

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
CIRCUIT BENCH AT RANCHI
OA/051/00990/2018

Date of order : 21.11.2019

C O R A M

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

Surendra Bhagat, son of late Ramashish Bhagat, resident of Village – Ram Nagar, Fasia, Post – Karondih, P.S. – Gumla, District – Gumla -835207.

Applicant.

Vs.

1. The Government of India, Ministry of Home Affairs, Department of Intelligence Bureau, having its office at North Block, New Delhi.
2. Director, Department of Intelligence Bureau, Ministry of Home Affairs, Govt. of India, having its office at North Block, New Delhi.
3. Joint Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, having his office at C-3, Block-E, Bandra Kurla Complex, Bandra [East], Mumbai-51.
4. Assistant Director/E, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, having his office at C-3, Block-E, Bandra Kurla Complex, Bandra [East], Mumbai-51.
5. Inquiry Officer-cum-Assistant Director/VS, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, having his office at C-3, Block-E, Bandra Kurla Complex, Bandra [East], Mumbai-51.

Respondents.

Shri M.A.Khan, Id counsel for the applicant.
Mrs. Shweta Singh, Id. S.C. for the respondents.

ORDER [oral]

Per Jayesh V. Bhairavia , Member [J] : In the instant OA the applicant has prayed for quashing and setting aside the punishment order of compulsory retirement by the Disciplinary Authority dated 13.11.2017 [Annexure-A/6] as also the order dated 12.12.2017 [Annexure-A/7] passed by the Appellate Authority rejecting the appeal of the applicant and order passed by the Revisional Authority dated 27.06.2018 [Annexure –A/8]. The applicant has also prayed for quashing the enquiry report dated 15.09.2017 [Annexure-A/4] and charged sheet dated 23.01.2017 along with memorandum dated 25.09.2017 [Annexure-A/5].

2. The counsel for the applicant mainly submitted as under : -

[i] It is submitted that while the applicant was working as ACIO-II/G, BOI, Mumbai at CSI Airport, Mumbai, he was served with charge memorandum

dated 23.01.2017 under the provision of Rule 14 of the CCS [CCA] Rules, 1965. The Articles of Charge reads as under : -

“Shri Surendra Bhagat, ACIO-II/G, BOI, Mumbai while performing ground duty at CSI, Airport, Mumbai had kept an unattended bag of a passenger containing valuable items in his personal custody without bringing it to the notice of any senior officer till he was intercepted at the exit of terminal building [Airport].

2. By this above act, Shri Surendra Bhagat ACIO-II/G did not maintain high ethical standards and honesty thereby violating Rule 3[1][iv] of the CCS [Conduct] Rules, 1064.”

[ii] Along with the charge memorandum dated 23rd Jan., 2017 he was also supplied statement of imputation of misconduct in support of Article of charges framed against him as also list of documents which includes statement dated 08.12.2016 given by the applicant himself and CCTV footage along with list of witnesses. He was directed to submit his statement of defense within ten days of the receipt of the memorandum.

[iii] In response to aforesaid charge memorandum the applicant had submitted his statement of defense dated 06.02.2017 [produced by the respondents Annexure-R/2], wherein he has explained the circumstances for keeping unattended bag of the passenger in his custody and tendered his apology with a request to consider his explanation with a undertaking that in future he will not commit this type of mistake again.

[iv] The Disciplinary Authority has not accepted the statement of defense filed by the applicant and appointed an enquiry officer.

[v] The applicant had filed his reply dated 10.07.2017 whereby he denied all the allegations and charges leveled against him [Annexure-A/2]. It is submitted that during the course of enquiry, the applicant had submitted his reply/verification and the Respondent No.5, i.e. Enquiry Officer had examined the statement of witnesses but the applicant was not allowed to cross examined those witnesses. The record of proceeding including the statement of witnesses has been placed on record and revered it as Annexure-A/3 series. It is further submitted that without considering the defense of the applicant in right perspective, the respondent no.5 has submitted his enquiry report on 15.09.2017 observing there that the charges leveled against the applicant stands proved [Annexure-A/4].

[vi] On submission of enquiry report, the Disciplinary Authority, i.e. Respondent No.4 herein had issued a memorandum dated 25th Sept., 2017 whereby the applicant has been directed to submit his representation against

the said enquiry report within a period of 15 days and also provided the copy of enquiry report [Annexure-A/5].

[vii] It is further submitted that the Respondent No.4, i.e. Disciplinary Authority without dealing with the allegation stated in the enquiry report and without giving its finding over the findings of the Enquiry report in a mechanical manner imposed the punishment of compulsory retirement under Rule 11 [vii] of the CCS [CCA] Rules, 1965, vide order dated 13.11.2017 [Annexure[R/6] which is impugned herein.

[viii] The applicant had preferred statutory appeal before the appellate authority [Respondent No.3 herein] and vide order dated 12.12.2017 the said appeal of the applicant was dismissed with the observation that considering the gravity of the misconduct and circumstances of the case, the punishment awarded is not unduly harsh or unreasonable [Annexure-/7 impugned herein]. The applicant had also filed a revision petition before the Respondent no.2 which was also rejected vide order dated 27.06.2018 [Annexure-A/8]. The learned counsel for the applicant submitted that the impugned dated 13.11.2017 passed by the disciplinary authority is arbitrary excessive in nature as the same has been passed without dealing with the enquiry report and without satisfying itself with the veracity of the allegations and without giving his findings over the same.

