

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /351/16/2014
M.A/351/1003/2017
M.A./351/120/2018

Date of order : 22.1.19

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Dr. U.N. Choudhury,
S/o Shri J.N. Choudhary,
Assistant Director(Physical Education & Sports),
Deptt. Of Sports and Youth Affairs,
A&N Administration,
Netaji Stadium Complex, Port Blair,
R/o 10, Quarry Hill,
Port Blair

Applicant

V e r s u s

1. Union of India
Through the Secretary, Ministry of Home Affairs,
(Appeal deciding authority), Govt. of India,
North Block, New Delhi-110001;
2. The Union of India through the Secretary,
Govt. of India, Ministry of Youth Affairs & Sports,
Department of Sports,
Shastri Bhawan,
New Delhi-110001;
3. The Deputy Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi-110069;
4. The Administrator(Lt. Governor),
Andaman and Nicobar Islands,
Raj Niwas, Port Blair;
5. The Chief Secretary,
Andaman and Nicobar Administration,
Secretariat, Port Blair;
6. The Secretary(Sports),
Andaman and Nicobar Administration,
Secretariat, Port Blair;

7. The Director(Sports),
Andaman and Nicobar Administration,
Netaji Stadium, Port Blair;

.....Respondents

For the applicant : Mr. G. B. Kumar, counsel
For the respondents : Md. Tabraiz, counsel

ORDER

Bidisha Banerjee, Judicial Member

This O.A. has been preferred by the applicant seeking the following relief:-

"A) An order be passed setting aside/quashing the impugned order dated 28/02/2011 passed by the respondent No.4, disciplinary authority wherein imposed minor penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and without adversely affecting the pension upon the applicant under Rule 11(iii)(a) of the CCS(CCA) Rule, 1965 and Impugned order No.U-14033/5/2011-ANL dated 06/12/2013 passed by the respondent No.1, Appellate Authority affirming the punishment imposed by the disciplinary authority mechanically without application of mind;

B) An order be passed directing the respondent authorities to transmit the original records of the case before this Hon'ble court, so that after perusing the same conscionable justice may be rendered to the applicant;

C) Any other relief or reliefs, order or orders, direction or directions as your Honour deem fit and proper."

2. The All India Tennis Association(ATTa) decided to adopt 12 Tsunami affected boys of the age of 10-12 Yrs. for a period of 7 to 8 years and to look after the boarding, lodging, education, clothing and tennis coaching of these 12 children at AITA Tennis Academy in Gurgaon, Haryana. Therefore, on 6th May, 2005 a Press Release was made by the applicant, Assistant Director(SAC) and sent to the Chief Editor, AIR, the News Editor, Daily Telegram and the News Editor, Aspect Port Blair, which reads as under:-

"Press Release"

The All India Tennis Association (AITA) has decided to adopt 12 Tsunami affected boys of the age of 10-12 Yrs. for a period of 7 to 8 Yrs. The AITA sees tennis as a profession whereby tennis players can make a living either as professional players or through coaching and officiating. AITA has therefore decided to look after the boarding, lodging, education, clothing and tennis coaching of these 12 children at AITA Tennis Academy in Gurgaon, Haryana. The project will cost around Rs.2 crores over a period of 7 to 8 Yrs.

Delhi Public School Society has also joined hand with the AITA to provide free education, uniform and books to the Tsunami affected children admitted into the National Tennis Academy of AITA.

In this regard a selection trial will be conducted on 12.....(not legible) 13th May, 2005 at Netaji Stadium, Port Blair. Interested student falling within the age group can register their names at Netaji Stadium on all working days. The students born on or after 30/4/93 are eligible to participate in this trial. They shall also submit their Date of Birth Certificate as proof in support of their age.

