed discussion on this issue of interpolation of documents by the respondent no.1 leads us to deem it appropriate that the respondent no.1 has indeed concluded his finding on this issue. More significantly, a perusal of chargesheet against the applicant very clearly reveals that interpolation *per se* is not a charge levelled against the applicant and, therefore, whether interpolation was done or not becomes a separate issue and cannot come in the way of the competent authority taking a view on the misconduct of the applicant, as mentioned in the chargesheet.

10. In view of this, we are not inclined to accept the argument of the applicant that no punishment could be imposed on her unless the preliminary enquiry with respect

to the charge of interpolation of documents is concluded and the applicant conclusively found guilty of this charge.

11. It may not be inappropriate to observe here that the applicant was a senior functionary in Ministry of Information & Broadcasting and it was her duty and responsibility to ensure that if she is occupying government accommodation, she must not draw house rent allowance. Even, for the sake of argument, if it is contended that the applicant had informed the Department, which the respondents have found to be unacceptable, the very fact that the applicant, who chose to merely inform the respondents knowing fully well that she was indulging in a misconduct does not, in any way, absolve her from the charges levelled against her.

12. The scope of interference by Tribunals in matters of disciplinary proceedings is rather limited and qualified. One has to see primarily whether (a) principle of natural justice has been followed or not; (b) that the procedure followed during the enquiry does not suffer from a defect which could significantly alter the outcome of the enquiry; (c) that analysis of evidence is not so skewed so as to defeat the ends of justice; and (d) whether the punishment meted out to the applicant is not overly disproportionate to the degree of misconduct.

13. The Hon'ble Apex Court in the case of ***Government of Andhra Pradesh vesusMohd. Nasrulla Khan*** [2006 (2) SCC 82) has held that the scope of judicial review is confined to correct the errors of law or procedural error if results in manifest miscarriage and justice or violation of principles of natural justice. The Hon'ble Court in para 7 has held that:

> *"By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority."*

The Hon'ble Apex Court in the case of ***S.R.Tewari versus Union of India*** [2013 (7) SCALE 417] has reiterated 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.*"

14. In another judgment, the Hon'ble Supreme Court has reiterated his earlier view that the High Court as well Tribunal under Article 226 of the Constitution of India cannot sit as Court of appeal over the decision of the authorities holding departmental proceedings against a public servant. After relying upon the judgment ***Sree Ramarao*** (supra) dismissed the SLP in case of ***State Bank of India vs. Ram LalBhaskar and Another*** [2011 STPL (web) 904], Para 8 of the judgment reads as under:-

> *"8. Thus, in a proceeding under Article 226 of the Constitution of India, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decision by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against the respondent no.1 do not constitute any misconduct and that the respondent No.1 was not guilty of any misconduct."*

Culled out from these judgments, the following broad guidelines, *inter alia*, emerge

a) *Tribunals should not, generally, re-appreciate the evidence considered by the disciplinary authority, as they should not act like an appellate authority;*

b) *They should not interfere unless there is a substantial procedural lapse committed by the enquiry officer;*

c) *They should not interfere unless there is evident violation of Principles of Natural Justice and fair opportunity of hearing has not been afforded to the charged officer;*

d) *They should not go into the question of quantum of punishment unless it is grossly disproportionate to the gravity of misconduct and/or shocking to the conscience.*

15. These guidelines for the Tribunals get strong support and endorsement from a recent judgment of the Apex Court in the case of ***Union of India versus P.Gunasekaran*** [2015 (2) SCC 610] wherein it has been held as follows :-

> *"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:*
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> *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;*
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> *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.

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.

Xx xx xx

19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

16. The above guidelines enunciated in the judgment are as relevant and useful for adjudication of Departmental

Proceedings in Tribunals as they are for High Courts. If we consider the guidelines laid down by the Hon'ble Apex Court in the case of ***P.Gunasekaran*** (supra), we cannot hesitate to conclude that the instant case does not merit any interference by us as no aspect of this case qualifies for an intervention by the Tribunal.

17. In view of the analysis and discussion in the preceding paragraphs, we are of the considered view that the respondents have meticulously considered the contentions/representations of the applicant at every stage and have come to a conclusion following due process of law. It is an admitted fact that the applicant occupied the government accommodation from 13.01.2005 to 31.05.2012 without getting the licence fee deducted from her salary and kept on drawing HRA which act of the applicant amounts to misconduct. It is true that the applicant deposited the arrears of rent qua government accommodation, but the penalty imposed upon her is for the misconduct committed by her knowing fully well that she was drawing HRA despite being in occupation of the government accommodation. We are, therefore, of the view that the respondents are justified in issuing the impugned punishment as per rules and no bias is attracted against the applicant. Hence, the OA is deficient in merit and

deserves to be dismissed and is accordingly dismissed. There shall be no order as to costs.

(Uday Kumar Varma)
Member (A)

(Permod Kohli)
Chairman

/AhujA/