

Central Administrative Tribunal, Principal Bench

Original Application No.1437 of 2001

New Delhi this the day of 22<sup>nd</sup> February, 2002-

Hon'ble Mr. S.R. Adige, Vice Chairman(A)  
Hon'ble Mr.Kuldip Singh, Member (J)

Mrs. Surinder Kaur  
R/o House No.C-2/75,  
Lodhi Colony,  
New Delhi.

- Applicant

(By Advocate - Dr.M.P. Raju)

Versus

Union of India  
through its Secretary,  
Ministry of Finance,  
(Department of Economic Affairs)  
New Delhi.

- Respondents

(By Advocate - Shri R.N. Singh, proxy counsel for  
Shri R.V. Sinha, Counsel for the  
respondents. )

O R D E R

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

The applicant in this OA has impugned order dated 15.10.1999 vide which she has been removed from service and also the order dated 3.5.2001 vide which the appeal had been rejected by the appellate authority.

2. The facts, in brief as alleged by the applicant are, that the husband of the applicant was working as Lower Division Clerk under the respondents who died in harness. The applicant was appointed as LDC w.e.f. 11.9.1991 on compassionate grounds after the death of her husband. One of the condition of the appointment was that the applicant shall acquire the requisite educational qualification within 2 years from the date of her appointment and as such she was

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required to pass Matriculation examination before 11.9.1993. The applicant claims that she enrolled herself at Punjab School Education Board vide enrollment No.71411 and appeared in the Matriculation Examination conducted by Punjab School and Education Board (hereinafter referred to as PSEB) in March, 1993. However, the certificate for the same was collected by her erstwhile father-in-law which she produced before the department before the completion of 2 years.

3. The aforesaid certificate was found to be bogus one and she was issued a charge-sheet on the charges that she had furnished false/forged School Leaving Certificate to secure the job of LDC on compassionate grounds in department of Economic Affairs. She subsequently informed the department of her successfully clearing the Matriculation Examination from PSEB, Mohali held in March, 1993 and also furnished false/forged Marks Card bearing Roll No.71411 obtained through fraudulent means from the Board declaring her to have passed the said examination by securing 266/650 marks in support of her claim. Thus the applicant is stated to have failed to maintain absolute integrity and has acted in a manner unbecoming of a Government Servant thereby violating Rule 3(1)(i) & (ii) of the CCS (Conduct) Rules, 1964.

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4. It is submitted by the applicant that she is totally innocent being not a party to the fraud and the fraud, if any, has been committed by her erstwhile father in law without her knowledge.

5. It is further submitted by the applicant that on becoming a widow, the erstwhile father-in-law was the only consoling guardian and there was no reason to doubt his malicious intention. It was only after re-marriage, the ill intention of the erstwhile father-in-law surfaced.

6. It was submitted by the applicant that even after submitting the certificate the respondents even after 1.1/2 years never verified the same. Had the applicant been told immediately after verification the applicant would have certainly produced the National Open School Certificate from where also the applicant had passed matriculation.

7. It is also submitted that against the termination order dated 20.6.95, the applicant had filed an OA 1262/97 which was disposed of on 6.2.98 by quashing the order of termination dated 20.6.95 and directed the applicant to be reinstated. Liberty was granted to the respondents to conduct the enquiry on the allegation of misconduct in a fair manner. The enquiry was not completed within the time limit granted by the Tribunal. Thereafter the applicant filed a CP. Immediately thereafter the respondents filed MAs 1262/98 and 877/99 seeking extension of time to conclude the DE. The CP 291/98 along with the MAs

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were disposed of on 3.6.99, granting time upto 30.6.99. Therefore, the applicant has submitted that the enquiry report cannot be relied upon because that was not completed within the time frame and as such the applicant has prayed for quashing of the same.

8. In the grounds to challenge the same the applicant has submitted that certificate of Matriculation cannot be considered to be false because at the same time the applicant was holding a genuine certificate from National Open School which qualifies the applicant for appointment to LDC, so to say that applicant furnished false certificate even while having another genuine certificate does not hold good.

9. It is also submitted by the applicant that the Inquiry Officer, in all fairness should have considered the submission of the applicant but he had not considered the facts with regard to applicant's obtaining the Matriculation certificate from the National Open School but had passed the order dated 25.10.1995 wrongly in violation of the principles of natural justice, which should be quashed.

10. It is also submitted that the disciplinary authority failed to comply in its action with the extended time limit, i.e., 30.6.99, as such any action taken by the disciplinary authority is without jurisdiction and the same is illegal as such the same cannot be sustained being without jurisdiction.