(Dr. U.N. Choudhary)
Assistant Director (SAC)"

3. The day of selection was fixed on 5th and 6th May, 2005 at Port Blair and on different dates in Little Andaman at Nancowrie and Car Nicobar etc. Due to some VVIP visit, selection could not be held on the scheduled date. However, the order No.208 dated 10.05.2005 was issued whereby the following officers were assigned the duties to conduct the preliminary selection at Netaji Stadium, Port Blair:-

1. Shri Easudasan, Coach, SAI,
2. Shri S.K. Ghosh, Coat, SAI,
3. Shri Joy Pinto, In-charge (Sports).

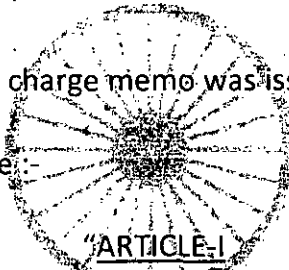
Final ranking of the children was to be decided by the committee comprising of the following officers :-

1. Sri Joy Kumar Roy, AD (SAI),
2. Dr. U.N. Choudhary, AD(SAC) i.e. the applicant,
3. Dr.(Smt.) Lally Joseph, Lecturer(PE), JNRM.

A letter was sent to the Education Officer, Car Nicobar, The Assistant Education Officer, Nancowry, The Principal, GSSS, Campbell Bay, The Principal, GSSS, Hut Bay.

4. After such publication, 26 children registered their names for such selection but on the scheduled date, only 5 children attended the Netaji Stadium for selection test. A chart was prepared showing the evaluation standard for physical development and physical fitness for 5 boys who attended the test. It was handed over to the Assistant Director(SAC) for further necessary action. However, Smt. Lali Joseph, Lecturer, who was supposed to be a member of the Selection Committee did not attend the final selection. The final list was prepared by Mr. Joy Kumar Roy, A.D., SAI and U.N. Choudhary, Assistant Director(SAC) i.e. the present applicant.

5. Following the selection, a charge memo was issued against the applicant with the following articles of charge:-



Dr. UN Choudhary while functioning as Asst. Director (SAC) during April 2005 in the Directorate of Youth Affairs, Sports and Culture, Netaji Stadium, Port Blair did not follow all the conditions mentioned in the letter dated 14/4/2005 received from Shri. Anil Khanna, Honorary Executive Vice President and Secretary General All India Tennis Association, New Delhi in the selection of 12 tsunami affected boys from A & N Islands.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid Directorate, the said DR. UN Choudhary, Asst. Director (SAC) did not intimate Smt Lali Joseph, Lecturer JNRM about her selection as one of the selection panel judges with a bad motive and did not ensure her participation in the selection of 12 tsunami affected boys from these Islands.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid Directorate, the said Dr. UN Choudhary, Asst. Director (SAC) deliberately did not send any communication to the Principal, GSS (Campbell Bay), Principal, GSSS (Hut Bay) Asst. Education Officer, Nancowrie thereby obstructing wide publicity of the selection of 12 tsunami affected boys in A & N Islands in accordance with letter dated 14/4/2005 from Shri Anil Khanna, Honorary Executive Vice President and Secretary General, All India Tennis Association, New Delhi with a bad motive and ensure the selection of his son and selection of ward of his colleagues.

ARTICLE-IV

That during the aforesaid period and while functioning in the aforesaid Directorate, the said Dr. UN Choudhary, Asst. Director (SAC) managed to hold letter No. 382 (12)-20/SAC/05 dated 6/5/2005 addressed to the EO, Car Nicobar, AEO, Noncowrie, Principal, GSS (Campbell Bay), & Principal, GSSS (Hut Bay), in order to obstruct wide publicity of the letter No. Nil dated 14/4/2005 of Shri Anil Khanna, Hon Executive Vice President and Secretary General, AITA, New Delhi with a bad motive to ensure that his own son and ward of his colleagues are selected.

ARTICLE-V

That during the aforesaid period and while functioning in the aforesaid Directorate, the said Dr. UN Choudhary, Asst. Director (SAC) managed to publish the news for selection of candidates for sending to the AITA in accordance with letter No. Nil dated 14/4/2005 from Shri. Anil Khanna, Honorary Executive Vice President and Secretary General, All India Tennis Association, New Delhi in the Daily Telegram to one day i.e. on 8/5/2005 (Sunday) instead of at least 3 consecutive days for wide publicity with a bad motive and ensure the selection of his son and the son of his colleagues.

