

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1580/2001

NEW DELHI, THIS THE 9th DAY OF SEPTEMBER, 2002.

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

T. Parthasarthy
S/o Late S. Totadri Iyengar
5, CLIMO ROAD
Opp. HQSC Recruiting Office
Pune Cantt. - 411001.

.... Applicant

(BY SHRI L.R. KHATANA, ADVOCATE)

VERSUS

1. Union of India
through Secretary
Ministry of Defence
South Block
New Delhi-110011.

2. Director General, Defence Estates,
West Block No. 4
R.K. Puram
New Delhi-110066.

3. Principal Director
Defence Estates
Southern Command
Pune-411001.

4. Secretary
Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi.


.... Respondents

(BY SHRI K.C.D. GANGWANI, COUNSEL)

ORDER

JUSTICE V.S. AGGARWAL:-

Applicant (T.Parthasarthy) had joined the Indian Defence Estates Service. On 12.5.1988, he was posted as Cantonment Executive Officer, Jabalpur and functioned there till 20.4.1990. During the said



period, the applicant was assigned the additional charge of the post of Defence Estates Officer, Madhya Pradesh Circle, Jabalpur. Applicant was served with a charge-sheet dated 11.8. 1992. The two articles of charge read:-

"ARTICLE-1: Shri T.Parthasarathy now Deputy Director, Defence Estates, Eastern Command, Calcutta, while functioning as Defence Estates Officer Jabalpur Circle, Jabalpur Cantt, during the period from 28.04.1989 to 06.02.1990 issued a letter No. MP/1005/ACQ dated 26.05.1989 to one Shri Chatra son of Shri Khushi Lal forsaking Government interest in the land comprising Khasra No.565/1 village Barkhera Bonder, Tehsil-Huzur, District Bhopal admeasuring 16.89 acres by abusing his official position with the intention of causing undue gain to Shri Chatra and corresponding loss to the Government.

By his above acts, Shri T.Parthasarathy failed to maintain absolute integrity and devotion to duty and gross misconduct unbecoming of a Government servant, thereby violating Clauses (i),(ii) and (iii) of rule 3 of the CCS (Conduct) Rules, 1964.

ARTICLE-II: Shri T.Parthasarathy now Dy.Director, Defence Estates, Eastern Command, Calcutta while functioning as Cantonment Executive Officer, Jabalpur Cantonment during the period 12.5.1988 to 20.4.1990 caused violation of the mandates of Section 181 (3) of the Cantonments Act, 1924 by not referring to the Defence Estates Officer, Jabalpur the building plans submitted by Shri Narbada Prasad Indurkhya and others in respect of constructions proposed on the site of G.L.R.Sy. No.95 of Jabalpur Cantonment for ascertaining whether there was any objection on the part of the Government to such erection or re-erection of buildings on the site. He misguided the Cantonment Board, Jabalpur through motivated advise procured from an Advocate misinterpreting some court judgements, and caused the Cantonment Board to sanction these building plans vide its resolution No.10 dated 20th March, 1990. Shri Parthasarathy thus acted in aberration of his normal duty with the intention of causing dishonestly undue gain to Shri Indurkhya and

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others and corresponding loss to the Government by exploitation of the defence land by the occupancy holders.

2. By his above acts, Shri T.Parthasarathy failed to maintain absolute integrity, devotion to duty and gross misconduct unbecoming of a Government servant, thereby violating clauses (i), (ii) and (iii) of rule 3 of the CCS (Conduct) Rules, 1964."

The applicant had submitted the reply and denied both the charges. The respondents proceeded with the enquiry under Rule 14 of the CCS (CCA) Rules, 1965. Shri S.C.Gupta had been appointed as the Inquiry Officer. The Inquiry Officer submitted his report on 23.6.1996. As regards charge No.I, the findings recorded by the Inquiry Officer were that the applicant had been misguided by the subordinate officers. There was no mala fide intention on the part of the applicant and the charge No.I is only partly proved. As regards charge No.II, the findings of the Inquiry Officer were couched in almost similar language that it was not appropriate for the applicant not have advised the Cantonment Board to await the opinion of the Director, Defence Estates. It was also not appropriate to have allowed the start of construction without receipt of full fees. Other allegations against the applicant were held not to have been proved.

