

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/788/2012

Date of Reserve:13.02.2019

Date of Order: 19.03.2019

CORAM:

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

Shri Dinabandhu Prusty, aged about 56 years, S/o. Shri Subal Prusty, resident of Qrs.No.Type-III/39, Survey of India Residential Colony, Nayapally, PO-RRL, Bhubaneswar-751 013, District-Khurda, State-Odisha, retired Draftsman, Division-I from Odisha Geospatial Data Centre, Survey of India, Bhubaneswar-751 013, Dist-Khurda, State-Odisha.

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
H.V.B.R.K.Dora
Ms.C.Padhi

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry/Department of Science and Technology, Technology, Bhawan, New Mehrauli Road, New Delhi-110 016.
2. The Surveyor General of India, Survey of India, Hathibarkala Estate, Dehra Dun-248 001, Uttarakhand.
3. The Additional Surveyor General, Eastern Zone, Survey of India, 15, Wood Street, Kolkata-700 016, West Bengal.
4. The Director, Odisha Geospatial Data Centre, Survey of India, 2nd Floor, Survey Bhawan, Bhubaneswar-751 013, Dist-Khurda, Odisha.

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) ...to quash the charge sheet at Annexure-A/1, the inquiry report at Annexure-A/7, the order of Disciplinary Authority (Respondent No.3) imposing penalty at Annexure-A/9 and

the order of the Appellate Authority (Respondent No.2) at Annexure-A/11 for the ends of justice.

- ii) ...to quash the Office Order dated 07.09.2009 (part of Statutory Appeal at Annexure-A/10 in so far as the question of classification of the posts of Draftsman, Division-I in Survey of India and the appointment of Appointing and disciplinary Authority/Appellate Authority in case of the Applicant is concerned for the ends of justice.
- iii) ...to hold that the applicant is entitled to be reinstated in service w.e.f. dated 20.06.2012 with all service benefits and entitlements as due and admissible for the ends of justice.
- iv) ...to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.

2. Facts of the matter in a nutshell are that the applicant while working as Draftsman Division-I, Survey of India, Bhubaneswar Wing of Jharkhand GDC, Survey of India, was issued with a Memorandum dated 30.09.2011(A/1) in contemplation of initiation of disciplinary proceedings against him under Rule-14 of CCS(CCA) Rules, 1965, containing the following Articles of Charges.

Article of Charge-I

That the said Shri Dinabandhu Prusty while functioning as Draftsman Division-I in the Bhubaneswar Wing of Jharkhand GDC, Survey of India, Ranchi (now under Orissa GDC, Survey of India, Bhubaneswar) with malicious intention tried to receive reimbursement of medical claims for Rs.1660/- for the second time by denying to have received the payment, thereby trying to defraud the Government Exchequer.

Article of Charge-II

That the said Shri Dinabandhu Prusty while functioning as Draftsman Division (in the Orissa GDC, Survey of India, Bhubaneswar was intimated about the payment of the medical claims for Rs.1625/- against his medical claim for Rs.1660/- submitted by him under his signature and date after he represented to higher formations. The Acquittance Roll on which he had received the payment was shown to him but he blatantly denied having signed the said Acquittance Roll, thereby raising doubt on the integrity of the Disbursing Officer".

3. Applicant, by virtue of the aforesaid Memorandum had been called upon to submit his written statement of defence as to whether he would like to be

heard in person. Applicant submitted his written statement of defence on 8.11.2011. However, vide order dated 15.11.2011(A/2 & A/3), the Additional Surveyor General, Eastern Zone, Survey of India in the capacity of Disciplinary Authority appointed Inquiry Officer & Presenting Officer to inquire into the charges framed against the applicant. Applicant having participated in the inquiry, the Inquiry Officer, on conclusion of inquiry, submitted his report to the Disciplinary Authority with the following findings.

