Central Administrative Tribunal
Principal Bench, New Delhi

OA No.2214/2012

Order Reserved on: 08.08.2018
Order Pronounced on:16.08.2018

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

Shri MM Gupta, AAO,
S/o Late Sh. S.L. Gupta,
DDA Office, Vasant Kunj,
DDA, New Delhi,
Aged about 57 years,
R/o B-90/A, Vishwas Parr,
Uttam Nagar, New Delhi-110059 - Applicant

(By Advocate: Mr. G.L. Verma)

Versus

Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA,
New Delhi - Respondent

(By Advocate: Mr. Manish Garg)

O R D E R

Ms. Nita Chowdhury, Member (A):

This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

"A) To quash and set aside the orders of Revisionary Authority (Annexure-A/1), Appellate Authority (Annexure-A/2) and Disciplinary Authority (Annexure-A/3).

B) To quash and set aside the Impugned Charge Sheet (Annexure-A/15) and subsequent Inquiry Proceedings/Findings of Inquiry Officer (Annexure-A/4), in the interest of justice.

C) Such other/further order this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case be also passed in favour of the petitioner and against the respondents, in the interest of justice."

2. The facts of the case are that the applicant was served upon impugned charge sheet vide memorandum no. F.27(14)05/VIG 1-47 dated 03.01.2006 alleging that the applicant, while working as AAO, had failed to point out to Executive Engineer that the bank guarantee bonds submitted by the agency are not in the prescribed format available with the Finance & Accounts Circular No.28 dated 01.10.1994 and that the bank guarantee bonds issued by State Bank of Saurashtra, Lodhi Road, New Delhi, were not got verified/confirmed by the concerned bank in accordance with the directions contained in Circular BI,27 dated 01.10.1994. Thereafter, an inquiry was conducted and the Inquiry Officer, vide his letter dated 26.10.2007, held the charge under Article I of the charge as 'partly proved' and charge under Article II of the Charge as 'proved'. The disciplinary authority, vide notice dated 28.04.2008, asked the applicant to make the representation against the same. Accordingly, the applicant made a representation dated 28.04.2008 to the disciplinary authority. Thereupon, the disciplinary authority passed an order dated 01.09.2008 imposing

penalty of reduction of pay by two stages in the pay scale for a period of two years with cumulative effect which was also confirmed by the appellate authority vide its order dated 28.08.2009. Aggrieved by the orders of rejection of the appellate authority, he further preferred appeal application dated 16.04.2010 before the revising authority, i.e. Hon'ble Lieutenant Governor. The revising authority, vide his order dated 15.03.2017, rejected the aforesaid appeal application of the applicant. Hence, the applicant has filed this OA on grounds, *inter alia that* (i) the Inquiring Authority, while holding the articles I and II of the charges as partly proved and proved respectively , did not appreciate the facts and evidence before it, thus committed an error; and (ii) the penalty of reduction of pay by two stages in the pay scale for a period of two years with cumulative effect is severest.

3. The applicant has cited the following judgments in support of his contentions:-

(a) Roop Singh Negi v. Punjab National Bank & Ors. 2009(1) SCALE 284;
(b) State of Uttaranchal & Ors. v. Kharak Singh (2008)8 SCC 236;
(c) Divl. Forest Officer, Kothagudem & Ors. v. Madhusudan Rao (2008)3 SCC 469;
(d) G.Vallokumari V. Andhra Education Society & Ors. (2010)1 SCC (L&S) 406;
(e) Union of India & Ors. Vs. HC Goyal, AIR 1964 SC 364;
(f) Kuldeep Singh Vs. Commissioner of Police & Ors., JT 1998(8)SC 603;

(g) Kundan las Vs. Delhi Administration, 1976 Lab IC 811
(h) State of AP Vs. N.Radhakrishan 1998(4)SCC 7382
(i) PV Mahadevan Vs. MD TN Housing Board 2005(6)SCC 639
(j) Official Liquidator Vs. Dayanand, 2008(13) SCALE 558
(k) Ghulam Mohidduin Vs. State of West Bengal & Ors., AIR 1964(Cal) 503;
(l) A.Palaniswamy Vs. UOI & Ors., AIR 1989(2) CAT 205 (Madras);
(j) Jagdish Prasad Vs. State (AIR-1961 SC 1245;
(k) Ganisetti Venkana, AIR 1958 AP 765; and
(l) Union of India Vs. J. Ahmed, AIR 1970 SC 1022

However, none of them has bearing on the facts of this case and as such are not applicable to this OA.

