Central Administrative Tribunal
Principal Bench

OA No.2697/2014

Order Reserved on :23.10.2019

Pronounced on:14.11.2019

Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. Ashish Kalia, Member (J)

Shri Pawan Kumar Gupta, Cook,
WET Canteen, aged 55 years,
Controllerate of Quality Assurance,
(Instruments) Raipur, Dehradun (UK),
PIN 248008.

-Applicant

(By Advocate Shri Janak Raj Rana)

-Versus-

1. Union of India through Secretary,
   Ministry of Defence, South Block,
   New Delhi-110001.

2. The Director General of Quality Assurance,
   Department of Defence Production (DGQA),
   Ministry of Defence, PO Nirman Bhawan,
   New Delhi-110011.

3. Controller of Quality Assurance (Instrument),
   Raipur, Dehradun-248008.

-Respondents

(By Advocate Shri M.S. Reen)

O R D E R

Mr. Ashish Kalia, Member (J):

Through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals, the applicant has prayed for quashing and setting aside of impugned punishment orders dated 07.09.2009, which was modified first on 14.09.2009 and thereafter it was modified again on 26.07.2013 and another punishment in another case vide order dated 27.01.2010 which was amended vide order dated 26.07.2013. He has further prayed for a direction to 2nd respondent to consider and dispose of his representation and set aside the illegal penalty by passing detailed orders thereon.

2. Brief facts of the case, relevant for adjudication of this matter, are that while working as Cook at CQI, Raipur Dehradun Station applicant was issued two different charge-sheets. In the first major penalty charge-sheet, the Disciplinary Authority (DA) imposed the penalty of reduction of his basic pay by two stages from Rs.7670/- to Rs.7100/- in the time scale/pay ban of Rs.5200-Rs.20200+Grade Pay Rs.2000 for a period of three years with cumulative effect and during the period of such reduction he will not earn increment of pay and the reduction will have the effect of postponing his future increment of pay vide order dated 07.09.2009. This

was amended vide order dated 14.09.2009 to reduction from Rs.7380/- to Rs.6810/- with remaining punishment being kept same. This was further amended vide order dated 26.07.2013 to reduction from Rs.8570/- to Rs.7960/- with remaining punishment being kept same.

2.1 In the second charge-sheet, the respondents vide punishment order dated 27.01.2010 and its amendment dated 26.07.2013, imposed upon the applicant the penalty of reduction in basic pay by two stages from Rs.6810/- to Rs.6300/ in the time scale/pay band of Rs.5200/- to Rs.20200/-+Grade Pay Rs.2000 for a period of one year without cumulative effect and during the period of such reduction he will not earn increment as well as such reduction will not have the effect of postponing his future increments and that such penalty will run concurrently with other penalty in force. This was amended vide orders dated 26.07.2013 for reduction from Rs.7960/- to Rs.7380/- with remaining punishment being kept same.

2.2 The applicant filed an appeal dated 09.09.2013 before the competent Appellate Authority (AA) and the AA passed the

orders on 29.01.2014 treating the same as time barred and thus upholding the punishment.

2.3 The applicant also submitted his representation/review petition/mercy petition against the impugned orders on 09.09.2013 and 18.02.2014, which were not considered by the respondents. Applicant pleads that respondents have awarded a major or minor punishment upon the applicant, which is illegal in the eyes of law. It is very harsh and disproportionate. Feeling aggrieved, the applicant has filed the instant OA.

3. Notices have been issued to the respondents who have filed their reply wherein it is submitted that the applicant is a habitual absentee. He has been punished twice earlier also for his absence but he has not improved. After following the due process of law, the competent authority has passed the punishment (para-2 supra).

3.1 In reply to the second punishment, it is submitted that the applicant has obtained a loan from Punjab National Bank, Kanwali Road Branch, Dehradun to the tune of Rs.9,00,000/- without seeking approval of the prescribed authority and by producing false/fraudulent pay slips and by misusing the

officer seal/rubber stump with illegal signature of Sr. Administrative Officer (para 2.1 supra).

