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## CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH KOLKATA

O.A. No.1012/2010

Date .02.2016.

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms Jaya Das Gupta, Administrative Member

Arvind Kumar Guptarya

...Applicant

-Vs-

Union of India & ors. (C.A.G)

.....Respondents

For the petitioner : Mr A.Chakraborty & Ms T.Das, Counsel

For the respondents : Mr B. Debnath, Counsel

Date of Hearing : 11.02.2016

Date of Order : 26.2.2016

### ORDER (ORAL)

JUSTICE V. C. GUPTA, JM:

The applicant by this O.A sought the following reliefs :

- a) Charge sheet dated 22/8/2007 issued by the Principal Accountant General (Audit), West Bengal, cannot be tenable in the eye of law and as such the same should be quashed.
- b) Order dated 30/01/2009 issued by the Principal Accountant General (Audit, West Bengal, cannot be tenable in the eye of law and as such the same should be quashed.
- c) Order dated 13/7/2009 issued by the Dy. Comptroller & Auditor General (Commercial), West Bengal is bad in law and therefore the same should be quashed.
- d) An order do issue directing the respondents to reinstate the applicant in service and to grant him all consequential benefits.

2. At the very outset, the learned counsel for the applicant submitted that as per instruction of the applicant he is pressing this O.A on the ground of quantum of punishment only and is not challenged the findings recording the charges proved in the disciplinary proceedings. Having noted the aforesaid statement we are deciding this application.

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3. The brief facts of the case are that the applicant who is working as Audit Officer (Commercial) in the office of the Principal Accountant General, West Bengal, Kolkata. The applicant Arvind Kumar Guptarya while functioning as Asstt. Audit Officer (Commercial) on the basis of indulged in the activities inconsistent with peaceful discharge of his duties a memo of charge sheet was issued against the applicant. Particular of charges framed against the applicant which is as under :

"Article-1

That Shri Arvind Kumar Guptarya while functioning as Asstt. Audit Officer (Commercial) indulges in activities inconsistent with peaceful discharge of his duties. It has been reported that he repeatedly failed to perform work assigned to him instead of doing the work entrusted to him he wilfully disregarded the orders of his superiors and overstepping his position, wrote lengthy letters/notes to his superiors trying to justify his non-performance by citing irrelevant reasons. He failed to conduct audits of G.M (Finance and Accounts) and G.M. Bidhannagar D Circle, while posted to RAO/WBSEB during the period from February 2007 to April 2007. He acted in a manner while posted in Audit Party at Kasbaa Transmission (O&M) Division and while conducting review of old Inspection Reports of WBSEB during May-June 2007. Page 19 Annexure A-2.

"Article-II

That the said Shri A.K.Guptarya, A.A.O (Com) is abusive and disturbs the peace at the place of his employment. He is a habitual late comer and regularly absents himself from office without permission. He was very hostile in his attitude in dealing with his superiors as reported by RAO/CTC and RAO/WBSEB. Similar behaviour was also found while he was posted in his previous office i.e. Office of the Principal Director of Commercial Audit & Ex-officio Member Audit Board-II, Kolkata. Further, he is in the habit of writing baseless, incoherent, irrelevant, derogatory notes/representations making various allegations against superior officers and even high dignitaries like the President of India, as well as the Comptroller and Auditor General of India. His manner of movement in office has created fear amongst the staff hampering working atmosphere in and around the area/section of his posting.

These activities of Shri Guptarya are unbecoming conduct of a Govt. Servant and attract provision of Rule 3(i)(iii) of CCS (Conduct) Rules, 1964."

3. The reply was filed by the applicant. After recording evidence during the course of enquiry and punishment order was passed on 30.01.2009 and he was dismissed from service. Aggrieved by this order of dismissal an appeal was preferred and the same was also rejected by the appellate authority by order dated 13.07.2009 as contained in Annexure A-6 to this O.A.



4. The applicant was suspended with effect from 25.7.2007 but his suspension was revoked with effect from 20.4.2008. From the perusal of the relevant clause it appears that applicant challenged the charge sheet, the order of dismissal passed by the disciplinary authority and the order passed by the appellate authority directing to re-instate him in service.

5. In view of the statement made by the counsel for the applicant at the outset as stated, we have to consider whether punishment awarded against the applicant is disproportionate to the proved charges and is harsh and if so, whether this Tribunal has any power to interfere in the punishment awarded by the disciplinary authority and affirmed by the appellate authority.

