CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3940/2018

Reserved on 11.10.2019
Pronounced on: 18.10.2019

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr. A.K.Bishnoi, Member (A)

Sunil Gupta,
Aged 35 years, Group 'D',
MTS, FRU, AED (Since dismissed),
NTRO, At: J-592, Gali No. 1,
Near Palhwana Chowk, Kushak Road No. 2,
Saroop Nagar, Delhi-110042. .... Applicant

(By Advocate: Dr. Sumant Bhardwaj)

VERSUS

National Technical Research Organization,
Government of India,
Through Chairman, Block-III,
Old JNU Campus,
New Delhi-110067 ... Respondent

(By Advocate: Mr. Hanu Bhaskar with Mr. Amit Yadav)

O R D E R

Hon'ble Mr. S.N. Terdal, Member (J):

We have heard Dr. Sumant Bhardwaj, counsel for applicant and Mr. Hanu Bhaskar, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(a) Quash the Order no. XXVII/12/NTRO/2016 (4)-135 dated 28.2.2018 passed by the Chairman, NTRO;

(b) Quash the Order no. XXVII/12/NTRO/2016(4)-382 dated 3.7.2018 passed by the Deputy Director, NTRO;

(c) Direct the Chairman to take the applicant back in service as MTS, FRU, AED, NTRO;

(d) Direct the Chairman to take the applicant back in service as MTS, FRU, AED, NTRO wef 28.2.2018 and give continuity of service and

(e) Pass such order or orders as deem fit and proper."

3. The relevant facts of the case are that the applicant while he was working as a Peon in administrative Division of National Technical Research Organization (NTRO) for his frequent unauthorized absences and also for filing forged illness certificate, a departmental enquiry was initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 vide Memo dated 12.09.2017. The article of charges for which the departmental action was initiated is extracted below:

"ARTICLE-1

That said Shri Sunil Gupta, MTS while working as such in MMG Division absented himself unauthorisedly from duty for the period from 29.08.2016 to 23.09.2016 in violation of provisions of Rule 25 of the CCS (Leave) Rules, 1972, and thereby alleged to have violated Rule 3(1) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That said Shri Sunil Gupta, MTS while working as such in MMG Division absented himself unauthorisedly from duty for the period from 31.01.2017 to 03.02.2017 in violation of provisions of Rule 25 of the CCS (Leave) Rules, 1972 and thereby alleged to have violated Rule 3(1) of the CCS (Conduct) Rules, 1964.

ARTICLE-III

That said Sunil Gupta, MTS while working as such in MMG Division absented himself unauthorisedly from duty for the period from 09.02.2017 to 27.03.2017 in violation of provisions of Rule 25 of the CCS (Leave) Rules, 1972 and thereby alleged to have violated Rule 3(1) of the CCS (Conduct) Rules, 1964.

ARTICLE-IV

That said Shri Sunil Gupta, MTS while working as such in MMG Division absented himself unauthorisedly from duty for the period from 16.05.2017 to 17.08.2017 in violation of provisions of Rule 25 of the CCS (Leave) Rules, 1972 and

thereby alleged to have violated Rule 3(1) of the CCS (Conduct) Rules, 1964.

ARTICLE-V

That said Shri Sunil Gupta, MTS submitted Medical Certificate of his illness for the period from February 9th to March 27th on an OPD card, issued purportedly by All India Institute of Medical Sciences, but the same has been found to be forged one. By doing so, said Shri Sunil Gupta, MTS is alleged to have violated Rules 3(1)(i), 3(1)(0 and 3 (1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-VI

In the past also, said Shri Sunil Gupta, MTS while working as MTS in MMG Division absented himself unauthorisedly from duty for the period mentioned below:

i) 03.09.2015 to 18.11.2015

ii) 04.02.2016 to 20.03.2016

iii) 28.03.2016 to 20.04.2016.

Though leave due and as applied for the aforesaid three (3) periods mentioned in this Article of Charge except 21.03.2016 to 27.03.2016 and 14.04.2016 to 22.04.20156 have been sanctioned so that the pay and allowances of the official could be drawl to save him from any financial hardship, the said Shri Sunil Gupta, MT' did not mend and improve his conduct despite show cause notices to him."

Along with the article of charge, as required, list of documents and list of witnesses were furnished to the applicant. The applicant filed reply on 20.09.2017 to the said Memo. In the said reply, the applicant admitted all the charges stating that he was alcoholic addict and he was suffering from family problems and insanity but he further submitted that in future he would not repeat the same. The reply of the applicant is extracted below:

"Reply in respect of Memorandum dated 12th September 2017.