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11. The respondents are contesting the OA. They have filed their reply and have stated that the applicant was appointed as LDC on compassionate grounds on the death of her husband w.e.f. 11.9.1991 under Rule 12-A of the CSCS Rules, 1962 in relaxation of age and temporary relaxation of educational qualification vide their department's order dated 26.9.1991 with the condition that she should acquire the requisite educational qualification from the recognised Board/University within a period of 2 years from the date of her appointment and also that she should qualify the typing tests in Hindi/English and if she fails to qualify the said test within the period of her probation, then her services will be terminated.

12. On 28.7.93 the applicant informed the department that she had passed the Matriculation Examination from the PSEB in March, 1993. To support this, she has submitted a Marks Card bearing Roll No.71411 which appeared to have been obtained by fraudulent means.

13. The applicant appeared for typewriting tests conducted by the SSC several times but did not qualify the same till the date of termination of her services on 21.6.95.

14. Accordingly, it is submitted that the applicant attempted to cheat the respondents by furnishing false information/certificate to secure the job of LDC on the death of her husband and that she

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also failed to qualify the typewriting test within the stipulated period of 2 years which is also an essential condition and as such her services were terminated as per rules and as such it is pleaded that the OA be dismissed.

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

16. The main contention of the learned counsel for the applicant is that the applicant had approached the Tribunal earlier by filing an OA in which the directions were given to the respondents to complete the enquiry within a period of six months from the date of receipt of a copy of this order. The said OA was decided on 6.2.1998 and thereafter the respondents had sought an extension and the respondents were allowed time upto 30.6.99 to complete the enquiry against the applicant. The counsel for the applicant submits that even by 30.6.99 the enquiry has not been completed as the final order which has been passed by the disciplinary authority had been passed on 15.10.1999. Thus the learned counsel for the applicant submitted that after the expiry of the extended period the respondents were bereft with the jurisdiction to proceed further with the enquiry and they had no jurisdiction to pass the final order after 30.6.99.

17. In reply to this the learned counsel for the respondents submitted that the directions given in the earlier OA were that the enquiry should be conducted

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in a fair manner and should be completed within a period of 6 months from the date of receipt of a copy of this order. The court did not give any direction that the final order should be passed within a period of six months and even extension of time granted was to complete the enquiry and not for passing of the final order. The enquiry had been completed before the stipulated period as the same was completed by 24.6.99.

18. The learned counsel appearing for the applicant submitted that the direction to complete the enquiry does not mean that it was only for the Inquiry Officer to submit his enquiry report but the enquiry continues till the final order is passed. In support of his contention the learned counsel for the applicant referred to a judgment reported in 1999 (7) SCC page 739 Yoginath D. Bagde Vs. State of Maharashtra and Another. In para 31 of the judgment it has been observed that so long as a final decision is not taken in the matter the enquiry should be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. On the same aspect the counsel for the applicant also referred to another judgment referred in 1989 (2) LLJ 340-346 entitled as Sheshrao Daulatrao Raut and State

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of Maharashtra and Others wherein para 13 of the judgment the Hon'ble Hon'ble High Court had observed that the inquiry which commences with the notice to show cause continues into the written statement by a delinquent employee, follows through the evidence of witnesses, production of documents and culminates in reasoning and conclusions. It is a continuous process which terminates with a final decision into the question under investigation. So relying upon these judgments the learned counsel for the applicant submits that merely by submitting a report on 24.6.99, enquiry does not terminate, if terminated only after the final decision on the report of the Inquiry Officer is taken by the disciplinary authority. Hence, the passing of the final order by the disciplinary authority was without jurisdiction and on the same ground it should be quashed.

19. In our view reliance upon these judgments by the learned counsel for the applicant is misplaced and the portions referred to by the learned counsel have been referred out of context because in the case of Yoginath D. Bagde (Supra) the question in issue was at what stage the right of hearing to a delinquent employee accrues and continues. Para 31 of the judgment is reproduced hereinbelow wherein the Hon'ble Supreme Court had held that the right to be heard would continue upto final stage. That right being a constitutional right, cannot be taken away by any legislative enactment:-

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"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution" (emphasis supplied).

20. So it is in that context it has been held that the enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held proved or not proved and as such the right would be available to the delinquent employee upto the final stage.

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21. Similarly in the judgment in the case of Sheshrao Daulatrao Raut Vs. State of Maharashtra (Supra) the observation made by the Hon'ble High Court was with reference to the reasonable opportunity of being heard that is why in para 17, 18 and 19 the Hon'ble High Court has observed that even at the second stage when the enquiry report is not considered by the disciplinary authority, right of hearing is available to the delinquent employee. Paras 17, 18 and 19 of the said judgment are reproduced hereinbelow:-

" 17. The reasonable opportunity of being heard is the fundamental element in every inquiry. Its breach may occur in various ways illustrated by the cases referred to in the last paragraph. No formula can prescribe the exact content of the right of reasonable opportunity of being heard. Yet its breach can be easily recognised. It can occur where a document is not supplied, as in Chandrama Tewari Vs. Union of India (supra). The Government may violate the rule by reversing the findings of the Inquiring Authority without hearing the Government servant, as in Narayan Misra Vs. State of Orissa (supra). The rule is also violated when the report of the Inquiring Authority is not supplied to the Government servant as in M.P. Naik Vs. State of Karnataka (Supra).