ARTICLE-VI

That during the aforesaid period and while functioning in the aforesaid Directorate, the said Dr. UN Choudhary, Asst. Director (SAC) obstructed the wide publicity of letter No. Nil dated 14/4/2005 from Shri Anil Khanna, Honorary Executive Vice President and Secretary General, New Delhi.

ARTICLE-VII

That during the aforesaid period and while functioning in the aforesaid Directorate, the said Dr. UN Choudhary Asst. Director (SAC) did not give wide publicity to the selection of candidates for sending to AITA through Director of Education, DEO of South Andaman, DEO (Wimberlygunj) DEO (Rangat), AEO (Mayabunder).

ARTICLE-VIII

That during the aforesaid period and while functioning in the aforesaid Directorate, the said Dr. UN Choudhary, Asst. Director (SAC) did not prepare combined merit list for the candidates from C/Bay and Port Blair after conducting a selection test for making a final merit list.

ARTICLE-IX

That during the aforesaid period and while functioning in the aforesaid Directorate the said Dr. UN Choudhary, Assistant Director (SAC) did not pay attention to select genuinely tsunami affected boys in these Islands in accordance with the letter No. Nil dated 14/4/2005 of Shri Anil Khanna, Honorary Executive Vice President and Secretary General, All India Tennis Association, New Delhi.

ARTICLE-X

That during the aforesaid period and while functioning in the aforesaid Directorate, the said Dr. UN Choudhary, Assistant Director (SAC) selected his own son in the guise of tsunami affected person concealing his actual identify.

Dr. UN Choudhary, Assistant Director (SAC) by his above acts exhibited lack of absolute integrity and acted in a manner unbecoming of a Govt. Servant thereby contravening Rule 3 (i) (iii) (i) of the CCS (Conduct) Rules, 1964."

6. The Enquiry Officer found that none of the charges were proved. However, the Disciplinary Authority issued its disagreement note on the findings of the Inquiry Officer which was conveyed to the applicant with a direction to make a representation within 15 days. The applicant submitted a detailed reply to the same. The applicant gave his pointwise reply as under:-

"(1) He stated that the disagreement finding is contrary to his specified duties and office procedures and approval method of selection approved by the competent authorities which has been elaborately mentioned in the IO's report dated 23.10.09. He also stated that the disagreement is based on extraneous to the inquiry proceedings and if the old and new office procedure manual prescribed by the Admn. is verified to know to whose duty is to dairy and dispatch for signed communication, the question of disagreement would not have arisen.

(2) He stated that deliberative attempt has been made to treat the Committee of Shri Joy Kumar Roy, GO and Smt. Lally Joseph as committee of selection. Smt. Lally Joseph had to do nothing with the selection it was only to compile the rank list based on the merit list prepared by the two committee for conducting selection at Car Nicobar & P/Blair without any change and the absence of Smt. Lally Joseph, in no way vitiated the selections as alleged, which were done by other committee.

(3) He stated that on the basis of the approval accorded by the competent authority, the letter was issued to all addressees, which the dispatch register prima facie proves, and dispatch is not his duty. Therefore, he cannot be held responsible for without any evidence as once he signed the communication and send to lower staff dealing hand, further action was his/her part unless any problem in dispatch was brought to him and he failed to solve it.

Supplied under RTI Act, 2005

(4) As regard issue to advt., he stated that he could not do any thing more than what were approved by the competent authority and this part was not approved by the authorities and hence sending of communications to Principals/AEO of Hut Bay, C/Bay and Nancowrie on his own did not arise. He further stated that in the entire charge sheet from Article 1 to 10 only one allegation has been levelled and repeated against him that alleged irregularity was committed purposely to select his own son, though at every stage the approval was accorded by the competent authorities and thus the final list prepared by adopting approved methods by two selection

committees constructed by the Admn. and compiled two merit list by the third committee, the CS approved which the disciplinary too has accepted in Article B, then the disagreement finds did not stand.

