

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

**T.A. No.40/2012
(Writ Petition Civil No.4987/2001)**

**Reserved On:18.07.2018
Pronounced on:05.09.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Anil Kumar Sahni
B-177a, Street No.9,
Bhajan Pura,
New Delhi-110053.

... Applicant

(By Advocate: Shri Pradeep Gupta with Shri Parinav Gupta, Ms.
Mansi Gupta and Shri Moazzam Ali)

Versus

Indian Trade Promotion Organisation
Pragati Bhavan, Pragati Maidan,
New Delhi-110 001.

... Respondent

(By Advocate: Shri Vikalp Mudgal with Shri Pranav Sharma)

ORDER

By Mr. V. Ajay Kumar, Member (J)

The applicant, a Deputy Manager, in the respondent-India Trade Promotion Organisation (ITPO in short), filed the OA questioning the Annexure P-2 disciplinary order dated 14.01.2000 imposing the penalty of removal from service on the applicant and the Annexure P-6 Appellate Order dated 25.05.2000 and the Annexure P-7 Review Order dated 18.04.2001.

2. The brief facts of the case are that while the applicant was

working as Deputy Manager, he was placed under suspension pending contemplation of the disciplinary proceedings vide Annexure P-1 order dated 17.09.1997. A charge sheet containing 3 Articles of Charges was issued to the applicant vide Memo dated 10.06.1998 and the said charges levelled therein, read as under:-

“ARTICLE-I

Shri A.K. Sahni, (now under suspension) while working as Assistant Manager/Deputy Manager during the period 1994-97 in Accounts Division passed the publicity bills for payment in an illegal and unauthorised manner. He was required to verify the approval of the competent authority and original copies of the advertisements published at the time of passing the bills for payment. However, while passing the bills for payment he did not do so. Due to his gross negligence and carelessness, the ITPO had to suffer a loss of Rs. 31,01,250/- for which he is fully responsible.

By the above acts of omission and commission, Shri Sahni exhibited conduct unbecoming of an officer of the Organisation, lack of integrity and devotion to duty and thus violated Rules 4(1), 5(5), 5(9), 5(20) & 5(30) of ITPO Employees' (Conduct, Discipline & Appeal) Rules 1977.

ARTICLE-II

Shri A.K. Sahni, Assistant Manager/Deputy Manager (Accounts) (now under suspension) while working in the Accounts Division from 1994 to 1997 has passed the publicity bills without the explicit authorisation of the concerned officer of the Commercial Publicity Division. He was not empowered to pass any such bill without the signatures of concerned officer of the Commercial Publicity Division on the verification certificate. The ITPO had to suffer a loss of Rs. 2,89,741/- on this account due to his carelessness and negligence.

By the above acts of omission and commission, Shri A.K. Sahni exhibited conduct unbecoming of an officer of the Organisation, lack of integrity and devotion to duty and thus violated Rules 4(1), 5(5), 5(9), 5(20), 5(24) & 5(30) of ITPO Employees' (Conduct, Discipline & Appeal) Rules 1977.

ARTICLE-III

Shri A.K. Sahni, (now under suspension) while functioning as Assistant Manager/Deputy Manager from 1994 to 1997 had received a cheque No.228150 dated 29-5-95 amounting to Rs.2000/- from M/s. Business Bureau with whom he has official dealings without prior permission or approval of the competent authority.

By the above acts of omission and commission, Shri A.K. Sahni exhibited conduct unbecoming of a Public Servant officer of the Organisation, lack of devotion to duty and integrity and thus violated Rules 4.1 (i) (ii) (iii), 5(1), 5(2) & 5(5) of ITPO CDA Rule of 1977 (ex-TFAI)".

3. On denial of the charges levelled against the applicant, a departmental enquiry was conducted and the Inquiry Officer vide Annexure P-3, Enquiry Report held that the Article-I is proved and Article-III is not proved and in respect of Article-II certain part was not proved and the remaining part is fully proved and the conclusion of the said Enquiry Report, reads as under:-

“Conclusion

Article-I The charge is fully proved.

Article-II The charge in so far as it relates to non-verification of 5 bills/vouchers nos.1518, 1519, 1737, 1738 and 1856, is fully proved. The charge in respect of other two remaining vouchers/bills nos. 3958 and 525 to the extent that the bills were not verified by the officer concerned of the CP Divn., is not proved.

The other part of the charge that ‘due to his negligence and dereliction of duty and malafide intentions the ITPO, suffered a loss of Rs.2,89,741/- on account of all the seven bills it is fully proved.

Article-III This charge is not proved.”

4. The Disciplinary Authority vide Annexure P-2 order dated 14.01.2000, imposed a major punishment of removal from service

on the applicant. The appellate and review authorities also confirmed the said penalty vide orders dated 25.05.2000 and 18.04.2001 respectively. Hence, the OA.

5. Heard Shri Pradeep Gupta with Shri Parinav Gupta, Ms. Mansi Gupta and Shri Moazzam Ali, learned counsel for the applicant and Shri Vikalp Mudgal with Shri Pranav Sharma, learned counsel for the respondents and perused the pleadings on record.