“After analysis of the case and findings made, the IO is fully satisfied that Shri Dinabandhu Prusty, Draftsman Division I of Orissa GDC, Survey of India, Bhubaneswar had received the payment of Rs.1625/- on the AIR No.37/M dated 19.4.2006 under his own signature. The fact was amply established by sufficient documentary evidence and oral depositions made by state as well as defence witness. The expert opinion by the CFSL, CBI, New Delhi further corroborates the fact”.

4. The Disciplinary Authority communicated the report of the IO to the applicant requiring him to submit his representation, if any in response to which, the applicant submitted his representation dated 18.5.2012(A/8). Thereafter, the Disciplinary Authority passed order dated 8.6.2012 (A/9) dismissing the applicant from service with immediate effect. Aggrieved with this, the applicant submitted an appeal dated 6.7.2012 to the Appellate Authority, i.e., Surveyor General of India, Dehra Dun and in consideration of the same, the appellate authority disposed of the appeal of the applicant vide order dated 24.09.2012 thereby modifying the punishment of dismissal from service to that of compulsory retirement with effect from the date the punishment of dismissal order had been passed by the Disciplinary Authority.
5. Hence, the applicant has approached this Tribunal in the present O.A. seeking for the reliefs as already mentioned above.

6. In support of his case, the applicant has mainly urged the following grounds:

- i) The order of the Disciplinary Authority is based on extraneous consideration and the same does not consider all the points raised by the applicant in his representation to the report of the I.O.
- ii) The Appellate Authority also did not consider the legal points raised by the applicant in his appeal and in a casual manner agreed with the findings of the Disciplinary Authority and thereby he has utterly failed to pass a reasoned order notwithstanding a direction to this effect made by this Tribunal in O.A.No.577 of 2012.
- iii) The applicant in his appeal had questioned the authority of the Additional Surveyor General to act as the Disciplinary Authority on the ground that he was not the applicant's Appointing Authority which was not considered by the Appellate Authority in its proper perspective. According to applicant, even in his substantive post of Draftsman, Division-I carrying Grade Pay of Rs.4200 the applicant comes under Group-B Service of the Central Civil Services in terms of Gazette Notification dated 09.04.2009 and DOPT OM dated 17.04.2009. Thus, according to the applicant, Respondent No.3 not being the Disciplinary Authority, the disciplinary proceeding initiated against him is *void ab initio*.
- iv) The conclusion arrived at by Respondent No.2 that the questioned signature on the AR is of the applicant in view of the report of CFSL, New Delhi is not tenable in view of the decision of CAT, Calcutta Bench interpreting the meaning of 'same' and 'similar'.
- v) Even if punishment of dismissal from service has been modified by the Appellate Authority to that of compulsory retirement from service, the same is too harsh/disproportionate to the alleged misconduct.
- vi) Allegation made in the charge memo that the applicant had tried to receive an amount of Rs.1660/- towards medical reimbursement cannot constitute misconduct within the meaning of CCS(Conduct) Rules.
- vii) The findings arrived at by the IO, DA and AA are based on no evidence.
- viii) Director, OGDC had no competency to refer the questioned signature to CFSL, New Delhi in the face of report submitted

by CFSL, Kolkata stating that the questioned signature was not of the applicant who was even ready to appear to lead evidence if necessary.

7. Resisting the claim of the applicant, Respondents have filed a detail counter. It has been submitted that the applicant while working as Draftsman, Division-I in Bhubaneswar Wing of Jharkhand GDC, Survey of India, Ranchi had submitted three medical claims amounting to Rs.1659.33 during the months of November, 2005 and January, 2006. Out of the aforesaid claim, Rs.1625/- was allowed and drawn in Bill No.68/M dated 23.02.2006 which was encashed on 18.04.2006 and accordingly, payment of Rs.1625/- was made to the applicant after he put his signature on the Acquittance Roll No.37/M dated 19.04.2006. After a lapse of more than eight months from the date of payment, the applicant submitted a representation dated 17.01.2007 to the Director, OGDC for reimbursement of medical claim to the tune of Rs.1660/-. On receipt of the same, the concerned Section Officer went through the Bills, AR etc. and found that payment has already been made. In view of this, he called upon the applicant to inspect his signature on the A.R., but the applicant did not turn up. Thereafter, he went on preferring representation after representation. As such, an explanation was called for vide Director OGDC's letter No.C-1114/12-H1 dated 20.07.2012 as to why he made false allegation against the administration and wrote to the Department of Science & Technology. The applicant in his reply denied to have received the payment and stated that the signature appearing on the A.R.No.37/M dated 19.04.2006 was not his signature. In order to verify the authenticity of the signature, the Director, OGDC sent the signature appearing on the A.R. No.37/M dated 19.04.2006 along with a set of signatures of the applicant appearing on various documents of the office to the Government Examiner of Questioned