2. Respondent No.1 had forwarded the enquiry report to the Union Public Service Commission (for short,"the Commission") (respondent No.4 herein). The

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Commission had tendered its advice and held that Article No.I of the charge was fully proved and not Article II.

3. Respondent No.1 thereafter had imposed a major penalty of reduction of the applicant from Senior Time Scale in the scale of pay of Rs.10,000 - 15,200/- to Junior Time Scale in the scale of pay of Rs. 8000- 13,500/- with immediate effect until he was found fit and after a period of 2 years on restoration to the Senior Time Scale, the period of reduction was to operate to postpone his future increments of pay.

4. By virtue of the present application, the applicant seeks setting aside of the order imposing the aforesaid punishment upon the applicant and also the advice of the Commission. It is asserted that the respondent No.3 had enhanced the penalty for running indefinite period. Co-related with the same, it is alleged that a direction should be given to the respondents to open the sealed cover and implement the recommendations of the Departmental Promotion Committee held in July 1992.

5. Application as such has been contested by the respondents. As per the respondents, the charge-sheet was served on the applicant on 11.8.1992. The sealed cover procedure was adopted. Applicant could not be promoted unless he was fully exonerated of the charges. It is not in dispute that the departmental proceedings were held and after the enquiry report had been received, it had been sent to

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the Commission. The Commission had tendered its advice in accordance with the constitutional obligation enjoined by it under Article 320 (3) of the Constitution. The assertions of the applicant assailing the said advice have been controverted. It has been pleaded further that the Inquiry Officer had not absolved the applicant with respect to his responsibility in issuing the letter dated 26.5.1989 and that after careful examination, the Disciplinary Authority was of the opinion that the applicant had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant in contravention of CCS (Conduct) Rules, 1964. Keeping in view the same, major penalty had been imposed.

6. During the submissions, it was not controverted that so far as Charge No.II against the applicant is concerned, the same was held not to have been proved and no action had been taken pertaining to the said charge. Therefore, we deem it unnecessary to go into the said charge.

7. During the course of submissions, the applicant's learned counsel had assailed the findings of the Inquiry Officer as well as the advice of the Commission to be erroneous. Therefore, the first and foremost question that comes up for consideration is whether this Tribunal would go into this controversy or not. Ordinarily, the Tribunal will not act as a court of appeal and reappraise the evidence already on record. It becomes necessary for us to ponder further

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into this controversy. A reference can well be made to a decision of the Apex Court in the case of **Yoginath D.Bagde v. State of Maharashtra and anr.**, (1999) 7 SCC 739. When a similar argument had been advanced, the Supreme Court held:-

"51. It was lastly contended by Mr.Harish N.Salve that this Court cannot reappraise the evidence which has already been scrutinised by the enquiry officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or Article 32 of the Constitution, act as the appellate authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr Salve is in very broad terms and cannot be accepted. The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In **Kuldeep Singh v. Commr.of Police**, 1999 SCC (L&S) 429 this Court, relying upon the earlier decisions in **Nand Kishore Prasad v. State of Bihar**, AIR 1978 SC 1277, **State of Andhra Pradesh v. Rama Rao**, AIR 1963 SC 1723, **Central Bank of India Ltd. v. Prakash Chand Jain**, AIR 1969 SC 983, **Bharat Iron Works v.Bhagubhai Balubhai Patel**, AIR 1976 SC 98 as also **Rajinder Kumar Kindra v. Delhi Admn.**,AIR 1984 SC 1805 laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

Keeping in view the aforesaid decision of the Supreme Court necessarily, the scope for interference is confined to the controversy if the findings are

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perverse and not supported by any evidence or no reasonable person could have reached the said conclusion.

8. In order to appreciate the said controversy, it would be in the fitness of things to refer to the conclusion of the Inquiry Officer as well as the advice tendered by the Commission. The Inquiry Officer had recorded the findings relevant extracts of which are:-

"In view of the above facts and circumstances although the land was technically requisitioned as well as technically acquired by the defence authorities but possession of the land was never taken over and was not proposed to be taken over because the land was not contiguous. The discrepancies in records were never rectified. The charge against the CO has to be seen in this background.(para 3.15 of Inquiry Report).

