Central Administrative Tribunal
Madras Bench

OA/310/01779/2013

Dated the 21st day of March Two Thousand Nineteen

P R E S E N T

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

V.Murugesan,
S/o late K.Vaidyalinga Achari,
working as Blue Printer,
Heavy Vehicles Factory,
Avadi, Chennai 600 054. .. Applicant
By Advocate **M/s.Karthik, Mukundan & Neelakantan**

Vs.

1. Union of India, rep by
   The General Manager,
   Heavy Vehicles Factory,
   Avadi, Chennai 600 054.
2. The Additional Director General,
   Ordnance Factories & Appellate Authority,
   Armoured Vehicles HQ,
   Avadi, Chennai 600 054. .. Respondents

By Advocte **M/s.Shakila Anand**

ORDER

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

The applicant has filed this OA seeking the following relief:-

> "To set aside order No.405/DS/2009/05 dated 09.3.2011 issued by the 1st respondent; and
>
> to set aside order No.668/appeal/AVHQ/HVF (V.M) dated 01.1.2013 issued by the 2nd respondent and pass such further or other orders as may be deemed fit and proper."

2. The applicant is a Blue Printer working in the 1st respondent factory and he joined service in the year 1974 and he had been discharging his duties to the satisfaction of the superiors. He was promoted to the post of Blue Printer in the year 2004 and he was working under the Joint Works Manager, K.V.Rathinam thereafter. According to him, on 12.2.2009 a charge memo under Rule 14 of CCS (CCA) Rules, 1965 was issued to him. It contained 2 articles of charges. The applicant denied the charges and an enquiry was conducted. The enquiry report held that first charge is not proved and the second charge stood as proved. The applicant again filed a detailed explanation but the Disciplinary Authority i.e. 1st respondent imposed a penalty of reduction of pay to a minimum of pay scale for a period of 2 years with cumulative effect. The applicant had filed an appeal to the 2nd respondent and the 2nd respondent had dismissed his appeal upholding the punishment on 01.1.2013. The applicant is challenging the above 2 orders in this OA.

3. The main grounds argued by the applicant is that the orders passed by the

respondents are arbitrary, unreasonable and irrational. It is violative of Article 14 of the Constitution. The impugned order are perverse and contrary to materials on record as well as law. The findings of the Inquiry Officer in respect of article 2 of the charges is based on surmises and conjectures. So, the findings are based on assumptions and presumptions and is liable to be set aside. The second article of charges was framed on the basis of suspicion and there is no legal evidence. The evidence of PW1 and PW3 etc. is contrary. The Inquiry Officer has not considered the evidence tendered by the defence i.e. DW1 and DW2. So, according to the applicant, the findings of the Disciplinary Authority and Appellate Authority is liable to be set aside.

4. The respondents entered appearance and filed their reply denying the allegations in the OA. They admitted that the applicant was working as Blue Printer in the HVF, Avadi and the main charge levelled against the applicant was he brought exposed ammonia print rolls to the cutting room intentionally to create toxic smell which could not be tolerated by the employees working there. The then Chargemen of the Section Balasamy instructed one Kadirvel another casual employee to remove the ammonia and keep the rolls in the ammonia room to avoid toxicity. While this was being done, the applicant entered the room and used unparliamentary words against the said Balasamy. The above instance was witnessed by Ramadoss and Vadivelan. Accordingly, disciplinary action was initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The first article of charge for bringing

exposed ammonia print rolls to the cutting room and causing health hazards to the employees working there and the second article of charge for using unparliamentary words against the superiors amounting to conduct unbecoming of a government servant as per Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964. The applicant denied the charges and an enquiry was ordered on 18.5.09. Inquiry Officer after conducting the enquiry filed his report on 14.11.2010 stating that article-I of the charge was not proved and article-II of the charge is proved against the applicant. The copy of the inquiry report was given to the applicant on 13.12.2010 for making his representation. The applicant submitted his reply on 12.1.2011. The Disciplinary Authority after careful consideration of the inquiry report as well as evidences available on record, held the applicant guilty for article-II in the charge memo and accordingly imposed the penalty of reduction of pay for a period of 2 years and with further directions that the applicant will not earn increments during the period of reduction. According to the respondents, the applicant is not a physically challenged person as he stated in the application. There is no mention of any disability in hearing in the official records. The applicant was earlier punished on 17.9.83, 09.4.86, 06.4.87 and 30.7.04. According to the respondents, Shri K.V.Ratnam, JWM, was the Head of Section of DDO and he had endorsed his remarks in the complaint letter dated 03.12.2008 given by Shri P.I.Balasamy. The contention of the applicant that the said K.V.Ratnam is on a enemical terms has no merit. The enquiry clearly proved the second article of charge and, therefore, he was imposed with penalty and there is no violation of natural justice and there is no merit in the application.

5. We have heard the counsel for the applicant and the counsel for the respondents. The main argument put forward by the applicant is that the Disciplinary Authority and the Appellate Authority has not properly appreciated the evidence tendered in the enquiry and there is miscarriage of justice. According to him, the punishment was imposed on the basis of surmises and conjectures. The other charge initiated against the applicant is based on suspicion. The evidence of PW3, the witnesses examined in the enquiry are full of contradictions. The Inquiry Officer has not considered the evidence tendered by the defence and the findings of the Disciplinary Authority is liable to be set aside. It was also contended that the Appellate Authority has also not properly considered the evidence and dismissed the appeal.

6. Counsel for the respondents would content that the enquiry was conducted in a fair and justifiable manner and there is no merit in the contention raised by the applicant. This Tribunal cannot interfere in the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. There is only the need of preponderance of probability and there is no need of any meticulous preposition as in the case of criminal cases.

7. We have anxiously gone through the pleadings and the grounds raised by the applicant against the orders passed by the Disciplinary Authority and the Appellate Authority in this case. The arguments raised by the counsel for the applicant cannot be taken into consideration. On going through the Inquiry Report and the order

passed by the Disciplinary Authority and the Appellate Authority, it can be seen that they had conducted the enquiry in a fair and reasonable manner and there is no miscarriage of justice or violation of natural justice in the conduct of enquiry. The applicant was given all opportunity for hearing and the orders were passed. Eventhough the counsel would content that the findings of the Disciplinary Authority is based on surmises and conjectures, there is no supporting materials in this case. It is a settled law that the Tribunals are not expected to sit in the appeal against the decision taken by the Disciplinary Authority in a disciplinary proceeding. In ***Mazhare Islam v. Union of India (reported in SLJ 2018 (1) CAT 399)*** at pg. 408 it was observed by the Principal Bench that "*it is trite law that Tribunals are not invested with power and authority and jurisdiction to sit in appeal over the decisions taken by departmental authorities. Courts/Tribunals in exercise of power of judicial review, can only examine whether the decision taken by the departmental authority is vitiated on account of any (1) legal flaw in decision making process warranting interference, (2) authority failed to take all relevant factors into consideration, (3) or have taken irrelevant factors into consideration and (4) conclusion arrived at by departmental authorities is perverse or irrational or in the contravention of rules."*

8. In view of the above settled prepositions of law, it can be seen that there is no merit in the OA filed in this case. **The applicant has failed to substantiate his contention before the Tribunal. The Disciplinary Authority as well as Appellate Authority has properly considered all the relevant materials and came to the**

conclusion that the applicant is guilty of article-II of the charge framed against him. Accordingly we find that there is no scope for interference in the impugned order. Accordingly, OA will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

21.03.2019

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