

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 558 of 2013

Date of Reserve: 25.03.2019

Date of Order: 9.4.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Smt. Sasmita Pattanaik, aged about 36 years, L.D.C, W/o. Sri Binod Kumar Behera, OFBL, Badmal Estate, Badmal, PS-Saintala, Dist. Balangir, Odisha.

...Applicant

By the Advocate (s)-M/s.L.Pradhan, D.P.Das, R.K.Mishra

-VERSUS-

1. Union of India represented through the Director General Quality Assurance (DGQA)-cum-Appellate Authority Department of Defence (Production), Ministry of Defence, Government of India, Room No. 234, South Block, DHQ, New Delhi-110011.
2. The Senior Quality Assurance Officer (SQAQ) SQAE (A) Badmal, Dist. Balangir, Odisha, PIN-767770.

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

PER GOKUL CHANDRA PATI, MEMBER(A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

“In view of the above mentioned fact and circumstances it is prayed that your Lordships will be graciously pleased to Admit the original application, call for the records from the authority and after hearing the parties set aside the impugned orders of reversion dated 28.09.2011 and Appellate order dated 23.04.2013 vide Annexure-3&5 and allow the original application (*sic*) with

cost, reinstating the application to service of UDC with all other service benefits."

2. The applicant was initially appointed as LDC under the respondents on 27.5.1997 and then promoted as UDC on 19.7.2007. She had proceeded on LTC for the block period 2002-2005 with her brother and had taken an advance of Rs. 1300/- for the purpose. After the LTC, she submitted the bill which was examined and the claim in respect of her brother was not allowed, The applicant was then directed to refund an amount of Rs. 502/- towards excess advance taken with the penal interest as per the rules and the applicant had paid the amount on 18.3.2008. Thereafter, she was served with a charge-memo dated 12.5.2008 with two articles of charges (extracted from the notes of submission filed by the Applicant on 25.03.2019) as under:-

"ARTICLE-I:

Where as Smt. Sasmita Pattnaik while functioning as LDC (now UDC) in Establishment Section under SQAE (A), Badmal processed a claim for LTC for her brother of 22 years age knowing it to be irregular and inadmissible and thereby defrauded the state of the amount incurred towards the ticket and thereby displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant, and thereby violated Rule 3 (1) 1 & 3(1) ii and 3(1) iii of CCS (Conduct Rules, 1964;

ARTICLE-II

That while functioning as LDC (now UDC) handling the LTC seat Smt. S.Pattanaik put up a case for grant of LTC of Shri K.L.Tripathi without carrying out due verification and thereby caused a fraudulent and inadmissible LTC advance to be claimed and used by Shri K.L.Tripathi. That on being detected in audit Shri K.L.Tripathi deposited the amount along with penal interest confirming his non eligibility. That she displayed lack of integrity and lack of devotion to duty and conduct unbecoming of a Govt. servant and violated Rule 3(1) i, 3(1)ii and 3(1) iii of CCS (Conduct) Rules of 1964."

3. The reply of the applicant was that her claim was not fraudulent and relaxation can be made as per the LTC rules. It was also stated

by the applicant that the LTC proposal was approved by the competent authority before she proceeded on LTC. After conducting inquiry into the charges, the applicant was removed from service and the appeal filed was rejected. The applicant then filed the OA No. 184/2009 which was allowed on the ground that the punishment was disproportionate to the charges and the respondents were directed to modify the punishment to any other penalty except dismissal or removal from service. Thereafter, the appellate authority remanded the matter to the disciplinary authority who passed the order of penalty of reduction in rank from UDC to LDC with no service benefit for the break period vide order dated 28.9.2011 (Annexure-3 to the OA). On appeal, the appellate authority, vide order dated 24.3.2013 (Annexure-5 to the OA) modified the penalty reducing the penalty of reduction of rank to LDC for a period of three years with cumulative effect and the applicant will regain the seniority after completion of the penalty period.

