

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/554/2017

Date of Reserve:13.09.2018
Date of Order:22.11.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Netrananda Bag, aged about 49 years, S/o. Lalit Mohan Bag, VIII/PO-Chalki, PS-Muribahl, Dist-Bolangir.

...Applicant

By the Advocate(s)-M/s.L.Pradhan
D.P.Das

-VERSUS-

Union of India represented through:

1. The Secretary, Govt. Of India, Department of Defence (Production), Ministry of Defence, South Block, DHQ, New Delhi-110 011.
2. Additional D.G.O.F. and Member, Appellate Authority, Ordnance Factory Board, 10-A, S.K.Bose Road, Kolkata-700 001.
3. General Manager-cum-Disciplinary Authority, Ordnance Factory, Badmal, At/PO-Badmal, Dist-Bolangir-767 070.

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To admit the original application, call for the records and after hearing the parties and evidence of records, quash the impugned order of dismissal dt. 07.07.2007 vide Annexure-

1 so also the appellate authority order dt. 15.03.2017 vide Annexure-4 and direct the reinstatement of the applicant to service with immediate effect with other service benefits.

- ii) To pass any other appropriate direction/order as may be deemed fit and proper and allow the original application.

2. Shorn of unnecessary details, it would suffice to note that the applicant while working as Labour(SS) under the Respondent-Organization had been proceeded against under Rule-14 of CCS(CCA) Rules, 1965 and on conclusion of the said proceedings, he was imposed punishment of removal from service vide order dated 07.07.2007 (A/1). He did not prefer any appeal against the order of punishment within the prescribed time limit and he submitted the same on 26.05.2016 to the Additional D.G.O.F. & Member, Ordnance Factory Board (A/2). Since this appeal was not considered and disposed of by the Appellate Authority, the applicant approached this Tribunal in O.A.No.260/00868/2016. This Tribunal vide order dated 7.12.2016 disposed of the said O.A., the relevant part of which reads as follows:

"3. As it is stated by Mr.Pradhan that the appeal preferred by the applicant is pending consideration, I am not inclined to admit this O.A. at this stage. Therefore, without expressing any opinion on the merit of the matter, I dispose of this O.A. at the stage of admission itself by directing Respondent No.3 that if any such appeal has been preferred and received, the same shall be considered and disposed of in the light of the extant rules and instructions and decision thereon communicated to the applicant by way of a reasoned/speaking order within a period of two months from the date of receipt of copy of this order. At the same time, I cannot lose sight of the fact that the appeal which has been preferred by the applicant, after a long lapse of 08 years of the passing of the order of removal dated 07.07.2007. However, the matter is left open to Res.No.2 to take into consideration this aspect of the matter while communicating the decision on the appeal.

- 4. Though I have not expressed any opinion on the merit of the matter all the points raised in the appeal

shall be considered as per Rules and Regulations in force. If, after such consideration it is found that the applicant is entitled to the relief claimed by him then the same may be extended to him expeditiously within a further period of three months from such consideration".

3. Complying with the above direction of this Tribunal, the Additional D.G.OF/Member being the Appellate Authority passed an order dated 01.03.2017 rejecting the appeal as submitted by the applicant. Hence, this Application with the aforesaid prayer.

4. The grounds urged by the applicant in support of his case are that the documents based on which the charges had been framed, were not provided to him, as a result of which, he was unable to effectively defend his case and as such, there has been violation of the principles of natural justice. The punishment of removal from service is harsh and disproportionate to the gravity of offence, i.e., unauthorized absence from duty due to mental illness.

5. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, the proceedings against the applicant have been conducted following the due procedure of rules and there has been no violation of the principles of natural justice. The punishment imposed is commensurate with the gravity of offence and therefore, this Tribunal should not interfere with this and dismiss the O.A. being devoid of merit.

6. Applicant has filed an additional affidavit in which he has pointed out that since he was undergoing medical treatment having suffered from the disease anxiety state and depression illness from 13.11.2011 to 20.05.2015, he was not aware of the departmental proceedings nor the punishment of removal from service. In this respect, he has submitted a Medical Certificate dated 25.5.2015 issued by Dr.R.N.Tripathy, M.D.(Medicine), Patnagarh, Dist-

Bolangir. The applicant has submitted that there was no deliberate and wilful negligence on his part in filing appeal against the orders of punishment. According to him, after having recovered from illness on 21.05.2015, he enquired the matter from the Trade Union Members, whereafter he preferred his appeal on 26.05.2015 (A/2).

7. We have heard the learned counsels for both the sides and perused the records. We have also perused the orders passed by the Disciplinary Authority dated 7.7.2017. appeal dated 26.05.2016 preferred by the applicant and the orders of the Appellate Authority dated 1st March, 2017. In the fitness of things, the relevant part of orders of the Disciplinary Authority, the appeal submitted by the applicant and the orders of the Appellate Authority, respectively, are quoted hereunder.

