**Central Administrative Tribunal**
**Madras Bench**

**OA/310/00282/2013**

**Dated the 26th day of July Two Thousand Nineteen**

**P R E S E N T**

**Hon'ble Mr. P.Madhavan, Member(J)**
**&**
**Hon'ble Mr.T.Jacob, Member(A)**

K.Saravanan,
S/o K.Kathiresan,
16, Old Ration Shop Street,
Edamalaipatti Pudur,
Trichy 620012. .. Applicant
By Advocate **M/s.Karthik, Mukundan & Neelakandan**

**Vs.**

1. Union of India, rep by
   Chairman,
   Ordnance Factory Board,
   10-A, S.K.Bose Road,
   Kolkata.
2. The General Manager,
   HAPP, Trichy 620025. .. Respondents

By Advocate **Mr.M.Kishore Kumar**

**ORDER**

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

> "for quashing the order No.218/KS/14/92/VIG/HAPP/07 dated 19.12.2011 issued by the 2nd respondent together with order No.17024/A/Disc dated 09.10.2012 issued by the 1st respondent as illegal and void and consequently reinstate the applicant in service with effect from 19.12.2011 with all consequential benefits including monetary benefits and;
>
> for such further or other reliefs as this Tribunal deems fit and proper in the circumstances of the case and this render justice."

2. The brief facts of the case are as follows:-

The applicant was working as UDC in the HAPP of the respondents and according to the counsel for the applicant, the applicant was discharging his official duties in a truthful and obedient manner. According to him, the applicant in this case had come to know regarding some gross financial irregularities committed by the higher officials of the establishment while discharging his duties and the applicant has informed the same to the Vigilance Officer of the establishment. But the Vigilance Officer did not take proper action and hence he was forced to file a complaint to Central Vigilance Commission (CVC) in the year 2006. Thereafter, the respondents are harassing him and on 31.12.07 the respondents had served a charge memo alleging various irregularities. There were all together 7 charges in the said charge memo. According to the applicant, these charges were fabricated and the

establishment wanted to cover up the financial frauds committed by the officers under the respondents. Out of the 7 charges, the Disciplinary Authority (DA) has found 5 charges not proved during the proceedings. The DA has found that the applicant has brought a personal floppy into the office without any proper authorisation and taken photo copy of the official communications unauthorisedly and possessed the same in his personal custody. The other charges like use of password to create obstruction in smooth functioning of ALWC office computer, altered the content of the confidential letter made by ALWC, copying official information in his file and transmitted the same to unauthorised persons and performed personal work during office hours and communicating unauthorised information to other persons in violation of Rules 11 etc., were found not proved. After enquiry, the DA after giving an opportunity for hearing had imposed a punishment of compulsory retirement on 19.12.2011. Eventhough he filed an Appeal against the order of punishment, it was only confirmed and appeal was rejected. According to the counsel for the applicant, the impugned order passed by the respondents are perverse and contrary to law and materials on record. It suffers from total non-application of mind and irrelevant considerations were taken into account for arriving at the conclusion. It was alleged that the enquiry was conducted against the principles of natural justice and the applicant was not given an opportunity to properly defend himself. The order passed by the DA is vitiated by malice and it was passed with an ulterior motive. The DA has not taken into consideration the enquiry report filed in the complaint filed by the applicant before the CVC.

3. The respondents entered appearance and filed a detailed counter admitting that the applicant was working as UDC in the establishment and according to them, he came on transfer from Board of Technical Education. According to the respondents, the applicant has brought a floppy inside the office and taken photo copy of the official communications and transmitted the same to others. According to them, it is a violation of Rule 11 of CCS (Conduct) Rules and violation of Official Secret Act. According to the respondents, the applicant was suspended w.e.f. 15.10.07. The respondents had conducted a formal enquiry under Rule 14 of CCS (CCA) Rules and the applicant was found guilty of charges mentioned in the charge memo as item No.1 and 3. According to the respondents, the above 2 charges were grave in nature and imposed the punishment of "compulsory Retirement" on 19.12.2011.

