

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No-2601/2017
MA No-2328/2019**

New Delhi, this the 06th day of February, 2020



Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

Ishwer Singh
S/o late Sh. Kesho Ram
R/o RZ-1101, B/13
Gali No-11, Sadh Nagar
Palam Colony, New Delhi-110045. ... Applicant

(through Sh. Sachin Mittal with Sh. Kavishk Khullar and Ms. Priya Dabas)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
Intelligence Bureau
North Block, New Delhi-110001.
2. Union Public Service Commission
Through its Secretary
Dholpur House, Shahjahan Road
New Delhi-110069. ... Respondents

(through Sh. Aamir Sheikh for Sh. Hanu Bhaskar)

ORDER(ORAL)**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**

The applicant was appointed as Assistant Central Intelligence Officer (ACIO) in the Intelligence Bureau (IB), of the Government of India, on 21.06.1984 and he was confirmed on 01.04.1988. On 01.11.2008, the applicant was promoted as Deputy Central Intelligence Officer. It is stated that on 04.06.2012, he informed one of his colleagues in his office, that he would come late and to take note of the same. On 18.07.2012, the applicant was issued a charge memo alleging that, he used harsh language in his telephonic conversation with another employee, and after he came to the office, he physically assaulted the said employee. The applicant submitted an explanation on 27.07.2012, denying the allegation.

2. Not satisfied with the explanation, the Disciplinary Authority (DA) appointed the Inquiry Officer (IO). In his report dated 07.01.2015, the IO held that the charge framed against the applicant, is not proved. However, the DA issued a disagreement note on 06.06.2016. The applicant submitted a reply on 18.07.2016. This was followed by the procurement of advice from the UPSC on 28.03.2017. Taking the advice into account, the DA passed an order dated 01.06.2017 imposing the penalty of reduction to a lower stage

in the time scale of pay by three stages, for a period up to the date of superannuation of the applicant, i.e., 29.02.2020. This OA is filed challenging the order dated 01.06.2017.



3. The applicant contends that the charge itself was totally false and that the IO recorded a categorical finding, that the charge is not proved at all. He contends that despite such a clear finding, the DA issued the so called disagreement note on 06.06.2016, straightway recording the finding that the charge is clearly proved and that the same is contrary to the settled principles of law. He submits that the UPSC did not take into account, such a flagrant violation and the order of punishment is totally unsustainable in law.

4. On behalf of the respondents, counter affidavit is filed, opposing the OA. It is stated that the prescribed procedure was followed at every stage in the proceedings against the applicant and no illegality has crept into the process. It is also stated that the applicant was given opportunity to show cause as to how the charge cannot be treated as proved and the slight difference in the language in the disagreement note, cannot be a ground to interfere with the order of punishment.

5. We heard Sh. Sachin Mittal, learned counsel for the applicant and Sh. Aamir Sheikh, appearing as proxy counsel for Sh.

Hanu Bhaskar, learned counsel for the respondents, at length and perused the record.

6. The applicant reached a fairly senior position in the department, by the year 2012. He was issued a charge memo on 18.07.2012. It contained only one article of charge and it reads as under:



“Article-I

That the said Shri Ishwar Singh, Assistant Director/Tech while posted at IB Hqrs., New Delhi, abused and physically assaulted his immediate superior Shri Ram Swaroop, Addl. Deputy Director/Tech on June 04, 2012.

Thus, by his aforesaid act, Shri Ishwar Singh, AD/Tech has exhibited conduct unbecoming of a Govt. servant, thereby violating Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.”

7. This was elaborated in the statement of imputation. In Annexure A/3, certain documents were listed and in Annexure A/4, five officials were cited as witnesses. In his explanation, the applicant denied the charges. The DA appointed the IO, who in turn, has taken into account, oral and documentary evidence.

