

8

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.174/2002

New Delhi this the 24th day of April, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)  
HON'BLE MR. S.K. AGRAWAL, MEMBER (ADMNV)

1. Sh. Nandoo Yadav (Farm Hand),  
S/o late Sh. Kaleshi Ram
2. Sh. Parkash Kumar (Farm Hand),  
S/o late Shri Kaleshi Ram
3. Shri Raj Kumar (Farm Hand),  
s/o late Shri Kalesh Ram
4. Shri Kishan (Farm Hand),  
S/o Shri Sakhai
5. Shri Nagina (Farm Hand),  
S/o Shri Gnuru
6. Sh. Deep Chand (Farm Hand),  
Posted at Military Farm Lucknow
7. Shri Gopi Chand (Farm Hand),  
S/o Sh. Ram Dev

-Applicants

(By Advocate Shri Vikas Dutta)

-Versus-

Union of India, through

1. Secretary, Ministry of Defence,  
South Block, New Delhi.
2. Dy. Dte. General of Military Farms,  
Army Hqrs. QMG's Branch,  
West Blcok, III R.K. Puram,  
New Delhi.
3. Director,  
Military Farms,  
H.Q. Western Command,  
Chandi Mandir.
4. ADMF,  
Inquiry Officer,  
Military Farm,  
Delhi Cantt.

-Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicants, Farm Hands, employed in the Military Farms, have impugned order dated 16.12.2001, wherein the reviewing authority (appellate authority) has rejected

9

(2)

their request for change of the inquiry officer. They have sought holding of the fresh inquiry by a competent and independent officer outside the department of the Deputy Director General, Military Farms, Army Headquarters.

2. By an order passed on 22.1.2002 further proceedings in the disciplinary proceedings were stayed.

3. Applicants, who are office bearers of Military Farms non-Gazetted employees union for the year 1999-2000 have been placed under suspension on 22.11.97 and are proceeded against for a major penalty on the allegation of misbehaviour with Lt. Col. A.S. Rathore by shoe garlanding him. A reply was filed to the memorandum and thereafter decision was taken to hold a common inquiry against all the applicants. One of the charges against applicant No.1 was different from others. Later on suspension was revoked. An inquiry officer of Station Headquarter Col. Ved Pal was appointed on 3.3.98 and after recording the evidence on the request of the applicants for change of inquiry officer was changed on 21.9.98. Applicants, though initially were not given the list of documents and witnesses but on their request were provided the same. Subsequently, the inquiry was further assigned to Major Ram Mehar Singh of M.F. Dte. Army Hqrs. and Shri R.C. Sonkar, Farm Officer was appointed as Presenting Officer. Subsequently, by an order dated 1.7.2000 the Presenting Officer Shri R.C. Sonkar was appointed as inquiry officer. On 16.6.2001 another inquiry officer Shri S.P. Singh, of Military Farm was appointed.

(3)

4. On 3.12.999 MFNG Union ibid has filed a PIL before the High Court of Punjab, alleging criminal offence in discharge of duties against one Shri V.P. Singh, DGMF. Directions have been issued on 3.12.99 through a responsible person <sup>to</sup> lodge a FIR which should be investigated. In pursuance thereof FIR No. RCACX-2000-A-0001 was registered under Section 120-B IPC and Section 13 (2) readwith Section 13 (1) (d) of the P.C. Act, 1981 on 18.9.2000 wherein Shri V.P.Singh has been charged for fraudulently and dishonestly misappropriating the money and also involving in the financial bugling to the tune of Rs. three crores. The matter was also published in the Newspaper.

5. Earlier the applicants have approached the Chandigarh Bench of the Tribunal in OA-137/HR/2000 for seeking assistance of defence assistant as well as in OA-17/HR/1999 for the same relief. One of the OA was dismissed and another OA was dismissed, as withdrawn.

6. Applicants made a representation to the disciplinary authority for bias of the inquiry officer on 27.11.2001 which was rejected on 29.11.2001. Thereafter they preferred a review petition on 10.12.2001 which was disposed of by rejecting their request by the impugned order dated 16.12.2001 giving rise the present OA. The learned counsel of the applicants stated that there exists a reasonable and real bias on the part of the inquiry officer who has been a subordinate officer in the Military Farm whereas the appellate authority Sh. V.P. Singh who is the head of the Department and against whom the respondents have made statements in the criminal

