

Contd No. IV
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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.N. 788/2002

Wednesday, this the 8th day of January, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Gajraj Singh
working as CareTaker, Social Welfare Deptt.
Govt. of NCT of Delhi
Special Home for Boys
Khyber Pas, Delhi

..Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. The NCT of Delhi through the Chief Secretary
New Secretariate, New Delhi
2. The Lieutenant Governor
Raj Niwas, Delhi
3. The Chief Secretary
NCT of Delhi New Secretariate
New Delhi

...Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

Shri Govindan S. Tampi:

Challenge in this OA is directed against the disciplinary proceedings initiated against the applicant (Shri Gajraj Singh), which culminated in the punishment order dated 20.4.2001 as well as the appellate order dated 5.2.2002.

2. Heard S/Shri Yogesh Sharma and Vijay Pandita, learned counsel appearing for the applicant and the respondents, respectively.

3. The applicant, a Caretaker in the Social Welfare Department of Govt. of NCT, was charge-sheeted on 6.6.1996 for alleged negligence in performing his duty in

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the Special Home for Boys, Khyber Pass, Delhi leading to the escape of 72 inmates on 28.11.1995. Though the charge-sheet was based on certain documents and statement of two witnesses, they were not supplied to the applicant. The applicant denied the allegations and also made request for the supply of the above relevant documents, which were directly connected with the charges but the same were not made available. In the inquiry report dated 25.10.2000, a finding was recorded that the charge against the applicant was not proved. However, the Disciplinary authority issued a disagreement note which was also enclosed to the inquiry officer's report. The applicant's detailed representation dated 14.2.2001 was not taken into consideration by the disciplinary authority, who, by an order dated 20.4.2001, imposed on him a penalty of reduction to three lower stages in the scale of pay for a period of three years with the further direction that he will not earn increment during the period of such reduction and on the expiry of the period, the reduction will have the effect of postponing the future increments of his pay which was upheld by the appellate order dated 5.2.2002. Hence, this OA.

4. The grounds raised in this OA are that (a) the impugned charge-sheet was vague and uncertain, (b) no misconduct has been brought against the applicant, (c) the specific prayer made by the applicant for supplying him the relevant documents which, were necessary for preparing his defence, were not supplied, an action frowned upon in a number of decisions of the Hon'ble Supreme Court starting from that of Kashinath Dixit

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Versus Union of India, AIR 1986 (2) SC 186, (d) the report of the preliminary inquiry, including the statements of the witnesses were not available to the applicant, (e) there was no basis for the disciplinary authority to record a disagreement note concluding that the charge on the applicant was not proved, (f) a new charge has been added by the disciplinary authority in his disagreement note while the disciplinary authority agreed with the findings of the inquiry officer that the charges were not proved in respect of two persons but in respect of three others in the same proceedings, he had disagreed, (g) the issuance of the disagreement note was only a formality; and (h) the applicant was seriously injured when the incident under inquiry took place, etc. According to him, therefore, the proceedings initiated by the Department and there are certain penalty and its approval of the appellate authority were improper and illegal.

5. In the reply filed on behalf of the respondents, it is pointed out that in the departmental proceedings, the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt (Union of India Vs. Sardar Bahadur, 1972 Vol.2 SCR 225. Further, as pointed out in B.C. Chaturvedi Vs. Union of India, 1995 Vol.6 SCC 749, the Tribunal shall not interfere if the punishment has been imposed after holding the proper inquiry and judicial review was restricted to the manner in which the power was exercised. According to the respondents, as the applicant had acted in irresponsible manner, proceedings

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have been initiated against him and after their proper completion, punishment has been imposed and as the proceedings have correctly been gone through, the applicant cannot have any grievance. He had been given full opportunities to explain his case and the evidence on which the charge-sheet had been issued was also made available to him. All documents, except the police report and preliminary inquiry report, had been made available for the perusal of the applicant. The preliminary inquiry report which was processed in the confidential file was not made available, in terms of the instructions in Vigilance Manual. While it is true that inquiry officer had held that the charge was not proved, the disciplinary authority found that the same was not so and had proceeded further after recording a note of disagreement which was made available to the applicant for making his representation. It is only after the representation against the inquiry report/disagreement note was examined. The punishment order was passed and the same cannot be called for question. The applicant, who was Incharge of care home for the juveniles was negligent in performing his duties, which had led to the escape of a number of juvenile delinquents and, therefore, the proceedings initiated against him and the punishment imposed, which are impugned here, had been taken. There was no ground for the Tribunal to interfere in this matter.

