Central Administrative Tribunal
Principal Bench

OA No. 470/2013

Order Reserved on: 12.01.2018
Order Pronounced on: 18.01.2018

Hon'ble Mr.V.Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

1. PN 8274, Pankaj Aggarwal, LDC,
Aged 44 years,
Canteen Stores Department,
Rajdhani Enlave,
Opposite Mahendra Park,
Near Rani Bagh,
Flat No.83, Punjabi Bagh,
New Delhi-110018.

... Applicant

(By Advocate: Mr. E.J.Verghese)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The General Manager, CSD
119, M.K.Road, Adelphy,
Mumbai-400020.

3. The Joint General Manager,
CSD, Adelphy,
119, M.K.Road,
Mumbai-400020.

... Respondents

(By Advocate: Sh. Krishan Kumar)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

This Original Application has been filed by the applicants claiming the following reliefs:-

> "(a) Allow the Application of the Applicant under section 19 of the Administrative Tribunals Act 1985 with interest.
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> (b) Quash and set aside the orders dated 05.03.2012 & 08.11.2012.
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> (c) Grant the cost.
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> And
>
> (d) any other relief, if any, this Honourable Tribunal deems fit and proper in the facts and circumstances of the case."

2. Applicant was appointed as LDC on 26.07.1993 and was holding the charge of store in-charge of Gp VI Godown in CSD Depot Hissar. He was charged with stealing of Govt. stores item worth Rs.5,53,443 on 08.08.2007 and misappropriated Govt. stores worth Rs.7,44,639.14 and had been illegally selling Govt. stores to unauthorized persons/shops in bulk for his personal gain. On 03.10.2007 applicant informed the Area Manager that Police arrested him on the pretext of verifying some materials of CSD, recovered from some persons and FIR was registered against him under Section 420, 467, 468 and 409 of IPC. Later it came to notice that he was arrested on 08.08.2007 when Rohtak Police

allegedly found him with a Canter (Truck) bearing No. HR039-A-4321 which was loaded with Canteen Stores and an FIR No.760757 was registered against him. Further he remained under Police custody for two days i.e. 48 hours. Thereafter, he was placed under suspension for the said offence on the same day. Inquiry officer was appointed and he was chargesheeted for the said offence on 25.06.2008 (Annexure A-4 colly.). He submitted his defence statement to the said charge sheet on 19.07.2008 refuting the charges. However, he was not given any opportunity to be heard in person.

3. Applicant further submits that his suspension has been reviewed vide order dated 19.11.2007 and the department decided to extend the same till further orders. However, preliminary hearing was conducted on 20.08.2009 and the proceedings continued till 2011 (Annexure A-7 colly.). The defence brief was submitted by him on 26.03.2011 in response to prosecution brief dated 14.03.2011. The inquiry report dated 05.04.2011 was supplied to him on 08.04.2011 by the respondent department along with all the relevant documents. Applicant made representation dated 17.05.2011 against the inquiry report. However, the disciplinary authority passed a cryptic and non-speaking order imposing a punishment of removal from service on the applicant w.e.f. 05.03.2012. He thereafter filed an appeal dated 16.04.2012. The Appellate Authority rejected the appeal on 08.11.2012 without

looking into the various grounds raised by the applicant. He has further stated that the disciplinary authority was pre-determined to remove the applicant from service.

4. He contended that the disciplinary authority has not complied with the mandatory provisions of Rule 15 of the CCS (CCA) Rules, 1965 and has not applied his mind or considered his representation. In this regard, he has relied upon a judgment of the Apex Court in **Mahavir Prasad vs. State of U.P.**, AIR 1970 SC 1302. He has further submitted that his co-accused Mr. Sarvesh Kumar was imposed with minor penalty for the same offence whereas he has been imposed with harsher punishment, i.e. removal from service. He has thus prayed that the OA be allowed.

5. The respondents have filed their reply and have submitted that applicant was proceeded under Rule 14 of CCS (CCA) Rules, 1965 and was removed from service vide memo dated 25.06.2008. The charge against him was that he has misaprorpiated Govt. Stores worth Rs.7,44,639.14 (including the value of stolen goods worth Rs.5,53,443) while he was the Group Incharge of Group IV Godown for his personal gain. They have further submitted that applicant had been illegally selling Govt. stores item to unauthorized persons/shops in bulk by misappropriating Govt. stores. Thus, he was imposed with the penalty of removal from service by the disciplinary authority vide their order dated 05.03.2012 which was

also affirmed by the Appellate Authority holding him guilty for the said offence by order dated 08.11.2012.