8. In his report dated 07.01.2015, the IO has undertaken a detailed discussion and has taken note of the deposition of witnesses as well as the other evidence, including the CCTV footages. The relevant part of discussion and the conclusion read as under:



“The alleged assault (throwing of chair, kicking and punching) that took place within the room could not be substantiated based on the deposition of the complainant and witnesses. Furthermore, examination of the CCTV footage, though it pertains to the corridor and not the room, does not substantiate the allegation that the complainant was hit by a steel chair, pushed to ground and kicked and punched by the CO. It is seen in the CCTV footage that after entering the room, the PW2 almost immediately leads the CO out of the said room and appears to be pacifying him. The complainant immediately follows the CO and PW2 out of his room. A man of slight build, the complainant, does not appear even slightly dishevelled, leave alone hurt, as would be expected of a person who had been hit with a steel chair on the head and then thrown to the ground and repeatedly punched and kicked by a much larger man. Given that the CO is a hefty man, a physical assault of the nature, as has been alleged by the complainant, should have inflicted serious injuries on the comparatively frailer complainant. On the contrary, the CCTV footage shows the complainant to be in a combative mode showing no sign of any injury or pain.

In so far as the allegation that Ishwar Singh tried to physically assault Ram Swaroop in the corridor is concerned, it can be seen in the CCTV footage, that after the PW2 had led the CO out of the Complainant’s room, the complainant not only follows the CO into the corridor, but also keeps gesticulating and appears to be shouting at him which provokes the CO to try to attack the complainant. Even after the CO is restrained and led away by PW2 and PW5, the complainant continues to follow the trio, gesticulating and raging, displaying complete lack of the gravitas expected from a senior officer.

It is, therefore, felt that both Sh. Ishwar Singh and Sh. Ram Swaroop indulged in intemperate and unseemly conduct and it would not be fair to apportion blame to the former alone.

Conclusion

In this backdrop, the undersigned has reached the conclusion that the Article of Charge against the Charged Officer, Shri Ishwar Singh, Assistant Director/Tech, that he abused and physically assaulted the complainant, Shri Ram Swaroop, Addl. Dy. Director on June 04, 2012 could not be substantiated.”



9. He categorically held that the charge framed against the applicant is not proved. It was certainly open to the DA to disagree with the findings, by following the procedure prescribed by law. It is fairly well settled that in such cases, the DA has to mention the factors on account of which, he intends to disagree with the findings. In the note, which he proposes to issue to the employee, he has to indicate that he has arrived at a tentative conclusion. If the conclusion tends to become final, the proceedings get vitiated. In the instant case, the DA has taken note of the deposition of certain witnesses and has undertaken his own discussion about the CCTV footages. In the concluding part of the disagreement note, he mentioned as under:

“The statement of Shri Nawang Rigzin clearly establishes that Sh Ram Swaroop sustained injury and it can be possible only in/during an assault. From the sequence of events narrated so far and in view of the statement of Shri Nawang Rigzin and observations of IO, the charge that Shri Ishwer singh assaulted Shri Ram Swaroop resulting into injury to Shri Ram Swaroop stands proved.

In view of above and from the evidence adduced during the course of the inquiry the charges against Shri Ishwar Singh stand amply proved.

The President, therefore, disagrees with the findings of the Inquiring Authority. Shri Ishwer Singh is given an opportunity of making any submission of representation on the inquiry report and disagreement thereon within a period of 15 days from the date of receipt of this memo.”



10. A perusal of the same discloses that the DA proceeded as though, the charge against the applicant is “clearly established” and “stands amply proved”. This is not at all the language which can be employed in a disagreement note. The conclusion which the DA proposes to arrive at, must be tentative in nature, and it can assume finality only after he has considered the explanation which the employee may offer. Therefore, the very disagreement note is defective and it cannot give rise to any order of punishment at all. The mere fact that the matter was referred to UPSC and it has also concurred with the disagreement note, cannot be a basis to ignore such a flagrant violation of law.

11. We would have certainly considered the feasibility of leaving it open to the DA to exercise his right to disagree with the findings of the IO, but for the fact that the applicant is retiring from service by the end of this month and the allegation is not with reference to any fraudulent activities or misappropriation of funds. It was, at the most an altercation between two employees. The CCTV footage which is made part of record did not support the version of the other employee. Having regard to the length of service and the position occupied by the applicant in a sensitive and important organization, he cannot be subjected to further proceedings even after his retirement.

12. It is brought to our notice that the applicant was considered for further promotion, but sealed cover procedure was adopted on account of pendency of the disciplinary proceedings. We, therefore, allow the OA and set aside the impugned order. The sealed cover adopted in respect of the applicant shall be opened and consequential benefits shall be extended.



There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/