

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 181 of 2002

New Delhi, this the 29th day of May, 2003

(35)

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri M.R. Dewan, IFS
S/o Late Shri D.R. Dewan
R/o D-315, Nirman Vihar,
Delhi-110 092.

-APPLICANT

(By Advocate: Applicant in person)

Versus

1. Union of India
Through the Secretary,
Ministry of Environment & Forest,
Parivaran Bhawan,
CGO Complex,
Lodi Road,
New Delhi-110 003.
2. The Joint Cadre Authority of AGMUT Cadre,
Through The Director General (Forests)
Ministry of Environment & Forest,
Parivaran Bhawan,
CGO Complex, Lodi Road,
New Delhi-110 003.
3. The Andaman & Nicobar Islands Administration,
through the Secretary,
Principal Chief Conservator of Forest,
Department of Environment & Forest,
Van Sadan, Haddo, Port Blair,
Andaman & Nicobar Islands-744102.

(Respondent No.3 to be served through
Resident Commissioner posted at
Andaman & Nicobar Bhawan,
12 Chanakya Puri, New Delhi). -RESPONDENTS

(By Advocate: Shri Mohan Singh, Counsel for respondent
No.1 and 2. and ~~and~~ Mr. Soninder Kumar)

Ms. Varuna Bhandari Gangwani,
Counsel for respondent No.3)

O R D E R

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

Applicant impugns order of respondent No.1
dated 3.7.2001 whereby the penalty of dismissal from
service had been imposed upon the applicant.

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2. Facts in brief are that the applicant is a member of Indian Forest Service of 1974 batch. He was proceeded departmentally on 11 charges, which are as under:-

" Article-I related to Unauthorised absence from duty.

Article-II related to Irregular drawl of pay advance and other Financial irregularities.

Article-III related to Irregular drawl of House Rent Allowance.

Article-IV related to Irregular sanction of advance of transfer TA.

Article-V related to misuse and exceeding the limits of financial powers and terms of contract.

Article-VI related to misuse of financial powers for the purchase of stores for building material.

Article-VII related to misappropriation in the purchase of sawn timber from a private saw mill for construction of a building.

Article-VIII related to unauthorised demolition of residential Government building.

Article-IX related to disposal of the seized red corals.

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Article-X related to illegal felling of trees and misappropriation of timber out of it.

Article-XI related to leaving the Headquarter, Port Blair during suspension".

3. The applicant claims that all these charges are false, baseless and motivated.

4. After that the enquiry was held by the department after consulting the UPSC and imposed the penalty of dismissal from service.

5. The impugned order says that out of 11 Articles of Charge, inquiring authority found three articles of charge, namely, Article Nos.I, VI and XI as fully proved and five Articles of Charge, namely, Article Nos. No.II, III, IV, V, and VII as partially established and the remaining articles of charge, namely, Article Nos. VIII, IX and X could not be proved conclusively. Copy of the enquiry report was sent to applicant who is stated to have made representation against enquiry report vide his letter dated 10.10.1996. Thereafter UPSC was consulted under sub-rule (3) of Rule 9 who advised the department vide their letters dated 4.8.2000 and 30.4.2001 to supply the advice along with the impugned penalty order dated 3.7.2001. The impugned order further reads that after careful consideration of the advice tendered by the UPSC and all relevant records of the inquiry, facts and circumstances of the case, the President holds that the officer is guilty of the charges

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I to VII and XI, levelled against him for remaining absent unauthorisedly from duty from time to time and improper exercise of financial powers and showing disobedience to the orders of the Government, so the President imposed the penalty of dismissal from service.

6. While assailing this order passed by the President dismissing the applicant from service the applicant submits that it is a non-application of mind on the part of the disciplinary authority. The Inquiry Officer adopted a procedure which is contrary to the rules of natural justice.

7. He further pleaded mala fide on the part of the respondents which was also quite manifest as the applicant has been litigating with the respondents for various grievances including his promotion to the senior time scale and because of that litigation, the authorities were annoyed with him and they with a mala fide motive, had instituted this enquiry.

8. It is further submitted that the enquiry officer has been selective in using the evidence not supporting and it left the evidence supporting the applicant and as such the findings are based on no evidence.