[ix] It is submitted that the impugned orders passed by the appellate authority as well as by the revisional authority are also illegal and arbitrary since the same has been passed without considering the fact as stated by the applicant in his appeal and revision. It is further submitted that the disciplinary authority failed to appreciate the submission of the applicant that there was no ill intention on the part of the applicant in keeping the bag in the card-room and the applicant kept the said unclaimed bag in the card-room in order to hand over the same to the Airport Manager. There was no intention of the applicant behind keeping the bag in the card-room. Generally, the person concerned whose bag or any article left/missed on the Airport, used to claim the same within two to three hours after enquiry from CCTV and usually the same is returned to the said person and in this case, till the disciplinary proceeding concluded. It is submitted that even till date, no one has claimed the said bag. It is further submitted that even after making surveillance through the CCTV, no officer or staff took any action in order to returned the said bag to the concerned person, but in order to implicate the

applicant, kept watch over him and served charge upon the applicant. It is submitted that the applicant has been falsely implicated in the said case. The charge-sheet as well as the enquiry report and order of penalty suffers from unreasonableness.

[x] The applicant has rendered seven years of service without any disciplinary action. However, for no fault of the applicant, the charge memorandum was issued and penalty has been imposed arbitrarily since the respondents have not considered the defence of the applicant in its true spirit. The counsel for the applicant submitted that the penalty imposed upon the applicant is severe harsh in nature, hence this OA.

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

[i] On 08.12.2016, around 20.20 hours, the applicant after completion of his shift duty in Bureau of Immigration at CSI Airport, Mumbai was intercepted at the exit terminal building of Airport. He was found carrying an unattended bag which was left by a passenger that contained valuable items.

[ii] The applicant while performing duty had found that bag and later placed the same inside his personal bag. The movement of the applicant was closely monitored as he was under surveillance of CCTV. He was not intercepted at that movement of time because his intentions were not clear. Later, the applicant was intercepted and found to be in possession of the said bag inside his personal bag while going home after completion of his duty. The bag of the applicant was thoroughly checked in the presence of Bureau of Immigration Officers. The bag contained following items, namely, Apple I.Pad [big, black in colour], I.Pad [mini, black in colour], headphone [Ujj make, black in colour], 2-ball pens, earphone [in packet], pocket diary, charger for i.pad [white colour], packet of mouth freshener, kitkat toffees and name tag of the owner with foreign and Indian address. During the course of further enquiry, it was revealed that the owner of the bag was one Amrit Bhulabhai Patel, US national who arrived from Amsterdam on 08.12.2016 by Jet Airways flight No.9W-231. He was contacted and directed towards Lost and Found Section of Mumbai Airport to collect his bag.

[iii] The respondents submitted that the applicant was served with a charge memorandum under Rule 14 of CCS [CCA] Rules, 1965 on 23.01.2017 [Annexure-R/1] and in response to the charge memorandum, the applicant

submitted his defense statement on 06.02.2017 denying the charge framed against him. Thereafter, in view of the denial of the applicant, it was decided to hold the formal inquiry and accordingly inquiry officer and presenting officer were appointed on 16.02.2017 to enquire into the matter.

[iv] The respondents further submitted that the applicant's submission that he was not allowed to cross examine the state witness during the course of inquiry is not only false but misleading and thus they denied the same. In this regard, they submitted that it is evident from the daily order-sheet no.6 to 8 [Annexure-3 series] that the applicant was given opportunities to cross examine the state witnesses but he himself did not opt to cross examine those witnesses. The respondents submitted that the Inquiry Officer, after considering the case of both the sides and thoroughly examining the evidences adduced by both the sides, prepared the inquiry report dated 15.09.2017 and observed that the charges stand proved.

[v] The respondents further contended that disciplinary authority issued order dated 13.11.2017 after giving an opportunity to the applicant to file a representation against the enquiry report within 15 days. The applicant acknowledged the said inquiry report on 28.09.2017 but he did not submit any reply against the said inquiry report. The order of the disciplinary authority dated 13.11.2017 [Annexure-A/6] is a reasoned and speaking order which has been upheld by the appellate authority and the revisional authority.

4. The applicant filed rejoinder to the written statement and contended that the allegation in the charge-sheet is the first allegation against him that too without any basis as stated in the facts and circumstances in the punishment order as it is dis-proportionate to the allegations leveled against him, therefore, the impugned order may be quashed in the interest and furtherance of justice. The applicant further contended that the unclaimed bag in the card room was that generally the person concerned whose bags and articles are left/missed used to claim the same within 2-3 hours after inquiry from CCTV and usually the same is returned to the said persons and in this case no one had claimed the said bag till that time. The applicant also contended that no action in order to return the said bag to the concerned person was taken by the respondents. But in the present case, in order to implicate the applicant, kept watch over him and served a charge memo upon him.

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

6. 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 affair 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.”*

7. 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”.

8. 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 defense/representation. It is also noticed that from the enquiry report and the record of proceeding, the applicant was provided due opportunity to submit his defense and examine the witnesses but the applicant failed to establish any fact by which he can claim that he was not granted to cross examine the witnesses. There is no material placed on record to substantiate the said grievance of the applicant. Therefore the submission of the applicant that he was not given opportunity during the course of enquiry is not tenable. The disciplinary authority has recorded its finding with cogent reason to believe the charge proved against the applicant. In the same way, the appellate authority and the revisional authority has also considered the ground raised by the applicant and rejected the same with due 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 natural justice or in violation of any statutory rules. The conclusion/findings recorded by the disciplinary authority is based on evidence. Therefore, we do not find any infirmity in the impugned orders.

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 compulsory retirement.

8.

9. In view of the aforesaid observations, 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.