CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 1088 of 2012

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Prakash Kumar Mahapatra, aged about 43 years, S/o Ramakanta Mahapatra, working as Examiner (MCM) under controller Senior Quality Assurance Establishment (A), Badmal, Bolangir, Odisha – 767770, permanent resident of Bamanda, PS/Dist. – Badmal.

.....Applicant

VERSUS

1. Union of India, represented by the Secretary to the Govt. of India, Department of Defence Production, Nirman Bhawan, Post Office, New Delhi – 110011.
2. The Directorate General of Quality Assurance, Govt. of India, Ministry of Defence, Dept. Of Defence Production, Dept. Of Quality Assurance (Armts), Nirman Bhawan, - 110011.
3. Office Senior Quality Assurance Officer, Senior Quality Assurance Establishment (A), Badmal, Bolangir, Orisha – 767070.

.....Respondents.

For the applicant : Mr.L.Pradhan, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 30.1.2019 Order on : 14.2.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed with the prayer for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

"(a) To admit the original application.
(b) Call for the records from the authority and after hearing the parties quash the impugned order of punishment dated 29.11.08, 28.4.2009, 7.1.2010 and 12.1.2012 vide Annexure Nos. 20, 22, 24 and 27 respectively and quash the impugned punishment imposed upon him with all service benefits and allow the original application;
(c) Any other order may be passed as this Hon'ble Tribunal deems just and proper."

2. The case of the applicant, who was working in the MCM grade under the respondent no. 3, had submitted a TA bill on 5.9.2007, which was found to be false. Accordingly, a show cause notice was issued to the applicant. On receipt of the show cause notice, the applicant modified the TA bill and the modified

bill has not been paid to the applicant as stated in the OA. He was issued a charge memorandum dated 1.3.2008 (Annexure-A/11) for submission of false claims. The Inquiry Officer (in short IO) was appointed and the IO's report found the charge established against the applicant. On 29.8.2008, the applicant was served a copy of the inquiry report which was replied by the applicant who was imposed a penalty of 'removal from service' by the disciplinary authority vide order dated 29.11.2008 (Annexure-A/20). The appeal filed by him was rejected and he filed a Revision petition before Hon'ble President of India on 18.5.2009 (Annexure-A/23). Vide order dated 7.1.2010 (Annexure-A/24), the penalty was modified to reduction to a lower stage in time scale for a period of five years and after expiry of five years, the reduction will have the effect on future increments and this order was effective from the date of his removal from service as per earlier order. The period from the date of removal from service till the date of reinstatement would be treated as duty with 50% of his pay. The applicant filed a review against this modified penalty, which was rejected vide order dated 12.1.2012 (Annexure-A/27). All four orders passed by the authorities have been impugned in this OA.

3. The grounds advanced in the OA are as under:-

(i) The appointing authority i.e. (respondent no.2) has delegated the power of the disciplinary authority/appointing authority of Group C employees to subordinate authority vide order dated 8.6.2001 (Annexure-A/15), which is illegal.

(ii) Order of removal from service was passed by the respondent no. 3 instead of the respondent no. 2 who was the competent authority to do so for the applicant.

(iii) The inquiry was conducted without giving fair opportunity to the applicant and the original records were suppressed.

(iv) IO should have given an opportunity to the applicant to produce his evidence after closure of the prosecution's case, but it was not done in this case.

(v) No opportunity was given by the IO to the applicant to examine authenticity of the latter dated 19.2.2008 of the Railway authorities.

(vi) There is no alleged crime since the applicant has not received the claim as per the bill.

(vii) The modified punishment is too harsh and excessive as stated in para 5.26 of the OA.

