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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1547/2002

New Delhi this the 5th day of September, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.NAIK MEMBER (A)

Shri Vijay Bahadur Mathur
A/78, Major Bhola Ram Enclave
Pochanpur, Palam
New Delhi-110 049. ..... Applicant

(Shri J.B.Buther, Advocate)

-versus-

Union of India through
The Chairman Management Committee
Army Headquarters Canteen
QMG Branch, Additional Directorate (A.B.O.L.)
Sena Bhawan, Rajaji Marg
New Delhi-110 011. ... Respondents

(By Mrs. Prasanti Prasad, Advocate)

O R D E R

Justice V.S.Aggarwal:

The Army Act had been enacted in the year 1950. Non-government servants of private undertakings are not subjected to the provisions of the Army Act. In 1952, the Rules were framed in this regard.

2. Applicant (Vijay Bahadur Mathur) had been appointed to the post of Sales Attendant/Security Man in the canteen. By virtue of the impugned order, he had been dismissed from service. He seeks reinstatement with full backwages.

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3. The application has been contested. It has been pleaded that the applicant is habitual offender and he is found guilty of misconduct on three occasions. Firstly for prolonged absence from duty. Secondly for assault and affray and thirdly for displaying on 28.7.1995, a poster containing false, malicious and baseless allegations against Major General C.Nandwani, the then Chairman Management Committee Army Headquarters Canteen and M/s. Luthra and Luthra, Chartered Accountants. The issue relating to the charges and suspension has already been decided by this Tribunal in OA No.63/1996 on 7.1.1996.

4. The respondents further plead that the Army Headquarters Canteen is a unit run canteen of the Army Headquarters. It functioned as a liquor and grocery shop for the welfare of the serving and retired military personnel. The Quarter Master General (QMG) is the ex-officio Chairman of its governing body. It appoints the Managing Committee of the canteen from one of the Directorates comprising Chairman of the rank of Major General/Brigadier, Deputy Chairman of the rank of Brigadier/Colonel and the Secretary of the rank of Lieutenant Colonel/Major or equivalent. All these officers function as ex-officio in discharge of their duties. It is not disputed that the applicant is an employee of the unit run canteen.

When the new Management Committee headed by Major General C.Nandwani took over the management with effect from 30.6.1995, an open and large meeting of the canteen employees was held. He asked for suggestions for improvement of the canteen and exhorted the employees to be punctual in attendance etc. Certain measures were adopted to streamline and rationalise the functioning of the canteen. The canteen accounts were audited by M/s. Luthra and Luthra, Chartered Accountants. The applicant was the general secretary of the Army Headquarters Canteen Association. He made baseless allegations against Major General C.Nandwani. Considering the gravity of allegations and to make correct assessment, a one man inquiry headed by Major General S.C.Bahl was held. He called the witnesses and perused the relevant record. The applicant had issued a false poster and even incited the employees for mass self-immolation. It is being pleaded further that on basis of the enquiry report since a prima facie case of grave misconduct was found, the charge-sheet dated 26.10.1995 was served on the applicant. On 26.12.1995, a court of enquiry/domestic enquiry headed by Major General M.M.Batra was ordered. In fact, it was a domestic enquiry. It was called a court of inquiry since every inquiry is understood and called a court of inquiry in common parlance in Army. It was ordered under paragraph 164 of the Standing Orders of Army

Headquarters Canteen and not under the Army Act Rules or Regulations. It was not a court martial. The notices were issued to the applicant but he had refused to accept the same. He did not cooperate with the inquiry proceedings. The domestic enquiry was completed on 19.9.1996 and earlier to that the application filed by the applicant in this Tribunal was dismissed. It was thereafter that the report of the domestic enquiry was received and the impugned order was passed.

