



WEB COPY



WP.No.15035 of2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2024

PRONOUNCED ON : 20.12.2024

CORAM:

THE HONOURABLE MR.**JUSTICE S.M.SUBRAMANIAM**

and

THE HONOURABLE MR.**JUSTICE M.JOTHIRAMAN**

W.P.No.15035 of2021

J.Kumar

... Petitioner

V.

1.The Central Administrative Tribunal
Chennai Bench
Chennai – 600 104.

2.The General Manager
Armoured Vehicles Headquarters
Avadi, Chennai – 54.

3.The Additional Director / Appellate Authority
D.G.O.F.
YF Group Headquarters
G.T.Road, Kanpur.

4.Union of India
Rep by its Under Secretary
Ministry of Defence Production
New Delhi.

...Respondents

PRAYER: Writ petition filed under Article 226 of Constitution of India
to issue a Writ of Certiorarified Mandamus to call for the records



culminated in the 1st respondent impugned order dated 30.04.2021 made in OA.No.310/01303/2013 and quash the same and consequently direct the respondents 2 to 4 to pay the service benefits such as Provident Fund, Gratuity, Pension, and other attendant benefits, to the petitioner and pass such other order or relief.

For Petitioner : Mr.R.Prabhakaran

For Respondents : R1 – Tribunal
Mr.S.Girissh for
Mr.M.Karthikeyan for R2 to R4.

ORDER

(The Order of the Court made by Justice **M. JOTHIRAMAN**)

Under assail is the order dated 30.04.2021 in OA.No.1303 of 2013 on the file of the Central Administrative Tribunal, Chennai Bench. The unsuccessful applicant before the Tribunal has preferred the writ petition before this Court.

2. The petitioner joined the second respondent as Tailor Semi Skilled on 04.06.1976. A charge memo was issued to the petitioner on 30.05.2005, along with charge sheet, the substance of the imputation of misconduct, statement of imputation of misconduct, copy of each of the documents along with a list of documents. The article of charges is



WP.No.15035 of2021

regarding forgery by submitting fabricated salary slip, fabricated Form-16 with a forgery signatures of the issuing authority and availing housing loan on the basis of the said documents. The petitioner submitted his reply to the said charge sheet on 22.11.2005, the disciplinary authority appointed the enquiry officer. After due enquiry, came to the conclusion that the charges framed against the petitioner was proved. A copy of the enquiry report was furnished to the petitioner on 20.07.2006. The petitioner submitted reply on 04.08.2006, the disciplinary authority imposed punishment of compulsory retirement from service. The petitioner filed an appeal before the appellate authority and the same was rejected by an order dated 07.03.2007. Subsequently, the petitioner filed a revision before the Hon'ble President of India, the said revision petition was rejected by an order dated 22.04.2008. Thereafter, the petitioner filed a review petition before the Hon'ble President of India and the same was also dismissed on 06.05.2010. The petitioner thereafter filed a representation on 07.04.2011 before the Chief Commissioner for persons with Disabilities, after obtaining a disability certificate on 08.10.2011. The said representation was also dismissed by an order dated 24.01.2012. As against the order of compulsory retirement issued by the department, he has preferred an Original Application before the Central



Administrative Tribunal in OA.No.1303 of 2013, the Tribunal dismissed the Original Application.

3. The learned counsel appearing for the petitioner would submit that the petitioner was disabled person and he could neither hear or speak and he was illiterate person. He does not understand English and that he should have been given an interpreter and an assistant to enable him to effectively participate in the Departmental Enquiry was not provided. He would submit that the alleged fabricated documents was prepared by the brokers of the Bank and as such, he was not forged or fabricated any documents.

4. Per contra, the learned counsel for the respondents/department would submit that the respondents/department have conducted departmental enquiry by following due procedures, after giving sufficient and reasonable opportunity to the petitioner at every stage of the departmental enquiry. The petitioner never raised any contentions before any disciplinary authorities, enquiry officer, that sufficient and reasonable opportunities were not provided to defend his case. The departmental authority and the appellate authority have passed elaborate



and speaking order.

WEB COPY

5. We have considered the submissions made on either side and perused the available records.

6. The petitioner joined in the service of second respondent as Tailor semi skilled on 04.06.1976 in Ordinance Clothing Factory, Avadi. The disciplinary action was initiated on 30.05.2005 and placed him under suspension w.e.f. 06.08.2005. Subsequently charge sheeted under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules 1965 for committing misconduct of “(i)dishonesty/forgery i.e, cheated the financial institution by submitting false/fabricated salary /pay slip, false declaration purported to have been issued by employer and false/fabricated Form No.16 besides forging signatures of the issuing officer Shri H.K.Paikara, Works Manager for availing wrongful gain and (ii)availed housing loan from Bank of Baroda, besides from Bank of India without getting permission from the factory” vide charge memorandum dated 20.09.2005.

