

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTAK BENCH, CUTTACK

O.A.NO.260/1044/2002

Date of Reserve:19.12.2018

Date of Order: 23.01.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sarat Chandra Khuntia, S/o. Bata Krishna Khuntia, aged about 47 years, at present working as Supporting Staff, Central Institute of Fresh Water Acquaculture, Kousalyaganga, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)- M/s.N.R.Routray
T.K.Choudhury
J.Pradhan
S.K.Mishra
P.K.Mohapatra
R.R.Mishra

-VERSUS-

Union of India represented through:

1. The Director General, Indian Council of Agricultural Research, Krushi Bhavan, New Delhi.
2. The director, Central Institute of Fresh Water Aquaculture, Kousalya Ganga, Bhubaneswar.

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant while working as Supporting Staff Grade-I (in short S.S.Gr.I) was placed under suspension vide order dated 19.3.1991(A/1) in contemplation of disciplinary proceedings. Aggrieved with this, he approached this Tribunal in O.A.No.97 of 1991. While the said O.A. was pending adjudication, Respondent No. 2 issued a Charge Memo dated 10.05.1993 under Rule-14 of CCS(CCA) Rules, 1965, containing eight Articles of Charge calling upon the applicant to submit his explanation. Applicant

submitted his explanation on 16.07.1993 denying all the charges and requested to allow him to take the assistance of an Advocate to defend his case in course of the inquiry. In the meantime, this Tribunal vide order dated 6.9.1993 disposed of O.A. No.97 of 1991 with a direction to the respondents to dispose of the disciplinary proceedings within a period of 60 days from the date of receipt of copy of the order. During the course of inquiry, the I.O. did not allow the applicant to take the help of the Advocate. The I.O. submitted its report on 26.12.1993 holding the applicant guilty in so far as Articles of Charge No. I, II, IV, V, VI and VIII are concerned and as regards the rest of the charges, the applicant was found not guilty. The applicant vide letter dated 31.12.1993 was supplied with copy of the inquiry report to make his submission thereof. The applicant requested the Respondent No.2 on 15.1.1994 to grant him two months time to give his reply since his wife was suffering from cancer and was under treatment at S.C.B.Medical College & Hospital, Cuttack and the applicant was remaining with her. The Disciplinary Authority without considering the said request imposed penalty of fixing the pay at the minimum of the time scale of the post that the applicant was holding and making the applicant as Junior most in the cadre/grade on that day, i.e. on 31.1.1994 vide letter dated 31.1.1991(A/6). On the same day the Respondent No.2 also revoked the order of suspension of the applicant with immediate effect vide order dated 31.1.1991(A/7). The applicant submitted an appeal to the Appellate Authority, i.e., Secretary, ICAR, New Delhi on 11.3.1994 against the punishment order. Since his appeal was not considered, he moved this Tribunal in O.A.No.228 of 1995 and vide order dated 11.03.2002 this Tribunal directed the appellate authority to consider and dispose of the appeal. In the above backdrop, the appellate authority vide

order dated 7.6.2002 rejected the appeal preferred by the applicant. Hence, by filing this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) To quash the appellate authority's order i.e., Indian Council of Agriculture Research Order No.F.No.3(14)/2002-Vig(D) dated 7th June, 2002.
- ii) To quash the penalty imposed by the disciplinary authority on the applicant vide his letter No.Admn/Misc.C/395/89/9330 dated 31.1.1994.
- iii) To issue directions to the respondents to restore all service benefits of the applicant with all consequential benefits of promotions, payment of arrears of salary, seniority etc.
- iv) To issue direction to the respondents to treat the period of suspension as duty.
- v) To issue direction to the respondents to disburse the salary of the applicant for the period from 3.1.1990 to 6.1.1990 and for 8.1.1990.
- vi) To pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice.

2. The grounds on which the applicant has claimed reliefs are as under:

- i) The appellate authority did not apply his mind to the points raised in the appeal petition.
- ii) The disciplinary authority could not conclude the disciplinary proceedings within 26.12.2991 as directed by this Tribunal.
- iii) While 71 numbers of staff members participated in the strike pay and allowances of 52 staff members including the applicant were held up and subsequently, pay and allowances of 51 staff members were disbursed whereas the applicant being the Secretary of the Association was placed under suspension and punished.
- iv) The punishment order is arbitrary, discriminatory and colourable exercise of powers by the Respondent No.2.
- iv) Punishment imposed on the applicant is disproportionate to the gravity of offence.
- v) The findings arrived at by the IO are based on no evidence.

- vi) The Presenting Officer being M.A.LLB, the applicant's request for engaging a Lawyer as his defence assistant was rejected and as such there has been a violation of the principles of natural justice in conducting the disciplinary proceedings.
- vi) The charges having been framed after a delay of about two years of the order of suspension, the period of suspension has to be treated as duty.

3. Per contra, respondents have filed a detailed counter. It has been submitted that the O.A. is not maintainable in view of Rule-23(C) of ICAR and Bye Laws which lays down that the Director General cannot be a party to the litigation, instead Secretary, ICAR should be arraigned as party-respondent.

