

CENTRAL ADMINISTRATIVE TRIBUNAL
KOKATA BENCH, KOLKATA
CIRCUIT BENCH AT PORT BLAIR

O.A.-505/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 Arunachalam, son of Shri Subha Raddiar, resident of Aberdeen Bazar,
Port Blair Tehsil, South Andaman – 744101.

By Advocate : Mr. G.B.Kumar

.....Applicant

Versus

1. The Union of India, Service through the Secretary, Govt. of India, Ministry of Home Affairs, North Block, New Delhi – 110 001.
2. The Andaman & Nicobar Administration, Through the Chief Secretary, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
3. The Director General of Police Andaman & Nicobar Islands, Police Headquarters Atlanta Point, Port Blair – 744101.
4. The Superintendent of Police, North and Middle Andaman District at Mayabunder.

By Advocates: Mr. S.C.Misra

..... Respondents.

ORDER

Per S.K.Pattnaik, Member (J):- The applicant has challenged the order dated 04.02.2016 [Annexure-A-11] passed by Disciplinary Authority whereunder penalty of dismissal from A&N Police service was passed. The applicant also challenges the order of Appellate Authority dated 02.08.2016 [Annexure-A-13] by which the Appellate Authority has concurred with the conclusion arrived at by the Disciplinary Authority that the applicant is unfit to continue in a disciplined police force as it would bring bad image to police service apart from being counter productive.

2. The case of the applicant in short, runs as under :-

The applicant was appointed as Police Constable after a selection

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process on 30th January, 1994. On 27th July, 2014, the applicant was transferred from Jarawa Protection Post, Bamboo Tikrey, Kandamatala to Out Post, Badam Nallah under Police Station, Billyground, North and Middle Andaman under the respondent no.4. The applicant on 23rd March, 2015 was entangled in a criminal case being Crime No.20 of 2015 dated 23rd March, 2015 under Section 32 Regulation III of the Excise Regulation of 1876 at Police Station Billyground. That the allegations levelled against the applicant was that the applicant was in possession of six 750 ml bottles of IMFL which is more than the permissible limit. On the basis of the FIR, a preliminary inquiry was conducted against the applicant and the disciplinary authority vide order book no. 08 dated 4th February, 2016 passed the order in the disciplinary proceeding whereby confirmed the proposed penalty of dismissal of the applicant from the Andaman and Nicobar Police with immediate effect. On the basis of an FIR, the criminal trial was also conducted against the applicant by the Court of Judicial Magistrate First Class, Mayabunder and on 6th December, 2016, the applicant was acquitted from the said charges. The applicant on 5th April, 2016 preferred a statutory appeal before the Respondent No.3 but the respondent no.3 without considering the appeal on merits, vide order dated 12th August, 2016 rejected the appeal filed by the applicant and affirmed the order passed by the respondent no.4, hence this application.

3. The main ground urged by the applicant is that even if for the sake of arguments, the misconduct is admitted, still the punishment becomes shockingly disproportionate as the applicant had already served the Department for 22 years before his dismissal and by this order not only the applicant but also the entire family members shall starve being deprived of the pensionary benefits. The applicant has also drawn the attention of this

Tribunal to the orders passed in respect of other employees, who have been let off with lesser punishment. The other ground is that the applicant for the self-same incident was involved in a criminal case bearing G.R. Case No.125 of 2015 and the learned Judicial Magistrate 1st at Mayabunder, North and Middle Andaman after a thorough trial, acquitted the accused solely on the ground that there is no iota of evidence against him and found him not guilty under Section 32 Regulation III of 1876. Learned counsel for the applicant further argued that in view of the acquittal in criminal trial, the applicant deserves a lenient consideration.

4. Respondents contested the case by filing a written statement. The respondents contended that the misconduct was grave as the applicant being an employee of the disciplined department, like Police, was involved in transportation of liquor more than the permissible limit and the authority after taking into consideration all the circumstances, have imposed the right punishment in the larger interest of the fraternity.

5. Learned counsel for the official respondents argued that since there is no flaw in the disciplinary proceedings, there is hardly any scope for interference by the Tribunal.

6. Learned counsel for the applicant drew our attention to the pleadings made in para 5[xxix], 5[xxx], 5[xxxii] and 5[xxxii]. According to the applicant, one Mohammed Rafique [PC/1606], S. Loknathan [PC/82], M. Ravi [PC/1954] and Simhachalam [PC/2155] were also involved in cases under Section 32 Regulation III of Excise Regulation 1976 and the charges were also proved against them but they were let off with minor penalty as reflected in Annexure-A-16. Mr. Simhachalam was awarded punishment for withholding of future increment of one year without cumulative effect. Mr. M. Ravi was awarded punishment of withholding of future increment for

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two years without cumulative effect. Md. Rafique was awarded punishment for withholding of future increments for three years with cumulative effect and Mr. S. Loknath was awarded minor penalty of black mark. There is no dispute to imposition of such punishment who were also involved in similar type of crime coming under Section 32 of Regulation III, and the punishment is also not shockingly disproportionate.

7. Admittedly, learned counsel for the respondents fairly admitted that the applicant was carrying liquor bottles, i.e. 04 Nos. 750 ml IMFL bottles Honsons Original Choice, Delux Whiskey company sealed and 02 No.s. 750 ml IMFL bottle Mc Docwells No.1 Reserve Whiskey and was possessing two bottles more than the permissible limit. There is no dispute that the applicant was an employee of the Police Department but other police personnel committing similar offences, have been let off with minor punishment.

8. The legal question that arises for consideration is whether the punishment of removal from service passed in the instant case is proportionate to the gravity or passed arbitrarily and on parity, when the applicant has already served in the department for 22 years. We do not go to the degree of misconduct but find that the punishment of removal becomes shockingly disproportionate as by this order, the applicant loses all his service benefits rendered to the Department for the last 22 years.

9. Before advertng into the merit of this case, we are conscious of the legal position unless the punishment is shockingly disproportionate, this Tribunal has no power to interfere. Suffice it to quote some authoritative pronouncements of the Hon'ble Apex Court. In the case of **Ranjit Thakur vs. Union of India & Ors.**, 1988 SCR [1] 512, the Hon'ble Supreme Court

observed as follows :

*See Catharine
196/18*

"5. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, a s part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

The Hon'ble Apex Court in the case of **Bhagat Ram vs. State of Himachal Pradesh, AIR, 1983 SC 454** held :-

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

10. Hence we feel it expedient in the larger interest of justice to direct the Disciplinary Authority to pass any sentence except the order of removal and more so keeping in view the punishment awarded to other similarly situated employees and considering punishment imposed to other police personnel committing similar offences in the past. Hence, the OA is allowed in part. The order of the Disciplinary Authority and the Appellate Authority so far as penalty imposed is concerned, is set aside. The matter is remitted back to the Disciplinary Authority to pass any order on the misconduct of the applicant except the order of removal keeping in view the above observations given above as keeping two foreign liquor bottles of 750 ml each which was more than the permissible limit of 04 bottles, may be a misconduct but not sufficient to snatch the bread from an employee. No costs.

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

[S.K.Pattnaik]
Member (Judicial)