18. For the reasons stated in the foregoing paragraphs, we are of the opinion that in the inquiry into the charges against the petitioner held by the disciplinary authority, the latter committed a clear breach of its duty to give to the petitioner a reasonable opportunity of being heard in respect of the charges' as envisaged by Article 311 (2) of the Constitution of India. We are not oblivious to the fact that Government servant is not entitled to a second notice before punishment is imposed. But in our opinion, the primary duty of the disciplinary authority to provide to the Government servant opportunity of being heard in respect of the charges, continues throughout the inquiry. This primary duty, which has not been abridged by the Constitution (42nd Amendment) Act, 1976, exists not only during the proceeding

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before the Inquiring Authority but continues until the disciplinary authority arrives at its conclusions (emphasis supplied).

19. Since the petitioner has been held guilty of the charges by the disciplinary authority, without giving to him a reasonable opportunity of being heard in respect thereof, the order of the disciplinary authority contained in Resolution No.BME 5283/1784/1451/Adm.6 dated 7th May, 1987 is void. Since the findings of the disciplinary authority on the charges which he considered in exercise of his authority under rule 9 are vitiated by failure to fulfil the primary duty of hearing the petitioner.....(emphasis supplied)."

22. In this context we may also examine the CCS (CCA) Rules which postulate that enquiry is conducted under Rule 14 of the Rules and Rule 14 provides the complete procedure for imposing major penalties and conducting of an enquiry and Rule 14 (23) shows that after the conclusion of the enquiry, a report shall be prepared and then Rule 15 provides as to what action on the enquiry report is to be taken and thus Rule 14 and 15 are distinct and under Rules 15. The disciplinary authority, if it is not itself the inquiring authority, may for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Rule 14, as far as may be and it is only thereafter that the enquiry report is submitted to the disciplinary authority then the disciplinary authority, has to take action on the enquiry report. Thus Rule 14 of CCS prescribes the procedure as to how the Inquiry Officer has to conduct the enquiry and complete it. Rule 15 prescribes the procedure as to

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how action is to be taken on enquiry report. Thus the difference in Rule 14 and Rule 15 is quite significant. Procedure under Rule 15 starts only after the enquiry is complete under Rule 14. The directions given in the earlier judgment was only to the extent that enquiry should be conducted and should be completed within a period of 6 months from the date of receipt a copy of this order. The direction did not say that action on the enquiry report should be taken within a time framework given by the Tribunal and since we have observed that the judgments cited by the learned counsel for the applicant have in a different context observed as upto what stage the enquiry continues and particularly with reference to the right of hearing and representation before the Inquiry Officer and the disciplinary authority, but the judgments cited by the learned counsel for the applicant nowhere state that if the enquiry report has been submitted within the time frame given by the Tribunal then the action taken by the disciplinary authority after that period would be within jurisdiction.

23. Thus we are of the considered opinion that the judgments relied upon by the learned counsel for the applicant do not apply to the present facts of the case since the enquiry report has been completed within the time frame given by the Tribunal. Action taken thereafter on the enquiry report under Rule 15 of CCS (CCA) Rule cannot be said to be without jurisdiction.

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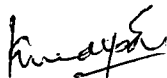
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24. The learned counsel for the applicant also contended that the applicant was not at all guilty since it was applicant's erstwhile father-in-law who had brought a certificate from PSEB, Mohali which the applicant had taken in good faith and had submitted before the authorities to show that she had qualified the Matriculation examination in the year 1993 and for that reason she should not have been held guilty. The applicant also pleaded that her erstwhile father-in-law had made a complaint to the department because he wanted to live in the accommodation allotted to his son and was not interested that the applicant should re-marry and since he was claiming that the applicant has got a job on the death of his son on compassionate grounds so he was claiming that he had a right to live with the applicant. In our view this contention of the applicant again has no merits because it is the applicant who had submitted the Matriculation certificate before the authorities which on enquiry turned out to be a false one and it cannot be said that the applicant had no knowledge of the fact that she had not qualified the Matriculation examination from the PSEB, Mohali and she believed that her erstwhile father-in-law had obtained the certificate and she was not aware of the fact, this plea cannot be accepted. Moreover this is reappreciation of evidence which is not permissible as while exercising the power of judicial review the court cannot reappreciate the evidence.



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25. No other ground has been urged. On the contrary we find that the applicant had been given full opportunity to defend herself and there is no violation of principles of natural justice or violation of any statutory rules so we find that the OA does not call for any interference and the same is dismissed. No costs.

  
(Kuldip Singh)  
Member(J) 22/2/2000

  
(S.R. Adige)  
Vice Chairman(A)

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