

(2019) 03 CAT CK 0141

In the Central Administrative Tribunal

Case No : Original Application No. 1934 Of 2013

Shri Satyawan B

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 CAT CK 0141

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : H.K. Bajpai, Meenu Mainee, Shailendra Tiwari

Final Decision : Dismissed

Judgement

1. By filing this OA, the applicant sought the following reliefs:

"8.1 That this Hon'ble Tribunal may also be graciously pleased to allow this application and quash the impugned orders dated-17.11.2011, 10.2.2012 & 29.11.2012.

8.2 That this Hon'ble Tribunal may be further pleased to direct the respondents to reinstate the applicant with all consequential benefits including back wages.

8.3 That this Hon'ble Tribunal may also be graciously pleased to pass any order or further order as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

8.4 That the cost of these proceedings may kindly be granted in favour of the Applicant and against the Respondents."

2. Brief facts of the case are that the applicant while working as Switch Board Operator, Grade-II, Ratlam under SSE (P), Western Railway, Ratlam, was served a Memorandum of charge sheet for major penalty dated 19. 01.2011 on the ground that he was sanctioned leave for five days from 14.8.2003 to 18.8.2003 but he came on duty on 12.9.2003 i.e., after 19 days. It was found that the

applicant was in City Jail in Gangapur City and was under judicial custody from 14.8.2003 to 09.09.2003. The applicant did not inform the Railway Authorities in this regard and he submitted an application dated 16.4.2004 and furnished wrong information to the department that due to some domestic circumstances from 19.8.2003 to 11.9.2003, he could not present on the duty.

2. 1 The inquiry officer so appointed conducted the inquiry as per Railway Servants (Discipline & Appeal) Rules, 1968 and returned the finding that the charge against the applicant stood proved vide his report dated 17.8.2011. Thereafter, the disciplinary authority sent a copy of the said report of the IO to the applicant to enable him to make his representation within 15 days. However, the applicant has refused to accept the same as per the evidence attached with the counter reply filed by the respondents. Thereafter, the disciplinary authority vide order dated 17.11.2011 passed the orders awarding the punishment of compulsory retirement upon the applicant. Being aggrieved by the same, the applicant has also filed his appeal which was rejected by the appellate authority vide order dated 10.2.2012. Thereafter applicant has also filed his revision petition, which was considered by the revisionary authority and the same was rejected by the revisionary authority by upholding the punishment imposed by the disciplinary authority vide order dated 29.11.2012.

2.2 Being aggrieved by the aforesaid orders of the authorities of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

3. Counsel for the applicant argued that the charge levelled against the applicant was not correct as it was very much in the knowledge of the department that the applicant had been taken away by the police with the permission of the superior of the applicant and subsequently the applicant also informed by post to the disciplinary authority about his judicial remand and as such the charge of not informing about remaining in judicial custody is not sustainable and that the applicant has been acquitted with COP (cost of proceedings) and no penalty was imposed upon him.

3.1 Counsel further submitted that inquiry officer failed to appreciate that documents/information called for by the applicant was not made available by the respondents and returned the findings of proving the charge against him.

3.2 Counsel also submitted that the disciplinary authority without making available a copy of the IO report imposed the penalty of compulsory retirement, which amount to violation of principles of natural justice.

3.2 Counsel further submitted that in his appeal applicant has pointed out various illegalities and irregularities committed by the IO but the appeal was also rejected by the appellate authority without application of mind and as such the order of the appellate authority is a non-speaking and unreasoned one.

3.3 Counsel also submitted that in his revision petition also applicant has pointed out various illegalities and irregularities committed by the IO but his revision

petition was also rejected by the revisionary authority without application of mind and as such the order of the appellate authority is a non-speaking and unreasoned one.

3.4 Counsel also pleaded that the punishment imposed upon the applicant is disproportionate to the gravity of charged alleged to have been proved against him.

4. On the other hand, learned counsel for the respondents submitted that after completion of disciplinary proceedings, the IO returned the finding that the charge against the applicant stood proved. Upon receipt of IO report, the same was sent to the applicant by the disciplinary authority vide letter dated 24.8.2011 to make his representation against the same, However, the applicant refused to accept the same. In support of this content, learned counsel for the respondents drew our attention to annexure R/4. Counsel also submitted that when the applicant refused to accept the IO report, the same was pasted on the notice Board and the envelop returned back.

