

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
 OA/050/00830/2016

Date of CAV : 14.11.2019

Date of order : 27th Nov., 2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
 Hon'ble Shri Dinesh Sharma, Member [Administrative]

Gulab Chandra Singh, son of Shri Rajendra Prasad Singh, resident of Village – Mawaia, PO – Kheria, P.S. – Korha, District – Katihar.

Applicant.

By Advocate : Shri Gautam Bose

Vs.

1. The Government of India through the Director, Subsidiary Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi.
2. The Joint Director, Subsidiary Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, 6 Serpentine Road, Patna – 800 001.
3. The Joint Deputy Director/E, Subsidiary Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, 6 Serpentine Road, Patna – 800 001.
4. The Assistant Director-E, Subsidiary Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, 6 Serpentine Road, Patna – 800 001.
5. 5. Mrs. Nupur Singh, A.C.I.O. Birpur Unit, B.L.B. Birpur, Koshi Colony, PO + P.S. – Birpur, District – Supaul – 854340.

Respondents.

By Advocate : Shri H.P.Singh, Sr. SC

ORDER

Per Jayesh V. Bhairavia , Member [J] : In the instant OA the applicant has prayed for quashing and setting aside the punishment order dated 4th August, 2016 [Annexure-A/2] passed by the Disciplinary Authority, an order passed by the Appellate Authority dated 26th September, 2016 [Annexure-A/1] and further prayed for a direction upon the respondents to restore/reinstate him in service on the basis of S.A./G.

2. The learned counsel for the applicant mainly submitted as under : -
 [i] The applicant while working as Security Assistant [S.A./G] at Birpur Unit under Subsidiary Intelligence Bureau [in short S.I.B.], Patna, he was served with a major penalty charge memorandum dated 13.06.2013 issued by the Respondent No.3 [Annexure-A/3].

[ii] It is submitted that there were four article of charges levelled against the applicant, such as :-

- [i] Article-I – On May 22, 2016 at about 20 hours, the applicant had misbehaved with Smt. Nupur Singh, A.C.I.O.-I/Executive, Birpur, Unit-in-Charge. Subsequently in the imputation of charges it was stated the he had grabbed her near her waist.
- [ii] Article-II – The applicant was alleged to have consumed liquor on May 22, 2016.
- [iii] Article-III – The applicant remained unauthorizedly absent from May 22k 2016 [A.N.] to May 25, 2016 [A.N.] without prior permission of the competent authority.
- [iv] Article-IV – He tried to intimidate indirectly Smt. Nupur Singh, A.C.I.O.-I/Exc., In-charge- Birpur Unit by sending his friend, a Sub-Inspector/Daaroga on 24.05.2016 along with S.H.O., Birpur and his father-in-law and some other persons.

[iii] The applicant submitted his written statement/defence statement to the said charge memorandum. He also submitted his detailed explanation before the Respondent No.4 on 21.06.2016 thereby he denied the charges levelled against him [Annexure-A/4]. The applicant participated in the enquiry and on conclusion, the Enquiry Officer submitted his report dated 06.07.2016 [Annexure-A/5] which was forwarded to the applicant by the Respondent No.4 on the same day and advised to file a representation within a period of 15 days.

[iv] The applicant submitted his representation on 20.07.2016 [Annexure-A/6] before the Disciplinary Authority. Thereafter, the Disciplinary Authority, vide order dated 04.08.2016 [Annexure-A/2] accepted the findings of Enquiry Officer and believed the charges are proved against the applicant and imposed major penalty of dismissal from service, and further the period of suspension from 23rd May, 2016 to the date of issue of the punishment order, was ordered to be treated as non-duty and his pay and allowances for the said period shall be restricted to the subsistence allowance already granted to him. The said order is impugned herein.

[v] It is further submitted that the statutory appeal filed by the applicant was rejected, vide order dated 26th September, 2016 [Annexure-A/2], which is also challenged in the instant OA.

[vi] The learned counsel for the applicant submitted that the Enquiry Officer has not considered the defence taken by the applicant in its true perspective and deliberately did not accept his case that he had fallen unconscious and was taken into illegal confinement till the night of 25.05.2016 when he could not be presented at the alleged site of occurrence, which the Disciplinary Authority and Appellate Authority ought to have considered the defence of the applicant.

[vii] It is further submitted that the applicant had demanded the call history from the mobile of Avinash to prove his defence so as to ascertain the truth of his defence whether he had fallen unconscious and was given movement to Patna as also for other relevant factors. However, the demand of the applicant was purposely denied with a motive to implicate him in this false case.