4. Heard learned counsel for the parties at length and perused the record. In the present case the applicant has been awarded two punishments against two different charge sheets. The first such order was dated 07.09.2009 whereby he has been found guilty and was penalized for unauthorized absence.

He was awarded a punishment of reduction in basic pay by two stages from Rs.7670/- to Rs.7100/- in the time scale/pay band Rs.5200-20200+grade pay Rs.2000 for a period of three years with cumulative effect w.e.f. 07.09.2009.

This was amended vide orders dated 14.09.2008 and 26.07.2013. Lastly the penalty of reduction in basic pay by two stages from Rs.8570/- to Rs.7960/- in the time scale/ pay band Rs.5200-20200+grade pay Rs.2000 for a period of three years with immediate effect was passed.

4.1 In the second penalty order the applicant has been charged for three different articles. The applicant (CQA(I) has borrowed housing loan of Rs.900,000/- from Punjab National

Bank, Dehradun on the basis of forged pay details and availed the same. As per article III the applicant stood as a guarantor to obtain loan by three persons Smt. Dayawanti Rani, Smt. Sylvia Saraswat and Kum. Kamlesh Sharma without prior permission from the department. The Enquiry Officer has proved those charges. The DA imposed the punishment dated 27.01.2010, of reduction in basic pay by two stages from Rs.6810/- to Rs.6300/- in the time scale of pay band of Rs.5200-20200. This was amended on 26.07.2013 wherein reduction was from Rs.7960/- to Rs.7380/-.

4.2 He has preferred an appeal against the punishment but the same was rejected vide order dated 29.01.2014.

5. It is further submitted by the applicant that the punishment is too harsh and disproportionate to the charges levelled against him and he has thus prayed for quashing of these charge-sheets.

In regard to unauthorized absence, the applicant has produced Annexure A-6 medical certificate issued by Dr. Sanjiv Mittal and also from Dr. K. Joshi, Cardiologist immediately on joining service. The basic contention raised by

the applicant herein is that the medical certificates should have been considered by the competent authority before passing the impugned orders.

As regards the second punishment, the applicant has not placed any material on record to show that he had intimated or took prior permission for obtaining loan for which a criminal case has also been registered against him.

6. The learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in the case of **Krushnakant B. Parmar v. Union of India & Ors.**[(2012) 3 SCC 178], where the Hon'ble Apex Court has held that absence from duty without application or without prior permission may amount to unauthorized absence but it does not always mean wilful absence and there were different eventualities due to which an employee was absent from duty, including compelling circumstances beyond his control like illness, accident, hospitalization etc.

The ratio of this case is not applicable to the instant case for the simple reason that the applicant has been found guilty earlier also on many occasions for unauthorized absence from

duty and he had never challenged those orders which had attained finality.

7. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments: (1). In the case of **K.L. Shinde** Vs. **State of Mysore** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

> "9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa,

(1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
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> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

7.1 Again in the case of **B.C.Chaturvedi** Vs. **UOI & Others** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed 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 eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be 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 office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 of 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.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the

> evidence or the nature of punishment. In a disciplinary inquiry 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 be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718: (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

7.2 Recently in the case of **Union of India and Others** Vs. **P.Gunasekaran** (2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-

> "Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:
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> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;

> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
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> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; i. the finding of fact is based on no evidence."

8. Thus, this Tribunal, after considering the relevant case-laws and the facts and circumstances of the case is of the view that no procedural lapse has been pointed out by the applicant herein. Hence, this Tribunal cannot assume the role of the AA in the departmental proceedings. In view of the same, we do not find any merit in the OA, which is accordingly dismissed. No costs.

(Ashish Kalia)
Member (J)

(Pradeep Kumar)
Member (A)

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