4.1 Counsel for the respondents further submitted that the disciplinary authority followed all procedure for disciplinary proceedings, as the applicant was issued major penalty charge sheet for false information and suppressing the fact that the period for which he wants leave sanction, he was under judicial custody and therefore present chargesheet was different from previous one. 4.2 Counsel also submitted that the inquiry proceedings is in order and all opportunities were provided to him but he did not cooperate in the inquiry. The disciplinary, appellate and revisionary authorities have considered all the documents of inquiry, personal hearing to applicant and passed the reasoned and speaking order.

4.3 Counsel also contended that even the revisionary authority and CESE has perused all the relevant record of the applicant, i.e., whole DAR case, service record and also extended opportunity of personal hearing on 25.9.2012 to the applicant and thereafter passed speaking and reasoned orders. As such the orders passed by all the authorities of the respondents are reasoned and speaking orders.

5. Before adverting on the claim of the applicant, it is pertinent to note that 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 - bazaar 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.

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."

(2) 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 officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappraise 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."

(3) 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:

- 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 principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- 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;
- 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 finding;
- i. the finding of fact is based on no evidence."

6. Keeping in view the aforesaid observations of the Apex Court, this Court finds that in this case charge levelled against the applicant, who was discharging the duties of Switch Board Operator, was sanctioned leave for five days from 14.8.2003 to 18.8.2003 but he came on duty on

12. 9.2003 i.e., after 19 days. It was found that the applicant was in City Jail in Gangapur City and was under judicial custody from 14.8.2003 to 09.09.2003. The applicant did not inform the Railway Authorities in this regard and he submitted an application dated 16.4.2004 and furnished wrong information to the department that due to some domestic circumstances from 19.8.2003 to 11.9.2003, he could not be present for duty. Applicant gave his reply and being dissatisfied with the same, disciplinary authority ordered initiation of inquiry in the matter and the enquiry officer after conclusion of the said inquiry proved the charge levelled against the applicant and on receipt of inquiry officer's report, the disciplinary authority issued a show cause notice to the applicant to enable him to make his representation. However, from the evidence on record, it is quite clear that applicant refused to accept the same and the said show cause notice was placed on notice Board by the respondents. Thereafter the disciplinary authority passed the order awarding the punishment of compulsory retirement upon the applicant vide order dated 17.11.2011. Thereafter the appeal preferred by the applicant was also rejected by the appellate authority after passing a detailed and reasoned order dated 10.2.2012 and the revision petition preferred

by the applicant was also rejected by the revisionary authority vide order dated 29.11.2012.

7. This Court also perused the said Orders of the disciplinary, appellate and revisionary authorities and did not find any illegality in the said orders. Also having regard to the findings of the Enquiry Officer, we also find that enquiry officer on the basis of evidence which came on record proved charges levelled against the applicant. It is further relevant to mention that having regard to gravity of the charge proved against the applicant, the disciplinary authority after considering the facts and circumstances of the case imposed the aforesaid punishment which was affirmed by the appellate as well as revisionary authorities which had also passed reasoned and speaking orders. It is also a well settled proposition of law, as held by the Hon'ble Apex Court in catena of cases, that it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment. In *Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad* reported in 2010 (3) ALS LJ SC 28 it has been held by Hon'ble Supreme Court as under:-

"The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal".

8. Having regard to the gravity of the charges levelled against the applicant, the punishment awarded by the disciplinary authority vide order dated 17.11.2011, which was affirmed by the appellate and revisionary authorities, we are of the considered view that punishment imposed by order dated 17.11.2011 is not so disproportionate that it shocks the conscience of the court, therefore, we do not think any case is made out for interference by the Tribunal even on the question of quantum of punishment.

9. In view of the above, and for the foregoing reasons, having regard to the aforesaid observations of the Hon'ble Supreme Court in the aforesaid cases, especially in the case of *Union of India and others vs. P. Gunasekaran* (supra), we do not find any justifiable reason to interfere with the impugned orders. Accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.