CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

TA No. 15 of 2012

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

Ashok Kumar Mahaptatra, aged about 45 years, S/o Late Krushna Chandra Mahapatra, Senior Operative, E.R.W. Pipe Plant, Rourkela Steel Plant, Rourkela, residing in Qr. No. E/11, Sector – 9, Rourkela – 769009, Dist. – Sundargarh.

.....Applicants.

VERSUS

1. Rourkela Steel Plant, represented through its Managing Director, Steel Authority of India Ltd., At/PO: Rourkela, Dist. – Sundargarh.
2. Deputy General Manager, Water Management Department, Rourkela Steel Plant, Steel Authority of India Ltd. At/PO- Rourkela, Dist. – Sundargarh.
3. General Manager (Utility), Rourkela Steel Plant, Steel Authority of India Ltd. At/PO- Rourkela, Dist. – Sundargarh.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.H.N.Dhal, counsel

Heard & reserved on: 19.2.2019 Order on : 8.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This application (referred hereinafter as TA) has been transferred from Hon'ble High Court, in which the applicant seeks the following reliefs:-

> "In view of above facts and circumstances, the Hon'ble Court be pleased to admit the writ application, issue a rule NISI calling upon the opp. parties to show cause as to why the writ application shall not be admitted and why the order dated 27.12.2004 vide Annexure-6 passed by the Deputy General manager, Water management Department – opp. party No.2 in imposing punishment of reduction of basic pay by 4 (four) stages in the existing scale of pay as a disciplinary measure and order dated 23.5.2011 vide Annexure 7 passed by the Appellate Authority confirming the order passed by the Disciplinary Authority shall not be set aside and why the petitioner shall not be extended with the salary which the petitioner is entitled to get.
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> If the opp. parties fail to show cause or show insufficient cause, Your Lordships be pleased to issue a writ of certiorari in quashing he order dated 27.12.2004 vide Annexure 6 and order

dated 23.5.2011 vide Annexure 7.

And further be pleased to issue a writ of mandamus directing the opp. parties to release the benefits accrued in favour of the petitioner.

And further be pleased to pass any other order(s) as would be deemed fit and proper by this Hon'ble Court in the interest of justice.

And for which act of kindness, the petitioner as in duty bound shall ever pray."

2. The applicant has challenged the order dated 27.12.2004 (Annexure-6 of the OA) by which, the disciplinary authority (respondent no. 2) has imposed a punishment of reduction of basic pay by 4 stages in the pay scale of the applicant reducing his basic pay from Rs. 8541/- to Rs. 7797/- in a disciplinary proceeding against the applicant for misconduct and the order dated 23.5.2011 (Annexure-7) passed by the Appellate Authority (respondent no.3). Main grounds urged in the OA are that the respondent no.2 is not competent to impose the impugned punishment on the applicant and the order of the respondent no.3 as Appellate authority is not sustainable under the law. It is stated in the OA that the applicant was one of the Secretary of the recognized workers' union i.e. Rourkela Sramik Sangh (in short referred as SS). The charge against him was framed with allegation that he had distributed a hand bill with false information and hence, he was charged for breach of standing order, distribution of hand bill without permission of the management and intentionally giving false information prejudicial to the interest of the management.

3. It is further stated in the OA that the inquiry officer submitted his report (Annexure-4) stating that two charges out of three have been established. Then a copy of the report was sent to the applicant who submitted his reply to the inquiry report (Annexure-5). Then the respondent no.2 imposed the penalty vide impugned order dated 27.12.2004 on which the appeal dated 4.2.2005 was filed before the respondent no.3. Since the Appellate authority did not dispose of the appeal, the applicant filed a Writ petition which was disposed of by Hon'ble High Court directing the respondent no.3 to dispose of the appeal within three months. Thereafter, the respondent no.3 passed the order dated 23.5.2011 (Annexure-7) rejecting the appeal.

4. Following main grounds have been advanced in the TA:-

(i) The respondent no.2 is not competent to pass order dated 27.12.2004.

(ii) The charge no V has been shown in the inquiry report to have been

proved without any evidence (as stated in para 16 of the OA).

(iii) No show cause notice was given for proposed penalty as per the certified standing order (as stated in para 18 of the OA).

(iv) The original hand bill was not produced during the inquiry, only a copy of the photo-copy of the original hand bill was produced (see para 13 of OA).