9. Besides that the applicant submits that the notice of conducting the enquiry at Port Blair on 6/7.2.1996 was not served upon the applicant prior to the said dates. Even the order appointing new Presenting Officer dated 7.2.1996 had reached the officer of

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respondent No.3 on 14.2.1996 and as such it was not comprehended as to how the Presenting Officer, who was working in the office of respondent No.3 could have appeared before the Inquiry Officer on 7.2.1996 itself.

10. It is further submitted that the decision of the Inquiry Officer to conduct ex-parte proceedings on 6/7.2.1996 did not precede with any notice to the applicant because at no stage prior to that dates of hearing the applicant was informed of the date of said hearing either at Port Blair or at Delhi. The Inquiry Officer did not confirm whether his communication dated 27.11.1995 had been received by the applicant or not. Therefore, the ex-parte proceedings conducted by the respondents are illegal.

11. The applicant has also submitted that the order of penalty has been imposed without jurisdiction and the said order is without sanction of law.

12. It is further submitted that the applicant is a member of Joint AGMUT cadre of IFS for which the competent authority is Joint Cadre Authority constituted vide DOP&T Notification dated 3.4.1989. Therefore, the impugned penalty order imposed by the Ministry of Environment and Forests is without jurisdiction and is illegal and arbitrary.

13. He further submits that as per Rule 7(3) of All India Service (D&A) Rules, 1969, no penalty order could be imposed upon the member of Joint Cadre without the concurrence of Joint Cadre Authority.

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14. The applicant also submits that he has not been provided the copy of the advice of the UPSC which is mandatory because the disciplinary authority while imposing the penalty had mentioned that they had taken note of the advice tendered by the UPSC. Since the applicant has not been provided with the copy of the advice of the UPSC, so a fair opportunity of hearing has not been granted to the applicant to raise the objections to the advice of the UPSC hence it is stated that the impugned order is liable to be quashed.

15. The respondents pleaded on facts and tried to justify the order about the allegations levelled against the applicant.

16. As regards the service of the notices are concerned, the respondents pleaded that various notices were sent vide registered post at the New Delhi address of the applicant but the same had been returned with the remarks that no such person live on the given address on registered notice it was mentioned that the "addressee was not available" and the letters were returned to the department. Even a personal messenger was sent who also could not meet the applicant at his residence and he met only his brother and he tendered a letter to his brother but his brother refused to take the letter.

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17. The respondents also pleaded that the applicant had been using political influence upon the respondents and his entire career will show that it is he who had been harassing the management and not the department as alleged by the applicant.

18. As regards the advice of the UPSC is concerned, the learned counsel for the respondents submitted that Rule 9 of the All India Service (Discipline & Appeal) Rules, 1969 provides that action is to be taken on enquiry report and proviso to Rule 9 provides that in every case the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any penalty on the member of the Service. However, there is nothing on record if the advice received from the Commission was every supplied to the applicant or his comments were called upon against the advice of the commission.

19. We have heard the learned counsel for the parties and gone through the records of the case.

20. The applicant appearing in person has submitted that he was never informed about the proceedings to be held on 6/7.2.1996 and the Inquiry Officer did not satisfy himself about the service of notice on the applicant for holding enquiry at Port Blair rather the Inquiry Officer himself had noted that the copies of the notices sent through Postman at his Delhi address and at Andaman and Nicobar Island address has

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been received undelivered and it had been decided by the Inquiry Officer to hold the regular proceedings ex-parte. Thus the applicant submitted that when the notices had not been delivered and particularly the same have been received back undelivered so the Inquiry Officer could not have proceeded ex-parte and it could not even be presumed that the noticed had been delivered on the applicant. Even there is no endorsement on the returned cover showing that the applicant had even refused to accept the notice. Though a presumption can be drawn under General Clauses Act if a notice tendered by the applicant have been refused then it should be deemed as if the same has been served upon him. But in this case the record produced by the respondents themselves show that whenever the notice was tendered by the postman the same was returned back with an endorsement on the letter that the 'addressee is not available' at the given address.

