

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.623 of 2013
&
M.A.No.657/2018 in O.A.No.623/2013

Date of CAV:07.01.2019.

Date of Order : 31 .01.2019.

Between :

K.Anantha Reddy, s/o Sri K.Sathi Reddy,
Aged about 45 yrs, Occ:Ex.Machinist,
T.No.1572-3/LMS, Ordnance Factory,
Yeddu-mailaram (P.O.), Medak District-502 205,
R/o Plot No.23, Magadha Village, Kokapet,
Rajendranagar, CBIT Post, Hyderabad-500 075.Applicant

And

1. Union of India, rep., by its Secretary,
Dept. Of Defence Production and Supplies,
M/o Defence, New Delhi-110 001.
2. The Additional Director General,
Ordnance Factory Board,
Armoured Vehicles Head Quarters, Avadi,
Chennai-600 054. T.N.
3. The General Manager, Ordnance Factory,
Yeddu-mailaram P.O. Medak District, AP-502 205. Respondents

Counsel for the Applicant Mr.K.Ram Murthy
Counsel for the RespondentsMrs.K.Rajitha, Sr. CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

Brief facts of the case:

While working as Machinist (Semi-Skilled) in Ordnance Factory, Yeddumailaram, Medak District, a disciplinary inquiry was initiated against the applicant, wherein two articles of charge were framed and served on him:

(i) Wilful neglect of duty – unauthorized absence during three periods –

(a) from 02-01-2007 to 04-04-2008 for 108 days;

(b) from 08-04-2008 to 05-12-2008 for 226 days; and

(c) from 03-08-2009 to 27-11-2009 for 32 days

making a total of 366 days spread over a period of three years.

(ii) Failure to maintain devotion to duty and conduct unbecoming of a Govt. servant in violation of Rule 3 (1)/(ii) & (iii) of CCS (Conduct) Rules, 1964.

Inquiry was held and the Disciplinary Authority passed orders dated 28.07.2011 imposing the penalty of removal from service.

2. The applicant has stated that due to strenuous industrial work, he was suffering from low back ache and was under treatment. He submitted medical certificates from Authorised Medical Attendants (AMA) appointed by Respondent No.3 and also from Gandhi Medical College Hospital, Secunderabad, for the said periods. His plea is that he could not attend duty for all above periods as his sickness was sudden and beyond control. He also has stated that he had informed his immediate Head of Section

regarding his absence from duty. However, the Inquiry Officer did not consider the medical certificate submitted by the applicant and submitted his Inquiry Report, wherein the charges were proved, to the Disciplinary Authority. The Disciplinary Authority imposed the penalty of removal from service with effect from 28.07.2011. Subsequently, the applicant preferred an appeal dated 16.09.2011 before the Appellate Authority to modify the penalty imposed on the ground that the same was harsh and disproportionate to the gravity of the alleged misconduct. The Appellate Authority did not consider his appeal and confirmed the order of removal from service imposed by the Disciplinary Authority, vide order No.668/APPEAL/AVHQ/OFMK (K.A.R.), dated 02.05.2012. The present OA has been filed against the said orders stating that the period of absence should be debited to his half pay account and any other period be treated as dies-non.

3. In their reply statement, the respondents have stated that the applicant was served with an OM dated 16.02.2010 under Rule 14 of CCS (CCA) Rules 1965. The applicant submitted his defence statement denying all the charges and requested for conduct of an inquiry. Accordingly, an Inquiry Officer was appointed and the applicant participated in the inquiry along with his defence assistant. It was only upon the completion of the inquiry proceedings that the Inquiry Officer concluded that both the charges framed against the applicant were proved. Thereafter, the Disciplinary Authority before passing final orders, forwarded a copy of the Inquiry Report to the applicant to enable him to submit his representation, if any, within 15 days from the date of receipt of a copy of the Inquiry Report. The

applicant submitted in his defence statement that he would be more careful in future and taking into consideration his defence statement, the Disciplinary Authority took a lenient view and gave him another opportunity to improve his performance and directed the concerned official to forward weekly performance in respect of the applicant for a period of three months i.e., 1.4.2011 to 25.7.2011. But the applicant did not stand by the assurance given by him and did not attend duty except on three days and simply forwarded a sick intimation letter.