(v) Impugned orders are passed without going through the evidence.

5. The respondents have filed the Counter stating procedure has been followed as per the certified standing order while conducting the disciplinary proceedings against the applicant. He was also given the opportunity of appeal and the respondent no.3 has considered the appeal dated 4.2.2005 (Annexure-R/1) vide order dated 23.5.2011. The counter denied the averment that the disciplinary authority did not give any show cause notice for the proposed punishment.

6. We have heard learned counsel for the applicant as well as the respondents. Subsequently, the respondents' counsel filed a copy of the certified standing order of Rourkela Steel Plant.

7. As per the settled law on the scope of judicial review of the disciplinary proceedings, the Tribunal can interfere in the disciplinary proceedings if there is violation of natural justice or statutory rules or if the findings are based on no evidence. In this regard Hon'ble Supreme Court in the case of **B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484** has held 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."

8. 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."

9. In this case, the applicant states that the penalty imposed is based on no evidence mainly because of the fact that the alleged hand bill distributed by the applicant was not produced in original, only photo copy of the hand bill was produced in the inquiry. The charge against the applicant was the distribution of the hand bill without permission of the management. It is not explained by the applicant how production of the original hand bill could have changed the findings that the applicant was involved in distribution of the said hand bills without approval of the management. It is not the case of the applicant that no approval of the management was required or the applicant was not associated with the distribution of the photo copy of the hand bills produced. Hence, the findings of the authorities particularly in respect of the charge (v) cannot be said to be based on no evidence, We are also not convinced that non-production of the original hand bill has vitiated the inquiry report.

10. One ground taken in the OA is that no show cause notice was issued on the proposed penalty as required under the Standing Order of the respondents. The paragraph of the Standing Order which lays down the above stipulation has not been disclosed in the OA. It is seen from the paragraph 29 of the Standing Order that the punishment of reduction of basic pay of the applicant by 4 stages in the existing pay scale, is a major penalty as specified under paragraph 29(2)(b) of the Standing Order. Paragraph 30 (II) of the Standing Order specifies the procedure for imposing major penalty and the sub-para (e) and (f) of the said para 30 (II) state as under:-

> "(e) If, after enquiry, an employee is adjudged guilty of the misconduct alleged against him or some other misconduct brought out in the course of the enquiry and punishment is awarded, the employee shall not be entitled to any remuneration for such period other than the subsistence allowance already paid to him. If a penalty other than dismissal or removal is imposed on him, the punishing authority shall by order decide as to how the period of suspension shall be treated. If however, he is found not guilty of the alleged misconduct or any other misconduct, he shall be reinstated in his post and shall be paid the difference between the subsistence allowance already paid and the emoluments which he would have received if he had not been suspended, the period of suspension being treated as duty.
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> (f) No order of removal or dismissal from service shall be made by an authority lower than the appointing authority of the employee. In awarding the punishment the Management shall take into account the gravity of the misconduct, the previous record of the workman and any extenuating or aggravating circumstances that may exist. A copy each of the orders passed by the Management shall be supplied to the workman concerned."

It is seen from above that there is no provision in paragraph 30(II) of the Standing Order for issuing a show cause for the proposed punishment after holding a regular inquiry.

11. For the reasons mentioned above and after taking into consideration the settled law as per the judgments of Hon'ble Apex Court discussed earlier, we do not find adequate justification to interfere in the matter. However, it is noticed that the paragraph 34 of the Standing Order has a provision for Review of the punishment order/order of the appellate authority by an authority higher than the appellate authority anytime after appeal either on its own motion or on the application of the applicant. It is revealed from the record that the applicant has not availed the provision relating to Review as he approached the Hon'ble High Court after disposal of his appeal.

12. In view of above this TA is disposed of with the liberty to the applicant to file the Review, if he so wishes, against the punishment and Appeal order before the Respondent no.1 within 10 days from the date of receipt of a copy of this order and if such an application for Review is filed by the applicant, then the Respondent no.1 shall consider and dispose of the same as per law by passing an appropriate order and a copy of such order be communicated to the applicant within 3 months from the date of filing the Review application as above. No cost.

(SWARUP KUMAR MISHRA) (GOKUL CHANDRA PATI)

MEMBER (J) MEMBER (A)

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