4. The respondents have stressed that as far as the question of evaluation of facts and evidence by inquiry officer is concerned, as can be seen from the report of the inquiring authority in terms of paragraph 4 of Ex. P-1, i.e., circular No.28, it was mandatory on the part of the Divisional Officer to get the BGBs verified from the issuing banks with the advice of Divisional Accountant. There was nothing on record to show that the applicant ever advised the Executive Engineer to verify the Bank Guarantee Bonds in question. Dealing with the submission of the applicant regarding responsibility of the Executive Engineer to get the Bank Guarantee Bonds verified and receipt of such guarantee directed by him, the inquiring authority viewed that even if the Executive Engineer had

received Band Guarantee Bonds himself and without the knowledge of the applicant, he should have asked for performance of Bank Guarantee Bonds before release of any payment to the contractor and being a Divisional Accountant, he should have been more careful regarding the correctness of Bank Guarantee Bonds submitted, as on earlier occasions, the Bank Guarantee Bonds given by the contractor were not proper. It is also held by the inquiry officer that the applicant being Divisional Accountant should know about the implication of a proper Bank Guarantee Bonds required to be issued under the signature of issuing bank and not under the signature of the contractor in any circumstances. Thus analyzing the material before it, the inquiring authority had held the article II of the charges as proved against the applicant.

5. Dealing with the plea of the applicant that it was the responsibility of the Executive Engineer to take action against the contractor, the inquiring authority viewed that such responsibility of Executive Engineer would not absolve the applicant from his responsibility as Assistant Account Officer to watch the interest of the department. It is not the case of the applicant that he ever advised the Executive Engineer to get the Bank Guarantee Bonds verified from the concerned banks or to take action

against the agency for submitting fake bank guarantee. Even otherwise also, as has been held by the Honble Supreme Court in the case of **B.C. Chaturvedi v. Union of India & others**, (1995) 6 SCC 749, it is not for this Tribunal to go into the correctness of the charges or to re-appreciate the evidence or material adduced before the inquiring authority. Relevant excerpt of the judgment reads as under:-

> "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.

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 781], this Court held at page 728 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."

6. Also in **Apparel Export Promotion Council v. A.K. Chopra**, (1991) 1 SCC 759, the Honble Supreme Court has held as under:-

"Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority. It is useful to note the following observations of this Court in Union of India v. Sardar Bahadur, (1972) 4 SCC 618 : Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction

under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

After a detailed review of the law on the subject, this Court while dealing with the jurisdiction of the High Court or Tribunal to interfere with the disciplinary matters and punishment in Union of India v. Parma Nanda, (1989) 2 SCC 177, opined : We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where they are not 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 what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

In B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, this Court opined : The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate them evidence or the nature of punishment. In a Disciplinary Enquiry, 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.

7. We have heard the learned counsel for both the sides and perused the pleadings on record and judgments relied upon them.

8. The penalty of reduction of pay by two stages in the pay scale for a period of two years with cumulative effect imposed on the applicant for the misconduct of not pointing out to the Executive Engineer the requirement to get the BGBs verified from the concerned bank, cannot be considered severest or disproportionate. Even otherwise also, it is not open for this Tribunal to go into the proportionality and quantum of penalty, as it is the domain of the disciplinary authority.

9. When the applicant had pointed out that the Bank Guarantee Bonds were not on specified performa, the article I of the charges was held as partly proved against him. In fact, while considering the responsibility of the applicant to advice the Executive Engineer to get the Bank Guarantee Bonds verified from the concerned bank, the appellate authority has expressed that being Assistant Accounts Officer, it was the responsibility of the applicant to verify the Bank Guarantee Bonds before releasing the payment.

10. The respondents also drew our attention to an order dated 10.10.2012 passed in identical OA No. 4523/2011

(**Shri R.C. Mendiratta, AAO Vs. Delhi Development Authority**) in which *the applicant was charged for committing misconduct of failure to point out to the Executive Engineer that the bank guarantee bonds (BGBs) issued by State Bank of Saurashtra, Lodhi Road, (New Delhi), ING, Vysya Bank, Vashi (Navi Mumbai) and UTI Bank, Palam Village (New Delhi) were not in prescribed format attached with finance and accounts circular No.28 dated 1.10.1994 as well as also that the BGBs issued by the UTI, Palam Village, New Delhi had not been got verified from the concerned bank despite the fact that the agency had earlier on two occasions submitted fake Bank Guarantee Bondss. In the said memo, it was also the charge against the applicant that he failed to point out to EE that the amount of Bank Guarantee Bonds of UTI, Palam Village, New Delhi was not as per requirement of the additional clause B of the agreement and the requirement of taking action against the agency for submission of fake Bank Guarantee Bonds issued by the State Bank of Saurashtra, Lodhi Road, New Delhi, ING Vysya Bank, Vashi Navi, Mumbai and UTI Bank, Palam Village, New Delhi.* In this identical OA, a similar penalty of reduction of pay by two stages in the pay scale for a period of two years with cumulative effect imposed on the applicant for

