

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2828 OF 2002



New Delhi, this the 23rd day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

J.K. Sharma,
Ex. Senior Auditor,
O/o Director of Accounts,
Cabinet Sectt.,
East Block-IX, Level-7,
R.K.Puram,
New Delhi-66

R/o:C-25A, Upper Ground Floor,
Panchsheel Vihar,
Malviya Nagar,
New Delhi-17

....Applicant

(By Advocate : Shri Abhay N. Das)

Versus

1. Union of India
through
Cabinet Secretary,
GOI,
New Delhi-1
2. Special Secretary (SR),
Cabinet Secretariat, GOI
Bikaner House Annexe,
Shahjahan Road,
New Delhi-11
3. Director of Accounts,
Cabinet Secretariat (i.e.DACS),
East Block-IX,
Level-7
R.K.Puram,
New Delhi-66

....Respondents

(By Advocate : Shri Madhav Panikar)

ORDER

Shri R.K.Upadhyaya, Administrative Member:-

This application under section 19 of the
Administrative Tribunals Act,1985 has been filed
claiming the following reliefs:-

"(i) quashing and set aside of the
enquiry proceedings with respect to the
applicant as being illegal, arbitrary and
void ab initio.

C. Bhattacharya

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(iii) Quashing and setting aside of the order No. Admn./VI/116/99-2000/953 issued by Director of Accounts Cabinet Secretariat (Annexure-A2).

(iii) Quashing and setting aside of the order bearing No.15/3/2001-DO.II-1360, dated 29.10.2001, issued by the Appellate Authority, Special Secretary-SR, Cabinet Sectt.(Annexure A-1).

(iv) Directing the respondents to reinstate the applicant.

(v) Directing the respondents to grant all consequential benefits including back wage, seniority, promotion, pay fixation etc.

(vi) Grant of orders granting any other relief which this Hon'ble Tribunal deems appropriate and necessary in the facts of the case; and

(vii) Grant of the costs of this application to the applicant."

2. It is stated that the applicant joined service under the respondents in March,1989 as an Auditor and was promoted to the post of Senior Auditor in January,1993. The applicant was placed under suspension by an order dated 8.11.96 pending initiation of the regular departmental proceedings against him. Subsequently, he was issued a charge-sheet under Rule 14 of the CCS(CCA) Rules on 28.11.96 by the then Disciplinary Authority Shri C.V.Avadhani, Director Accounts. As per this charge-sheet, the following charges were levelled against the applicant:-

"Article-I"

While functioning as Senior Auditor in the office of the Director of Account, Cabinet Secretariat, New Delhi during October,1996, the said Shri Jitendra Kumar Sharma was served a memorandum on 1.10.1996 through Shri Srichand, Peon. He received the same, read it and tore it into pieces. He also tore away the portion of the page of transit register where he had signed.

C. V. Avadhani

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On 28.10.96 another memorandum was delivered to him at 15.30 hours by Shri Srichand, Peon. Shri Jitendra Kumar Sharma, Senior Auditor did not sign in the transit register, took the envelope and tore it without opening it.

By his aforesaid acts of omission and commission, the said Shri Jitendra Kumar Sharma conducted himself in a manner unbecoming of a Government servant. He has thereby violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

Article-II

While functioning as Senior Auditor in the Office of the Director of Accounts, Cabinet Secretariat, New Delhi, during the month of October, 1996, the said Shri Jitendra Kumar Sharma, Senior Auditor gave a telephonic call to Smt. Sunita Bhardwaj, the then Senior Assistant Director of Accounts (Admn) at her residence at about 1830 hours on 24.10.1996. After she identified herself as Sunita Bhardwaj on the line, the said Shri Jitendra Kumar Sharma started talking to her in abusive language and also threatened her by using the following objectionable, insulting, uncalled for and intimidatory words:

"ULTA LATKA DUNGA TUJHE".

By his aforesaid acts of omission and commission, the said Shri Jitendra Kumar Sharma conducted himself in a manner unbecoming of a Government servant. He has thereby violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

Article-III

That on 28.10.96, the said Shri Jitendra Kumar Sharma, Senior Auditor, while on duty, entered the office room of Smt. Sunita Bhardwaj, Deputy Director of Accounts at about 1515 hours without permission, when Smt. Rashmi Jain, another Deputy Director of Accounts was also present there. Without any provocation whatsoever, the said Shri Jitendra Kumar Sharma started shouting out at her, in intemperate, insulting and intimidatory language.