"2. The DGS was issued with a charge sheet memorandum dtd. 12.07.06 for violation of Rule 3(1) (iii) of CCS(Conduct) Rules, 1964 with following article of charge.

(i) Remained on unauthorized absence from duty on 133 days in 13 occasions during the year 2003, on 271 days in 02 occasions during the year 2004, and on 249 days in 07 occasion during the year 2005 without any intimation and pre-sanction of leave and failed to regularize the same by submitting leave application in time.

3. The charge sheet memo could not be served through his HOS/DVO as the DGS was absenting from duties at the relevant time. The charge sheet was forwarded to him by registered post/Ad to his permanent residential address which was returned by Postal Authority with remarks, i.e., addressee out of station for more than seven days: As a result the DGS was intimated about initiation of disciplinary proceedings against him through newspaper advertisement on 24.09.06 in the leading Oriya daily newspaper, i.e., The Sambad. However, thereafter the DGS neither reported duty nor any response has been received from him. Hence, the Disciplinary Authority ordered a

Court of Inquiry to inquire into the charges in terms of Rule 14 of CCS(CCA) Rules.

4. The Government Servant did not appear before the Court of Inquiry despite issue of newspaper advertisement. Moreover, all the notices sent through registered post/Ad to his residential address by the Inquiry Officer have been returned unserved with remarks of postal authority, i.e., 'addressee is out of station more than seven days'. Hence in terms of Rule 14 of CCS(CCA)Rules, 1965 the Inquiry Officer conducted Ex-part hearing as the D GS failed to intimate his whereabouts and di not respond to the newspaper advertisement.
5. The Inquiry Officer/Court of Inquiry submitted a report dtd. 12.05.07 to the Disciplinary Authority with his findings on the article of charges. The Inquiry Officer, having gone through the evidences produced by the Presenting Officer during hearings, found that the article of charge levelled against the DGS is proved.
6. The Disciplinary Authority examined the Court of Inquiry report and agreeing with findings of the Inquiry Officer/COI, accepted the Court of Inquiry report in toto with a direction to provide a copy of the COI report to the DGS to enable him to submit his representation on the COI report. The DGS was provided with a copy of Inquiry report vide letter dtd. 18.05.07 which was also returned back with remarks of Postal Authority 'not known more than seven days".
7. The Disciplinary Authority, taking all the materials into record, i.e., Charge sheet memo dtd. 12.07.06, Court of Inquiry Report dtd. 13.05.07 and also having regard to the connected evidences available on record, has come to the conclusion that the article of charges as mentioned inpara-2 above are correct and established as PROVED and accordingly the Govt. Servant has been found guilty of the charge.
8. The Disciplinary Authority, therefore, hereby imposes the penalty of REMOVAL FROM SERVICE upon Shri Netrananda Bag, Labour, T.No.139, P. No.6387 of Unit-10 Section with immediate effect.
9. He should acknowledge receipt of this order".

8. The relevant part of appeal dated 26.5.2016 submitted by the applicant reads as follows:

- "2. That I had done my labour works under Ordnance Factory, Badmal since last 19.8.1994 with utmost satisfaction of my hierarchies/seniors being appointed as a Displaced Card Holder.
- 3. That it is astonished that I had not received any letter or information from my seniors that I had been retrenched from my duties.
- 4. That I came to know from my Admin. Office, Badmal that I had been retrenched from my duties since 5 years.
- 5. That it is very astonished and sad information against me, because I am a poor man having no any job under any instructions and it is very difficult to maintain my livelihood as our land had been acquired for the establishment of Factory.
- 6. That owing to some unavoidable circumstances I had remained absent in my works because my mother was seriously ill and later due to her illness she died, my wife also dead and I had also confined to bed-ridden, hence I could not inform the factum of my natural calamities which was clouded on me and after the all vanish I am living with miserable with penniless life.
- 7. That after my recouping from my health and illness I came to join in my duty, but I had been denied as had been terminated from duties without information under official corresponding nor I was aware of the proceeding.
- 8. That it is needless to mention here that I am a Displaced Person bearing D.P.Card No.D.P.No.1410/91 and our landed properties have been acquired by the State Govt. Of Odisha for Ordnance Factory, Badmal and a provision was that a D.P. person must be appointed for his livelihood for living.
- 9. That I have 4 issues, 2 sons and 2 daughters who are fully dependent upon me and their studies had been hampered by this effect.

Hence I earnestly crave our sovereign authority of Ordnance Factory, Badmal, kindly appoint me in my

original place and retain me in my duties setting aside the dismissal order dt. 07.07.2007 for which act of your kindness I myself and my family members will ever and ever grateful to you".