Respected Sir,

Most humbly I am submitting the following for your kind consideration and sympathetic action please.

Sir,

I would like to inform that, since May 2014 my family relation was so disturbed with my wife and she was not ready to stay along with me. Meantime I have made a habit of alcoholic and gone under depression and created some domestic violence.

Further sir, My wife appealed in the pattiala house court, Delhi and complaint lodged in Delhi Mahila Ayog, Mandir Marg Thana Goal Market. After wards I was so depressed and I was not aware what I have done.

Reply to Article 1-IV: I was become an alcoholic addict, not aware about what I am doing. I really sorry for the things happened and I may please be excused.

Reply to Article V: I was become an alcoholic addict, not aware about what I was doing. I have approached AIIMS hospital, to obtain the medical certificate I was not in a conscious stage and arranged medical certificate to cover up the case. I am really sorry for the things happened and I assure you that I will not do any such misbehaviour, misconduct and fake things.

Reply to Article- VI: In this regard I request that my leave may kindly be regularized as per the order No.IV (A)/16/313/2007-5223 dated 17th October 2016. Sir, I am ready to accept the mistake which I have done.

Please refer annexure-II, I hereby assure that I was really absent on that period and submitted the leave afterwards for perusal.

Reply to Article: II

Sir, it is requested that after regularizing my leave/absent period my pay may kindly be released and assure that I will do any misconduct/misbehaviour.

Reply to Article: III The period of absence was not intentionality because I was not in conscious stage and requested to regularize my leave period.

Reply to Article: IV: I hereby accepting all my mistakes as per the rules and regulation of Government of India and ready to apply for leave as per your suggestions and I may please be excused.

Further sir, I was in a condition of insanity and my family admitted in rehabilitation centre since 09.07.2017 up to 11th August 2017. Afterwards, I reported at NTRO, Udaipur on 18th August 2017.

> At present, my family compromised with me on 14th September 2017 and ready to stay along with me and court is monitoring our family relations. So I am really apologise for the things happened, presently I am in good health condition, I am aware and ready to obey the rules and regulations of office, performing duties without any absence.
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> So, I most humbly requested that I may kindly be excused this time and assure that I will do any such misbehaviour/misconduct or absence from duties."

The respondent appointed an Inquiring Authority and Presenting Officer vide order dated 30.10.2017. The Inquiring authority submitted inquiry report on 29.11.2017 holding that the charges are proved in view of the unconditional acceptance of the charges by the applicant. The inquiry report along with all the supporting materials was supplied to the applicant enabling him to file representation against the inquiry report. Thereafter, the disciplinary authority after considering the entire material before the disciplinary authority imposed the penalty of dismissal from service vide order dated 28.02.2018. The appeal filed by the applicant was also dismissed by the appellate authority vide order dated 03.07.2018.

4. The counsel for the applicant vehemently and strenuously submitted that though the applicant was absent, but, however, the applicant was absent as accepted by him for the reasons beyond his control, namely, because of his family problems and because of his insanity and alcoholic addiction and, therefore, the said absence was not wilful and as such the said unauthorised absence cannot be treated as misconduct. In support of her contention the counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in the case of **Krushnakant B.Parmar** Vs.**Union of India and Ors** (2012(3)SCC 178.

He further submitted that the penalty of dismissal imposed on the applicant is grossly disproportionate to the allegation accepted by the applicant.

5. The counsel for the respondent equally vehemently and strenuously submitted that the applicant was in the habit of remaining absent unauthorisedly and apart from being unauthorisedly absent he had filed forged medical certificate regarding the same he submitted that charge no 4 was framed against the applicant and that the applicant had admitted to having filed forged medical certificate. The counsel for the respondent further submitted that the organization in which the applicant is working is highly sensitive organization and any indiscipline of unauthorised absent and filing forged certificate cannot be tolerated in the said organization and as such the misconduct on the part of the applicant is established as per law and it is not disproportionate in nature and there is no violation of any of the provisions of holding departmental enquiry or principles of natural justice.

6. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(1). In the case of **K.L.Shinde** Vs. **State of Mysore** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

> "9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same

footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
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> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the

> back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of **B.C.Chaturvedi** Vs. **UOI & Others** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

> "12. 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 eye of the Court. When an inquiry is conducted on charges of a 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 be 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 office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 of 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.

> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

Recently in the case of **Union of India and Others** Vs. **P.Gunasekaran** (2015(2) SCC 610), the Hon'ble Supreme Court 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:
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> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
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> 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;
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> 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."

7. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice, the OA requires to be dismissed.

8. Accordingly, OA is dismissed. No order as to costs.

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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