6. Shri Pradeep Gupta, learned counsel appearing for the applicants at the time of hearing mainly pressed the ground of disproportionate punishment. The learned counsel submits that in respect to the identical charges and with respect to same incident, 8 officers of the respondent-ITPO were charge sheeted and though a common enquiry was required to be conducted, but the respondents conducted different enquiries and imposed different punishments on each of them. The learned counsel drawn our attention to the charges levelled against the applicant vis-à-vis the other delinquents and the findings of the Inquiry Officer and the punishments imposed thereon. Accordingly, he submits that when others, who were levelled with grave charges and were found proved, imposed with lesser punishments, such as, Shri S.P. Sharma/Deputy Manager with reduction in rank, Ms. Sapna Joniwal/Assistant Manager with reduction to the lower post for a

period of 4 years, Ms. Soma Chakravarty/Deputy Manager with reduction to a lower stage in the present time scale of pay for a period of 5 years and Bal Kishan, Assistant Manager/Deputy Manager with penalty of reduction to a lower stage in the present scale of pay for a period of 2 years, prays for reduction of the penalty of the applicant, on the ground that the penalty of removal imposed on the applicant is disproportionate to the charges levelled against him and also violates Article 14 of the Constitution of India.

7. On the other hand, Shri Vikalp Mudgal, learned counsel appearing for the respondents would submit that though charges are pertaining to the same incident but the gravity is different from one delinquent to another delinquent and the role played by them in discharge of their respective posts is also different and hence no uniform punishment can be imposed. The learned counsel further submits that in identical circumstances the identical submission made by one Shri Subhash Chand was considered by this Tribunal in TA No.02/2012 and this Tribunal, after giving detailed reasons, rejected the said prayer and dismissed the TA by order dated 21.12.2012.

8. In Subash Chand (supra), a Coordinate Bench of this Tribunal while dealing with an identical question, observed as under:-

“18. We have gone through the charges and the enquiry reports against these other officials also, which were of different levels of seniority than the applicant, and have found that since their post was different, level of responsibility in respect of the fraudulent transactions were different, the charges framed in respect of those, through the Articles of Charges though emanating from the same set of fraudulent transactions, were obviously different than that in the case of the applicant. Therefore, when the charges levelled against each of them were different, the documents relied upon to prove those different charges have also been different, and have been appreciated in the context with, and in relation to the responsibilities of those other officials concerned in respect of the forged bills. Therefore, it appears that the applicant cannot be allowed to derive any benefit out of the conduct of the separate disciplinary enquiries against persons different than him”.

After considering various decisions cited on both sides, it was further observed as under:-

“31. It is clear that those delinquent officials of the respondent-organization belonged to various levels of seniority. They were not proceeded against in a common departmental enquiry, when there would have been a single set of the Disciplinary Authority, the Appellate Authority and the Revisional/Review Authority. When parallel proceedings are initiated against delinquent officials of various levels of seniority, even though they may be in respect of the same set of events connected with a mischief, not only are the charges different in respect of the delinquent officials of different levels of seniority, but also many sets of Disciplinary Authorities, Appellate Authorities and Revisional/Review Authorities emerge, though many of them may be overlapping sets. The Appellate Authority of a junior delinquent official may be the Disciplinary Authority of his senior, and the Revisional/Review Authority of a junior delinquent official may be the Appellate Authority of his senior delinquent official, and so on and so forth. Therefore, the appreciation of the relative quantum of guilt, based upon the charges as proved in respect of the individual case of delinquent officials of different levels of seniority, and the proposed quantum of punishment would also as a result vary, and would have to be based upon the charges proved against the particular concerned official.

32. Therefore, this Tribunal cannot venture to undertake the process of re-appreciating the evidence adduced in a disciplinary enquiry by putting itself in the shoes of either the numerous Enquiry Officers, or of the numerous Disciplinary Authorities, or of the numerous Appellate Authorities, who took decisions based upon the quantum of guilt that could be established in each of the disciplinary enquiry case separately,

based upon the charges as framed and proved against the many concerned delinquent officials.

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41. Therefore, the judgments cited above prohibit this Tribunal from interfering with the quantum of punishments imposed on the eight delinquent officials on the basis of the evidence adduced in each of those eight individual disciplinary enquiries, as the task of deciding the measure of the guilt, and, thereafter, the quantum of punishment, squarely falls only upon the Disciplinary Authorities concerned, based upon the evidence adduced during the respective disciplinary enquiries, and this Tribunal is neither meant to be, nor equipped, to weigh the quantum of evidence adduced against eight different delinquent officials, in eight different disciplinary enquiries, particularly so in this case, where we do not have the facts of all the other 7 disciplinary enquiries conducted by the respondent organization in respect of the same chain of fraudulent transactions undertaken by those eight delinquent official.

42. In those eight different departmental enquiries, at the most 32 different minds would/could have been applied, as the 8 Disciplinary Authorities, the 8 Enquiry Officers, the 8 Appellate Authorities, and the 8 Revisional or Review Authorities, many of which could have been common, because of overlapping sets of authorities concerned, as stated above. In such a case, at least some difference in their appreciation of facts of the 8 respective cases is bound to be there, in the natural course itself. But that itself is not sufficient ground for this Tribunal to interfere with the conclusions arrived at by the concerned authorities in one particular case.

43. As a result, this TA does not survive, and is, therefore, rejected, but there shall be no order as to costs”.

9. In view of the identical circumstances and submissions, we agree with the view expressed by the Coordinate Bench of this Tribunal in Subhash Chand (supra).

10. In the circumstances and for parity of reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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