4. The order dated 28.9.2011 & dated 24.3.2013 have been impugned in this OA in third round of litigation between the parties mainly on the ground that there is no misconduct on the part of the applicant as the applicant had refunded the excess advance amount with interest as per the rules. Another ground is that the matter was remanded to the appellate authority who intturn remitted the case to the disciplinary authority who passes the order at Annexure-3. The applicant had to file appeal and the appellate authority passed order at Annexure-5 which is passed in a mechanical manner.

5. The respondents have filed their Counter not disputing the facts. It is stated that as per the order of the Tribunal in OA No. 184/2009,

the disciplinary authority passed the order dated 28.9.2011 reducing the penalty of removal from service. The applicant was reinstated in service at a lower post of LDC at reduced pay till she was found fit after a period of three years for promotion to UDC. On appeal, the order at Annexure-5 modified the penalty so that after three years as LDC, the applicant will regain her seniority but not earlier salary. The period between date of removal from service till reinstatement will be treated as per the rule FR 54-A. In the counter, the respondents have compared the applicant's argument with that of a thief who returned the amount stolen with interest on being caught.

6. The applicant has filed Rejoinder stating that Sri K.L. Tripathy who was also charge-sheeted for similar charge of claiming ineligible amount in LTC bill, has been exonerated. It is also stated that no other officers who had approved her LTC claim was proceeded against in the matter. But in case of the applicant, she has been imposed severe penalty for which she has been victimized. It is further stated that the amount was refunded by the applicant on being pointed out by audit and as per the intimation from the authority.

7. We have heard the counsels for both the parties and perused the record. When the case was considered by the Tribunal in OA No. 184/2009, it was held in the order dated 3.5.2011 (Annexure-1) as under:-

“We have considered the rival submission of the Parties and perused the materials placed on record. We are in agreement with the Learned Counsel for the Applicant that the punishment of removal/dismissal being too harsh, while imposing any such punishment the authority should be circumspect enough and such punishment should be imposed only on gross misconduct but not for such petty mistake which was unintentional and not deliberate. In the instant case the mistake having come to the notice the applicant so also Shri Tripathi had

deposited the amount drawn by them with penal interest which is also provided in the Rules. Therefore, leaving aside the other points, in so far as competence of the Respondent No.2 to impose the punishment of removal etc., we are of the considered view that imposition of punishment of removal on the applicant is too harsh and needs reconsideration. Hence without going into the other aspects of the case, we feel this is a fit case for remand to the Disciplinary Authority for considering imposition of any punishment other than dismissal/removal. Ordered accordingly. Respondent NO.2 is hereby directed to pass appropriate reasoned order in the light of the direction given above within a period of 60 (sixty) days from the date of receipt of copy of this order. In the result, for the reasons recorded above, this OA stands disposed of. No costs."

8. It was held by the Tribunal in the above cited case that the applicant was charged for a "petty mistake which was unintentional and not deliberate" as revealed from the order dated 3.5.2011 as extracted above. The matter was remanded by the Tribunal to the appellate authority for consideration. This order of the Tribunal was not challenged by either of the party and hence, it has attained finality. But unfortunately, the appellate officer remanded the case to the disciplinary authority which delayed the matter by two more years and one more OA which had to be filed by the applicant to direct the appellate authority to dispose of her appeal. In a disciplinary proceeding, the charged officer expects to get justice at the appeal stage. We take note of the judgment of Hon'ble Apex Court in the case of **Ram Chander vs. Union of India & ors. reported in AIR 1986 Supreme Court 1173**, in which it was held on the role of the appellate authority as under:-

"24..... It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram

Patel's case unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charge proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and give a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

9. The manner of consideration of appeal as specified under the CCS (CCA) Rules, 1965 is also very clear about the role of the appellate authority in case of a disciplinary proceeding against a govern servant. The rule 27(2) of the CCS (CCA) Rules, 1965 lays down the following in this regard:-

"27. Consideration of appeal

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

- (a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case : provided that-

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii)"

From above discussions, it is clear that the role of the appellate authority in a disciplinary proceeding is very important since at that stage the matter can be examined in entirety keeping in view the grounds mentioned by the charged official in the appeal.