[viii] It is also submitted that the Enquiry was not held in a proper manner. The applicant was denied the proper opportunity to examine the witnesses. It is submitted that the applicant was also denied opportunity to cross examine the complainant.

[ix] The respondent authorities have failed to appreciate the allegations made against him since the same has not been proved on the basis of any document or evidence as there is no evidence against the applicant for recording the findings. It is also contended that there was no witness who have seen the applicant to visit the place of occurrence. It is also submitted that the explanation/defence statement submitted by him has not been considered by any of the authorities. The concerned authorities have not given him any opportunity of personal hearing, which has caused prejudice to his case.

[x] It is contended that the applicant's representation/defence statement dated 22.08.2016 [Annexure-A/7] has not been considered. The Id. Counsel also submitted that the applicant is very young as he had worked only for five years in the department and the respondents imposed upon him a very harsh punishment of dismissal from service, therefore he lastly submitted that this Tribunal may consider his prayer sympathetically on quantum of punishment, since the Disciplinary Authority and Appellate Authority has rejected his defence/appeal in a very cryptic manner.

3. On the other hand, the respondents have filed their written statement and denied the contentions of the applicant. The learned counsel for the respondents submitted as under :-

[i] The orders under challenged in this OA have been passed by the competent authority after following the procedure prescribed under Rule 14 of CCS [CCA] Rules, 1965 and the punishment imposed upon the applicant is in consonance with the gravity and seriousness of the allegations levelled against the applicant. The orders passed by the competent authorities do not suffer from any illegality or impropriety, therefore, the applicant is not entitled for any relief as sought for in the instant OA.

[ii] It is further submitted that the contentions raised by the applicant that the Assistant Central Intelligence Officer/IG [referred to as ACIO Incharge] at Birpur was vindictive against the applicant and started harassing him, the said officer wanted to utilise the applicant as a servant in the quarter for which the applicant was not agreed. The said contention of the applicant is afterthought because neither any such circumstances was ever reported to the office of the respondents nor the applicant had ever complaint in this regard.

[iii] It is further submitted that all the members of Internal Complaint Committee were part of the proceedings and they were required to prepare and sign the report after due consideration of the proceedings and it was so signed as a matter of abundant caution. The said Committee was appointed as enquiry officer vide memo dated 02.06.2016 and Sri Sanjeet Kumar, SO/E was nominated as PO in the said case. As such, the enquiry report bears the signature of all members of the said ICC. Hence, there is nothing unusual in this regard while dealing with the disciplinary proceeding, more particularly the charges levelled against the applicant were serious in nature of molestation of a lady officer. Therefore, the plea of the applicant that the enquiry officer has been signed by other officers and challenged the legality of the enquiry report. The Disciplinary Authority and Appellate Authority have considered all the pleas taken by the applicant and found that the same are not tenable. It is further submitted that as per the report, sufficient opportunity has been provided to the applicant to defend his case before the duly constituted Internal Complaint Committee as also the Disciplinary Authority and the Appellate Authority. The competent authority after

considering the entire records, recorded its finding and imposed penalty upon the applicant. There is neither violation of natural justice nor any rules.

4. The applicant has filed rejoinder to the written statement and reiterated his submissions. The proceedings initiated against the applicant is vitiated. It is submitted that the request for providing documents was not accepted by the respondents on the ground that the said documents were irrelevant. Such admission on the part of the respondents amounts to denial of full opportunity to defend his case. Therefore, the impugned decisions of the respondents to believe that the charges are proved against the applicant is erroneous. The plea of the applicant that he was unconscious and he was taken away to some other place for four to five days has not been accepted by the respondents, without any cogent reason. It is submitted that the applicant was denied reasonable opportunity to defend his case.

5. Heard the parties and gone through the materials available on record.

6. In the present case, it is noticed that the applicant was served with the major charge-sheet. The applicant was supplied with the documents relied upon by the Disciplinary Authority. During the course of enquiry, due opportunities were also given to him by the enquiry officer to defend his case. The submission of the applicant that he was not provided due opportunity to cross examine the complainant and other witnesses, is found to be without any substance. It is noticed that in the enquiry report, it is observed that – “The applicant was asked whether he wanted to put some questions to Ms. Nupur Singh but he refused saying that he does not want to ask any question to Ms. Nupur Singh. He also refused to nominate a defence assistant and pleaded his case himself.” The explanation/representation submitted by the applicant has been considered and not accepted by the enquiring authority, that too with cogent reasons for it, which are based on the evidence thus, the C.O. was found guilty of all the charges levelled against him by the enquiry officer.