4. We have heard the counsel for the applicant as well as the counsel for the respondents and perused the pleadings from both sides. The main contention put forward by the counsel for the applicant is that the charge memo issued against the applicant was vindictive and it arose out of malice due to the giving of a complaint to the CVC. The applicant has not committed any irregularity as alleged in the charge memo. According to him, the applicant had brought a floppy disc with the permission of one Mr.Harikrishnan who was the higher official at that time. But the applicant could not produce the copy of the order. Eventhough the said Harikrishnan was cited as witness, he was not examined by the respondents. The respondents came to the conclusion that the applicant has not obtained any permission as claimed by him and he was found guilty for the same. Eventhough the applicant has filed

objection regarding the enquiry officer and his involvement in the earlier case of financial irregularities, the respondents had not considered the said objection and permitted him to continue with the enquiry. The respondents were exerting undue pressure on the applicant for the reason that he has filed a complaint against the higher official to the CVC. According to the counsel for the applicant, he was only a whistle blower as he was against the corrupt practices that were going on in the factory premises. This the respondents did not like and because of that the applicant was compulsorily retired. So, according to the counsel for the applicant, the order passed against the applicant is vitiated by malice and the punishment imposed is highly excessive. According to the counsel for the applicant, the applicant has brought the floppy disc only for the purpose of his cultural activities for promoting religious tolerance etc. inside the office among the employees and it was permitted by the previous officer by name Hariskrishnan. There is no bad intention behind it. There is no case even for the respondents that he has obtained classified information and leaked it outside the defence establishment. There is no case that he has committed any financial irregularities or any other indiscipline inside the office. The 2 charges which the DA has found proved is one bringing the floppy disc without authorisation and taking photo copy of the official information and possessed it in his personal custody. The DA has imposed an unduly harsh and excessive punishment of "compulsory retirement". The counsel for the applicant has invited our attention to the decision of the Hon'ble Supreme Court in ***Common Cause & Others v. Union of India & Others reported in (2015) 6 SCC 332*** wherein it was held that *"if somebody*

*access documents that ought to be carefully maintained by the CBI, it is difficult to find fault with such whistle blower, particularly when his or her action is in public interest"*. According to the counsel for the applicant, after the coming into force of the Right to Information Act, any person can get copies of all documents, unless it is protected from disclosures. Here the applicant was working in the Labour Welfare section and it is only natural that applicant will be dealing with communications regarding the subject. The applicant has never accessed any confidential communications which is protected from disclosure as such. The charge alleged against the applicant that he had brought a floppy into office and taken copies was not much relevance. The DA has imposed a punishment which is highly disproportionate to the charges proved against the applicant. The counsel for the applicant has also cited the decision of the Hon'ble Apex Court in ***Indirect Tax Practitioners Association v. R.K.Jain*** wherein the court has discussed the term whistle blower. He has also cited the decision of the Hon'ble Apex Court in ***Pritam Singh v. U.O.I & Others reported in (2005) 9 SCC 748*** in which it was held that *"judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is arbitrary or malafide or if it is based on no evidence"*. It was also held that *"in cases of compulsory retirement, public interest is the primary consideration. The DA should have come to the conclusion that the appellant had outlived his utility as a member of railway service and had become dead wood which had to be chopped off. If there is no material placed before the authority in which it could be held that compulsory retirement of applicant was in public interest and nor was the case one of*

*doubtful integrity, the order of compulsory retirement will be considered as arbitrary and liable to be set aside"*. The counsel for the applicant would argue that the offence committed and the punishment imposed is shockingly disproportionate and it clearly shows the vindictive nature of the respondents in this case.

5. The counsel for the respondents would contend that the enquiry was conducted in a fair and reasonable manner and there is no room for allegation of malice and violation of principles of natural justice. The applicant was given opportunity for adducing additional evidence and the DA has taken all the materials into consideration and in fact the DA has dropped charges 2,4,5,6&7 which were levelled against the applicant. The Office of HAPP is part of the defence establishment and nobody is permitted to take inside the floppy disc which can be used to take copies of record from the computer of the office. He was also found in possession of various official communication in his personal custody. As per Rule 11 of the Government Servants Conduct Rules, 1964, *Government servant is not expected to communicate directly to other Government servants or to non-official persons or to press any documents or information which may have come into his possession in the course of his duties.* The respondents mainly rely on the decision of the Hon'ble Supreme Court in ***Shri Parma Nanda v. State of Harayana and Others [1982 (2) SCC 177]*** wherein it was held as follows:-

> "We must categorically state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or

> competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

So, according to the respondents, the Tribunal cannot sit in the appeal against the order passed by the DA and there is nothing in this OA to interfere with the punishment imposed against the applicant.

