

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.376 of 2014

Orders reserved on : 28.08.2018

Orders pronounced on : 31.08.2018

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

Gopi Ram Meena, Chowkidar
R/o L-457, Gali No. 7
Sangam Vihar
New Delhi – 110 062.

....Applicant
(By Advocate : Ms. Saumayashree Mishra)

VERSUS
Commissioner,

South Delhi Municipal Corporation
26th Floor, Civic Centre
JLN Mark, Minto Road
New Delhi -02

....Respondent
(By Advocate : Mr. S.N. Verma for Mr. R.K. Jain)

ORDER

Ms. Nita Chowdhury, Member (A):

By filing this OA under Section 19 of the Administrative Tribunals Act, 1985 the applicant is seeking the following reliefs:-

- “(i) set aside the order No. 3/208/2009Vig./P/2013/241 dated 13.8.2013 and No. 3/208/2009/Vig./P/2013/301 dated 3.10.2013 with consequential benefit.
- “(ii) or any other order or directions as deemed fit in the facts and circumstances of the case may be passed.”

2. Brief facts as stated in the OA are that the applicant while working as Chowkidar in the MCD Auto Workshop, Lodhi Road, New Delhi was charged sheeted vide charge Memo No.3/208/2009/DA-III/10/29 dated 4.2.2010 by the Addl. Commissioner/Disciplinary Authority for unauthorized absence. The statement of allegations on the basis of charge has been framed against the applicant are as follows:-

“Shri Gopi was working as Chowkidar in Autoworkshop, Lodhi Road during the year 2008-09.

He was in the habit of remaining unauthorisedly absent from duty without prior sanction of leave from the competent authority. He remained absent from duty during the following periods without prior sanction of leave from the competent authority.

1.1.08	to	06.01.08
11.01.08	to	15.01.08
15.02.08	to	29.02.08
01.03.08	to	11.03.08
09.04.08	to	12.04.08
17.04.08	to	26.04.08
08.07.08	to	22.07.08
27.09.08	to	30.09.08
01.10.08	to	12.10.08
11.11.08	to	17.11.08
04.12.08	to	14.12.08
18.12.08	to	21.12.08
27.12.08	to	12.01.09
09.02.09	to	15.02.09
26.02.09	to	05.03.09
12.03.09	to	16.03.09

Four call back memos dated 28.8.08, 15.12.08, 26.12.08 and 12.1.09 were also sent to him with the direction to resume his duty during aforesaid periods.

From the foregoing, it is evident that Sh. Gopal Ram Chowkidar failed to maintain devotion to duty and committed gross misconduct in as much as he was in the habit of remaining unauthorisedly absent from duty

without prior sanction of leave from the competent authority.

He, thereby, contravened Rule 3(I) (ii) (iii) of CCS (Conduct) Rules 1964 as made applicable to the employees of MCD.”

2.1 Thereafter the departmental enquiry was conducted by Dy. Director of Enquiries, who after completion of inquiry submitted the Inquiry Report on 18.1.2013 (Annexure No.4) held that the applicant was habitual to remain absent from his duty without getting prior permission from the competent authority, which was served on the applicant vide letter dated 8.2.2013. The applicant submitted his reply against the said inquiry report on 20.2.2013 (Annexure No.5).

2.2 The Disciplinary Authority after considering the inquiry report and reply submitted by the applicant against the said inquiry report, the Disciplinary Authority issued a show cause notice dated 31.5.2013 (Annexure No.5) proposing to impose the penalty of reduction to the minimum of the scale for a period of five years with cumulative effectg. The applicant submitted to the said show cause notice issued by the Disciplinary Authority vide his representation dated 10.7.2013 (Annexure No.6). The Disciplinary Authority after considering the reply of the applicant passed the order dated 19.7.2013 confirming the proposed penalty that ***pay of the applicant be reduced to the minimum of the pay in which he is at present for a period of five years with***

cumulative effect, which was communicated to the applicant vide order dated 13.8.2013.

2.3 Against the said order dated 19.7.2013 the applicant preferred his appeal to the Appellate Authority which was considered by the Appellate Authority and vide Order dated modified the penalty order to that of **reduction in pay in the present time scale of pay by three stages for a period of three years with future effect.**

2.4 Being aggrieved by the aforesaid orders of the Disciplinary and Appellate Authorities, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondent, he has filed counter affidavit in which it is stated that the applicant, who is working as Chowkidar with the respondent is habitual of remaining unauthorizedly absent from duty without prior sanction of leave from the competent authority. He remained absent from his duty for the following periods without prior sanction of leave from competent authority:-

01.01.08	to	06.01.08
11.01.08	to	15.01.08
15.02.08	to	29.02.08
01.03.08	to	11.03.08
09.04.08	to	12.04.08
17.04.08	to	26.04.08
08.07.08	to	22.07.08
27.09.08	to	30.09.08
01.10.08	to	12.10.08
11.11.08	to	17.11.08
04.12.08	to	14.12.08

18.12.08	to	21.12.08
27.12.08	to	12.01.09
09.02.09	to	15.02.09
26.02.09	to	05.03.09
12.03.09	to	16.03.09

3.1 Four call back memos dated 28.08.08, 15.12.08, 26.12.08 and 12.1.09 were also sent to him with the direction to resume his duty.