6. In **Union of India Vs. Sardar Bahadur, (1972) 4 SCC 618** the Hon'ble Supreme Court ruled that the court has no concern to decide whether the punishment imposed on charges held proved in the departmental proceedings, provided it is justified by the Rules, is appropriate having regard to misdemeanor ultimately established. In **Union of India Vs. Prema Nanda, (1989) 2 SCC 177= AIR 1989 SC 1185** it has been held by the Apex Court that Tribunals have no jurisdiction to interfere with the finding of inquiry officer or competent authority or penalty where they are not arbitrary or utterly perverse, to substitute their own discretion for that of the authority. Their Lordships of Supreme Court unequivocally stated that the jurisdiction of Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Apex Court cautioned the Tribunals that it should be remembered that 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 end 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 on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of authority or the to interfere with the penalty, if the conclusion of inquiry officer or of the competent authority is based on evidence even if some of it is found irrelevant or extraneous to the matter or if the adequacy of punishment is not based on mala fide. In **State Bank of India Vs. Samendra Kishore Endow, (1994) 2 SSC 537** the Hon'ble



Supreme Court held that if the punishment is harsh or disproportionate to the proved misconduct it may be open to the Appellate Authority to interfere with it but not to the High Court or Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of High Court under article 226. The Power under Art. 226 is of judicial review and not of appeal. In this case the Supreme Court observed that the punishment of removal in the instant case may be harsh but this is a matter which the disciplinary authority or the Appellate Authority should consider and not the High Court or Administrative Tribunal. In **Govt. of A.P. vs. B Ashok Kumar, (1997) 5 SCC 478**, the Hon'ble Supreme Court that imposition of penalty is the right of disciplinary authority and the Tribunal has no power to direct to reconsider the matter by proposing a lesser penalty. In **N. Rajarathinam Vs. State of Tamil Nadu, (1996) 10 SCC 371**, the Hon.ble Supreme Court held that while making decision to impose the penalty of dismissal, If the findings of disciplinary authority on proved charge or charges are based on some evidence and that preponderance of probability did establish the charge or charges on the basis of evidence of one witness (PW-1) though other 17 witness turned hostile and Government accepted the report, it could not be said that it is based on no evidence. It has been further observed that Evidence Act has no application in disciplinary proceedings. The disciplinary authority, if after taking the totality of all the facts and circumstances into consideration, it is for the authority to take a decision keeping in view the discipline in the service. In such situation, the fact that there was no allegation of misconduct against the officer during his earlier carrier does not mean that proved allegation is not sufficient to impose the penalty of dismissal.

In **Balbir Chand Vs. FCI, (1997) 3 SCC 371**, the Apex Court has held that there is no prohibition in law that a higher authority should not impose the penalty as the primary authority in the matter of disciplinary action. It has been further held that merely because one of the officers was wrongly given the lesser penalty, it cannot be held that they should also be given the lesser penalty. Omission to repeat the same mistake would not be violative of Art. 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice.

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prejudicial to the interest of the bank, the penalty of dismissal awarded by disciplinary authority and affirmed by the appellate authority after giving due consideration and after analyzing the material on record, found that taking a different view by High Court regarding violation of natural justice and quantum of penalty would not be sustainable and set aside the finding of High Court.

7. In view of the aforesaid legal proposition it is well settled now that the Tribunal cannot act as a Court of Appeal, the Tribunal cannot substitute its own discretion by awarding any lesser penalty in place of the penalty awarded by the disciplinary authority. It is the appellate authority which could consider the quantum of penalty imposed and not by this Tribunal. However, it is within the competence of this Tribunal that if in the opinion of this Tribunal it is a patent error in awarding the punishment is not provided under the rules, the Tribunal may set aside the order and send the matter back either to the appellate authority or to the disciplinary authority for passing an appropriate order.

8. So far as the quantum of punishment awarded against the proved charges in our opinion the punishment cannot be said to be harsh or disproportionate to the proved charges for the following reasons :

(i) The disciplinary authority which has to take all the facts and circumstances into consideration and to maintain the discipline in the Institution before awarding the punishment but disciplinary authority categorically and very specifically deal with each and every proved misconduct and then award the punishment. It is not the case that against the proved charges a punishment of dismissal can be passed.

(ii) That the applicant virtually is a creator of trouble in the department which is evident from the records which has been proved against the applicant during the course of enquiry. Disregard the senior officer is evident from the allegation made in his reply in not only show disregard to superior officers but also against the President of India and the Government. His act is not within the definition of loyalty to an employee.



(iii) The proved charges clearly established that the applicant is a very indisciplined employee and worked in the department not only create trouble among the other employees but also create an atmosphere which is not conducive for peaceful work. It is no doubt true that applicant is handicapped to some extent and is partly deaf to disability is not by itself sufficient to relieve him from deterrent punishment for his misdeeds.

9. Hence this application lacks merit and it is accordingly dismissed.

(Jaya Das Gupta )  
Adm. Member

(Justice V.C. Gupta)  
Member (Judl.)

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