CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH LUCKNOW

Original Application No.00219/2013

Order reserved on: 29.02.2024

Order pronounced on: 24.04.2024

Hon'ble Mr. Justice Anil Kumar Ojha, Member-Judicial

Hon'ble Mr. Pankaj Kumar, Member-Administrative

Bachchey Dhanuk aged about 28 years S/o late Mufat Lal Ex [redacted]

.....Applicant

By Advocate: Shri S. M. S. Saxena

VERSUS

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Senior Divisional Mechanical Engineer (Depot), North Eastern Railway, Lucknow.
3. The Coaching Depot Officer, North Eastern Railway, Aishbagh, Lucknow.
4. Shri Murlidhar, Inquiry Officer and Senior Section Engineer, Aishbagh Depot, North Eastern Railway, Lucknow.

.....Respondents

By Advocate: Shri Yogendra Sharma

ORDER

Per Hon'bleMr.Pankaj Kumar, Member-Administrative

In this case relating to removal from service, the applicant has sought the following reliefs:

(i) This Hon'ble Tribunal may graciously be pleased to quash the Inquiry Report dated 14.12.2011, removal order dated 01.03.2012 and appellate order dated 08.02.2013 filed as Annexure No. A-1, A-2 and A-3 to this application.

(ii) To direct the respondents to pay salary and allowances to the applicant with all consequential benefits w.e.f. 01.03.2012 till date of reinstatement along with interest @ 18% p.a.

(iii) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the application be awarded to the applicant."

2. The facts of the case are that the applicant was appointed on 03.06.2004 to the post of Safaiwala on compassionate ground following the death of his father in harness. He was proceeded against for unauthorized absence from 28.04.2006 to 27.08.2006 and removed from service, but taken back in service on appeal in 2007. He was again issued charge sheet on 07.06.2011 for unauthorized absence for 75 days from 19.02.2011 to 04.05.2011. In the enquiry, the charge for unauthorized absence was found proved. The applicant was removed from service vide impugned order dated 01.03.2012. On appeal, the punishment of removal from service was converted to compulsory retirement vide impugned order dated 08.02.2013. Aggrieved, the applicant has preferred this OA.

3.1 It is the contention of the applicant that he could not attend his duties because of the illness of his mother and he submitted a medical certificate to this effect. This fact was overlooked by the Inquiry Officer. Depositions of two persons, who were not listed in Annexure IV of the charge sheet, were relied upon illegally. The Inquiry Officer has travelled beyond the charge mentioned in Annexure I of the charge sheet by mentioning the unauthorized absence from 28.04.2006 to 27.08.2006 in the enquiry report, which is nonest as the previous punishment had been condoned by the appellate authority and regularized by re-instatement. It is stated that Hon'ble Supreme Court has held that unauthorized absence from duty does not always mean willful absence.

3.2 It is further contended by the applicant that copy of the enquiry report was not provided to him. The disciplinary authority has referred to the applicant's absence from duty from 28.04.2006 to 27.08.2006 in the impugned order dated 01.03.2012. The disciplinary authority has also failed to record any finding that the unauthorized absence from 19.02.2011 to 04.05.2011 was willful, ignoring the compelling circumstances of the applicant.

3.3 The appellate authority ignored the contentions made by the applicant in his appeal dated 04.06.2012 and referred to the irrelevant fact of absence from 28.04.2006 to 27.08.2006 rendering his impugned order dated 08.02.2013 prejudicial.

4.1 The respondents, on the other hand, contend that the stand taken by the applicant is contradictory. On one hand, the applicant stated that he left station with his mother on 18.02.2011 for his village and, on the other, he submitted a medical certificate issued by a private clinic at Lucknow showing his mother's treatment as OPD patient on 19.02.2011. Past record of the applicant was not the basis of the enquiry's finding.

4.2 It is well settled that the past record of a worker can be taken into consideration by the disciplinary authority for the purpose of determining quantum of punishment.

4.3 The appellate authority held the applicant guilty of the misconduct and found no procedural flaw in the disciplinary proceedings. Taking a lenient and sympathetic approach, he modified the punishment of removal from service to compulsory retirement.

5. We have heard both the parties.

6.1 The scope of judicial review in departmental proceedings have been traversed comprehensively by Hon'ble Supreme Court in ***Union of India vs Subrata Nath in Civil Appeal No. 7939-7940 of 2022 arising out of SLP (C) 11021-22 of 2022*** in following terms:

> *"**15.It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence.** However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.*
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> *16. In the above context, following are the observations made by a three-Judge Bench of this Court in **B.C. Chaturvedi (supra)**:*
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> > *"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 there from, 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…*
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> *17. In **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya**, a two Judge Bench of this Court held as below:*
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> > *"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. The 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.****"*

…..

19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in ***Union of India and Others v. P. Gunasekaran*** *held thus :*

"12. 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, reappreciating even the evidence before the enquiry officer. The finding on Charge 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation 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 considerations;

(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.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

....

(emphasis supplied)

6.2 The main contention of the applicant is that both the enquiry officer and the disciplinary authority have travelled beyond the charge levelled of unauthorized absence from 19.02.2011 and 04.05.2011 by taking into consideration the irrelevant and extraneous consideration of unauthorized absence on a previous occasion from 28.04.2006 to 27.08.2006. A perusal of the charge sheet reveals that the Annexure II thereof makes a specific mention of the previous absence in 2006 to demonstrate the applicant's habit of unauthorized absence. The reference to previous unauthorized absence mentioned at Annexure II of the charge sheet has been recorded by the enquiry officer while describing the charge in his report. The past behavior of the applicant having been specifically mentioned thus in the charge sheet, we do not find any infirmity in recording it by the enquiry officer. By the same token, its mention by the disciplinary authority in the order dated 01.03.2012 imposing the punishment is also entirely in order. The contention of the applicant has no legs to stand on, in our view.

6.3 The perusal of the enquiry report shows that the charge of unauthorized absence was explained to the applicant, who is stated to be illiterate, understood by the applicant and his statement recorded. The fact of non-delivery of the enquiry report to the applicant has been discussed by the appellate authority stating that the enquiry report was

sent on 30.01.2012 by registered post to the applicant's address, but was returned with the comment of Department of Post that despite visiting and informing again and again, the addressee does not meet. We further note that after considering the appeal dated 04.06.2012 preferred by the applicant, the appellate authority, taking a sympathetic view of the matter, converted the penalty of removal from service imposed by the disciplinary authority to that of compulsory retirement. We fail to notice any procedural infirmity in observance of principles of natural justice which may have caused prejudice to the applicant.

7.1 In view of the facts and circumstances above, the OA is dismissed.

7.2 Pending MAs, if any, are also disposed of.

7.3 The parties shall bear their own costs.

(Pankaj Kumar)
Member (A)

(Justice Anil Kumar Ojha)
Member (J)

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