By his aforesaid acts of omission and commission, the said Shri Jitendra Kumar Sharma, Senior Auditor conducted himself in a manner unbecoming of a Government servant. He has thereby violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

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3. The Disciplinary Authority appointed an Enquiry Officer to look into the charges against the applicant. In view of the representation from the applicant pointing out that Shri C.V.Avadhani had addressed a complaint to the local police against the applicant and was also listed as a witness in the proceedings before the Magistrate, the Competent Authority appointed another adhoc Disciplinary Authority viz. S.R.Mehra. The Enquiry Officer submitted his final report on 14.2.2001. In view of the fact that the earlier Director of Accounts Shri C.V.Avadhani was transferred on promotion to Chennai and the adhoc Disciplinary Authority (Shri S.R.Mehra) also demitted the office in December,2000, another order dated 29.1.2001 was issued by the competent authority restoring the powers of the Disciplinary Authority to the Director of Accounts. The new incumbent of post Shri B.S.Gill, the Disciplinary Authority forwarded a copy of the Enquiry Officer's report to the applicant on 27.2.2001 and after consideration of the representation of applicant dated 26.3.2001, the Disciplinary Authority passed the impugned order dated 30.4.2001 (Annexure-A2) by which the applicant was removed from service but his removal from service was not to be a disqualification for future employment. .

4. The applicant filed an appeal against the order of the Disciplinary Authority which has been decided by the appellate authority and Special Secretary (SR) by an order dated 29.10.2001 (Annexure-A1) whereby he reduced the penalty of "removal from service which shall not be a

A handwritten signature in black ink, appearing to read "Ch. B. S. Gill".



disqualification for future employment under the Government" to that of "compulsory retirement". The applicant is aggrieved by the orders of the Disciplinary Authority as well as the Appellate Authority in pursuance to the issue of the charge-sheet dateds 28.11.96. Several grounds have been advanced on behalf of the applicant in support of his contention that the impugned orders be quashed and set aside and the applicant be reinstated in service with all consequential benefits.

5. The learned counsel of the applicant stated that the entire departmental proceedings are merely a farce and even the evidences relied upon are merely concocted ones. It has also been stated on behalf of the applicant that in 1993, the applicant raised the issue of forming Employees Association. He was informed vide letter dated 23.11.93 (Annexure-A3) that the matter regarding Employees' Association was still under correspondence with the Cabinet Secretariate and further communication will follow as soon as a decision was arrived. By subsequent communication dated 21.1.94 (Annexure-A4) as well as one dated 28.10.96 (Annexure-A5), a similar reply was sent by the respondents that the matter was still under consideration and the decision would be communicated in due course. The applicant alleges that after he submitted a joint representation of 188 employees to Shri C.V. Avdhani, the then Director of Accounts regarding formation of Employees Association, he was called and threatened. The claim of the applicant is that the present proceedings are outcome of his duties relating to the permission for formation of the

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Employees Association. The applicant claims that Shri C.V.Avdhani vide his letter dated 29.10.96 (Annexure-A12) had complained to the police. The police had issued an Inquiry Report, Kalandra dated 1.11.96 (Annexure-A13) in which Shri C.V.Avdhani, the then Director of Accounts was listed as a witness. The applicant claims that Shri C.V.Avdhani was not competent to institute the departmental proceedings by issuing charge-sheet dated 28.11.96 on the facts of this case. The learned counsel also stated that the Enquiry Officer's report should be discarded in view of the fact that he flouted rules. He also made an attempt to say that the Enquiry Officer had taken into account certain papers like letter dated 11.11.96 (Para 5 of the report) which was not part of the record. According to the applicant, there is no evidence in support of the charges and, therefore, the impugned orders be quashed and set aside.

6. The learned counsel also pointed out that there are other certain shortcomings in the disciplinary proceedings. For example, in his grounds, the applicant stated that PD-1, PD-2, PD-6, PD-8 & PD-9 do not bear diary number. Therefore, the authenticity of these documents are extremely doubtful. Referring to the statements of witnesses, the learned counsel stated that there are certain contradictions. They are also not supported by the material on record and even the enquiry was conducted in the premises under high security. The applicant was also not provided the assistance of legal

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practitioner as defence assistant. Therefore, on the facts of this case, the impugned orders deserve to be quashed and set aside.

7. The respondents have contested this application and have also filed reply. According to the respondents, the Disciplinary Authority has not only the power to initiate the disciplinary action against an official for mis-conduct but also to ensure that there was no breach of peace in the office. The Office of Director of Account, Cabinet Secretariat (DACS) was set up in the year 1963 for pay and accounts work of the Directorate General (Security). Subsequently, such work of other security and intelligence organizations like Research & Analysis Wing (RAW), NSG and the Special Protection Group (SPG) was also entrusted. The post of Director of Accounts (DACS) is of the level of a Joint Secretary to the Govt. of India which is held by an officer of the Indian Audit & Accounts Service on deputation. When in the year 1990, some members of staff of the DACS had taken initiative for formation of an employees' association. As the Directorate of Accounts was part of the security set up of the Cabinet Secretariate and was also handling the pay and accounts work of intelligence organizations, the question of recognition of an association in DACS required careful consideration by the Govt. Accordingly the matter was referred by the Directorate of Accounts to the Cabinet Secretariat. The applicant who joined the respondents Organisation in March, 1989 as an Auditor was promoted as Senior Auditor in