3.2 Accordingly, a chargesheet for major penalty was issued to him on 4.2.2010 vide RDA No.3/208/2009. Thereafter, the departmental enquiry was conducted by Dy. Director of Enquiries, in which three witnesses namely, PW-1 Sh. Seema Mitroo, PW-2 Raj Anand Samwal, PW-3 Sunil Gandhi were examined. After going through the evidence and the documents on record, the Inquiry Officer observed that the applicant is habitual to remain absent from his duty without getting prior permission from the competent authority and held the charge as proved. The applicant submitted his representation against the IO report in which he merely stated that he was under compelling circumstances to remain absent from duty but he did not state anything whether he had made any effort either to take the prior sanction of leave or has informed the department about his absence from duty.

3.3 Thereafter the Disciplinary Authority after examining the record of the departmental proceedings and considering the reply of the applicant, imposed the punishment of

“reduction of the pay of the applicant to the minimum of pay scale for a period of five years with cumulative effect vide order dated 13.8.2013. Thereafter the applicant filed an appeal before the Appellate Authority who after considering the facts and circumstances of the case reduced the punishment to that of reduction in the pay in the present time scale of pay by three stages for a period of three years with future effect vide order dated 13.10.2013.

4. The applicant has also filed rejoinder in which besides reiterating the averments made in the OA the applicant has denied the averments made in the counter affidavit and further submitted that the applicant remained absent for only 131 days during the period from 2008 to 2009 and the said absence was due to compelling circumstances. All points made earlier have been reiterated.

4.1 The applicant never denied that he was absent due to compelling reasons. He has provided medical certificates to the authorities. The applicant has no malafide intention or ulterior motive for remaining absent causing inconvenience to his employer. No penalty could be imposed unless the misconduct of the applicant for remaining absent is willful and malicious.

5. Counsel for the applicant submitted that the absence of the applicant from duty during the periods as mentioned in

the said charge memo is not willful absence but due to compelling reasons. Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Krushnakant B. Parmar vs. Union of India and another**, (2012) 3 SCC178 as also of the Hon'ble Delhi High Court in the case of **R.K. Sharma vs. Union of India** (WP (C)No.5709/2002 decided on 6.12.2012).

6. Counsel for the respondents submitted that applicant was habitual to remain absent from his duties without getting prior permission from the competent authority and the Inquiry Officer has returned a detailed findings in his inquiry report and held that charge against the applicant is proved. The applicant himself admitted that he could not attend duty and could not send any application but he stated the reason was due to the fact that he remained ill and had to attend his ailing son, which cannot be a reasonable ground not to report continuously to the competent authority for prior approval or sanction of the leave and for remaining absent from duty without prior intimation. Counsel further submitted that applicant's absence from duty unauthorizedly without prior sanction of leave during the period from 2008 to 2009 from the competent authority cannot be said to be due to compelling circumstances but due to willful attitude of the applicant. Counsel for the respondents further submitted that reliance placed by the applicant on the aforesaid judgments are distinguishable on facts.

7. Heard both parties and perused the record.
8. It is an admitted fact that applicant could not attend duty and did not send any application for remaining absence from duty during the said periods and four memos were also issued to him. The grounds taken by the applicant in the OA are not sustainable in view of the fact that applicant himself admitted his act of habitual absence from duty and pleaded for lesser punishment instead of punishment awarded by the Appellate Authority, who reduced the same to that of reduction in the pay in the present time scale of pay by three stages for a period of three years with future effect. Further the applicant, being a Chowkidar, is responsible for the safety and security of the premises of the respondent. If he remains unauthorizedly absent repeatedly without prior sanction of leave, the premises of the institution would be in danger and the said absence unauthorizedly cannot be said to be due to compelling circumstance but the same can be said to be willful and deliberate act of the applicant.
9. The learned counsel for the applicant has relied upon the judgment of Hon'ble Supreme Court in the case of ***Krushnakant B. Parmar*** (supra). In that case, the Hon'ble Supreme Court has held that if absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful.

However, in the present case, the facts are otherwise. The Inquiry officer has dealt with all the documents made available in the inquiry proceeding and has come to the conclusion that applicant was habitually remained absence without prior sanction of leave, which can be said to be willful in nature. The applicant's counsel further placed reliance on the judgment of the Hon'ble Delhi High Court in the case of **R.K. Sharma** (supra) which is also not relevant to the fact of the present case as the applicant in the instant OA was habitual absentee without prior approval and sanction of leave during the period from 2008 to 2009 as alleged by the respondents in the show cause notice issued to him. Hence, the reliance placed by the applicant on the aforesaid cases is distinguishable on facts.

10. It is well-settled that the Tribunal cannot re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the Court cannot arrive on its own independent finding.

11. Counsel for the applicant further raised a ground that the punishment awarded is not commensurate with the gravity of the charge proved against the applicant. On the question of proportionality of punishment, Hon'ble Supreme

Court has held that *it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment.* In **Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhai M. Lad** reported in 2010 (3) ALSLJ SC 28 it has been held by Hon'ble Supreme Court as under:-

“The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal”.

But having regard to the gravity of the charge levelled against the applicant and the punishment awarded by the Disciplinary Authority which was reduced by the Appellate Authority to that of reduction in the pay in the present time scale of pay by three stages for a period of three years with future effect vide order dated 13.10.2013, we are of the considered view that punishment imposed by the impugned order dated 13.10.2013 is not so disproportionate that it shocks the conscience of the court, therefore, we do not think

any case is made out for interference by the Tribunal even on the question of quantum of punishment.

12. In the result, for the foregoing reasons, the present OA being devoid of merit is liable to be dismissed and the same is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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