4. The respondents have further stated that the applicant has not in any way improved even after giving him another opportunity and therefore the penalty of removal from service with effect from 28.7.2011, imposed on the applicant, was justified. The applicant made an appeal to the Appellate Authority to set aside the penalty of removal from service, which was also rejected and the penalty imposed by the Disciplinary Authority was confirmed.

5. During submissions, the Counsel for the Applicant stated that the total period of absence of 366 days was spread over a period of 3 years, wherein the applicant fell seriously ill and it was beyond his control, but the Inquiry Officer did not consider the Medical Certificates submitted by the applicant and the Disciplinary Authority also did not consider the defence submitted by the applicant. The Appellate Authority also did not consider his appeal.

6. The Counsel for the Respondents contended that the applicant remained absent for a total period of 366 days without any sanction of leave from the competent authority and in fact returned to duty only on Saturdays which were half working days, which shows that the applicant had not mended his ways. The respondent's counsel further contended that mere submission of a leave application is not enough and as per laid down procedures, leave due of any kind has to be duly sanctioned prior to availing leave.

7. The respondents' counsel argued that the applicant submitted leave application enclosing unfit and fit certificates issued by the AMA and some certificates were issued by Private Hospitals and Gandhi Medical Hospital, Secunderbaad without any Logo/Seal of the Hospital. The department verified the certificates issued by the Gandhi Medical Hospital, Secunderbad, and found that the two certificates issued by the Casualty Medical Officer/Civil Asst. Surgeon Gandhi Hospital/Medical College, Secunderabad, were in his private capacity and not issued in his official capacity. Moreover, the applicant did not make any attempts to regularize his earlier period of absence reflecting his casual attitude. Therefore, ample opportunity has been provided to the applicant during the inquiry and it was only thereafter that the inquiry officer imposed the penalty of removal from service. Thereafter the penalty has been confirmed by the Appellate Authority. Therefore, at every stage, a fair opportunity has been given to the applicant.

8. The respondents' counsel had also stated that earlier i.e., in the year 2006, the applicant was imposed with a penalty of removal from service by the Disciplinary Authority for unauthorized absence for a period of 231 days, which was later moderated by the Appellate Authority by bringing down to the minimum of scale i.e., Rs.4000/- in pay scale of Rs.4000-100-6000/- from the date of penalty order for a period of two years with cumulative effect. But, the applicant has not improved his performance. He reiterated that leave cannot be claimed as a matter of right and can be availed only after it is duly sanctioned by the competent authority and wilful absence from duty would render the Government servant liable to disciplinary action.

9. The learned counsel for the Applicant has cited the following judgments of the Hon'ble Supreme Court:

1. *Chairman-cum-Managing Director, Coal India Limited & Another vs. Mukul Kumar Choudhuri & Others* (AIR 2010 SC 75).
2. *Ranjit Thakur v. Union of India* (MANU/SC/0691/1987)/ (1987) 4 SCC 611)

10. In Mukul Kumar Choudhuri's case, the Hon'ble Supreme Court has observed that "*the Respondent No.1 therein did not join duty even after expiry of leave despite several reminders and remained absent for 6 months without any authorization and also sent a letter of resignation,*

which was not accepted by the management, whereas, in the instant case, the period of leave is much more than 6 months". The Hon'ble Supreme Court also held that "the High Court/Tribunal while exercising powers of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof".

11. In Ranjit Thakur's case, the Hon'ble Supreme Court has held that "*proportionality is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution or relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise-the elaboration of a rule of permissible priorities*". In the said case, a Army Officer did not obey the lawful command of his Superior Officer. Applying the doctrine of

proportionality, the Hon'ble Supreme Court has observed has follows:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

Finally, the Hon'ble Supreme Court held as follows:

26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of

punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charge of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for

reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No.1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.

27. Consequently, both these appeals are allowed in part. The appellants shall reinstate Respondent No.1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement.":

12. In the instant case, any reasonable employer would have also taken a similar decision based on the measure, magnitude and degree of the misconduct as the applicant has stayed away from duty for more than 366 days. His coming to work only on Saturdays, which are half days, confirms his attitude and shows that there was no improvement in the manner the applicant was discharging his official duties. The case is further strengthened by the fact that earlier in 2006, when a lenient view was taken, the applicant did not behave in a manner to prove that he had no intention nor desire to disobey his superiors.