6. On a perusal of the records, enquiry report, proceedings and the order passed by the DA, it can be seen that the respondents had conducted the disciplinary proceedings in a fair and reasonable manner without causing any prejudice to the applicant. Eventhough the applicant has raised objection regarding the enquiry officer, he could not substantiate the same and his objection was rejected by the respondents. There is no merit in the contention that the EO was prejudiced against him. Eventhough 7 charges were framed against the applicant, the DA has carefully gone through the enquiry report and came to a conclusion that only charges 1 and 3 were proved and the applicant was found not guilty for all other charges levelled against him. The applicant was found guilty for taking personal floppy disc inside

the office of the HAPP without authorisation and for also taking photo copy of official communication unauthorisedly and possessed in personal custody. These are the 2 charges which were proved against the applicant. The counsel for the applicant would contend that the applicant in this case has no intention to keep any classified information, secret information kept in the respondents establishment and there is no case even for the respondents that he has used classified documents for making undue enrichment. The facts revealed against the applicant in this case is that the applicant was instrumental for initiating an enquiry regarding financial irregularities committed in the HAPP establishment. There is no case even for the respondents that the applicant has any particular interest in these matters. It has come out in the pleadings that the applicant was instrumental for giving complaint regarding the wages paid to the casual labours and it is only thereafter disciplinary action was initiated. But the counsel for the respondents mainly states that the action taken against the applicant has no relation with the financial irregularities alleged and the action was taken only for violation of conduct rules and the applicant was found guilty for bringing floppy disc inside the office unauthorisedly and also for taking photo copy of official communication and unauthorised possession of the same. According to the counsel for the respondents, these type of indiscipline cannot be permitted in a defence establishment. The findings of the DA on these two points cannot be assailed as arbitrary as there is evidence for the same. While exercising the power of judicial review, we are not expected to sit as an appellate authority or to substitute our own conclusions in this case. The scope of judicial review is limited to **"the deficiency in**

**the decision making process and not the decision"** ***(Associated Provincial Picture House Limited v. Wednesbury Corp (1948 (1) KB 223).*** The Hon'ble Apex Court in ***B.C. Chaturvedi v. Union of India reported in 1995 (6) SCC 749*** held that *"the Court/Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that where the findings of disciplinary authority or appellate authority are based on some evidence the Court/Tribunal cannot re-appreciate the evidence and substitute its findings".*

7. The common principle running through all the decisions is that the court should not interfere with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was a defiance of logic or moral standards. We have considered all these aspects and find that there has not occurred any legal flaw or failure to take relevant factors or had taken irrelevant factors into consideration or the conclusion arrived was perverse or in contravention of rules. So, we have no hesitation to hold that the respondents had conducted the enquiry in a free and fair manner without causing prejudice. But at the same time we find that the punishment imposed by the DA is highly disproportionate to the offences committed by the applicant. Though the applicant is working in the civilian side as a UDC, the DA had inflicted a severe penalty i.e. "compulsory retirement" of the applicant. The order of the DA dated 19.12.11 (Annexure R16) does not give any reason as to how the DA had come to the conclusion that the continuance of the applicant in service is against public interest or whether the applicant has outlived his utility as a member of service, or whether he

has become a dead wood etc. We could not find any material in the order (Annexure R16) regarding these aspects. On a perusal of the pleadings and other records, we find that there is nothing to show that the applicant is a person of doubtful integrity. So, we find that the punishment imposed on the applicant is shockingly disproportionate to the conscience and it is vindictive in nature.

8. **In the result, we hereby set aside the order of "compulsory retirement" passed on the applicant. Accordingly, we hereby direct the Disciplinary Authority to consider the matter afresh in the light of what is discussed above and impose a suitable penalty which will be proportionate to the nature and gravity of the misconduct and which will meet the interest of justice and fair play within a period of three months from the date of receipt of a copy of this order.**

9. With the above directions, the OA is disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

26.07.2019

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