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January, 1993. The applicant had indulged in certain acts of serious indiscipline, misbehaviour and had vitiated the general atmosphere in the office by threatening and intimidating his senior officers. The applicant was initially placed under suspension on 8.11.96 pending initiation of regular departmental proceedings. He was issued a charge-sheet by the then Director of Accounts Shri C.V. Avdhani. In order to insure fairness in the disciplinary proceedings, the Disciplinary Authority appointed an officer of one of the sister organisations in the Cabinet Secretariat as the Enquiry Officer. The request of the applicant for engaging the services of a lawyer as his Defence Assistant was duly considered and was rejected as per provisions of the rules in this regard. At the request of the applicant, the competent authority appointed an adhoc Disciplinary Authority from another sister organisation in the Cabinet Secretariat. The adhoc Disciplinary Authority considered various representations of the applicant and directed the Enquiry Officer to examine certain additional witnesses. Because of the dilatory tactics adopted by the applicant, the departmental proceedings lingered on almost for four years. In view of the fact that the adhoc Disciplinary Authority demitted office in September, 2000, the powers of Disciplinary Authority in the case were again restored to the Director of Accounts Shri B.S. Gill, the new incumbent of the post. The copy of inquiry report was forwarded to the applicant by the Disciplinary Authority on 27.2.2001 and the Disciplinary Authority passed the impugned order after considering the representation of the applicant dated 26.3.2001. The applicant filed an

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appeal and the Appellate Authority after perusal of the entire record passed the impugned order dated 29.10.2001 (Annexure-A1) reducing the "penalty of removal" imposed on applicant vide order dated 30.4.2001 to "compulsory retirement".

3. According to the respondents, the object of disciplinary proceeding is to maintain discipline and the overall working atmosphere in the office. The fact that the applicant was exonerated by the Court of Law in the proceedings before the SEM and ASJ under section 107 (prevention of breach of peace and public tranquility) and under section 150 (preventive action on receipt of information of design to commit cognizable offence) of the Code of Criminal Procedure had nothing to do with the specific charges levelled against the applicant in the departmental proceedings. It has also been pointed out by the respondents that the objections and representations of the applicant have been duly considered reasonably and the applicant has been given every opportunity to defend himself. According to the respondents, there is enough evidence in support of the charges levelled against the applicant. Reappraisal of the evidence is not within the domain of this Tribunal. The Enquiry Officer as well as the Disciplinary Authority have followed the procedure and came to the conclusion that the charges levelled against the applicant were proved. The punishment awarded was also commensurate with the gravity of the charges. The learned counsel of the respondents at the time of hearing stated that so far as Article III of the charge-sheet is concerned, the words such as "insulting" and "intimidatory" might not

("insulting")



be corroborated by the witnesses but the fact that the action of the applicant amounted to gross-misconduct stood proved by the material already on record. As a matter of fact, the Enquiry Officer has given reasons and reached the conclusion that the charges levelled against the applicant were proved. Therefore, there was no scope for interference at this stage by this Tribunal. Relying on the decision of the Hon'ble Supreme Court in the case of State Bank of Patiala & Ors. Vs. S.K.Sharma 1996(2) SLR 631, it was urged by the learned counsel of the respondents that even if there were certain inaccuracies in the statements of the witnesses and the same were rejected, the entire proceeding cannot be questioned as no prejudice resulted to the applicant on account of said failure.

9. The learned counsel of the applicant, in the rejoinder, stated that the applicant is being punished for lack of integrity which is not one of the charges as per the charge-sheet. Alternatively, the learned counsel stated that the punishment awarded, in any case, is excessive.

10. We have heard the learned counsel of the parties and have perused the material available on record.

11. The admitted fact is that the applicant was working in the respondents Organisation since 1989 when he was appointed as Auditor. He was promoted as Senior Auditor in 1993. From the material available on record, it is clear that the applicant indulged himself in aggressive activities to prove himself an

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active leader of the employees association. The respondents had informed the applicant that the respondent organisation was already alive to the demand of the staff regarding formation of the employees association and the matter was pending before the Cabinet Secretariat. The copies of various bulky letters and representations placed on record suggest that the applicant did not follow the norms of discipline. There is no denial that certain rights have been guaranteed by the Constitution even to a Govt. servant. Govt. servant is further to follow various rules of discipline like CCS (Conduct) Rules, 1964 etc. The applicant may be a leader of the employees but he still remains a Govt. employee and is bound by the basic rules and instructions to be followed by the Govt. servant.

