

CENTRAL ADMINISTRATIVE TRIBUNAL
KOKATA BENCH, KOLKATA

CIRCUIT BENCH AT PORT BLAIR

O.A.-500/AN/2017

Orders Reserved on : 20th. June, 2018

Date of orders : 25th June, 2018

CORAM

HON'BLE MR.S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. NANDITA CHATTERJEE, MEMBER (A)

Shri P. Murugesan, aged about 38 years, S/o Palanivelu, working as Constable in India Reserve Battalian, Ct. No. 02002, Port Mout.

.....Applicant

By Advocate : Ms. S. Mondal

Versus

1. The Union of India, through the Secretary, Ministry of Home Affairs, Jaisalmer House, 26, Mansingh Road, New Delhi – 11101.
2. The Lt. Governor, Raj Niwas Kamraj Road, A&N Islands, Port Blair.
3. The Director General Police [PHQ], A&N Police, A&N Islands, Atlanta Point, Port Blair.
4. The Inspector General Of Police [PHQ], A&N Police, Atlanta Pooint, Port Blair.
5. The Commandant, Office of the Commndant, India Reserve Battalion, A&N Police, Port Blair.
6. The Assistant Commandant [II], Office of the Commandant, India Reserve Battalion, A&N Police, Port Blair.

..... Respondents.

By Advocates: Mr. S.C.Misra

ORDER

Per S.K.Pattnaik, Member (J):- The applicant seeks for quashing of the following orders :

- [i] Memorandum of charge dated 22.10.2013 [Annexure-A-3] by which disciplinary proceeding was initiated.
- [ii] Memorandum dated 08.07.2015 [Annexure-A-6] by which enquiry report was served on the delinquent employee intimating that the charges have been substantiated.

- [iii] Disciplinary order dated 03.10.2015 [Annexure-A/9] by which the

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applicant was awarded penalty of forfeiture of five years of future increments with cumulative effect.

[iv] Order dated 21.01.2016 [Annexure-A-11] passed by Appellate Authority whereby the appeal has been rejected.

[v] Order dated 14.10.2016 [Annexure-A-14] passed by Commandant India Reserve Battalion, A&N Islands rejecting the prayer of the applicant on the ground that outcome of the criminal case has no bearing upon the disciplinary proceeding.

2. Applicant's case in short, runs as follows :-

The applicant was appointed as Constable in India Reserve Battalion, A&N Police, vide order dated 03.12.2002. On 07.10.2012, the applicant along with other accused persons was involved in a criminal case under Section 9/39/49[A]/49[B]/50/51 of Wild Life Protection Act, 1972 for having in his possession 03 numbers live water monitor lizards in three separate plastic bags. A criminal case was registered and tried in the Court of Judicial Magistrate First Class Additional Court, Port Blair, vide C.R. No. 75/2013 [Annexure-A-13]. Ultimately the accused was acquitted from the criminal case being found not guilty as per the judgment of the Trial Court dated 22.09.2016 [Annexure-12]. The misconduct coming to the notice of the Department, the Commandant Indian Reserve Battalion, A&N Police initiated a disciplinary proceeding, vide memorandum dated 22.10.2013 [Annexure-A-3]. The applicant submitted his defence and participated in the enquiry. Even the applicant had challenged the disciplinary proceeding in the mid-way before the Central Administrative Tribunal, Calcutta Bench, and the OA being premature, the same was dismissed by the Tribunal, vide order dated 05.08.2015 passed in OA 131, 132, 133 and 134 of 2015 [Annexure-A-7]. Ultimately, the disciplinary proceeding was concluded and

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the Enquiry Officer furnished his report holding the charges to have been substantiated, vide report dated 08.07.2015 [Annexure-A-6]. The applicant submitted his reply to the enquiry report on 05.08.2015 [Annexure-A/8]. However, the Disciplinary Authority solely relying on the seizure list dated 03.04.2015 [Annexure-A-9] holding the applicant guilty of misconduct, and imposed a penalty for forfeiture of five years future increments with cumulative effect. The applicant preferred an appeal on 23.01.2016 [Annexure-A-11], but the Appellate Authority mechanically rejected the appeal. The applicant after acquittal from the criminal case, filed a review [date not reflected] before the Director General of Police, A&N Islands [Annexure-A-13] to exonerate him from the punishment. However, the reviewing authority vide order dated 14.10.2016 [Annexure-A-14] rejected the representation holding that the out-come of the criminal case has no bearing upon the disciplinary proceeding which was on different footing.

