CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT SHIMLA)

O.A.NO.063/01066/2017 Orders pronounced on: 15.03.2019
(Orders reserved on: 07.03.2019)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)

Rishu Verma

S/o Sh. Inder Jeet Verma,

aged 31,

resident of House No. 118/593, Kaushalpuri,

Near Guru Nanak Girls Inter College,

Gumti No. 5, Kanpur, District Kanpur Nagar,

Uttar Pradesh-208012 (D Class).

.... Applicant

(Argued by: **MR. AJAY VAIDYA, ADVOCATE)**.

Versus

1. Union of India through the Chief Secretary Postmaster General, Himachal Pradesh Circle (HP Circle)-Shimla-171009.
2. The Director Postal Service, Himachal Pradesh Circle, Shimla-171009.
3. The Senior Superintendent of Post Offices, Shimla Division, Shimla-171001.
4. The Inspector Posts, Shimla East Sub Division, Shimla, Himachal Pradesh (HP)-171004.

.. Respondents

(Argued by : **MR. ANSHUL BANSAL, ADVOCATE**)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has approached this Tribunal under section 19 of the Administrative Tribunal Act, 1985, seeking quashing of letter/order dated 28.9.2016 (Annexure A-1), vide which the appeal filed by the applicant against imposition of penalty of removal from service vide order dated 30.11.2015, has been rejected and for issuance of direction to the respondents to reinstate him in service as Postman.

2. The facts of the case, which led to filing of the instant Original Application (O.A), are that after qualifying the examination for the post of Postman in 2013, the applicant was appointed as such, vide letter dated 3.4.2014 (Annexure A-2), in the pay scale of Rs.5400-20200 (GP Rs.2000). After such appointment, he was placed under probation period for two years from the date of joining service. He claims to have discharged his duties to the satisfaction of the respondents. The applicant submits that his father was suffering from chronic health problems like Bronchiole Ashma, Diabetes, Mellitus and Hypertension and applicant was only son to take care of him. On 8.6.2015, a memorandum of charges was issued to the applicant under rule 14 of CCS (CCA) Rules, 1965, with the allegations that he absented himself from duty since 24.5.2015 unauthorisedly without permission of the competent authority and thus caused disruption to the government work which is subversive of discipline and violation of Rules 62 and 162 of Postal Manual Volume-III. He had also remained absent from duty from 11.10.2014 to 17.2.2015 and 22.2.2015 to 17.5.2015 in violation of rules thereby failed to maintain devotion to duty and acted in a manner unbecoming of a government servant in violation of Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964. The applicant submitted a reply on 18.6.2015, explaining on Article-I that after

prolonged medical unfitness and constant constrains, he joined duty on 18.5.2015 and worked for 6 days till 23.5.2015. On being unwell, he consulted a doctor who advised rest for 10 days for which intimation was sent by post. On article II, he explained that on first day on 10.10.2014 itself, his father fell ill and he had to leave headquarter for Kanpur from where he sent intimation about factual position. The respondents conducted inquiry and report was submitted on 10.8.2015, copy of which was sent to the applicant vide letter dated 20.8.2015 in reply to which applicant admitted that he left the station and proceeded for Kanpur without waiting for the permission of competent authority due to illness of his father and his own health problem. The Disciplinary Authority, finding that applicant has clearly admitted the charges during the preliminary hearing and confirmed his admission in statement dated 7.8.2015 and charges are of very serious nature and shows his total non devotion to duty resulting into disruption to government work, imposed the penalty of removal from service was imposed upon him vide order dated 30.11.2015. The order was confirmed vide order dated 22.3.2016. He submitted an appeal dated 4.5.2016 which has been rejected vide order dated 28.9.2016 (Annexure A-1), without application of mind. Hence, the O.A.

3. The respondents have filed reply. They submit that the applicant was charge sheeted for remaining absent from duty and after conduct of inquiry and his admission to guilt, penalty of removal from service was imposed upon him. Two appeals filed by him have also been rejected by passing speaking orders and the impugned order is liable to be upheld.

4. We have heard the learned counsel for the parties at length and examined the material on file.

5. The learned counsel for the applicant argued that absence of the applicant from duty was not out of choice but a compulsion due to his own bad health and his father was unwell at Kanpur and the applicant being the only member in the family to look after him, he had to leave without ensuring that applied for leave was sanctioned or not and as such penalty imposed upon him is illegal and arbitrary. The applicant had submitted an application on 1.6.2015 for transfer to Kanpur, which was not entertained by the respondents. The applicant has not violated rule 62 and 162 of Postal Manual Volume III and Rules 3 (1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964, and as such impugned order stands vitiated. This is resisted by learned counsel for the respondents pleading that applicant was under probation and he has acted recklessly in remaining absent from duties and as such after conduct of proceedings under CCS (CCA)Rules, 1965, the penalty of removal from service has rightly been imposed upon him.

