

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 1751/2001
IA No.

Date of Decision 29-4-02

Sh. Sh. Gavel.

(11)

...Petitioner (s)

Applicant in Person

...Advocate for Petitioner (s)

V E R S U S

Govt & others.

...Respondents

Shri George Parackal

...Advocate for respondents

Coram :-

Hon'ble Sh. Kuldeep Singh, Member (J)
Hon'ble Shri Govindan S. Tamai, Member (A)

1. To be referred to the Reporter or not ? YES
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO

(GOVINDAN S. TAMPI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH



O.A.No.1751/2001

New Delhi Dated this the 29th April, 2002.

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

S.P. Goel
S/o. Late Sh.Chandu Lal,
R/o. 131, Delhi Admn.Flats,
Nimri Colony, Ashok Vihar,
Phase-IV, Delhi-110052.

.... Applicant

(Applicant in person)

Versus

1. Govt.of N.C.T. of Delhi
Through the Lt. Governor,
Raj Niwas, Delhi.
2. The Chief Secretary,
Delhi Secretariat, A Wing,
Vth Level, I.P. Estate,
New Delhi.
3. The Director of Vigilance,
Old Secretariat, Delhi.
4. The Commissioner(Food & Supplies),
K Block, Vikas Bhawan, New Delhi.
5. The Director of Education,
Old Secretariat, Delhi.

.... Respondents

(By Advocate:Sh.George Paracken with Depttl.representative
Sh.J.P.Bachchan)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member(A)

Order No.F.7(44)/96/DOV/3820 dated 28.6.2000
imposing the penalty of "removal from service" on the
applicant, passed by the Chief Secretary, GNCT duly
endorsed in appeal by the Lt.Governor on 30.3.2001 is
under challenge in this OA.

2. Heard Sh. S.P.Goel, the applicant in person and Sh. George Paracken, learned counsel for the respondents.

3. The applicant, an Inspector Food and Supplies Circle 20 and Headquarters, Under direction of his superior Sh. Ganga Prasad, Food Supplies Officer inspected on 13.2.96 FPS 5940 of one Trilok Chandra Gupta on complaint that they were causing inconvenience to customers. Results of the inspection annoyed him. On 19.2.96, the Depot holder approached the applicant, with three persons for issue of Food Cards to three people, which he did after consulting his superior, on post verification basis. The applicant was placed ^{under} ~~on~~ suspension on 28.2.96. He had on that day over twenty eight years of service. On 20.5.96, he was asked to explain concerning the issue of passes which he replied on 28.5.96. Charge-sheet issued to him on 14.2.97 was replied on 10.3.97. Relevant documents were supplied on 23.6.97 and the suspension was revoked on 7.8.97. Enquiry was ^{Kept under} ~~beneath~~ held against the applicant as well as Sh. Ganga Prasad, his senior. Inquiry Report was filed on 18.8.99 and the applicant's representation on 7.4.2000. By order dated 28.6.2000/10.7.2000 the applicant was removed from service when he had completed total service of over 31 years. His appeal dated 26.7.2000, was rejected on 30.3.2001/17.5.2001, Hence this OA.

4. Grounds raised in the OA are as below:

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- i) Penalty order issued by Respondent No.2 was illegal and improper as the applicant's disciplinary authority was Respondent No.4, who was the Head of the Deptt.
 - ii) Common proceedings were adopted for him along with his senior Sh. Ganga Prasad , without any order for the purpose being issued as called for under Rule 18 of CCS(CCA) Rules,1965.
 - iii) The charge-sheet was vague and unspecific and the respondents have taken the expression "post verification as similar to " without any enquiry " which was wrong. It also did not indicate the nature of infraction of the Delhi Specified Food Article Order 1981 or CCS Conduct Rules he had committed.
 - iv) The charge-sheet was defective in that it alleged collusion on his part with his superior Ganga Prashad on the one hand and had acted dishonestly action for monetary gains pointing to failure to maintain integrity on the other, neither of which is proved;
 - v) the respondents have not considered the contents of the applicant's reply dated 28.5.96 to their memo dated 20.5.96, they had relied upon a earlier statement taken three months ago.