Document, Central Forensic Science Laboratory, Kolkata for opinion. The Director, CRFSL, Kolkata vide their letter dated 23.11.2010 gave their expert opinion in one sentence stating that the signature appearing on the aforesaid A.R. was not of the applicant. Since the report of CFSL, Kolkata was very brief and did not disclose the reasons of their conclusion, the Director, OFDC considered it necessary to take the second expert's opinion and accordingly, he approached the Director, Central Forensic Science laboratory, New Delhi enclosing copy of the report received from CFSL, Kolkata with a request to re-examine the signature appearing on the A.R and to give their expert opinion. The Director, CFSL, New Delhi in a comprehensive report vide letter dated 10.06.2011 stated that the signature appearing on the A.R.No.37/M dated 19.04.2006 was of Shri Dinabandhu Prusty. In the above backdrop, the Additional Surveyor General, Eastern Zone, Kolkata being the Disciplinary Authority issued a Memorandum of Charges dated 30.09.2011 to the applicant. Since the applicant was found guilty of the charges, punishment of dismissal from service was imposed on him after following the due procedure of rules. However, the Appellate Authority on the appeal preferred by the applicant, modified the punishment of dismissal from service to that of compulsory retirement.

8. Respondents have pointed out that the Disciplinary Authority has passed the order after taking into consideration all the points raised by the applicant in his representation. He was neither biased nor had he taken into consideration any extraneous materials while passing the order of punishment. Similarly, all the points raised by the applicant in his appeal has been duly considered by the Appellate Authority. Respondents have pointed

out that they have complied with the principles of natural justice at every stage of the proceedings.

9. According to respondents, Respondent No.3 being the appointing authority was the competent authority to initiated disciplinary proceeding against the applicant and to substantiate their stand point, they have produced Annexure-R/2 to the counter showing that Respondent No.3 is the appointing authority of the applicant. They have clarified that enhancement of Grade Pay under ACP Scheme does not upgrade the status of a Government servant. Applicant had admittedly been granted two financial upgradations raising his Grade Pay from Rs.4200 to Rs.4800. However, his status remains the same. According to reclassification of the cadre of Draftsman Division I from Group C to Group B, the status of the applicant was enhanced to Group-B. This classification order also prescribes that the Additional Surveyor General is the disciplinary authority of the applicant's cadre.

10. Applicant has filed a rejoinder to the counter which is more or less reiteration of averments made in the O.A.

11. Heard the learned counsels for both the sides and perused the materials on record. We have also gone through the written notes of submission filed by the applicant.

12. It is the case of the applicant that Respondent No.3, i.e., Additional Surveyor General being not the appointing authority was not the authority competent to initiate disciplinary proceedings against the applicant . In this connection, the applicant has placed reliance on order of appointment vide No.C-7119/1800 dated 24.12.2004 issued by the Surveyor General of India (Annexure-2 to the appeal petition). On a reference being made, it is found that in the same order applicant's place of posting has been mentioned under

Jharkhand GDC, Bhubaneswar Wing. However, the respondents in their counter have annexed at Annexure-R/2, an office order dated 07.09.2009 regarding classification of different civil posts existing in Survey of India in four categories for the purpose of Central Civil Service [Classification, Control & Appeal Rules], 1965, which has been issued in pursuance of Government of India, Ministry of Personnel, Public Grievances & Pensions (DOP&T), Gazette Notification "Extra-Ordinary" Part.II dated 09.04.2009 and No.11012-Estt.(A) dated 17.04.09 received under DST'S No.SM/23/07/2009 dated 19.06.09. Applicant being Draftsman Division-I has been classified as Group B (Non-Gazetted), his appointing authority being the Additional Surveyor General. From this, it is clear that the Additional Surveyor General (Res.No.3) is the appointing authority of the applicant as Draftsman Division-I and therefore, applicant's contention that Res.No.3 being not the appointing authority could not have initiated disciplinary proceedings against him in the capacity of Disciplinary Authority is overruled.

