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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2545 of 2002

New Delhi, this the 9th day of April, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL.)

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

Mr. R.N. Goel
S/o Shri Chander Bhan
R/o H-19/56, Sector-7,
Rohini,
Delhi-110 085.

Applicant

By Advocate: Dr. M.P. Raju.

Versus

1. Union of India
through the Foreign Secretary,
Ministry of External Affairs,
Government of India,
South Block,
New Delhi.

2. Shri R.S. Jassal
Joint Secretary (XP) & Enquiry Officer,
External Publicity Division,
Ministry of External Affairs,
Shastri Bhawan,
New Delhi.

Respondents

By Advocate: Shri N.S. Mehta.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl.)

The applicant impugns order dated 16.7.2002 (Annexure A-1) vide which a penalty of reduction by three stages in the pay scale of pay till the date of retirement or superannuation of Charged Official with further stipulation that during the currency of the period of penalty the Charged Official will not earn any increment of pay and that the penalty would have the effect of postponing of future increments of pay was passed upon the applicant.

2. The applicant was proceeded departmentally on the

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following charges:-

Article-I

Shri R.N. Goel, while functioning as Attaché (PS) in the High Commission of India, Malta, obtained a refund of school fee of an amount of equivalent to Rs.61,068.70p (sixty one thousand sixty eight rupees and paisa seventy only) from the school, which was paid to the school by the Mission, and managed to deposit the refund cheque, made in the name of the High Commission, in his personal account.

By the above act Shri Goel had exhibited lack of integrity and conduct unbecoming of a Government servant thereby contravened Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

Shri R.N. Goel, while functioning as Attaché (PS) in HCI, Malta purchased a car after informing the Ministry that it would be paid for through hire-purchase agreement. However, the total cost of the car equivalent to Rs.1,60,000 (One lakh sixty thousand rupees only) was paid by Shri Goel as cash.

By his above act Shri Goel had exhibited lack of integrity and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964".

3. When the enquiry report was submitted the Inquiry Officer exonerated the applicant from both the charges. However, the disciplinary authority disagreed with the findings recorded by the Inquiry Officer and the disciplinary authority was of the view that the charge No.1 stands proved from the record so the disagreement note with the findings of the Inquiry Officer was conveyed to the applicant vide memo dated 22.11.2001 and after providing him an opportunity to make representation against the disagreement note, the disciplinary authority passed the impugned order imposing penalty aforesaid on the applicant.



4. The applicant while impugning the same has taken various grounds, but during the arguments the counsel for the applicant confined his arguments only on the following ground:-

That the disagreement note as recorded by the disciplinary authority is not a proper one and in order to support his contention the learned counsel for the applicant submitted that Rule 15 of the CCS (CCA) Rules provide about what action is to be taken on enquiry report. The counsel for the applicant submitted that the disagreement note recorded by the disciplinary authority is not supported by any document and the disciplinary authority, if not satisfied with the findings recorded by the Inquiry Officer, should have remitted the case back to the Inquiry Officer for holding further enquiry and could not have recorded dissent note. In order to supplement this ground the learned counsel for the applicant referred to the enquiry report recorded by the Inquiry Officer where the Inquiry Officer on Article I has recorded 'no evidence was brought on record and no witness was introduced by the Presenting Officer nor the authenticity of the documents mention that the charge has been so established'. Thus in a way it is a case of 'No evidence' so the counsel for the applicant submitted that there was no evidence available on record on the basis of which the disciplinary authority could have disagreed and if the disciplinary authority was not satisfied then the disciplinary authority should have exercised powers under Rule 15 (1) and should not have exercised power under Rule 15(2) of CCS (CCA) Rules.



5. In our view the contentions, as raised by the learned counsel for the applicant in this regard have no merits because Rule 15(1) postulates for holding of further enquiry whereas Rule 15(2) empowers the disciplinary authority to disagree with the findings recorded by the Inquiry Officer on the articles of charge. Now the question arises whether there was any evidence available on the basis of which the disciplinary authority could disagree or it is a case of no evidence and if the disciplinary authority was not to accept the report then it should have invoked powers under Rule 15(1) to remit the case for holding further enquiry.