- vi) order for initiating common proceedings had not been obtained or supplied;
- vii) impugned orders were not based on Delhi Specified Food Articles Act 1981 and as such illegal;
- viii) he has been penalised on the version of the co-accused Ganga Prashad without hearing facts;
- ix) I.O.'s report has been based on personal knowledge rather than an evidence which was perverse and based on misconcepts of facts;
- x) right of cross examination has been denied, primarily relating to one Sanjiv Mankotia one of the listed witness;
- xi) the applicant had only acted in accordance with the instructions of his senior Ganga Prashad, as was expected of him;
- xii) I.O.'s report has been only on the basis of the report/version given by Shri Ganga Prashad;
- xiii) impugned order has been based on the advice of CVC which had not been communicated to him; 2
- xiv) the order has been without any application of mind and has been harsh in ^{the} _{the} penalty imposed has taken away the bread and butter from him, after 31 years of service;

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- xv) the Inquiry Officer had held that the charge-sheet against Ganga Prashad, applicants' senior was not proved, a finding with which the disciplinary authority himself did not agree, DA could not therefore have issued the penalty of removal of the applicant, especially as the fact that the applicant had obeyed the orders of the senior was proved;
- xvi) remarks " previous application not traceable" on the form for the food cards was not at all any act of misleading the Deptt; ^{as} wrongly assumed and alleged.
- xvii) impugned order wrongly held that it was the job of the applicant to check on every aspect of the application form, which indeed was the job of the clerk;
- xviii) the version in the impugned order that the applicant should have brought it to the notice of the senior that instruction dated 8.1.96, did not permit issue of card on post verification basis was incorrect, as he had joined the charge much later than the senior; who should have been aware of the instructions;
- xix) No S.C. notice was also issued to him on the proposed punishment;

xx) appellate order was bad as it showed non-application of mind, non-consideration of specific points raised in the appeal, failure to see the disagreement note in the case of the Sr. Officers as well as the linkage in respect of the charge against ~~the other~~ — r-applicant and his senior and failure to appreciate his previous record of unblemished service of 31 years. It was also cryptic and non-speaking.

In view of the above the OA merits acceptance, in toto pleads, he.

5. In the reply on behalf of the respondents, it is submitted that during the inspection of Circle Office No. 20, Alipur, by the Vigilance Branch three food cards were found to have been issued by the applicant, who was Food Inspector to S/Shri Mohd. Poddar, Shankar Dayal Sharma and Satish Chander. The same were subsequently found to be non-existent and bogus. The Cards had been issued on 19.2.96, on post verification basis by the applicant which had been stopped since 1.1.96 by Deptt. instructions. As this irregularity has been committed by the applicant his explanation was called for following which charge-sheet was issued to him ^{on 14.2.97} for having committed gross misconduct, in collusion with his senior/supervisor Sh. Ganga Prashad, Food and Supply Officer, He was therefore alleged as having failed to maintain total integrity and devotion to duty. In the enquiry that followed I.O. in his report dated 18.8.99, held that charge stood proved. After examining the I.O.'s ² report, the applicant's representation and other material on record, the Disciplinary Authority imposed on the

applicant the penalty of removal from service, by its order dated 26.6.2000. Applicant's appeal dated 26.7.2000, was rejected by the appellate authority on 30.3.2001. Respondents do not generally deny the facts, but contest the averments by the applicant. According to them the applicant was neither authorised to sign Food Card nor to recommend for its their issue. As Inspector (HQ) his duty was to scrutinise the applications of Food Cards. He had in his attempt to mislead the Deptt. indicated that "previous application was not traceable". He should have issued the card only after spot verification, even if he was directed by the FSO. As the primary involvement of the applicant in this irregularity was evident he was proceeded against. As the case against applicant was linked up with that of his senior Sh. Ganga Prasad, F.S.O., the applicant was charge-sheeted by the disciplinary authority of the Sr. officer, so that common proceedings could be conducted. The higher disciplinary authority had passed the impugned order which was permissible on legal in terms of CCS(CCA) Rules. There was no need to pass any order U/Rule 18 to hold common enquiry proceedings when two or more Govt. servants were involved. In fact proceedings were separate but held simultaneously against the applicant and Ganga Prashad.

6. The applicant had allegedly issued three food cards, without making any enquiry at all and in total disregard of the deptt. instructions. He could not have issued food cards on post verification basis which was specifically barred by the Deptt. The applicant could not prove the genuineness of the parties in whose names, the cards have been given, though he was given full opportunities to do so. Ganga Prasad had agreed that he