7. It is further noticed that on receipt of the enquiry report, the applicant submitted his detailed representation before the Disciplinary Authority and the same has been considered and the Disciplinary Authority came to the conclusion that the culpability of the applicant is beyond doubt.

In para 7 of the punishment order dated 4th August, 2016, the Disciplinary Authority has recorded its findings that all the relevant facts have been considered including the contentions raised by the applicant and

based on the evidence, it is believed that the charges levelled against the applicant has been found to be fully proved.

In the same way, the appellate authority, vide its order dated 26th September, 2016 also considered the contentions of the C.O. including the contentions that a conspiracy was hatched against him by his colleague and Complaint Committee has recorded its findings against him are false. The said contentions of the applicant have not been found correct in the absence of any evidence on record. The appellate authority has also recorded its findings that the contentions of the C.O. that the enquiry has not been conducted impartially and the said submission has been rejected on the basis of materials available on record, which proves that the C.O. was given full opportunity to defend himself.

The C.O. was also provided opportunity to cross examine the witness but he failed to defend himself. The applicant also failed to rebut the charges levelled against him.

The competent authorities have found the C.O. guilty of committing serious misconduct, and as such outraging the modesty of a woman and subsequently intimidating her through his friends/relatives consuming liquor and unauthorisedly absenting himself from duty. Therefore, the said Appellate Authority has concluded that a person cannot be allowed be part of a sensitive organisation like Intelligence Bureau otherwise it will severely impact the organisational efficiency and integrity and will ultimately impinge on larger organisational objective.

8. It is well settled principle that the Tribunal/court has very limited scope of judicial review with respect to department enquiry constituted by the competent authority and decision of disciplinary authority. In the case of Union of India & Ors. Vs. P. Gunasekaran reported in 2005 [2] SCC 610. The Hon'ble Supreme Court in the disciplinary proceeding, there is limited of scope of re-appreciation of the evidence. The High Court can only see whether –

- “[a] the enquiry is held by a competent authority;*
- [b] the enquiry is held according to the procedure prescribed in that behalf;*
- [c] there is violation of the principle of natural justice in conducting the proceeding;*
- [d] the authorities have disable themselves from reaching a fair conclusion by some considerations to the evidence and merits of the case;*

- [e] the authorities have allowed themselves to be influence by irrelevant or extraneous consideration;
- [f] the conclusion, on the very fact of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- [g] the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- [h] the disciplinary authority had erroneously admitted inadmissible evidence which influenced the findings;
- [i] the finding of fact is based on no evidence."

9. The disciplinary authority is the sole judge of facts. Where appeal is present, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary enquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to canvass before the court/tribunal. In the case of B.C. Chaturvedy vs. UOI & Ors. reported in AIR 1996 SC 484, the Hon'ble Apex Court held as under :-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case".

10. In the present case, it is noticed that the enquiry was held by the competent authority in accordance with the provisions of Rule 14 of CCS [CCA] Rules. The applicant had participated in the enquiry. He was supplied with all the relevant documents relied upon by the D.A. At every stage, due opportunity was granted to the applicant to submit his

defence/representation. It is also noticed that from the enquiry report and the record of proceeding, the applicant was provided due opportunity to submit his defence and examine the witnesses but the applicant failed to establish his case by which he can claim that he was not granted opportunity to cross examine the witnesses.

There is no material placed on record to substantiate the grievance raised by the applicant in this OA. Therefore the submission of the applicant that he was not given opportunity to cross examine the witness during the course of enquiry is not tenable.

The disciplinary authority has recorded its finding based on evidence. In the same way, the appellate authority has also considered the ground raised by the applicant and rejected the same with cogent reasons. Considering the materials on record, we do not find that the proceedings initiated against the delinquent [applicant] was said to be in a manner inconsistency with the rules of quantum of punishment as also of natural justice or in violation of any statutory rules. As noticed hereinabove, the disciplinary authority had recorded its findings on the basis of findings of the Enquiry Officer that the charges stands proved and imposed the punishment of dismissal from service. The conclusion/findings recorded by the disciplinary authority is, therefore, based on evidence. Therefore, we do not find any infirmity in the impugned orders.

9. In view of the aforesaid discussions and also in view of the law laid down by the Hon'ble Apex Court as referred to hereinabove, we do not find any reason to interfere with the impugned orders. Accordingly, the OA is dismissed. No costs.

Sd/-

[Dinesh Sharma]M[A]

Sd/-

[Jayesh V. Bhairavia]M[J]

mps.