5. Before proceeding further, we deem it necessary to mention that the charges conveyed to the applicant as is apparent from the convening order were:-

"Charges:-

a) That he displayed a poster on 28.7.95, ostensibly on behalf of Canteen Employees Association which was in fact composed by him without consultation with other office bearers of the Association nor any approval was taken from the General Body of the Canteen Employees Association wherein he made baseless, malicious and motivated allegations in that:-

(i) the allegations made in the poster about renovation work of the Canteen and excessive money spent thereon are not borne out from the facts and the said allegation is baseless, malicious and motivated with a view of pressurise the management;

(ii) the allegation about commission having been taken for procurement of new computer/is not borne out from the facts and said allegation is baseless, malicious and motivated with a view to pressurise the management;

(iii) the insinuations against the Chartered Accountants against his findings and the fees were not made for bonafide reasons and the same are baseless, malicious and motivated with a view to pressurise the management;

(iv) the allegation of usurpation of the funds in the name of soldier widows is not borne out from the facts and the said allegation is baseless, malicious and motivated with a view to pressurise the management;

(v) the allegation of due process not having been followed in appointment of Manager is not borne out from the facts and the said allegation is baseless, malicious and motivated with a view to pressurise the management;

(vi) the allegation of threat to the jobs of civilian employees is not borne out from the facts and the said allegation is baseless, malicious and motivated with a view to pressurise the management;

(b) That he displayed a poster on 28.7.95, ostensibly on behalf of Canteen Employees Association which was in fact composed by him without consultation with other office bearers of the Association nor any approval was from the General Body of the Canteen Employees Association where in he made baseless, malicious, slanderous and scandalous allegations against Superior officers in that:

(i) the allegations of playing with self-respect of lady employees are baseless, malicious, slanderous and scandalous allegations against superior officers;

(ii) the allegations of corruption against Chairman and other members of the management committee, AHQ Canteen are baseless, malicious, slanderous and scandalous allegations against superior officers;

(c) That he committed forgery, in that he produced a register before the Court of Inquiry being conducted by Maj.Gen.S.C.Bahl purporting to be a register for recording the minutes of General Body Meetings of the Canteen Employees Association wherein he forged Minutes of a meeting alleged to have

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been held on 5.7.95 whereas no such minutes were recorded in the meeting, if any, held on that date.

(d) That he instigated the employees of the Canteen for mass self-immolation which is an act prejudicial to good order and discipline and is also opposed to public policy.

(e) That he attempted to pressurise/instigate other employees to subserve his malafide objectives."

After the inquiry had been held, the following charges only were held to have been proved:-

(a) For displaying a poster on 28 Ju 95 in the Canteen premises threatening mass self immolation by the canteen employees on 7 Aug 95, without consultation of any other office bearer of member of the Army HQ CSD Canteen Employees Association.

(b) For composing the contents of the poster by Mr.V.B.Mathur himself of his own accord, containing allegations against the management, which have been found to be false and baseless, with a view to malign the management and the thwart their well meaning attempts to streamline the functioning of the canteen.

(c) For instigating employees of the canteen for mass self immolation by holding an illegal meeting within a week of the display of poster in the canteen premises.

(d) For attempting to instigate other employees of the association by using extra constitutional authority as the General Secretary of the Army HQ Canteen Employees Association to subserve his malafide objectives."

It is in pursuance thereto that the order dismissing the applicant from service had been

passed.

6. The controversy pertaining to the status of the employees serving in the unit run canteen of the Army, Navy and Armed Forces had been the subject matter of dispute for some time. However, the Supreme Court in the case of **Union of India and Others** v. **M.Aslam and Others**, 2001 SCC (L&S) 302 held that the status of the employees serving in the unit run canteens must be held to be that of Government employees and consequently, the Central Administrative Tribunal will have jurisdiction to entertain the applications of such employees. It was further held that it would not by itself entitle them to get all the service benefits which are available to the regular Government servants or even their counterparts serving in the canteens. It would necessarily depend upon the nature of duty discharged by them as well as on the rules and regulations and administrative instructions issued by the employer. The Supreme Court went on to further hold that the service conditions of such employees will not be governed by the Fundamental Rules. It would be open to the employer to frame separate conditions of service of the employees or to adopt the Fundamental Rules. With this controversy having been set at rest, we can easily delve into other merits of the contentions raised

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at the Bar.

