

(2021) 06 CAT CK 0086

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00111 Of 2020

Narayan Das

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 17-06-2021

Acts Referred:

Constitution Of India, 1949 — Article 226

Citation : (2021) 06 CAT CK 0086

Hon'ble Judges : Swarup Kumar Mishra, Member J;T. Jacob, Member(A)

Bench : Division Bench

Advocate : G.R. Verma

Final Decision : Dismissed

Judgement

Swarup Kumar Mishra, Member (J)

1) The Applicant has filed this O.A seeking the following reliefs.

1. By quashing the penalty of compulsory retirement from service and reinstating the applicant at his rightful post (TGT-SST) and place (OFBOL)

from dated 24.11.2011 by exonerating him from all the false charges levelled against him by quashing all papers created at his back as enumerated

under para 4.27.

-in the form of false complaints, false FAX, Transfer Order letters, alleged Bills, charges under the Memo of charges, inquiry reports warnings on

LTC claim notes and penalties etc;

-AND allowing all accrual benefits and privileges (crediting leaves to his account, LTC, Ednl and Medical allowances, the evicted accommodation at

normal licence fees and the lost increment of 2008 etc.) as per rules;

2) By fixing up the responsibility (liabilities) on staffs and the interested officials

who have made the applicant a victim of defamation, harassment and conspiracy AND immune those who have acted in the interest of the Union of India;

3) By compensating the applicant by the nominal respondents for the unwanted losses and damages thrown upon him in his service;

4) By allowing the applicant to sue against the real respondents in case of felt necessity (complaints and the inquiry officers and a few others in

making an illegal and monopolised report in 2008 and in 2011) for due and necessary compensation for damages and losses done to the applicant;

5) By directing the Disciplinary Authority to take serious disciplinary actions against the real culprits - the H.M (Pry), the TGT (CBZ), TGT (Hindi)

and others for playing repeated mischief against the applicant and keeping the MOD OF Board and the particular management of OFBOL and RFI to

run behind the applicant for no fault of him;

The mischief imposed by them over the victim one after another is the sufficient proof of mischief committed by them - amounting to action on

administrative reasons"".

2. The facts, in nut shell, are that the applicant was initially appointed as a PRT under the Respondent No.3 in 1994 and then was appointed as TGT

(SST) in the year 2000. While functioning as TGT, Rifle Factory, Ishapore, West Bengal, for remaining unauthorised absent and irregular in attending

duty charge sheet dated 18.1.2017 was served on him calling upon to submit his reply. The Applicant submitted his reply dated 31.01.2017 denying the

said allegations. The matter was enquired into. IO submitted its report dated 25.09.2017 establishing the allegation levelled against him in the charge

sheet. Copy of the report of the IO was supplied to the Applicant. Applicant submitted his reply on 21.03.2018. The competent Authority/Disciplinary

Authority after going through the entire records vis-a-vis the report of the IO and the reply of applicant imposed the order of punishment of

compulsory retirement from service vide order dated 28.06.2018. After protracted correspondences and filing of cases, finally, the applicant has filed

this OA praying for the relief quoted above.

3. Notice was issued to the Respondents requiring them to file reply, if any, on the question of admission. The Respondents have filed their counter

inter alia questioning the very maintainability of this OA being hit by constructive

resjudicate, delay and laches so also on the ground jurisdiction of this

Bench to entertain the OA. The matter was heard on the preliminary issue and vide order dated 12.11.2020 the matter was kept for consideration on

the issue of multiple reliefs and incorporation of unnecessary parties so also on merit of the matter.