(5) Reg. selection of his son, he stated that one of the criteria for selection was to produce birth certificate to selection board, it is undisputed that the selection committee has selected the candidates only after verifying the birth certificate. The list prepared by the committee constituted for carrying out selection at Port Blair where it has been clearly written 'Prashant S/o Dr. UN Choudhury. The same was ditto written by merit rank compilation committee and placed before the competent authority for perusal and acceptance and approval. Reg. the disagreement that the CO suppressed that his son has been selected by the committee for the said purpose while seeking final approval from the competent authority, the CO stated that this is a new article of charge which the disciplinary authority is bared to bring such new charge which was not the part of enquiry process."

7 That the final list was prepared by Mr. Joy Kumar Roy, A.D., SAI and U.N. Choudhary, Assistant Director(SAC) i.e. the present applicant and the son of the present applicant was selected for admission as a Tsunami affected candidate, in the same selection, where his father approved the select list. Having come to the fore, the matter was referred to the Vigilance Department. The Vigilance confirmed that the applicant was responsible for handling the scheme and framing the process of selection, therefore, it was his responsibility to obtain approval from the competent authority for issuance of repeated advertisement instead of publishing a news item. He failed to confirm/check the receipt of such important communication from the addresses i.e. AEO, Nancowrie, Principals of GSSS, Hut Bay and Campbell Bay. On 01.11.2011 the matter was directed to be placed before the Hon'ble Lieutenant Governor, the Disciplinary Authority for consideration and issuance of necessary orders. The reply furnished by the CO and the comments of the Vigilance Branch are reproduced below for ready reference:-

B

S. No.	Reply in brief furnished by the CO	Comments of the Vigilance Branch
1.	The disagreement finding is contrary to his specified duties and office procedures as well as method of selection approved by the competent authorities which had been elaborately mentioned in the I.O's report dated 23.10.2009. That the repeated advertisement was not part of charge sheet approved by the authorities and the disagreement is based on issues irrelevant to the inquiry proceedings.	The CO was responsible for handling the scheme and framing the process of selection. Therefore, it was the responsibility of the CO to obtain approval from the competent authority for issue of repeated advertisement instead of publishing a news item. Though dispatch of letter is not his duty, he failed to confirm/check the receipt of such an important communication from the addressees i.e. AEO, Nancowrie, Principals of GSSS, Hut Bay & C/Bay.
2.	That Smti Lally Joseph had to do nothing with the selection. It was only to compile the ranking list based on the merit list prepared by the two committee for conducting selection at Car Nicobar & Port Blair without any change and the absence of Smti Lally Joseph in no way vitiated the selections as alleged, which were done by the other Committee.	The final ranking of children was to be prepared/decided by the Committee consisting of Dr. U. N. Choudhary (CO) Shri Joy Kumar Roy and Dr. Lally Joseph. But the final selection was done by the CO himself and Shri Joy Kumar Roy. But he failed to suggest and get appointed another officer in place of Smt. Lally Joseph in the Committee charged with the task of preparing the final list.
3.	He stated that on the basis of the approval accorded by the competent authority, the letters was issued to all addresses, whom the dispatch register prima-facie proves, and dispatch is not his duty.	Dispatch of letter is not the duty of the CO. However, he was entrusted with the task of selection candidates for admission to AITA. Considering the importance of the Scheme, i.e. the requirement of AITA it was his responsibility to check whether the letters were actually received by the addresses. Further, in the letter No. 12-20/SAG/2005/382 dated 6.5.2005, he allowed only 10 days time for the authorities to conduct trail and send the names and he should have known that it will be difficult to reach the notices far off southern group of islands in 10 days time. There is also no record of notices having been sent by FAX.
3.	That sending of communication to Principals/AEO of Hut Bay, C/Bay and Nancowrie on his own did not arise.	Since the CO was entrusted with the task of selection of candidates, it was his responsibility to send the communication to all the concerned officers and cross check with them regarding the receipt of the communication addressed them. As per the enquiry report all the witnesses who appeared before the enquiry testified that they did not receive the aforesaid letter and had no knowledge of the Scheme sponsored by AITA and therefore no selection trial was conducted at Hut Bay, Nancowrie & Campbellbay. Therefore, the candidates from the worst affected tsunami area i.e. Hut Bay, Nancowrie & Campbellbay could not participate in the selection trail.
4.	Regarding selection of his son, he	He failed to abide by the conditions of AITA