10. The appellate authority is required to see whether the quantum of penalty imposed is adequate and not excessive. In this case, the appellate authority has modified the penalty imposed by the disciplinary authority after remand of the matter to him vide the order dated 3.5.2011 of the Tribunal after examining the facts of the case in some details. Regarding the charge relating to excess payment to Sri KL Tripathy, it is observed that the LTC claim of Sri Tripathy was put up by another clerk and not by the applicant who was on leave and hence, the appellate authority found the penalty imposed on the applicant excessive. The appellate authority after examining the case, has modified the penalty as under:-

"NOW THEREFORE, the undersigned hereby in modification of the earlier penalty order impose the penalty of "Reduction to a lower time scale of pay, grade and post of LDC in the pay Band of Rs. 5200-20200/- with Grade Pay Rs. 1900/- for a period of three years with cumulative effect and she will regain her original seniority after the completion of penalty period."The period between the date of removal from service to the date of reinstatement shall be regulated as per Rule FR 54-A."

11. From above, it is seen that the penalty of reduction in rank as modified by the appellate authority as above constitutes a major penalty as it is imposed with cumulative effect, which impacts the applicant's pensionary benefit. Regarding the penalty, it is held by Hon'ble Apex Court in the case of **Deputy Commissioner KVS vs. J. Hussain**, reported in **AIR 2014 SC 766** 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."

12. In this case, there is nothing on record to show if the applicant had been proceeded against for misconduct in the past. The appellate authority in his order dated 23.4.2013 (Annexure-5) has considered some of the relevant facts of the case and noted the observation of the Tribunal in order dated 3.5.2011 that the applicant's mistake was a petty mistake, which was not deliberate and it was also noted in the appeal order that the applicant was on leave when the LTC claim of the Sri KL Tripathy was put up for approval with reference to charge in Article II. But still the gravity of the charge and past conduct of the applicant were not considered in the appeal order. The appellate

authority did not discuss the reason as to why a major penalty in this case would be just and fair in this case.

13. We take note of the fact that the scope for judicial review of disciplinary cases at the level of the Tribunal is very limited. In the case of **B.C. Chaturvedi vs. Union of India & Anr. reported in 1996 AIR 484**, it was held by Hon'ble Apex Court on the issue of the judicial review, 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.

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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. If 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."

14. Applying the ratio of the judgments discussed above to the OA before us and taking note of the fact that the nature of misconduct proved against the applicant being petty as observed in the order dated 3.5.2011 of the Tribunal (Annexure-1), which by no stretch of imagination, can be equated with fraud since the claim of the applicant was duly approved by the competent authority before she went on LTC and after submission of the bill by her and there was no attempt by her to suppress any details and there is no record of any misconduct committed by the applicant in the past, we are of the view that the major penalty of reduction in rank with cumulative effect on the applicant vide the impugned order dated 23.4.2013 (Annexure-5) is shockingly disproportionate to the charges proved against the applicant.

15. In the circumstances as above, the order of the appellate authority dated 23.4.2013 (Annexure-5) passed by the respondent no.1 as appellate authority is set aside and the matter is remanded to the respondent no.1 as appellate authority to reconsider the matter as per the provisions of the CCS (CCA) Rules, 1965 and if he decides to impose any penalty, then it shall exclude the major penalties listed

under the rule 11 of the CCS (CCA) Rules, 1965 after considering the gravity of the misconduct and other factors as mentioned in the preceding paragraphs of this order. The applicant will be entitled to all consequential benefits after passing of the order by the appellate authority on reconsideration of the case as above. The respondents are to comply with this order within 03 (three) months from the date of receipt of a copy of this order. The OA is allowed accordingly. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER(ADMN.)

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