It is seen that first letter Ex.S.12, was issued only on the basis of entry in MLR without properly examining all the related facts in this case (ex.D.1) so there was no harm in re-examining the case again. Shri J.L.Rajak, DW.2 has stated that the case was reconsidered at the request of Shri D.K.Sharma who had intimated that the case was rejected without proper verification of record. It appears that Shri J.L.Rajak and Shri D.K.Sharma played the active role in reconsideration of the case. Shri Sharma did not communicate the contents of Ex.S. 12 to Shri Chatra and rather asked for its reconsideration (DW.2). Apparently this was done by Shri D.K.Sharma as he had already some NOC on 16.3.89 (EX.S.14). Shri Rajak DW.2 was instrumental in the notes being put up again on 12.5.89 onwards from a new file without reference to earlier decision as he was a common link between earlier decision, subsequent notes as the earlier decision had not been handled by Shri Kalar.(para 3.18 of Inquiry Report)

Shri Rajak did not point out NOC having been rejected earlier and put up Ex.S.11 in a new file. This shows that there was deliberate attempt on part of junior officers to mislead him as there is no evidence that this was done at the instructions of the CO. ".....There is no evidence that the CO

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influenced Shri Kalar and Shri Rajak to put up notings in the particular manner. (para 3.19 of Inquiry Report)

However, it is seen from Ex.S.11 that the CO asked for all the relevant details pertaining to this land. This shows that the CO wanted to consider this case on the basis of all material facts and not because of any malafide consideration. It is seen from Ex.D. 1 that the SDO-I and SDO-II did not analyse the documents available on record properly and did not analyse their implications. Even Shri D.K.Sharma, ADEO, Bhopal did not point out all the relevant facts in this case. Although he has also examined this case as seen from his initials on the copy of the letter (Ex.S.13) issued to Shri Chatra (Ex.SW.1). So it appears that the CO was totally misled by his subordinate staff in issuing Ex.S.13.(para 3.21 of Inquiry Report)

In view of the above, it is held that it was not appropriate on the part of CO to have issued Ex.S.13 even though its contents are factually correct. The CO was misguided by his subordinate officers in respect of this case. the malafide intention on the part of the CO are not established. So, the charge in Article I is held as partly proved.(para 3.24 of Inquiry Report)."

The Inquiry Officer held that the charge was partly proved. When the matter was referred to the Commission, it had noted anomalies and tendered the advice which runs as under:-

"The Commission observe that even though there were some anomalies regarding the land in question, CO being a senior officer should have realized that Sri Chhatra, the private party, had purchased the land in 1968 from one Gorelal, the original owner and for long 21 years, Shri Chhatra was keeping quiet about a No-Objection Certificate. The Commission hold that CO should have checked up the position regarding ownership of land with the records of land maintained by the revenue authorities. He should have checked up whether the land was acquired for the Ministry of Defence at any time even though it was not shown within the boundary of defence land in the land plan with the defence Estate Officer. CO could have also referred the matter to the Ministry of Defence for guidance. The Commission note that instead of taking recourse to anyone of these steps, CO issued a letter on 26.5.1989 granting No-Objection Certificate (Exhibit S-13) and thereby relinquished rights, titles and interests over

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a large chunk of defence land, which he was not authorized to do. Moreover, even though CO had written a letter on 10.5.1989 to Sri D.K.Sharma, Assistant Defence Estate Officer, rejecting the request for a No Objection Certificate, on a telephone call from Sri D.K.Sharma, CO examined the question of grant of No-Objection Certificate *denovo* opened a new file on the subject and without any reference to his letter dated 10.5.1989 issued the letter dated 26.5.1989 (Exhibit S-13) granting the No-Objection Certificate.

In view of the foregoing the Commission hold that Article I of the charge is fully proved against the CO."

9. In the first instance, it was contended that the Commission should not have tendered the advice which was contrary to what had been held by the Inquiry Officer. However, our attention has been drawn towards a decision of the Supreme Court in the case of *A.N.D'Silva v. Union of India*, AIR 1962 SC 1130. The Supreme Court had gone into this question and held that the Commission does not act as an appellate authority over the Inquiry Officer. But it was further held that when the Commission is consulted, it can certainly express an opinion on the merits of the matter which can be different from the conclusion of the Inquiry Officer. Consequently, we have no hesitation in holding that the Commission in discharge of its constitutional obligations when consulted can express an opinion and advice which could be contrary to the findings of the Inquiry Officer.