6. They have further submitted that with reference to para 4.3. of OA the applicant informed the Area Manager on 03.10.2007 that he was picked by some police personnel from Sat Road on the pretext of verifying some materials of CSD, recovered from some other persons. However, after reaching in Rohtak Police Station applicant was detained and FIR was lodged against him under Sections 420, 467, 468 and 409 of IPC. They have also submitted that he was placed under suspension as applicant was arrested on 08.08.2007 at Rohtak Police Station and remained in their custody for more than 48 hours. For the said offence he was chargesheeted on 25.06.2008 by initiating departmental enquiry proceedings wherein aforesaid charges were proved.

7. They have also submitted that with reference to para 4.6 of the OA the allegations made by the applicant that he has not been provided defence assistant is totally baseless, fabricated and an afterthought as the applicant himself and his defence assistant had participated in the enquiry proceedings. They have also submitted that defence witness is also one of the culprit involved in the said illegal act, thus, it is merely a statement of co-accused wherein he may depose in favour of the applicant.

8. The respondents have further submitted that in reply to para 4.18 of the OA that since applicant himself has given a statement before the Police that he was selling Government stores to unauthorised persons for his personal gain which proved that he is accepting his guilt of misappropriation of Govt. stores worth Rs.7,44,639.14. Thus, applicant is making allegations against all the authorities such as inquiry officer, presenting officer, disciplinary authority and appellate authority only to protect him hence he is fully responsible for the said offence for which no sympathy can be shown. They have thus prayed that the OA be dismissed.

8. The respondents have relied upon the judgment in the case of **Naresh Chand Mathur vs. State of Rajasthan**, 2009 (3) SLJ 151 wherein Hon'ble High Court of Rajasthan has held that "in disciplinary enquiry strict proof is not required". Respondents have also submitted that the judgments relied upon by the applicant is not of any help to the applicant since he has committed a very heinous crime being a govt. official i.e. Incharge of the canteen.

9. We have heard the learned counsel for the parties and perused the material on record as well as judgments.

10. We may mention that it is now well settled principle of law that neither the technical rule of Evidence Act nor of proof of fact or evidence as defined would apply to the disciplinary proceedings. In

departmental enquiry, the authorities are required to decide the real controversy between the parties on the basis of preponderance of probabilities of evidence. The Hon'ble Apex Court while considering the jurisdiction of judicial review and rule of evidence in the case of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484** has ruled as under:-

> "12. 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 eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be 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 on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 of 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.
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> 13. **The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued**".

11. Similarly, the Hon'ble Apex Court in the case of **K.L. Shinde** v. **State of Mysore**, **(1976) 3 SCC 76**, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence, it was ruled as under:-

> "9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-
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> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
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> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is

> put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

12. Above all, the jurisdiction of this Tribunal to interfere with disciplinary matters or punishment awarded in DE proceedings cannot be equated with appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authorities unless they are arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, the Tribunal has no power to substitute its own discretion for that of the authority.

13. Meaning thereby, if the epitome of the evidence produced by the parties during the course of enquiry, is put together, then conclusion is inescapable that charges framed against the delinquent stand proved. Moreover, in the present case the EO has discussed the evidence in detail and has appreciated the evidence of the parties in the right perspective as discussed hereinabove.

14. With regard to the allegation made by the applicant that the other coaccused Sh. Sukesh Kumar was imposed with minor panelty whereas

he has been inflicted with punishment of removal from service cannot be a ground to allow this OA. With regard to award of lesser punishment to others co-accused as compared to applicant, the Hon'ble Supreme in the case of **Balbir Chand Vs. Food Corporation of India Ltd 1997 (3) SCC 371** has held as under:-

> "…….*It is further contended that some of the delinquents were let off with a minor penalty while the petitioner was imposed with a major penalty of removal from service. We need not go into that question.* ***Merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they should also be given the lesser punishment*** *lest the same mistaken view would be repeated. Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the matter and taken appropriate decision according to law…."

15. Finally, the Disciplinary Authority has recorded cogent reasons dealing with the relevant evidence of the parties and provided adequate opportunities at appropriate stages to the applicant. The Appellate Authority again considered the matter and confirmed the punishment order.

16. Therefore, we hold that both the Disciplinary Authority as well as Appellate Authority have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. As such, no interference is warranted by this Tribunal in the obtaining circumstances of the case.

17. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of the aforesaid reason, we find that there is no merit in the OA and it deserves to be and is hereby dismissed, as such. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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