investigation having influence over the subordinate officers, i.e., disciplinary authority as well as inquiry officer is tantamount to punish them. It is also stated that the applicants were office bearers at the time when the PIL was filed before the High Court and were instrumental in getting the case registered against the appellate authority. It is also stated that the applicants have made an application for change of enquiry officer alleging bias, as the procedure in the enquiry was not adopted and the inquiry officer being a member of the Military Farm was acting under the directions of the appellate authority partially depriving the applicants' right of defence. It is contended that the representation was made in view of the instructions of the Government in OM No.3940/70/Estt.A dated 9.11.72 wherein it is provided that whenever any application is made by the Government servant in a disciplinary proceeding for bias of the inquiry officer the proceeding should be stayed and the application referred with relevant material is to go to the appropriate reviewing authority for orders. In this background it is stated that the reviewing authority in this case is the appellate authority Sh. V.P. Singh who decided the representations of the applicants and being <sup>w</sup>biased against them he should not have decided this application and having assumed the rule of a Judge in his own matter the decision taken is arbitrary and cannot be treated as by application of mind.

7. The learned counsel has further placed reliance on the decision of the Apex Court in Indrani Bai v. Union of India, 1994 SCC (L&S) 981 to contend that if any request for change of inquiry officer is made the

proceedings taken during this interregnum should be set aside and the inquiry officer should be changed invariably. Further reliance has been placed on a decision of the Apex Court in Registrar, Cooperative Society, Madras & Another v. F.X. Fernando, 1994 SCC (L&S) 756, to substantiate his plea. In this backdrop it is stated that the impugned order passed by the respondents, rejecting the request of the applicants for change of inquiry officer is not legally sustainable.

8. The respondents have also filed an MA-565/02 for vacation of the interim order staying the proceedings on the ground that the applicants are delaying the disciplinary proceedings on flimsy ground despite the fact that their request for change of inquiry officer has already been acceded to. It is also contended that they have filed a joint representation for change of inquiry officer which is subversive of discipline and the same should not have been considered by the reviewing authority. It is stated that the charge against the applicant is serious and the inquiry has been delayed for a long without any justified reasons. In their short reply it is contended that the applicants having filed OAs before the Chandigarh Bench the present OA suffers from the vice of res judicata and the same is not maintainable. On merits too, it is contended that the applicants while moving representation to the DDGMF have violated the channel, which is a misconduct. By referring to the allegations levelled against the applicants it is stated that the same are serious and due to non-cooperation of the delinquent officials the inquiry is yet to be finalised. It is also stated that the apprehension of the applicants that DDGMG

is biased is of no consequence as the disciplinary authority is DMFHQ and it is only at the appellate stage this ground is applicable to the applicant. It is further contended that the stay may be vacated to enable them to proceed with the disciplinary proceedings.

9. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view which is supported by the decision of the Apex Court supra and as provided under the CCS (CCA) rules in OM dated 9.11.72 if any application is moved by a Government servant for alleging bias against the inquiry officer the same should be referred to reviewing authority for his appropriate orders. The contention of the applicants that in this case the reviewing authority is appellate authority, i.e., V.P. Singh, against whom they have made PIL, which culminated into a FIR registered against him for loss to the Govt. at the tune of Rs. three crores and as they are instrumental in getting the case registered and are witnesses in the case the appellate authority has acted with a bias by rejecting their request for change of inquiry officer and has acted as a Judge in his own cause, is justified.

10. In our considered view the fact that the applicants in the present OA are office bearers at the relevant time on whose behest the criminal case was registered is not disputed. For changing <sup>the</sup> inquiry officer, as held by the Apex Court even if the bias is not proved it is in the interest of fair play and natural justice that on the request of the delinquent officer the inquiry officer is changed. However we find in this case

that the applicants have a case when they allege that the reviewing authority who rejected the request for change of inquiry officer has been involved in the criminal case on behalf<sup>h</sup> of the applicants. In this view of the matter respondent No.2 should not have dealt with the representations of the applicants but as we are told that he is the highest authority in the department and the next senior officer is respondent No.1, without going into the merits of the case as we are fully aware of our jurisdiction not to interfere with the disciplinary proceedings at an interlocutory stage the OA is partly allowed by setting aside the impugned order dated 16.12.2001 (Annexure A-1) and direct respondent No.1 to dispose of the representation of the applicant and the review petition of the applicants for change of inquiry officer made on 10.12.2001 (Annexure A-23), within a period of one month from the date of receipt of a copy of this order by passing a detailed and speaking order. However, we are also aware of the fact that the enquiry has been dragged on for the last seven years. In the event a final decision is arrived at on the representation of the applicants the same shall not bestow on the applicants a fresh cause of action and they shall have to cooperate<sup>h</sup> in the disciplinary proceedings for its expeditious disposal.

No costs.



(S.K. Agrawal)  
Member(A)



(Shanker Raju)  
Member(J)