10. During the course of submissions, it has been urged that the article of Charge No.I pertains to an allegation that the applicant had abused his official position with the intention of causing undue

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gain to Shri Chatra and corresponding loss to the Government. According to the learned counsel for the applicant, the applicant had been held not to have abused his official position with the intention of causing undue gain to any person. In this regard as already referred to above, reliance was placed on the report of the Inquiry Officer. In answer to that in the first instance, the respondents pointed that in the second paragraph of article of charge, it has clearly been mentioned that the applicant had failed to maintain absolute integrity and devotion to duty and gross misconduct unbecoming of a Government servant. However, this particular plea of the respondents indeed necessarily must fail because the first paragraph is governing the second paragraph. The second paragraph of article of charge opens with the words "by his above acts". It clearly conveys that the second paragraph draws its strength from the first paragraph. The first paragraph while reciting the facts blames the applicant for abusing his official position with the intention of causing undue gain to Shri Chatra and corresponding loss to the Government. In order to succeed, therefore, it has to be established before it could be stated that there was gross misconduct unbecoming by the applicant he should be shown to have abused his official position with the intention of causing undue gain to Shri Chatra and corresponding loss to the Government.

11. It was contended that the order of 27.11.2000 (Annexure A1) imposing the penalty had been passed without any application of mind. According to



the applicant's learned counsel, the findings of the Inquiry Officer as well as the advice of the Commission had been accepted. They are not identical. On this count what has been urged indeed cannot be lost sight of. A perusal of the order dated 27.11.2000 indicates that the report of the Inquiry Officer had been accepted and thereupon it recites that on consideration of the same and the advice of the Commission it had come to the conclusion that the charge that the applicant while functioning as Defence Estates Officer abused his official position with the intention of causing undue gain to Shri Chatra and corresponding loss to the Government and thereby failed to maintain absolute integrity and devotion to duty and gross misconduct unbecoming of a Government servant is proved.

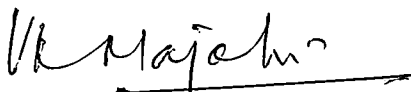
12. It has already been noticed above that the report of the Inquiry Officer was different from the advice of the Commission. The Inquiry Officer had held that the Charge I had partly proved. The advice of the Commission on the contrary was that Charge I was fully proved. We are conscious of the fact that the Disciplinary Authority is competent to record its own reasons and accept the report of the Inquiry Officer or not to accept the same in accordance with law. Having accepted the report of the Inquiry Officer and also the advice of the Commission which are poles apart, it betrays common sense to believe that the order as such could be passed acting on both the reports without setting aside one of them. To that extent, therefore, the said order must be held to have been passed without due application of mind.

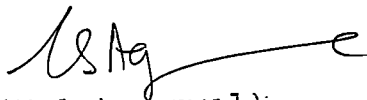
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13. During the submissions, arguments have further been advanced in the peculiar facts that it cannot be held that there was any misconduct on the part of the applicant and reliance was placed on the findings of the Inquiry Officer that the applicant as such had been misled. On that count, reliance was placed on a decision of the Supreme Court in the case of Union of India and others v. J.Ahmed, AIR 1979 SC 1022. Once we have come to the conclusion that the order had been passed without application of mind, we deem it improper at this stage to go into the said controversy. This is for the reason that it is for the Disciplinary Authority to pass an appropriate fresh order keeping in view the two reports we have referred to above and for purposes of the present order, no further opinion regarding this particular controversy is being expressed.

14. For these reasons and on the abovesaid grounds, the OA 1580/2001 is allowed. The orders in question consequently i.e. 27.11.2000 and 19.2.2001 are quashed and set aside. The Disciplinary Authority would be at liberty to pass a fresh order in accordance with law after considering the report of the Inquiry Officer as well as the advice of the Commission. It would be appropriate that a decision in this regard is taken preferably within six months from the receipt of a certified copy of this order. No costs.


(V.K. Majotra)
Member (A)


(V.S. Aggarwal)
Chairman

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