4. According to the Respondents the applicant while working as TGT at Rifle Factory Ishapore, West Bengal faced a departmental proceedings for

remaining unauthorized absent from duty and irregular in attendance during the year 2015 & 2016 vide Memorandum of charge dated 18/1/2017

(Annexure- A/2). On consideration of the reply submitted by applicant, the matter was enquired into. IO, after detailed enquiry giving all reasonable

opportunities to the applicant submitted its report dated 25/09/2017 holding the charge levelled against the applicant as proved. The report of the IO

was supplied to the Applicant. Applicant submitted representation dated 21.3.29018. The competent authority after considering the entire records

including the report of the IO and reply of applicant imposed the punishment of compulsory retirement from service vide order dated 28/06/2018

(Annexure-A/1). Thereafter, alleging non consideration of his appeal stated to have been submitted under Annexure-A/33 he preferred this OA and

this Bench vide order dated 17.6.02020 directed to intimate the stage of appeal so preferred by the applicant. On enquiry it is found that no such

appeal was preferred by the applicant. It has been stated that the unauthorized absence of the applicant was intentional and deliberate which was

proved by the IO after giving the applicant due opportunities. The proceedings was initiated and concluded in compliance of rules and principles of

natural justice. Since the applicant did not prefer any appeal and accepted the punishment, this OA is liable to be dismissed.

5. Heard the applicant who is appearing in person and learned counsel for respondents and perused the records. The Applicant, who is appearing in

person seeks for this Tribunal to consider mainly on the ground as under:

(i) Whether he has remained absent ever or this time without any written application or information of leave. Whether his absence are wilful, whether

such absences were ever notified in his first place of posting;

(ii) Whether his absence about 14 days out of 52 absences as given in the charge memo under Article 2 and absences of about 63 days to attend the

Tribunal after his leave application of protects dated 27.6.2016 (spending about 3 days at the minimum to attend one day at the court including to and

fro journey to Kolkata) under Annexure-1 can be wilful and habitual;

(iii) Whether meeting the exigencies of the family members by spending huge amount of money and a long journey of exhaustion is habitual and wilful

to be a victim of unauthorized absence;

(iv) Whether one's job can be taken away by pushing him into a condition of unauthorized absence by placing a game of repeated prevention,

disallowing him to get his rights available;

(v) Whether the officials who have paid a deaf ear to the genuine grievances of the applicant since his first application or his second application on

spouse ground have not failed in their duties and responsibilities to bring the victim with such a consequence. Whether they will not bear any liabilities

on the damages to him;

(vi) Whether the false allegations/complaints of the guardians as in 2011 or complaint of any teacher as in 2007 taken as precedent can be accepted s

a charge in a court of law or in a tribunal;

(vii) Whether the said complaints and allegations can be considered as proved;

(viii) Whether papers created at one's back and without giving opportunities to examine and cross examine the complaints or witnesses be treated as

established;

(ix) Whether papers created at a preliminary inquiry are sufficient to punish an employee in any way without conducting a formal enquiry. Whether a

prel inquiry is conducted to penalise anybody or to find some other purposes;

(x) Whether one's right to a post can be taken away by accommodation or promotion by imposing false charge of mischief on him or one's right to a

post offer the offenders exclusive right to play mischief against an innocent employee again and again under protection of his god father;

(xi) Whether an allegation unfounded and un-established can be used to spoil one's service career in the disguise of a transfer order issued against the

real public interest;

(xii) Whether spoiling of one's service career without just caused by means of a forcible transfer on the pretext of a false inquiry and playing a game

of prevention to get him retired by infringing upon his legal rights on the basis of

his post is allowed by law;

(xiii) Whether an employee being in service does not have his right to continue a govt accommodation for well being of his family members even

without taking any other govt accommodation elsewhere or without taking any HRA etc and can be evicted even during the pendency of a case in

Hon'ble Tribunal;

(xiv) Whether the people involved in all these issues have not violated law not caused damages to the service career of the victim to his dignity and

other aspects of life;

(xv) Whether a stigmatic and purposeful transfer after violating all the limitations and restrictions for the use of such power can attain its validity at the

running of time or a case of transfer is a continuing wrong in the eye of law;

(xvi) Whether the alleged action do not establish the fact of an abuse and misuse of power by the officials to fulfil the ulterior purposes of their people;

(xvii) Whether the validity of a conspiratorial transfer order can be allow the false allegations or complains against an employee as accepted. Whether

an employee loses his right to protest a malicious transfer after his joining or being struck off strength as and when the collusion conspiracy and malice

come to his notice;

(xviii) Whether a recorded warning can be issued against an employee on a LTC claim before submission of the papers by the employee in the

concerned section;

(xix) Whether any false issues created at one's back and without following any procedure can be used to be a precedent to find or establish further

guilt to victimise one.