6. The learned counsel appearing for the respondents has invited our attention to document Exhibit R-VI which is a letter written by the Mid-Med Bank Ltd. to the High Commission of India which clearly shows that someone from the High Commission had deposited the cheque in question into account No. 025037510 and the account was being held in favour of Shri R.N. Goel (the applicant). Thus the counsel for the respondents submitted that this letter makes it clear that the amount in question has been deposited in the bank account of the applicant itself.

7. The counsel for the respondents then referred to Annexure R-2, i.e. the advice of the UPSC and submitted that the advice of the UPSC does disclose that UPSC has gone through a letter Exhibit S-7 (which has come on the file of the enquiry) which is an original letter from the Bank and is crucial to the case and from this letter it is clearly evident that the cheque No.001689 dated 4.2.92

drawn by the International School in favour of the Indian High Commission was deposited into personal account No.025037510 of Mr. R.N. Goel, the Charged Official. Thus this report does suggest that the documentary evidence in the shape of S-7 was there on record on the basis of which disciplinary authority had disagreed and the advice of the UPSC was also sought which also concurred for holding that the charge as covered under Article-I stood proved so it not a case that there was no evidence at all inculpating the Charged Official.

8. We may also mention that it is the cardinal principle that during the domestic enquiries the technical rules of evidence are not to be applied and preponderance of probabilities are to be seen and the case is not to be proved beyond reasonable doubt as done in the criminal trials.

9. In this case the advice of UPSC which is based on the domestic enquiry shows that there was some evidence available on the record which pointed out accusing finger towards the Charged Official and this court is not required to reappreciate the evidence and to arrive at a different conclusion on the basis of the evidence since the scope of judicial review is very limited.

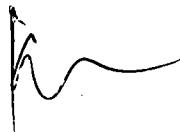
10. Another plea taken by the applicant is that he had not been supplied with the copies of the documents such as transfer certificate for Shri Kamal Goel from the Verdala International School, full details of A/c No.025037510, name, address, account statement, deposit slip etc. The counsel for the applicant then referred to

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Annexure VI (page 129 of the paper book) and submitted that even the Inquiry Officer had requested the Presenting Officer to arrange the additional documents from HCI Malta and those additional documents were transfer certificates of Shri Kamal Goel from the Verdala International School, full details of the account in question and submitted that despite this, these documents were not produced.

11. As against this the learned counsel for the respondents submitted that as far the transfer certificate of his son from one school to another school is concerned that is irrelevant and that has nothing to do with the charge as framed against the applicant and similarly the details of the account in question are also not to be furnished by the department. Rather as per the letter of the Bank, i.e., Annexure R-6 the account in question was held by the Charged Official himself and he pretty well knew the entire details of the account and since this information was also available and moreover it was not relevant for the purpose of enquiry as the charge against the applicant was that he had deposited the cheque, for the refund of school fee of his son which was in favour of the High Commission, and the applicant got credited the said amount into his personal account, so there was no reason to give details of the account.

12. In our view also first of all these documents were not relevant because the transfer of the applicant's son Shri Kamal Goel from one school to another has nothing to do with the allegations as contained in the article of charge. Similarly as regards the detail of the account in question is concerned, the letter R-6



shows that the account was held by the Charged Official himself so he had full knowledge about the details of his account. Though these details were not quite relevant because the only question to be examined during the enquiry was as to how the proceeds of the cheque in question was deposited into the account of the applicant so the details sought for by the applicant first of all was within his knowledge and secondly the same were irrelevant to the query in question so this ground taken by the applicant to challenge the enquiry proceedings has no merits. Even otherwise it has not caused any prejudice to applicant since all the relevant details of account in question were known to him.