7. The learned counsel for the applicant had highlighted the fact that before the inquiry, no notice had been served upon the applicant and, therefore, the claim of the applicant has been prejudiced. This plea has been raised without prejudice to the claim of the applicant about the jurisdiction of the inquiry officer to hold the inquiry or court of inquiry.

8. Our attention was drawn to the fact that firstly notice was issued to the applicant on 28.2.1996. The said notice was received back undelivered on 15.3.1996 with the remarks that despite repeated visits, the addressee was not available. The subsequent notice dated 7.3.1996 was received back with the remarks that the applicant had refused to accept the same. The same refusal is on the two subsequent notices. The reports are dated 23.3.1996 and 4.4.1996.

9. The position in law is well-settled that the correctly addressed letters would be delivered to the addressee. Section 114 of the Indian Evidence Act read with Section 27 of the General Clauses Act permits the authorities to draw such a presumption. There is no extraordinary happening in the facts of the case to prompt us to conclude that ordinary course of events would not happen in

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the present case. Therefore, we have not least hesitation in concluding that the correctly addressed letters were tendered to the applicant and he refused to accept the same. When a person refuses to receive a correctly addressed letter, he is presumed to know the contents of the same. We hold that the applicant cannot raise this plea that he was not served with the notice.

10. Same conclusion can be arrived at from the fact that the applicant had challenged the charge-sheet and for a direction for appointment of ad hoc disciplinary authority by a Presidential order. Original Application No.63/1996 had been preferred. The said application was dismissed on 31.7.1996 by this Tribunal holding the same to be without merit. The domestic enquiry had been completed on 19.9.1996. These facts clearly show that the applicant was aware that the charge-sheet is there against him.

11. The applicant even had filed a petition for quashing of the convening order in the Delhi High Court. All these facts lead us to presume that this contention that has been pressed at the Bar is totally devoid of any merit and that applicant was aware of the charges framed and pendency of the proceedings.

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12. Yet another argument which was raised at the Bar was that the report of the inquiry officer had not been given and the applicant had asked for it. This fact was controverted by the respondents' learned counsel who has drawn our attention to the fact that along with the letter, the said report had been accompanied. Perusal of the record clearly shows that it had been so sent and we find no reason to accept the applicant's contention taking totality of the facts and circumstances.

13. It is only a ploy adopted to rake up the technical aspect which on its facts must fail.

14. The main argument advanced in this regard was that it was a court of enquiry that had been directed. The provisions of the Army Act and the Rules did not apply to the applicant and, therefore, the entire proceedings must be held to be vitiated. In support of his argument, the learned counsel relied upon a decision of the Apex Court in the case of **R.Viswan and Others** v. **Union of India and Others**, Supreme Court Service Rulings Vol.13 page 451. Before the Supreme Court, the proceedings were drawn under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It was observed that the former are disciplinary proceedings in character while the later are penal in nature. There is no dispute

with this proposition, but the material question for consideration is as to if the applicant can take advantage of the said plea in the facts of the case or not.

15. On 26.12.1995, the convening order had been issued stating that the court of inquiry composing of certain officers had to assemble at the date and time fixed by the Presiding Officer to investigate into the charges which we have already reproduced above. The learned counsel relied upon Rule 37 of the Army Rules and Rule 177 (v) of the Court of Inquiry framed under the Army Act in support of his abovesaid plea. On the contrary, the respondents' plea was that in fact, it was a domestic inquiry. It is in common parlance known as court of inquiry under the Army Act and the Rules, but instead it was a regular inquiry conducted in accordance with the settled principles of law.

16. In the case of **Managing Director, ECIL, Hyderabad and Others** v. **B.Karunakar and Others**, (1993) 4 SCC 727, one of the questions for consideration was as to when the principles of natural justice in strict sense are not followed and what would be the effect thereto. This had arisen keeping in view the theory of reasonable opportunity. The Supreme Court framed certain

questions. This question was answered stating that if prejudice is not caused and the report has not been supplied, it would not vitiate the inquiry. The Supreme Court held:-

> "The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

A few years later, in the case of **State Bank of Patiala and Others** v. **S.K.Sharma**, (1996) 3 SCC 364, the same question had come up for consideration pertaining to certain deviations and violation of the procedure. The principles of natural justice on which the applicant's learned counsel relied upon were again the subject matter of controversy. The Supreme Court held that there is no strait-jacket formula pertaining to the principles of natural justice. It held:-

"28. The decisions cited above make one

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thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russel v. Duke of Norfolk (1949) 1 All ER 109: 65 TLR 225 way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v.Chief Election Commissioner, (1978) 2 SCR 272). The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K.Roy v. Union of India, (1982) 1 SCC 271 and Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664."