4. Respondent have pointed out that the scope of interference by the Tribunal in the matter of disciplinary proceedings is very limited and the Court/Tribunal cannot sit as an appellate authority to examine the factual aspects. They have submitted that adequate opportunities have been provided to the applicant and there has not been violation of the principles of natural at any stage of the disciplinary proceedings. As regards refusal of the request of the applicant to engage a Lawyer to act as his defence assistant, it has been pointed out that there is a bar in engaging a lawyer as defence assistant in a domestic inquiry and therefore, the IO did not accede to his prayer in that behalf. However, the applicant was allowed to take resort to a Defence Assistant and that he having participated in the inquiry, is now estopped to raise this point again. According to respondents, the I.O. conducted the inquiry in a fair and impartial manner. The Disciplinary Authority on receipt of the representation of the applicant on the report of the IO and other connected documents considered the matter with due application of mind and keeping in view the gravity of offence and the charges proved, imposed punishment on the applicant. Respondents have submitted that because of the conduct of the

applicant, his pay has been reduced, but as per the order under Annexure-9, he has been given a routine promotion and there is no bar for any future increment.

5. With these submissions, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

6. Applicant has filed rejoinder to the counter in which it has been submitted that the findings of the I.O. are based on no evidence, besides, there has been violation of the principles of natural justice. The punishment imposed is not commensurate with the gravity of offence. It has been submitted that although the applicant was placed on under suspension vide order dated 19.3.1991, the charge sheet had been issued on 10.5.1993, i.e., after more than two years. The statutory requirement of time gap between the date of inspection of document, submission of list of defence witness, examination of witness etc. was not followed by the IO for which the inquiry is vitiated.

7. We have heard the learned counsels for both the sides and perused the pleadings of the parties. We have also examined each of the grounds urged by the applicant in support of his case. As regards consideration of appeal, applicant has not pointed out which specific point urged in the appeal was not considered by the Appellate Authority as a result of which, a prejudice has been caused. Secondly, in so far as direction of the Tribunal in O.A.No.97 of 1991 to conclude the disciplinary proceedings within 26.12.1991 is concerned, it is to be noted that the Appellate Authority vide order dated 07.06.2002 (A/11) has mentioned that the Respondents had approached this Tribunal for extension of time for conclusion of the disciplinary proceedings

which was granted upto 27.12.1993. This fact has not been rebutted by the applicant.

8. With regard to submission that although 71 staff members were on strike of which 52 including the applicants were held up and subsequently, although 51 were let off, only the applicant was proceeded against, we are not impressed upon this inasmuch as in a disciplinary proceedings matter prima facie a case should exist to proceed against a delinquent and such prima facie case having been established, the applicant was proceeded against departmentally. Therefore, the point that he only was proceeded against in the disciplinary proceedings is not quite enough to hold the said proceedings vitiated.

9. As regards the request of the applicant for engagement of a Lawyer, it has been submitted that as per rule, the applicant was allowed to conduct his case by a Defence Assistant and accordingly, the inquiry was conducted and participated.

10. It is the case of the applicant that the charges having been framed after a delay of about two years of the order of suspension, the said period has to be treated as duty. In this connection, it is pertinent to mention that this point the Tribunal had taken note of in O.A.No.97 of 1991 and directed conclusion of disciplinary proceedings within a stipulated time frame. Therefore, this point now urged is farfetched.

11. We have also gone through the charges proved against the applicant as well as the orders of the appellate authority. In this connection, it is worthwhile to note that the scope of interference by Courts/Tribunals in the matter of disciplinary proceedings is limited as laid down by the Hon'ble Supreme Court in a catena of judgments. It is appropriate to quote some of

the observations of the Hon'ble Supreme Court in a few cases on the issue of scope of judicial review in the matter of disciplinary proceedings.

12. In *Surender Kumar vs. Union of India* (2010) 1 SCC 158, the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

13. In *Union of India vs. Flight Cadet Ashish Rai* (2006) 2 SCC 364, the Hon'ble Supreme Court has held as under.

"Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reach a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administration action is subject to control by judicial review in the following manner:

- (i) Illegality: this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

14. In *Hombe Gowda Educational Trust vs. State of Karnataka* (2006) 1 SCC, the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

15. Similarly, in *B.C.Chaturvedi vs. Union of India* (1995) 6 SCC 749, the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceedings 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 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 or 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 reappreciate 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 whether 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.

16. We have considered the matter in the light of the decisions of the Hon'ble Supreme Court as cited above. In the facts and circumstances of the case, we do not find any procedural violation in the conduct of the disciplinary proceedings nor the applicant has been able to make out a case that because of not following certain procedure in the course of disciplinary proceedings, prejudice has been caused to him. We also do not see that the findings arrived at by the I.O. are perverse or based on no evidence.

17. For the reasons discussed above, the O.A. is held to be without any merit and the same is accordingly dismissed. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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