12. The first Article of charge relates to tearing of memorandum on 1.10.96 along with the portion of the page of transit register where the Charged Officer had signed in token of having received a letter. It also relates to refusal of signing the transit register and tearing of the envelope containing another memorandum delivered to the Charged Officer on 28.10.96. Perusal of the record indicates that both the envelopes containing memorandums delivered to the Charged Officer on 1.10.96 and 28.10.96 were handed over by the Office Peon Shri Srichand (PW3). In his deposition before the Enquiry Officer on 9.6.97 Shri Srichand has stated as follows:-

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"PW-TJT: I was asked to deliver a sealed cover through Transit Register at 1300 hr. on 1.10.96.

PO: Whether the letter, in sealed cover, was received by Shri J.K.Sharma, Sr. Auditor?

PW-TTT: Yes. The sealed cover was received by Shri Sharma under signature on the Transit Register. Shri Sharma opened the sealed cover and after going through the contents of the letter, Shri Sharma tore the letter into a number of pieces and returned the pieces to me. The signature given by Shri Sharma on the Transit Register was also torn by him."

In reply to another question, the prosecution witness Shri Srichand has stated as follows:-

"PW-TTI: I went to Shri Sharma's seat at 1500 hrs. on 28.10.96 to deliver the letter but he was not present in his seat. I again went to his seat on the same day at 1530 hrs. to deliver the memo dated 24.10.96. Shri Sharma, the CO took the sealed cover containing the memo dt. 24.10.96 along with the Transit Register. He tore the sealed cover into pieces and returned along with the Transit Register without putting his signature on it along with the torn pieces to me."

13. In the cross-examination by the Charged Officer, he maintained his earlier statement. Even in the preliminary enquiry before issue of charge-sheet, Shri Srichand had maintained the same statement. Therefore, we cannot find any substance in the allegation of the applicant that this OA deserves to be allowed for want of evidence. The Enquiry Officer has held that Charge-I was proved on the basis of material on record as well as the statements of the witnesses. As brought out from the statement of the prosecution witness, it can be said that there is, at least, some material against the charged officer. Therefore, it cannot be said that Charge-I is not proved at all.

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14. The second Article of charge relates to threatening on telephone to Smt. Sunita Bhardwaj while she was at her residence on 24.10.96 at about 1830 hrs. According to the charge-sheet, the charged officer talked to her in abusive language and threatened her by using objectionable, insulting and intimidatory words including "ULTA LATKA DUNGA TUJHE". The Enquiry Officer has narrated the background and sequence of events and had come to the conclusion on the basis of circumstantial evidence that there was no doubt that the charged officer had valid reasons to cow down Smt. Bhardwaj to take disciplinary action against him.

15. The third charge relates to entering the room of Smt. Sunita Bhardwaj at 1515 hrs. on 28.10.96 unauthorisedly when the applicant is alleged to have shouted at Smt. Bhardwaj in an intemperate, insulting and intimidatory language. It was placed before the Enquiry Officer that for similar charge a complaint was filed before the police and the applicant had been exonerated vide SEM's judgment dated 19.5.97. The Enquiry Officer on the basis of statements and other materials had come to the conclusion that the plea of the applicant being present in the Society Room from 1400 hrs. to 1615 hrs. on 28.10.96 was unconvincing and unfounded. He has concluded that the applicant was present in his section from 1400 hrs. onwards on 28.10.96. Therefore, there was every possibility of his visiting the room of Smt. Bhardwaj where Smt. Rashmi Jain was also present who has also deposed in the present enquiry proceedings. Smt. Rashmi Jain was not a witness in the police case. The Enquiry

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Officer has held that inspite of the opportunities provided on 2.7.97, 11.8.97 and 20.8.97, the charged officer did not avail the opportunity to cross-examine Smt. Rashmi Jain. The Enquiry Officer had held that on the basis of oral and circumstantial evidence, the charge against the applicant that he entered the room of Smt. Sunita Bhardwaj without permission at 1515 hrs. on 28.10.96 and his misbehaviour were proved beyond doubt. The learned counsel of the applicant stated during the course of argument that the name of Smt. Rashmi Jain was not stated in the police case even though she had been present at the time of incident. The learned counsel of the applicant had also stated that the statement of Smt. Rashmi Jain in the absence of cross examination by the charged official should have been ignored by the Enquiry Officer. In our opinion, there is no merit in the contentions of the applicant regarding this charge also as he has been provided adequate opportunities to defend himself.

16. In the result, we do not find any violation of principles of natural justice. So far as this case is concerned, we also find that there is evidence to support the charges. Some inaccuracies in the statements of witnesses will not render the entire proceedings invalid. On the facts of this case, we do not find any justification to interfere with the impugned order. Therefore, this OA is dismissed without any order as to costs.

(R.K. UPADHYAYA)
(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

(V.S. AGGARWAL)
(V.S. AGGARWAL)
CHAIRMAN