

(2) (6)
Central Administrative Tribunal
Principal Bench

O.A. No. 2988 of 2002

New Delhi, this the 12th March, 2003

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. A.P. NAGRATH, MEMBER (A)

Arvind Jindal,
S/o Shri O.P. Gupta,
CM-I, CQA (ICV),
Yeddu-mailaram 502 205,
Medak District,
Andhra Pradesh State.

R/O 76, Ashoka Park (Main),
Rohtak Road,
(By Advocate: Shri Anees Ahmed)

...Applicants.

Versus

1. Union of India through
its Secretary,
Ministry of Defence,
South Block,
New Delhi-11
2. Director General Quality Assurance,
Department of Defence Production,
Ministry of Defence,
Government of India,
DHQ Post Office,
New Delhi-11

...Respondents.

(By Advocate: Shri Rajeev Bansal, proxy counsel for Shri
B.K. Aggarwal)

ORDER (Oral)

Justice V.S. Aggarwal

The applicant in December, 1999 was posted as Chargeman-I SQAE (V), Delhi. He was served with a memorandum by the Director Grade-I, Quality Assurance (Vehicles), Ministry of Defence along with the Articles of charges framed against him. It was alleged that the applicant drew selective samples of Foot Pumps and accepted the sub-standard bulk and in this process he failed to maintain absolute integrity and contravened Rule 3(1)(I) of the CCS(Conduct) Rules.

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2. The disciplinary proceeding had been initiated. The Inquiry Officer had submitted the report exonerating the applicant. The Addl. Director General, Quality Assurance, who admittedly is an authority higher in status than the disciplinary authority, disagreed with the report of the Inquiry Officer and recorded a note of disagreement which was conveyed to the applicant. Thereupon the disciplinary authority, on consideration of the same, had passed the order imposing the penalty of compulsory retirement. The applicant preferred an appeal and therein the appellate authority i.e. Director General Quality Assurance set aside that order and reduced the penalty of compulsory retirement to the penalty of reduction in pay by two stages in the time scale of pay for two years and it was directed that the applicant would not earn increments during this period and this period of reduction would have the effect of postponing his future increments of pay. The applicant was directed to be reinstated in service and the period of absence from duty that is from the date of compulsory retirement to the date of reinstatement was to be regulated as per FR 54.

3. The applicant assailed the orders of the disciplinary authority as well as the appellate authority. The application has been contested.

4. It was unnecessary to dwell into the other contentions because during the course of the submissions it was pointed that a note of disagreement was recorded

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by an authority higher in rank than the disciplinary authority and, therefore, the disciplinary authority had not applied his mind to the same. Resultantly the order passed by the appellate authority is to be quashed.

5. We have considered the matter. In the Service Jurisprudence, the Disciplinary Authority has a right to disagree with the report of the Inquiry Officer. The reason is that it was the disciplinary authority who has to apply his mind and the ultimate decision rests with him.

6. In the present O.A., the application of mind has flown from there when the authority higher in rank than the disciplinary authority recorded the note of disagreement with the Inquiry Officer's report. Once it is so, the application of mind appears to be an exercise in futility. He has a little role to play there on.

7. Learned counsel for the respondents contended that in the present case the powers had been delegated to Addl. Director General Quality Assurance and therefore, he was competent to act as the disciplinary authority. Our attention has been drawn towards the delegation of powers to disciplinary authority (Annexure-R1) dated 20.1.1981 which reads as under -

"Under the proviso to sub-rule (1) of Rule 9 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, I hereby delegate the powers of the Appointing authority vested to me in respect of Class III

and Class IV posts under the Directorate General of Inspection, vide Schedule to SRO 3521 dated 25 Sep 71, to the authorities specified below, with effect from 25 Sep 71 in respect of the posts indicated against each Authority:

- a) Directors concerned at DGI HQ Class III selection posts
- b) Heads of Estts. Class III Non-selection posts and Class IV posts."

8. On 23.3.1981 the said order was modified and following paragraph had been added-

"(b) Add the following as para 2:-

"In the event of the regular incumbent being unable to discharge his functions due to his temporary absence for a period of 21 days or more on account of any reason other than that of Casual Leave, the officiating incumbent is also hereby empowered to act as an appointing authority in respect of Class III and Class IV Civilians under the cases the officiating incumbent shall have the powers of the appointing authority only for the institution/initiation of disciplinary proceedings for the imposition of any of the major penalties specified in Clauses (v) to (ix) of Rule 11. He will, however, be competent to complete the proceedings and for imposition of minor penalties, if the circumstances of the case so warrant, in such cases which cannot await the return of the regular incumbent."

9. Finally, on 8.6.2001 the powers of Director were also given to Addl. Director General Quality Assurance and the said order reads as under -

"Under the proviso to sub rule (1) of rule 9 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, I hereby delegate the powers of the Appointing Authority vested in me in respect of Group "C" and "D" posts (earlier Class III and

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Class IV posts) under the Directorate General of Inspection (Now Director General of Quality Assurance), vide Part V of the Schedule to CCS (CC &A) Rules, 1965 to the authorities specified below in respect of the posts indicated against each:

(a) Director Concerned /Addl. DGQA at DGQA Hqrs. Gp. "C" Selection posts

(b) Head of Establishments Gp. "C" non-selection posts and Gp. "D" posts.

Note:

1. In the absence of any regular incumbent or when the regular incumbent cannot function as Disciplinary Authority on technical grounds, the next higher authority i.e. Director concerned/ADGQA/DGQA will exercise the powers of Appointing/Disciplinary Authority.
2. The Appellate Authority in respect of posts (a) and (b) above will be DGQA.
3. This supersedes letter No.24080/DGI (Vig.Cell) dt. 20 Jan.81 as amended from time to time."

10. From the above, it is obvious that the delegation of powers to the Addl. Director General Quality Assurance has been done on 8.6.2001 that is after the note of disagreement had been issued i.e. on 15.2.2001. Therefore, in so far as the aforesaid delegation of powers is concerned, no order has been shown to us that the Addl. Director General Quality Assurance was looking after the working of the disciplinary Authority who, admittedly as referred to above is subordinate to the Addl. Director General Quality Assurance. This argument must, therefore, fail.

11. Resultantly we are not dwelling into the other controversies in the present O.A.

Agree

12. For this reason, we allow the OA and quash the impugned orders. The matter is remitted back to the disciplinary authority who may, as it may deem fit, pass a fresh order from the stage the report of the Inquiry Officer has been received by the disciplinary authority. Nothing said herein is an expression as to what action they intend to take.

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(A.P.Nagrath)
Member(A)

VS Agarwal

(V.S.Agarwal)
Chairman

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