Thereupon the Supreme Court explained that the principles of natural justice are synonymous to providing a fair hearing. It was observed:-

"29. The matter can be looked at from the angle of justice or of natural justice also. The object of the principles of natural justice- which are now understood as synonymous with the obligation to provide a fair hearing- is to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing. The said objective can be tested with reference to sub-clause (iii) concerned here."

The Supreme Court had delved further into the question of violating the procedural provisions and concluded that the same are generally meant for affording a reasonable and adequate opportunity to the delinquent officer and on the question of prejudice, it concluded:-

"In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally

speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or other passed. Except cases falling under - "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz,, whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that the has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgement, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle."

17. We have extensively quoted from the judgements in the cases of S.K.Sharma and B.Karunakar (supra) that had been rendered by the Supreme Court earlier for the purpose of the present application. Suffice to say that cases where no opportunity or no hearing or no notice had

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been issued are on different premise. If opportunity has been given to a particular person and procedure as such is being followed, the question of prejudice would loom large which would go with the facts and circumstances of each case. If there are only mandatory provisions, they have to be followed, but if procedural aspect is there and it is directory in nature, then in the absence of any prejudice, the plea as is being floated could not succeed.

18. What is the position herein? The label given to the inquiry is not material. Even if it is described as a court of inquiry, but in fact the procedure adopted is of a regular inquiry and if reasonable opportunity is given to the delinquent, he cannot complain of prejudice.

19. In the present case as already pointed above, the applicant was served with the charge-sheet. The Inquiry Committee was constituted. The evidence was recorded. If the applicant did not take part then, it is not a case of denial of fair opportunity. It would be a case where opportunity is not availed of. Mere description of the same as court of inquiry will not take away the stint of regular inquiry from it. In this connection, we refer to paragraphs 164 and

165 of the Standing Orders of Army Headquarters which read:

> "Investigation
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> 164. In the cases where it is intended to dismiss a person, proper inquiry should be held before a decision is taken for dismissal. In the case of other punishments except censure, investigation should be held by a person detailed for the purpose.
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> Suspension
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> 165. The Manager has the powers to suspend any person at any time if he suspects that a person is likely to interfere with the evidence. During the period of suspension, the person will be paid 50% of the emoluments. However, as far as possible the case must be decided within six months of the suspension. If the person is not found guilty, the period of his absence from duty due to suspension will be regularised as on duty and he will be paid the balance of his dues under orders of the appointing authority. If the person is found guilty, the period of absence will be regularised as considered fit by the Appointing Authority."

The procedure as such as already referred to above was fair and, therefore, the question of prejudice does not arise. As a necessary corollary, the question of allowing the application on this very ground cannot arise.

20. Another limb of the same argument was that there should be one inquiry officer, but herein there is more than one inquiry officer. We have no hesitation in rejecting the same. In law, singular will include plural. There is no bar if more than one inquiry officers sit together.

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21. In fact, it cannot be termed that the inquiry as such requires to be quashed and as a consequence thereto, the order of dismissal should fail. We have already referred to above that on earlier occasion, the applicant had preferred OA No. 63 of 1996 with this Tribunal. He wanted the charge-sheet to be quashed. This Tribunal had dismissed the application. One of the pleas raised was that the person holding the inquiry was not of higher rank than the material witnesses. The contention had been rejected because the application was dismissed. Now to state that in fact it was not an inquiry would be incorrect.

22. No other argument was advanced.

23. Resultantly, the present application being without merit must fail and is dismissed.

(S.K. Naik)
Member (A)

(V.S. Aggarwal)
Chairman

/sns/