4. The respondents have filed their Counter without disputing the basic facts of the case. It is stated that after show cause notice regarding the applicant's TA claim, he had submitted a letter dated 3.9.2007 (R/4) undertaking that the information provided was correct. But as informed by the Railway authorities, vide their letter dated 19.2.2008 (Annexure-R/5) stating that the applicant had travelled in Sleeper class. But as he had claimed in the TA bill that he had travelled in AC III tier, a charge memo was issued to the applicant on 1.3.2008 under rule 14 of the CCS (CCA) Rules, 1965. On conclusion of the proceeding, the disciplinary authority (the respondent no. 3) imposed the punishment of removal from service, which was upheld by appellate authority. In Revision, the competent authority modified the major penalty to the penalty under rule 11(v). It is further stated that the respondent no. 3 is the disciplinary authority for the applicant who was working as MCM on placement, but not on appointment, as claimed by the applicant. It is further stated in the Counter that the applicant was supplied the extract of all documents relied upon during the proceeding and the original was shown to the defence assistant who has signed for it. On the basis of the documents, the charges have been proved. It is further stated that the applicant was given all opportunity by the IO and the applicant and his defence assistant had all opportunity to say whatever they wanted. It is further stated that the applicant was in the past warned in writing as per the details at Annexure-R/25.

5. The applicant filed the Rejoinder and Additional Rejoinder, mainly reiterating the averments made in the OA. It is stated that there was a possibility of taking the AC III tier ticket in the train and the applicant was not given the opportunity to prove the same. It is also stated in the Rejoinder and

Additional Rejoinder that the averment in para 5.26 of the counter that in the past the applicant was issued warning in writing for absence on a number of occasions as stated in Annexure-R/25, has not been specifically contradicted by the applicant in his Rejoinder/Additional Rejoinder.

6. We heard learned counsel for both the parties and also perused the pleadings on record. As per the law laid down by Hon'ble Apex Court in a number of cases, this Tribunal has a limited scope for judicial review of the disciplinary proceedings. In the case of **Union of India Vs. P. Gunasekaran 2015 (2) SCC page 610**, Hon'ble Supreme Court has held as under:-

> ".....In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:
> a. the enquiry is held by a competent authority;
> b. the enquiry is held according to the procedure prescribed in that behalf;
> c. there is violation of the principles of natural justice in conducting the proceedings;
> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
> i. the finding of fact is based on no evidence."

7. As per the judgment of Hon'ble Apex Court in the case of **Deputy Commissioner KVS vs. J. Hussain, reported in AIR 2014 SC 766**, it was held as under :

> "When the charge proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the disciplinary required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority."

8. Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484**, while examining the scope of judicial review in disciplinary proceedings has held as under:-

> "A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. It the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof."

9. In this case, the applicant has alleged that he was not allowed reasonable opportunity to defend himself. The respondents have averred in the Counter that he was allowed all opportunity of placing his defence before the authorities. In any case, the applicant has got opportunity to place his grievance before the Appellate Authority and the Revisionary authority and in Revision, his punishment of removal from service was modified to reduction to lower stage vide order dated 7.1.2010 (Annexure-A/24). There is no scope for this Tribunal to look at the factual aspects again after these have been examined by the Appellate and Revisionary authorities. The charges against the applicant were serious, for submission of false claims, which were modified after his wrong-doing was detected.

10. The applicant's submission that he should have been allowed by the IO to prove that he had taken AC III tier ticket in the train, is difficult to accept since no money receipt in support of his buying of the ticket for AC III tier in the train has been produced by the applicant during the inquiry. There is nothing on record to show that he was not allowed by the IO to produce the said money receipt in support of the claim that he had actually travelled in AC III tier instead of Sleeper class as per the report of the Railway authorities dated 19.2.2008 (R/5). In addition, there are occasions of past misconduct on the part of the applicant, which have been furnished in Annexure-R/25 of the Counter, which have not been contradicted by the applicant. Regarding

competence of the authorities to issue penalty order, which has been denied by the respondents, it is seen that the applicant has not challenged competence of the Revisionary authority, whose order is final as per law. Hence, this plea of the applicant has not much force. It is also not the case of the applicant that the findings of the IO are not based on evidence.

11. In view of the discussions above and taking into account the law settled in the judgments of Hon'ble Apex Court as discussed in preceding paragraphs, we are of the considered opinion that there is no justification to interfere with the order dated 7.1.2010 (Annexure-A/24) of the Revisionary authority, in view of the charges against the applicant which have been proved and his past conduct. There is no valid ground to justify the judicial review of the impugned disciplinary proceedings by this Tribunal. Hence, the OA is dismissed being devoid of merit. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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