9. In this order dated 01.03.2017, the Appellate Authority has held as under:

"8. In his contention the appellant has stated about the death of the appellant's mother and wife and the appellant being bed ridden due to illness. But, these issues are not supported by any documentary evidence. It is pertinent to mention here that if the appellant was bed ridden then how the communication sent to him through Registered post returned undelivered by the Postal Authorities with the remarks "Addressee is out of station for more than seven days hence returned to sender". Whatever be the situation, nothing restricted the appellant to submit an intimation to the factory administration about the constraints faced by him in joining and attending duties. But, the appellant had failed miserably in doing so on every occasion during the year 2003, 2004 and 2005. Hence, initiation of disciplinary action vide OFBL charge sheet dated 12.07.2006 was quite justified. Further, every employee of the factory is governed by the CCS(Conduct) Rules, 1964. Being appointed in the factory as a Displaced Card Holder does not entail the appellant to act as per his sweet will. At every time and place, the appellant was required to abide by the administrative rules and procedures. It is also noted that the appellant had described his mental illness as the reason of his unauthorized absence before the Hon'ble CAT Cuttack Bench, whereas, in the instant appeal the reasons brought out are something else as narrated in the above lines. The contention in this regard being contrary, do not merit consideration.

9. The other contention is about non-receipt of any communication from the factory about initiation of disciplinary proceeding and imposition of penalty. It is seen that all the communications sent by OFBL to the appellant's recorded residential address through Registered post had been returned to the factory undelivered by the Postal authorities since, the appellant was not available at the recorded address. Even, there was no response from the appellant after publication of the Newspaper notification in a leading Odiya daily SAMBAD on 22.09.2006. The appellant did not participate in the inquiry proceedings despite

issue of Notices of hearing issued to him by Registered post at his recorded residential address. All the notices were returned to the factory undelivered, as the addressee (here, the appellant) was not available at the said address. Accordingly, the COI proceedings had to be held ex-parte wherein the charge was established as proved and the penalty under appeal had been imposed on the appellant by the Disciplinary Authority. As such, the contention in this regard is absolutely baseless and without merit since, OFBL had afforded all reasonable opportunities to the appellant to present his defence against the charge imputed against him.

10. Finally, it is observed that while imposing the penalty under appeal, the Disciplinary Authority had followed the procedures/provisions laid down under the CCS(CCA&A) Rules, 1965. The appellant was afforded with reasonable opportunity to present his defence against the imputed charges. All out efforts were made by Ordnance Factory Bolangir to make the appellant aware of the disciplinary proceedings initiated against him. The appellant did not acknowledge the communications from the factory as well as from the Inquiry Officer. Also, there was no participation in the Court of Inquiry by the appellant in spite of being communicated the fact that inquiry proceedings will be held ex-parte. As such, there was no violation of principles of natural justice during the entire disciplinary proceedings. In this context it is also noted that in the past also the appellant was penalised for the similar misconduct of "unauthorised absence" but, there was no change in his attitude. The attitude of the appellant reveals that he was, incorrigible. Therefore, the penalty imposed by the Disciplinary Authority which is now under appeal, is construed as well warranted and justified considering the fact and circumstances of the case and the incorrigible attitude of the appellant. Also, the appellant had failed miserably to bring out any convincing justification for consideration in his grossly belated appeal dated 26.05.2016. The appeal in question is therefore found to be devoid of merit. Hence, the same is rejected".

10. We have considered the rival submissions vis-a-vis the pleadings of the parties threadbare. As per the settled position of law, the scope of interference by the Tribunal in the matter of disciplinary proceedings is

limited. From the recital of above mentioned facts, we do not find that the charges framed against the applicant are vague or unspecific or are not based on the materials on record. Besides, it is not a case where the charges have been issued by an authority, who is not competent to issue any such charge memo to the applicant. Respondents have scrupulously followed the due procedures of rules while conducting disciplinary proceedings and in this respect, we do not find any flaw or lacuna either with the Disciplinary Authority or the Appellate Authority, as the case may be, in sphere of discharge of their duties of being the quasi judicial authorities. In the appeal, the applicant has not adduced any justifiable reason for the delay in submission of appeal against the order of punishment imposed by the Disciplinary Authority. It also appears that the findings arrived at by the I.O as well as the conclusion derived by the Disciplinary Authority are based on evidence.

11. As regards the punishment of removal from service, which, according to applicant, is harsh and disproportionate to the gravity of offence, we would like to note that it reveals from the orders of the Appellate Authority that the applicant had been penalised for the similar misconduct of "unauthorised absence" in the past. This goes without saying that the applicant is in a habit of remaining unauthorized absence from duty which by any stretch of imaginations amounts to misconduct within the scope and meaning of CCS(Conduct) Rules, warranting disciplinary action and to this extent, no fault is found with the respondents in initiating disciplinary proceedings against the applicant..

12. Having regard to what has been discussed above, we are not inclined to interfere with the action taken by the Respondent-authorities in the matter of

disciplinary proceedings initiated against the applicant and the conclusion arrived at thereon. In the result, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)