3. The ground urged by the applicant is that since for the self-same incident criminal case and disciplinary proceedings were initiated and as the applicant was acquitted from the criminal charge and transportation of live lizard or seizure could not be proved on that ground the applicant should have been exonerated from the punishment. Further ground is that the Disciplinary Authority could not appreciate that in fact there was no seizure from the immediate possession of the delinquent employee and his involvement in the entire episode was not proved.

4. Respondents contested the case by filing a reply. According to the respondents, the present applicant, Shri P. Murugesan, being a constable was involved in an illegal trade of live water monitor lizards along with other personnel of the police department. The applicant and other two constables were arrested by the SHO, PS, Central Crime Station, Port Blair. However,

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Shri Jai Singh had managed to flee from the spot and they were booked under Section 50/51 of Wild Life Protection Act, 1972. Further case of the respondents is that since the misconduct came to the notice of the Department, disciplinary proceeding was initiated and a charge memo was served on the delinquent employee. However, in order to delay the proceeding, the applicant preferred an OA before this Tribunal. Finally, the said OA was dismissed. An Enquiry Officer was appointed and after due enquiry and giving opportunity to the delinquent employee to defend his case, submitted his report holding that the charges levelled against the delinquent employee has been substantiated. Thereafter, the copy of the enquiry report was served to the applicant and on receipt of his reply, the Disciplinary Authority considering all pros and cons of the entire materials on record, as the applicant was found guilty of misconduct, awarded a punishment for forfeiture of five years' future increments with cumulative effect. The applicant was also given an opportunity to place his case before the Appellate Authority, who by his order dated 21.02.2016, rejected his appeal. After acquittal from the criminal case, the applicant had preferred a review application before the Director General of Police, A&N Islands, and the Commandant, India Reserve Battalion, A&N Police, vide order dated 14.10.2016 [Annexure-A-14] rejected the representation of the applicant on the ground that the outcome of the criminal case has no bearing with the criminal case, which was on different footing and already been completed and rejected the same.

5. Learned counsel for the respondents drew the attention of this Bench to the scope of judicial review in a disciplinary proceeding. We are also conscious of the legal position that unless there is infraction of any rules or procedures, the scope of interference of this Tribunal is very-very limited as

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the Tribunal does not sit as an Appellate Authority of the Disciplinary Authority. Even in the case of **State of Tamil Nadu vs. S. Subramanian**, 1996 SCC [L&S] 627, Their Lordships analyzing the power of judicial review of the Tribunal under Section 19 of the A.T. Act emphatically observed that the Tribunal cannot re-appreciate evidence to come to its own conclusion. Even in the case of **Union of India vs. Parmanand**, 1989 SCR [2] page 19, Their Lordships observed that the Tribunal has no power to interfere with the disciplinary proceeding or order passed by the Disciplinary Authority. Only when the punishment is shockingly dis-proportionate or there is no legal evidence on record to come to a finding, the Tribunal can re-direct the Disciplinary Authority to examine the matter.

6. Here the burden lies on the applicant to demonstrate whether there was any infraction of rules or violation of natural justice for giving a scope to the Tribunal to have judicial review. We have examined the record and found that ample opportunity has been given to the applicant to prove his innocence, which he signally failed. We did not notice anything illegal in the approach of the Enquiry Officer or the Disciplinary Authority calling for our interference. The disciplinary proceeding proceeds on preponderance of probabilities where as a criminal trial proceeds with a presumption that the accused is innocent, which presumption is not available in a departmental proceedings. That apart, in a criminal trial the case has to be proved beyond all reasonable doubt. Here the involvement of the applicant in illegal transportation of prohibited wild life has been proved through departmental witnesses. As regards punishment also, we found that it is not disproportionate to the gravity of the offence which is not expected from a police personnel. Instead of showing gratitude to the Department of not removing him from service, the applicant has unnecessarily dragged the

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department to a series of litigation. Even the Appellate Authority has assigned cogent reasons for rejecting the appeal. Hence ordered.

7. The OA being devoid of merit, is dismissed. No costs.

[Dr. Nandita Chatterjee]
Member (Admn.)
mps/-

[S.K.Pattnaik]
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