6. We have considered the submissions made on both sides carefully.

7. It is not in dispute that the applicant was appointed as Postman vide order dated 8.10.2014 and was placed on probation for a period of two years which was to remain in operation atleast upto 7.10.2016. During probation itself, the applicant absented himself from duties, which according to him, was beyond his control as he had fallen ill and secondly his father was also not well. He had given intimation in writing through post. He absented himself from 24.5.2015 and submitted application for transfer to Kanpur on 1.6.2015, which remained unanswered. In any case, a charge sheet was issued to him and after considering his reply, the competent authority conducted an enquiry in which applicant admitted during preliminary hearing about charges

levelled against the him. He however, claimed that absence was beyond his control and as such harsh penalty was unwarranted. In any case, two appeals filed by him were duly considered and the removal order was upheld, on the ground that applicant failed to maintain devotion to duty and acted in a manner unbecoming of a government servant in violation of Rules 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964. It has been explained in written statement that applicant is a habitual absentee and is not sincere towards his duties. He did not turn up for duty despite repeated directions. He remained absent for more than four months and after remaining on duty for four days (18.2.2015 to 21.2.2015) again left office on 21.5.2015. Thus, he has put in only ten days total service. Thus, no leniency can be shown to such an employee. Apparently, he had joined service with a premeditative thought of firstly occupying service in Shimla Division and subsequently getting himself transferred to his home state. They have explained that even medical certificate (Annexure A-11), was contrary to the medical certificate issued by State Medical Board, DDU Hospital, Shimla (Annexure R-1). The sequence of events shown by respondents and material on record leads us to conclude that indeed the charges levelled against the applicant have rightly been proved by the inquiry officer and the punishment of removal from service has also rightly been imposed upon him. His defence has been considered and even appellate authority has rejected his pleas which is based on material on record. Thus, we do not find any grounds made out to interfere with the impugned order. In any case, three orders have been passed adverse to the interest of the applicant but he has challenged only last order passed on second appeal of the applicant. The removal order and first appellate order is not even under challenge. In any case, even this

technicality is ignored, even then we do not find any grounds made out by applicant to interfere with the impugned proceedings.

8. The learned counsel for the applicant has placed reliance on a decision of Hon'ble Apex Court in the case of **KRUSHNAKANT B. PARMAR VS. UNION OF INDIA & ANOTHER**, (2012) 3 SCC 178 to plead that since I.O. has failed to consider any evidence to record finding of guilt against him and no specific finding has been given with regard to violation of rule 3(1)(ii) and rule 3(1)(iii) of CCS (Conduct) Rules and as to whether absence amounted to wilful absence or not, so the impugned order stands vitiated. It was so held in the indicated case by the apex dispensation. A perusal of punishment order indicates that before I.O., the applicant has himself admitted the charges during preliminary hearing confirming his admission in his statement dated 7.8.2015 and it has clearly been held that the charges are very serious in nature which indicated his total non devotion to duty and an action which is unbecoming of a government servant. The overall discussion by authorities would lead to only one conclusion that the applicant indeed remained wilfully absent from duties considering his working of only 10 days during three spells that too during probation period of his job. In these circumstances, the indicated judgement does not help the applicant from any angle and is distinguishable.

9. It is by now well settled law that it is for the disciplinary authorities to decide on the punishment and the courts or Tribunals should not interfere with the same unless it is found that the same pricks the conscience of a prudent man. In other words, there is no complete bar in interference by a court of law or Tribunal in quantum of penalty upon a delinquent employee and such interference is dependent upon case to case basis. It has been held that ordinarily the court or

tribunal cannot interfere with the discretion of the punishing authority in imposing particular penalty but this rule has exception. If the penalty imposed is grossly disproportionate with the misconduct committed, then the court can interfere.

10. A three bench judgment of the Hon'ble Supreme Court in **B. C. CHATURVEDI VS. UNION OF INDIA** (1995) 6 SCC 749 has held that even though the Court/Tribunal, while exercising the power of judicial review cannot normally substitute their own conclusion on penalty and impose some other penalty, if the punishment imposed by the disciplinary authorities shocks the conscience of the High Court or the Tribunal it would be appropriate to grant the relief either directing the disciplinary, or the appellate authority to reconsider the penalty or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with reasons in support thereof.

11. In the case of **STATE OF MEGHALAYA & ORS. V. MECKEN SINGH N. MARAK**, AIR 2008 SC 2862, it was held that a Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review. Similar view has been taken in **DEPUTY COMMISSIONER, KENDRIYA VIDYALYA SANGTHAN AND OTHERS VS. J. HUSSAIN**, (2013) 10 SCC; **U.P. STATE ROAD TRANSPORT CORPORATION VERSUS VINOD KUMAR**, 2008(1) SCC 115 and **UNION OF INDIA AND OTHERS VERSUS GYAN CHAND CHATTAR**,

2009(12) SCC 78 that it is highly uncalled, for the courts of law to interfere in these discretionary powers of the Punishing Authority.

12. Before parting, we may notice certain judicial pronouncements on the interference by courts in departmental proceedings. It is well settled law that a Tribunal or court of law can interfere in disciplinary proceedings only on limited grounds. The Hon'ble Supreme Court has considered the issue of interference in disciplinary proceedings including penalty in a recent decision of **S.R. Tewari Vs. Union of India & Another**, 2013 (3) SCT 461 and placing reliance on the cases of **B.C. Chaturvedi Vs. Union of India & Others**, AIR 1996 SC 484; **High Court of Judicature at Bombay through its Registrar v. Udaysingh S/o Ganpatrao Naik Nimbalkar & Ors**, AIR 1997 SC 2286 and **Government of Andhra Pradesh & ors Vs. Mohd. Nasrullah Khan**, 2006 (1) SCT 588, it has been held that the Court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding.

13. In the wake of aforesaid discussion, this O.A. is found to be devoid of any merit and is dismissed accordingly. The parties are, however, left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

DATED: MARCH 15, 2019
HC*