the misconduct of not pointing out to the Executive Engineer the requirement to get the Bank Guarantee Bonds verified from the concerned bank. The respondents, in their additional counter affidavit, have been able to show that they have taken action against other persons also, including Shri R.C. Mendiratta, who was the subject of the OA mentioned above and who was similarly placed. Hence, there was no vindictive action against the applicant of this OA.

11. Even it is not open for this Tribunal to go into the question of proportionality and quantum of penalty. With regard to the imposition of penalty, the Hon'ble Supreme Court has held in **State of U.P. Vs. Nand Kishore Shukla and another** 1996 SCC (3) 750 as under:-

> "..... *It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment.* ***It is for the Disciplinary Authority to consider what would be nature of punishment to be imposed on a government servant based upon the misconduct proved against him****. Its proportionality also cannot be gone into by the court. The only question is whether the Disciplinary Authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the Disciplinary Authority or by the Appellate Authority, the court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the*

> *respondent to disable him from seeking any appointment elsewhere. Under these circumstances, the High Court was wholly wrong in setting aside the order.…"*

12. Thus, in the absence of any procedural illegality and irregularity, in the conduct of DE, no ground to interfere with the impugned enquiry proceedings as also the orders passed, in view of law laid down by Hon'ble Apex Court in the case of ***Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others (2009) 15 SCC 620***.

13. The same view was reiterated by the Hon'ble Supreme in the case of **B.C. Chaturvedi Vs. UOI 1995 (6) SCC 749 and it was held as under**:-

> *"Service Law – Writ – Power under Article 226 of the High Court – To impose appropriate punishment –* ***The High Court/Tribunal while exercising the power of judicial review, cannot normally come to its own conclusion on penalty and impose some other penalty. (Constitution of India, Article 226)****.*
>
> *No doubt, while exercising power under Article 227 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review.* ***It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible****."*

14. The Hon'ble High Court of Delhi in the case of **Union of India (UOI) and Ors Vs Ram Dass Rakesh** [WP(C) No. 4211-4213/2006] decided on 24.09.2007 has decided on quantum of punishment. The relevant portion of the judgements is quoted below:-

> *"…5. When we apply these principles to the present case, our conclusion would be that the approach of the learned Tribunal is not correct in law. No doubt, in the first blush it appears that allegations against all three officials are of similar nature, which related to non-payment of 8 money orders to the payees. However, the role of the three officials, it is natural, would be different. Depending upon that if the disciplinary authority in the case of other two officials decided to impose a particular punishment, that would not mean that same punishment is to be meted out to the respondent as well. Before the disciplinary authority of the respondent the charge against the respondent for misappropriation of a sum of Rs. 12,000/- is proved.* ***The charge in itself is a very serious charge and punishment of dismissal on such a charge should not have been interfered with unless the penalty is shockingly disproportionate to the proven charge. Even if one proceeds with the assumption that other two officials are given lesser punishment wrongly, that would not mean that lesser punishment should have been given to the respondent as well, who had committed grave misconduct,*** *and when such a case is treated in isolation, even as per the Tribunal, the misconduct justified imposition of this kind of penalty. The concept of discrimination would be alien in such a situation…".*

15. In view of the facts of the case and decision in the inquiry proceedings, it is clear that the proceedings have been carried out as per rules and the punishment has been given accordingly. There is no defect in the actions carried out in the disciplinary proceedings and the applicant has been given penalty after following all due procedures and affording an opportunity of personal hearing to him before the Revisioning Authority as is clear from para 4(vi) of the order dated 15.03.2012 of the Hon'ble Lieutenant Governor. The applicant has only been given penalty of "reduction of pay by two stages in the pay scale for a period of two years with cumulative effect" which cannot be called shockingly disproportionate in the given circumstances.

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

17. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed as such in the obtaining circumstances of the case. No costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/lg/