6. We may, at the first instance, record that interference in the matter of disciplinary proceedings or the order of punishment is well settled in a catena

of decisions and suffice to place reliance of the decision of the Hon'ble Apex Court in the case of State of Andhra Pradesh & Ors. v. S. Sree Rama

Rao, reported in AIR 1963 SC 1723 , wherein a three Judge Bench of the Hon'ble Apex Court have held that the Court/Tribunal is not a court of

appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is

held by an authority competent in that behalf, and according to the procedure

prescribed in that behalf, and whether the rules of natural justice are not violated, an excerpt from it quoted as under:

7. ...The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities

holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that

behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some

evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that

the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence

and to arrive at an independent finding on the evidence....

6.1. In the B.C. Chaturvedi v. Union of India & Ors. Reported in (1995) 6 SCC 749 , again, a three Judge Bench of the Hon'ble Apex Court have

held that power of 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 eyes of the court. The Court/Tribunal in its power of judicial review does not act as an appellate authority to re appreciate the evidence and to

arrive at its own independent findings on the evidence. It was 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 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 reappreciate 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.

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 781], this Court held at page 728 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.

6.2. In the case of *High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil & Anr.* (2000) 1 SCC 416 , the Hon'ble Apex

Court have held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the

principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226

of the Constitution. It was held as under:

16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the

administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising

jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of

statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence

and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person

could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the

Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if

there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing

before the High Court in a writ petition filed under Article 226 of the Constitution.

6.3. In the case of *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya* (2011) 4 SCC 584, it was further held that courts will not act as an

appellate authority and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on

record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the

reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. It was held as under:

7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the

ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence,

the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental

enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no

evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such

conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or

statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide *B. C.*

Chaturvedi vs. Union of India - 1995 (6) SCC 749, *Union of India vs. G. Gunayuthan* - 1997 (7) SCC 463, and *Bank of India vs. Degala*

Suryanarayana - 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil - 2001 (1) SCC416).

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12. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.

7. It is not the case of the applicant that there was any infraction of rules or principles of natural justice starting from initiation of disciplinary proceedings till the order of punishment. We find from the record that the Respondents have conducted the disciplinary proceedings starting from initiation to conclusion, in accordance with Rules and principles of natural justice. In the case of Chennai Metropolitan Water Supply and Sewerage Board & Ors.-vs.-T. T. Murali Babu, (2014) 4 SCC 108, the concerned employee was absent from duty without having obtained leave or giving any intimation to the management. The Hon'ble Supreme Court held that this indicated totally indiscipline attitude on his part and the punishment of dismissal imposed on him was not shockingly disproportionate and doctrine of proportionality did not get even remotely attracted to such a case. In the instant case we find that the applicant has made endeavour for this Tribunal to re-appreciate the entire issue and find out whether initiation of disciplinary proceedings was correct or not which is beyond the scope and ambit for this Tribunal to look into. As regards the points the applicant is trying to convince that his transfer was not in accordance with Rule or law is

hardly any help to him because the applicant has challenged his order of transfer and the matter was set at rest after the order of the Kolkata Bench of the Tribunal. In view of the above we find no ground to intervene and interfere in the order of punishment imposed by the Respondents after following due procedure of Rules, law and principles of natural justice.

8. Consequently, this Original Application, being sans substratum, stands dismissed. There shall be no order as to costs.