6(i).The enquiry officer on completion of enquiry finding that the



charges framed against the petitioner are proved. The disciplinary authority imposed penalty of “compulsory retirement from service” w.e.f. 25.09.2006. The suspension period of the petitioner was regularised as the “NOT spent on duty” vide Factory Order Part-II No.238 dated 29.09.2006. The petitioner preferred an appeal dated 06.10.2006 addressed to the Appellate Authority (Addl.DGOF/OEF HQrs., Kanpur) against the punishment. The appellate authority considered the appeal and rejected the same vide order dated 07.03.2007. The petitioner preferred a revision petition dated 14.05.2007 addressed to the Hon'ble President of India and the same was rejected vide Ministry of Defence Order No.22(34)/11/2007/D-(Fy.II) dated 22.04.2008. As against the same, the petitioner preferred an revision petition dated 17.11.2008 addressed to the Hon'ble President of India and the same was also rejected vide Ministry of Defence order No.22(19)/II/2009 D(Fy.II) dated 16.11.2009. Thereafter, the petitioner filed OA.No.1303 of 2013 against the order of disciplinary authority, appellate authority, revisional authority and revisionary authority. The above said OA.No.1303 of 2013 was also dismissed on merits by the Tribunal on 30.04.2021.

7. The main contention of the learned counsel for the petitioner is



that the petitioner was not provided with interpreter assistance.

Objecting the same, the learned counsel for the respondents has drawn the attention of this Court to the counter affidavit filed by them, particularly in Paragraphs 14 and 17.

8. At this juncture, it is relevant to cite the paragraphs 14 and 17 of the counter :-

“14. During the court of inquiry, the petitioner was provided with all reasonable opportunities to engage a defence assistant to defend his case. But the petitioner did not want the assistance of defence assistant and opted to defend his case himself. Further, for the sake of convenience of the petitioner every Court proceedings was explained to him in Tamil and then recorded in English and he did not objected to it. As regards to time given for offering his written submission during the entire proceedings, the petitioner himself had expressed that time given for expressing his views was sufficient.”

9. In paragraph 17 of the counter states hereunder :-

“..... All the charges were explained to him in regional



language which he can understand. The petitioner did not denied the same, in the course of enquiry at any stage. The whole disciplinary proceedings were conducted in Tamil which is the regional language. The petitioner submits his replies/written statement of defence in English only. Hence, his contention, during the course of enquiry English language which is alien to him is baseless is not tenable.”

10. The Tribunal findings with regard to petitioner's disability, he has urged it for the first time before the Tribunal, he has not urged this ground before any of the disciplinary authority.

11. At this juncture, it is relevant to cite the order of the Hon'ble Revisional Authority dated 06.05.2010 in paragraph 4 states hereunder :-

“4. AND WHEREAS, after careful consideration of the points raised by Shri.J.Kumar, in his petition, the President is fully satisfied that none of the points as raised by him the proceeding paras are tenable since :-

(i)The petitioner had participated in the enquiry with full cooperation and answered the questions of Inquiry Officer/Presiding Officer as such it is not maintainable



that he could not understand what transpired in the enquiry. Further, it is observed from the Inquiry proceedings that in the first learning itself Inquiry Officer had specifically asked Charged Officer whether he would utilize the services of defence assistant when Charged Officer had replied that he did not want any Defence assistants. (ii)The petitioner has been provided reasonable opportunity to defend his case during the Court of Inquiry in accordance with the principles of natural justice.”

12. On perusal of the records reveals that the petitioner refused to take any defence assistants at every stage of departmental enquiry, despite sufficient and adequate opportunities were provided to the petitioner to defend his case.

13. It is settled law that in exercising power of judicial review interfering with the punishment, only in extreme cases, where on the face of it there is perversity or illegality, there can be judicial review under Article 226 of the Constitution of India. At this juncture, it is relevant to



cite the judgment of the Hon'ble Apex Court reported in

Manu/SC/0052/2023 – Union of India (UOI) and others V. Sunil

Kumar wherein it was held that :-

*“6.2. Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of Surinder Kumar (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of **Union of India v. R.K. Sharma; MANU/SC/0621/2001 : (2001) 9 SCC 592** that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be*



WEB COPY



WP.No.15035 of2021

strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review Under Article 226 or 227 or Under Article 32 of the Constitution.”

14. By applying the law laid down by the Hon'ble Apex Court in the aforesaid decision, to the facts of the case on hand, it cannot be said that the compulsory retirement, said to be strikingly disproportionate and warranting the interference by this Court. As we do not find any reasons to interfere with the findings of the Tribunal and there is no merits to consider the case of the petitioner, hence writ petition is liable to be dismissed.

15. In the result, the writ petition is dismissed. The order of the Central Administrative Tribunal in OA.No.1303 of 2013 dated 30.04.2021 is confirmed. No costs.

(S.M.S.,
J.) (M.J.R., J.)
20.12.2024

tsh
Index : Yes / No



WP.No.15035 of2021

Internet : Yes / No

Neutral Citation: Yes / No

To

1.The Central Administrative Tribunal
Chennai Bench
Chennai – 600 104.

2.The General Manager
Armoured Vehicles Headquarters
Avadi, Chennai – 54.

3.The Additional Director / Appellate Authority
D.G.O.F.
YF Group Headquarters
G.T.Road, Kanpur.

4.Union of India
Rep by its Under Secretary
Ministry of Defence Production
New Delhi.



WEB COPY



WP.No.15035 of2021

S.M.SUBRAMANIAM.J.
and

M.JOTHIRAMAN.J.
tsh

Pre-Delivery order in

W.P.No.15035 of2021

20.12.2024.