13. The applicant has also relied on the following judgments of the Hon'ble Supreme Court and Hon'ble High Court of AP at Hyderabad, and the order of the Central Administrative Tribunal, Hyderabad Bench,

respectively:

- (i) *Krushnakant B.Parmar v. Union of India* in Civil appeal No.2106/2012, dated 15.02.2012;
- (ii) *Syed Abdul Kareem v. Commandant, 8th Battalion, APSP, Kondapur, Ranga Reddy District* (2010 (5) ALD 322 (DB) in W.P.No.22961/2003, dated 11.06.2010; and
- (iii) O.A.No.728/2009 dated 31.08.2010.

14. In all the three cases, referred to above, it is seen that the facts and circumstances of the case therein are different to the case on hand.

15. The respondents' counsel also cited the following judgments of Hon'ble Supreme Court and Allahabad High Court respectively:

- 1) *Tushar D.Bhatt v. State of Gujarat & Another* in Civil Appeal No.968/2009, dated 12.02.2009.
- 2) *Union of India v. Bishamber Das Dogra* in Civil Appeal No.7087/2002, dated 26.05.
- 3) *Mithilesh Singh v. Union of India & Others* in Appeal (Civil) No.6087/2001, dated 27.02.2003.
- 4) *Writ – A* No.60991/2010, dated 22.01.2015 of the Allahabad High Court dated 26.02.2015 in *Mustaq Ahmad v. State of U.P. & Others*.

16. In Tushar D.Bhatt's case, the Hon'ble Supreme Court held that "*the appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorizedly absent from official duties for morethan 6 months. In the interest of discipline of any*

institution or organization such an approach and attitude of the employees cannot be countenanced". The Hon'ble Supreme Court in Paras 11 and 12 of the judgment held as under:

"11. The learned Single Judge was clearly of the opinion that strict view was required to be taken in the matter of discipline of the institution. According to him, when the disciplinary authority has taken appropriate view in the facts and circumstances of the case, then it should not be interfered with.

12. The learned Single Judge observed that no leniency in the punishment can be shown in the facts of this case. The learned Single Judge observed as under:

"The facts of this case do not warrant any such conclusion to be drawn by this Court and no interference with the decision of the disciplinary authority is warranted. If the petitioner is allowed to escape with minor penalty as suggested by Mr.Oza, it will certainly form a bad precedent and in a given case, some other unscrupulous Government employee would resort to arm twisting of his superior for extorting a decision in his favour. Such leniency cannot be permitted."

The Hon'ble Supreme Court did not interfere with the judgment of the High Court of Gujarat at Ahmedabad in LPA No.1360/2004, dated 24.11.2006 and final judgment and order dated 19.01.2007 in Misc.Civil Application for Review No.116/2007, which is extracted as under:

"In the instant case, the matter has been thoroughly examined by the learned Single Judge and the Division Bench of the High Court and we have also examined the matter in great detail. On consideration of the totality of the facts and circumstances of this case, no interference is called for in the impugned judgment."

17. In Bishamber Das Dogra's case, the Hon'ble Supreme Court held as follows:

The applicant in this case was a Security Guard in Central Industrial Security Force (CISF) and remained absent from duty without seeking permission and was awarded punishment for remaining absent from duty for a period of 10 days. Then again, he deserted the LINE for a period of 50 days and again for 11 days. While it is true that the above said pertaining to the discipline force. The order of the Single Judge was set aside and the order of punishment imposed by the Statutory Authority was restored.

18. In Mithilesh Singh's, the Hon'ble Supreme Court held as follows:

"The appellant was appointed as Constable in the Railway Protection Special Force, and penalty of removal from service is statutory prescribed. It is for the employee concerned to show that how penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to show as to how the punishment could be characterized as disproportionate and/or shocking."

Accordingly, it was held that *the order of removal from service cannot be faulted*. In the above case, the applicant was away from duty for 25 days and inspite of giving a chance by the disciplinary authority has not attended to his official duty.

19. In view of the above, the present OA is devoid of merits and the same is dismissed.

20. The M.A.No.657/2018 seeking permission to file rejoinder is allowed. No order as to costs.

Sd/-
(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-
(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 31st day of January 2019

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