13. The next ground taken by the applicant is that the report submitted by the Inquiry Officer has not been written by himself. It is the Presenting Officer who submitted his report and the Inquiry Officer adopted the same and submitted to the disciplinary authority so on that ground the report of the Inquiry officer suffers from infirmities.

14. However, in our view this contention as raised by the applicant has no merits because whether the report is written by the Presenting Officer or by the Inquiry Officer the same was not accepted by the disciplinary authority and on the face of it the report seems to be written by the Inquiry Officer. The disciplinary authority on the basis of the record which was produced in the enquiry had arrived at a different conclusion and supplied copy thereof to the Charged Official and sought for representation, if any, to be made by the applicant and the disciplinary authority thereafter formed a different opinion. So the perusal of the report, as

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submitted by the Inquiry Officer, becomes invalid.

15. The learned counsel for the applicant then submitted that it is a case of no evidence as the Inquiry Officer submitted that no evidence was produced either oral or documentary evidence so it is a case of no evidence as per the report of the Inquiry Officer itself. As already held by us above, that it is a case of no evidence rather the documentary evidence in the shape of record annexed at exhibit S-7 shows that no doubt some evidence are inculpatory.

16. The next point raised by the applicant is that he has not been provided the defence assistance. The counsel for the applicant submitted that the applicant had asked* for the defence assistance of one Shri V.K. Sharma who was working as a Legal Assistant in the Commissioner of Industries, Government of NCT of Delhi and the respondents have refused to provide assistance of Shri Sharma as he is a legal expert and falls within the definition of Legal Practitioner and cannot be engaged by the applicant. The counsel for the applicant then submitted that this particular person was allowed by the Commissioner of Departmental Enquiry in the some other enquiry whereas the applicant has been denied the same so on this ground also the right of the applicant under Article 21 of the Constitution of India has been violated and the enquiry proceedings are liable to be quashed.

17. As against the above, Shri Mehta appearing for the respondents submitted that assistance of legal practitioner can be refused if a person working as a Legal Assistant is covered under the definition of Legal Practitioner. However, Shri Mehta was unable to explain as to why they have refused the legal assistance of Shri



Sharma and on that aspect respondents submitted that assuming for the same of arguments the department had refused legal assistance of Shri V.K. Sharma then the applicant should have given the name of some other person to be nominated as Defence Assistant and it has been so held in the book of CCS (CCA) Rules as follows:-

" It has been held by the Ministries of Law and Home Affairs that refusal by superior officer to grant permission to nominated Government servant on reasonable grounds would not amount to denying the right to representation under CCS (CCA) Rules, as it would be open to the delinquent official to nominate another Government servant.

{DGP&T letter No.6/4/66-Disc. dated the 6th August, 1966 and Letter No.10/1/68-Disc. dated the 23rd July, 1969}.

18. Since the applicant did not give the name of any other person so the department could not provide him legal assistance. Moreover in this particular case non-providing of legal assistance would not have caused any prejudice to the applicant because the entire case rested upon documentary evidence and the facts involved were also not complex. The only fact to be proved was whether a particular cheque in question which as issued in favour of Indian High Commission and the proceeds of the said cheque had been realised through the personal account of the applicant so the facts were not at all complicated and no prejudice was caused to the applicant at all. Thus we are of the view that this contention of the applicant also has no merits.

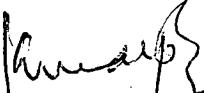
19. However, before parting with the judgment we may mention that the OA of the applicant is also not maintainable on the ground that the applicant has not exhausted all the remedies. The impugned order was passed on 16.7.2002 and the applicant without exhausting



the remedy of filing an appeal to the appellate authority had filed the OA on 19.9.2002 itself. Thus on this ground also the OA is not maintainable.

20. So from whatever angle the case may be examined, the same is not maintainable as the applicant has not exhausted the departmental remedies so the OA has to be dismissed. Accordingly, the OA is dismissed. No costs.

(GOVINDAN S. TAMPT)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL.)

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