6. During the oral submissions, Shri Yogesh Sharma and Shri Vijay Pandita reiterated the grounds raised by them earlier. Shri Yog[Besh Sharma, in addition, pointed

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out that OA-1805/2001 filed by Shri Jitender Kumar, who was concerned in the joint inquiry as the applicant in this case, had been disposed of by this very Bench of the Tribunal on the ground that specifically called for documents have not been made available. He also relied on the decision of the Tribunal in Vijay Pal vs. Union of India & Others (OA-2092/99) decided on 10.4.2001. On the other hand, Shri Vijay Pandita points out that they have acted correctly and there was no need at all for any interference for the Tribunal and pointed out that OA-789/2002 filed by Shri Shankar Vinod, who was also involved in the same proceedings had been dismissed on 5.11.2002, the circumstances being the same. There was no reason for the Tribunal to take a different view in the instant case, according to Shri Vijay Pandita. Shri Yogesh Sharma, however, pointed out that the pleas raised in the case of Shankar Vinod (supra) relied upon by the respondents did not include the points regarding the non-supply of the documents and, therefore, the same had not been dealt with in the said case. Decision of the Tribunal in Shankar Vinod's case (supra) was clearly distinguishable, according to Shri Yogesh Sharma.

7. We have carefully considered the matter. The facts are not disputed. On 26.11.1995, a riotous situation arose in the Observation Home for Boys at Khyber Pass leading to the escape of as many as 72 inmates, following which the inquiry was conducted and proceedings were initiated against five persons, including the applicant. The inquiry report showed that the charges against the accused officers were not proved

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but the disciplinary authority disagreed from the inquiry officer and issued notice to three of the charged officers, including the applicant. After the receipt of the representations, the impugned penalty has been imposed. Of the three persons, who have been so penalized, Jitender Kumar, who filed OA-1805/2001 was successful before this Tribunal on 25.10.2002, while Shankar Vinod, the second person, who filed OA-789/2002, found that his OA was dismissed on 5.11.2002. Respondents seek to rely upon the decision of Shankar Vinod's case (supra).

8. It is on record that the applicant in this case as well as in the case of Jitender Kumar (supra) had raised the plea that they had sought for the supply of the preliminary inquiry report and other basic documents on the strength of which the charge-sheet had been issued. It was also indicated by both these applicants that the same were not supplied. The preliminary inquiry report and the statements recorded during the preliminary inquiry which had led to the issue of the charge-sheet, admittedly, had not been made available to the applicant. Therefore, the applicant had been denied the chance for effective representations, a situation which had been frowned upon by the Hon'ble Supreme Court in a number of decisions starting from that of Kashinath Dixit's case (supra). The facts brought out in the OA make it clear that the relevant documents had been held back by the respondents indicating that they were part of confidential report, thereby effectively negating the rights of the individual to explain his case and defend

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the position. That being the case, the instant applicant's pleas are in fact the same as those raised in Jitender Kumar's case (supra) which had been decided by this very Bench in his favour. We tried hard, but in vain, to find any reference about this particular aspect in OA-789/2002 filed by Shankar Vinod, which has been dealt with by Court No.1. There the discussion primary turns around the disagreement note and its validity and does not at all relate to the aspect of non-supply of the basic documents which had been prayed for by the applicant, but had been denied to him. That being the case, the decision of Court No.1 in Shankar Vinod's case (supra), in spite of his being related to the same inquiry, can be clearly distinguished. It is not a case wherein we are deferring from the findings and conclusions of Court No.1, but it is a case where on materials brought on record, the findings are being distinguished. The arguments raised on behalf of the respondents by Shri Vijay Pandita that the preliminary inquiry report and the statements are dealt with in a confidential file and, therefore, has been correctly held back, cannot be supported. There is no sanction for the respondents' action to hold back the material facts when the entire charge-sheet is based on the same. It would, therefore, appear that the respondents had pre-judged the issue and to facilitate the same had held back the documents. The same cannot be endorsed. It would also mean that the respondents had denied the applicant the right to have the examination of the basic documents relied upon while issuing the charge-sheet examined for coming up with proper defence. The proceedings, therefore, have got vitiated and the respondents cannot,

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in any way, derive any assistance from the decision of the Hon'ble Tribunal in Shankar Vinod's case (supra).

The respondents have also not been able to answer ground

(g) that the disciplinary authority had incorporated a new charge "it was rather his view on the misconduct of the applicant with regard to the main charge which the inquiry officer failed to discuss in his report". Thus the order is vitiated on both the counts.

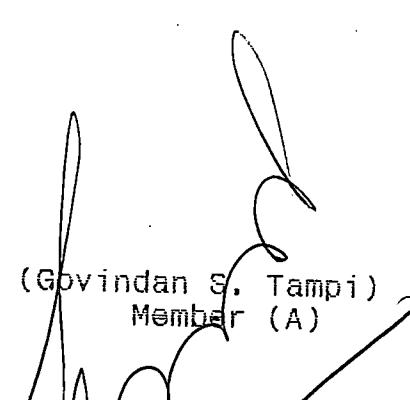
9. In this view of the matter, the OA succeeds in principle and accordingly disposed of. The impugned order of 20.4.2000 is quashed and set aside. The case is remanded back to the disciplinary authority with a direction to conduct the inquiry after making available to the applicant the relied upon documents, the supply of which had been sought by him, but had been unjustifiably denied. The reference made in the disciplinary authority's disagreement note which amounts to incorporating a new charge should also go out of reckoning. The respondents shall complete the proceedings within a period of three months from the date of receipt of a copy of this order.

No costs.


(Shanker Raju)

Member (J)

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(Govindan S. Tampi)

Member (A)