21. The applicant also submitted that as per the order of suspension the Headquarter was at Andaman and Nicobar Islands so admittedly the same should have been sent to serve him at Andaman and Nicobar Islands but fact remains that the Inquiry Officer himself has recorded that the notices sent at Delhi and Andaman and Nicobar Islands address had been delivered back with the endorsement addressee not found. But none of the covers show that there was refusal on the part of the applicant so the Inquiry Officer should not have proceeded ex-parte. If at all the applicant was not available, then the notices should have been published in News Paper or fresh notices should have been sent.

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22. In our view also there is no proper service of notice. The photocopies of the registered cover, as submitted by the respondents on record, show that whenever the postman has gone to tender the notice, the applicant was not available at the given address.

23. Hence the presumption with regard to delivery of letters under the General Clauses Act, which has been argued by the counsel for the respondents, also cannot be invoked by the respondents since the letters have neither been refused nor the same have been returned with any remarks which may show that the addressee had been avoiding to accept the service of notice.

24. It is also not the case of the respondents that the letters sent to the applicant by post were not returned back to the respondents. So from every angle it is quite clear that the letters had not been delivered/tendered to the applicant at all, as such the ex-parte proceedings started from the stage on 6/7.2.1996, is not in accordance with law.

25. Next point taken up by the applicant is that copy of the UPSC advice was not served on him enabling him to make comment over the same. Thus the applicant submitted that he has been deprived of right to defend himself and despite the fact that he had made an interim representation which too was rejected also. In support of his contention the applicant has also relied upon a judgment given in OA 2582/2000 dated 2.8.2001 in the case of R.K. Mishra Vs. U.O.I. wherein the court relying

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upon the judgment in the case of Raj Kamal Vs. U.O.I. OA 1103/98 wherein on the ratio of the Apex Court's decision in D.C. Aggarwal Vs. U.O.I. 1993 (1) SCC 13, it was found that the advice of the DOP&T which was unfavourable to the applicant was relied upon by the disciplinary authority without affording a reasonable opportunity before imposing a punishment, as such the same was fatal for the impugned order.

26. On the aspect of non-supply of UPSC advice the counsel for the respondents referred to Rule 9 of the All India Services (Discipline and Appeal) Rules, 1969 that after the receipt of the enquiry report it was not necessary to supply the copy of advice of the Commission. The Inquiry Officer had already held the applicant on the similar charges and there is no material difference in the advice of the UPSC.

27. In our view this contention of the learned counsel for the respondents has no merits because as per the impugned order UPSC has been consulted twice and they have submitted two reports one dated 4.8.2000 and another dated 30.4.2001 and the reading of the impugned order itself suggests that the advice of the UPSC had been taken into consideration for imposing penalty. The extract of the order is as under:-

" And whereas after careful consideration of the advice tendered by the Union Public Service Commission and all relevant records of the inquiry, facts and circumstances of the case, the President holds that the officer is guilty of the charges I, II, III, IV, V, VI, VII and XI levelled against him for remaining absent unauthorizedly from duty from time to time

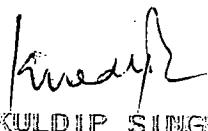
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and improper exercise of financial powers and showing disobedience to the orders of the Government (emphasis supplied)".

28. After perusing the above we think that the respondents while imposing penalty had definitely taken into consideration the advice tendered by the UPSC which has not been supplied to the applicant before imposing the penalty and as such the applicant has been definitely prejudiced because he has not been afforded reasonable opportunity to defend himself or to make his comment over the advice of the UPSC. Thus non-supply of the UPSC's advice to the applicant is fatal to the present proceedings.

29. Accordingly, we are of the considered view that in view of the Apex Court's judgment in D.C. Aggarwal (Supra) and consistent view held by the Tribunal in RAJ Kamal (Supra) and R.K. Mishra (supra) since the applicant has not been supplied the copy of the advice of the UPSC which has been used at the time of passing of the final order, so the final order cannot be sustained and the same is liable to be quashed.

30. Accordingly, we hereby quash the impugned order and the OA is allowed. The case is remanded back to the department for proceedings from the stage the ex parte proceedings were taken on 8/7.2.1996. The quashing of the impugned order will not amount to automatic reinstatement of the applicant and department ^{After proper enquiry} may pass order in accordance with rules and instructions. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
MEMBER (A)