13. We have examined all the points raised by the applicant in support of his case. Amongst other things, the applicant has assailed of the competency or rather propriety of the Director, OGDC to refer the questioned signature to CFSL, New Delhi in the face of report submitted by CFSL, Kolkata stating that the questioned signature was not of the applicant and it was made clear therein that "***should evidence be necessary in this case, the Opinion No. Or this letter reference be quoted in all correspondence and the Summons be got issued in the Name of Shri A.K.Singh, Asst.Govt. Examiner of Questioned Documents, Kolkata***". Respondents at Para-61 of their counter-reply have stated that since the report of CFSL, Kolkata was not a report in its true sense,

it was not relied upon by the Disciplinary Authority and a second expert opinion from CFSL, New Delhi was sought for.

14. This Tribunal after going through the materials on record is of the view that it was within the competence of the Disciplinary Authority to call for a 2nd opinion of the Handwriting Experts from CFSL, New Delhi as there was no categorical finding in the 1st report submitted by CFSL, Kolkata and no motive can be imputed to the authorities in this case in the absence of any sufficient material shown by the applicant. This Tribunal is conscious of the fact that it cannot go into the detailed discussion in the report of the IO and reappreciate the evidence on record. But the Tribunal is empowered to examine as to whether this is a case of no evidence and as to whether no reasonable person would have arrived at a conclusion as arrived at by the concerned authorities.

15. The statements of witnesses of Smt.Gita Pradhan and A.Sobharani disclose that they had intimated the applicant that he has already received the amount towards reimbursement of medical claims and was done after submission of the medical claims by the applicant. The mere fact that the concerned authority decided to send the document to another handwriting expert, does not, by itself show that he was biased against the applicant when the first report of the handwriting experts was not supported by any reason. After going through the evidence on record once the fact finding authorities, i.e., IO and DA came to the conclusion on the basis of evidence on record that the applicant is guilty of the charge levelled against him, this Tribunal does not deem it proper to intervene in the matter. It is seen that the applicant had tried to take a sum of Rs.1660/- by giving representation to the authorities concerned for reimbursement of medical claim that had already been received by him. On conclusion of the disciplinary proceedings, the Disciplinary

Authority imposed punishment of dismissal from service, which on being appealed of, the Appellate Authority modified the said punishment to that of compulsory retirement from service. At this stage, it would be profitable to quote the following judgments of the Hon'ble Supreme Court on the subjects.

16. 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.

17. 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.

18. 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 reappraise 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.

.....

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 be appropriate 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".

19. In Deputy Commissioner KVS vs. J.Hussain (air 2014 sc 766), the Hon'ble Supreme Court has 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 discipline 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”.

20. In the instant case, as already indicated above, although the punishment of dismissal from service as imposed by the Disciplinary Authority has been modified by the Appellate Authority to that of compulsory retirement from service, but, we are of the considered view that the punishment of compulsory retirement is not commensurate with the gravity of offence committed by the applicant and the punishment as imposed on the applicant shocks the conscience of this Tribunal. In view of this, we quash the order dated 24.09.2019(A/11) and remit the matter back to the Surveyor General of India (Res.No.2), the Appellate Authority, to reconsider imposition of punishment other than dismissal or removal or compulsory retirement from service on the applicant, as per the provisions of law, within a period of two months from the date of receipt of copy of this order. How the service of the applicant from 20.06.2012 is to be treated will also be considered by the Appellate Authority who will pass an appropriate order in this regard as per law.

21. The OA is allowed as mentioned above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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