	<p>stated that one of the criteria for selection was to produce birth certificate to selection board; it is undisputed that the selection committee has selected the candidates only after verifying the birth certificate.</p>	<p>to offer the scheme only to tsunami affected children, as he failed to devise a definition/condition of tsunami affected children in the scheme prepared by him and got approved from the Director (SAC)/competent authority. By this act, he made the scheme open to those also who were not adversely affected by tsunami and gave them undue, unfair and unjust advantage from a scheme meant only for those who were adversely affected by tsunami. Thus, by not devising the definition of tsunami affected children, his son got an opportunity to get selected for admission to AITA. Further, he participated in the final selection process where his son was one of the candidates for admission in AITA, which was against the general principles and norms of propriety and he should have disassociated from the final selection for admission to AITA.</p>
--	---	---

8. On 25.02.2011, the Disciplinary Authority, having considered the matter in entirety, found that the applicant failed to abide by the conditions of AITA to offer the scheme to only Tsunami affected children, as he failed to devise a definition/condition of tsunami affected children in the scheme prepared by him and got approved from the Director(SAC)/competent authority and by this act, he made the scheme open to those who were not adversely affected by tsunami and gave them undue, unfair and unjust advantage depriving those who were actually deserving consideration. Accordingly the Disciplinary Authority imposed a penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting his pension, upon the applicant, as specified under rule 11(iii) a of CCS(CCA) Rules.

9. The applicant preferred an appeal on 30.03.2011 to the Ministry of Home affairs which was referred to UPSC for its advice. The Appellate Authority keeping in view all the facts and circumstances and the observations made by UPSC came to the conclusion that the Article of charges except Article-VIII framed against the

applicant vide A&N Administration's Memorandum No.Edn-121/04-Vig. dated 08.11.2007 stood proved and that the ends of justice would be fully met if the penalty imposed by the Disciplinary Authority, was sustained. Accordingly the Appellate Authority rejected the appeal vide its order dated 06.12.2013. The order dated 06.12.2013 rejecting the appeal of the applicant dated 30.03.2011, was rejected in terms of DOP&T O.Ms dated 19.11.2014 and 14.07.2016 since UPSC's advice was not provided to the applicant before it was acted upon.

10. On 13.06.2017, having noted that no new facts/information were brought to the notice of the Appellate Authority by the applicant, the Appellate Authority confirmed the order of the Disciplinary Authority dated 28.02.2011 imposing a penalty of 'reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting his pension, as specified under rule 11(iii) a of CCS(CCA) Rules' upon the applicant once gain, as evident from Annexure A/2 to the M.A.351/120/2018. By way of M.A.351/1003/AN/2017 the applicant sought for stay of the order dated 13.06.2017. However, the applicant failed to challenge the order dated 13.06.2017 by way of a proper application.

11. In view of the fact that no grounds have been put forth, it is noted that the judicial review of disciplinary action is available on very limited grounds as decided by the Hon'ble Apex Court in the following decisions :-

(a) In **B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749**, the Hon'ble Apex Court on the scope of judicial review 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."

- (b) Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. 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."*

- (c) In **Ranjit Thakur v. Union of India & Others, 1989(1)SLJ 109 (SC)=(1987)4 SCC 611**, the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

".....It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

12. We further note that apart from the fact that UPSC advice was not given earlier, no other procedural infirmity have been noticed in the proceedings while issuing the impugned order dated 13.06.2017. No new facts have been pleaded by the applicant denying the fact that he himself was a member in the Committee which selected candidates other than genuinely tsunami affected victims in terms of AITA instructions and in fact he facilitated the selection of his own son as a tsunami victim. Therefore, we find no extenuating circumstances which would tempt us to interfere with the punishment imposed on the applicant, which in our considered opinion is not shockingly disproportionate to the proven charge.

13. Accordingly the O.A. is dismissed. Consequently the M.A.No.1003/2017 and M.A.No.120/2018 also stand dismissed. No costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member