had instructed the applicant on telephone to issue cards, but later explained that it was only to issue duplicate cards. This is supported by the applicant's version that he had indicated that the "previous applications were not traceable", a ploy adopted by him to commit the impropriety. Charge-sheet issued to the applicant was specific and not vague as alleged. Deptt. instructions issued from time to time, in regard to procedures, did not call for any amendment to the Control order as the basic rules/powers have not been changed. Procedures are adopted by the Deptt. as and when situations warrant. As the food cards have been issued by the applicant against the deptt. instructions and the cards, on post verification were found to be bogus, the action taken against the applicant was correct and proper. The penalty was imposed only after examining all circumstances and the same was correct and legal. C.V.C's advice was not communicated to the charged official, as only on 28.9.2000, i.e. after the issue of the order, general directions were received from the CVC, on the communication of their advice to charged officials. As the proceedings against the applicant were ^{under} that Rule 14 of CCS (CCA) Rules and not that Rule 19, no notice was required to be issued before imposing the penalty. The appellate authority's order was a speaking order and had been issued after considering all the points raised in the appeal and the same did not suffer from any infirmity. OA therefore deserved to be dismissed according to the respondents.

7. In the rejoinder, it is reiterated that the charge-sheet had not specified as to which provision of the law was violative by the applicant, that he was duly authorised to issue the food cards, the inspection note on

the basis of which proceedings were started were handed over to him only at the inquiry stage and that he had acted only at the directions of his superior Shri Ganga Prashad, as admitted by the latter, a version accepted by the I.O. also. In this case, though the applicant's disciplinary authority was respondent No.4 Commissioner of (Food and Supplies), the penalty was imposed by respondent no. 2 - Chief Secretary, without any specific order for the purpose. Besides, common proceedings were taken in the case of the applicant and his senior Ganga Prashad and the respondents averment that they were separate but simultaneous proceedings was wrong. No orders had been issued, permitting the holding of common proceedings as was required under Rule 18 of CCS(CCA) Rules, and the respondents defence to the contrary was incorrect. Vagueness of the charge was not specifically denied as also the allegation/fact that the applicant's reply dated 28.5.96 to the respondents letter of 20.5.96 was not considered. That the applicant was a junior employee acting under the instructions of his supervisor. FSO, was overlooked. Food cards issued were termed as bogus only on presumptions and assumptions and not on evidence. When the competence of the FSO to issue Food Card or to direct their issue is not challenged, it was surprising that the applicant who has acted in terms of the directions of his senior has been put to task. As the findings against the applicant have been based on the averment of Ganga Prashad, the respondents should have given the applicant a copy of the same which they had not done. Orders of both the disciplinary authority and the appellate authority were totally non-speaking in nature and the appellate authority in particular had not at all considered the

points raised by the applicant in his appeal. The entire proceedings were therefore vitiated and deserved to be set aside, prays the applicant.

8. During the oral submissions, the respective written pleas were forcefully reiterated by both the parties. Points stressed by the applicant who appeared in person were that (i) the penalty on him was imposed by an authority who was in fact the appellate authority in his case, depriving him of his right of first appeal [V.K. Ranade Vs Food Corporation of India of Delhi High Court 1998 Rajdhani Law Reporter 365] and ii) Common proceedings were initiated without any proper authority which has prejudiced his right (Trikurari Charan Chatterjee Vs. State of West Bengal & Ors. - 1979 (1) SLR 878 of Calcutta High Court and Sanjeev Kant Tiwari Vs. State of MP and Others of MP High Court - 1986(1) SLR 559) and Kishan Lal Godhana vs. State of Rajasthan of Rajasthan High Court 1969 SLR 666) iii) that the charge were vague and not specified [Samar Singh Vs. State of Rajasthan in (Supreme Court (1986 (2) SLR 47) ;iv) that relevant documents were not supplied to the charged officer which was bad (N.K. Vardharaja Vs. Sr. Dy.DGAMSE Wing, GSI- OA no.1012/86 decided by Bangalore Bench of CAT on 4.12.1990) v) and that CVC report relied upon by the respondents were not supplied to the applicant. On the other hand, Shri George Paracken stated that as the respondents have acted correctly both in procedure and in law there was no ground whatsoever for any interference by the Tribunal. According to him there was no need at all for issuing any separate order for holding joint proceedings and CVC's advice was correctly not furnished to the applicant as the same was not at all required, till

orders for the purpose were issued on 28.9.2000. In the above view of the matter, it was clear that the applicant had no case at all and the OA should be dismissed according to Sh. Paracken.

9. During the oral submission, we specifically enquired of Sh. George Paracken to indicate whether joint/common proceedings were ordered in this case - for the applicant his superior Ganga Prasad - but he was not able to assist us. We therefore, desired that we wanted to see the relevant file from which the proceedings were initiated and the learned counsel agreed to do so for which he was granted sometime. On the learned counsel's request the time was also extended but the relevant records were not made available. On being further asked the learned counsel expressed his inability to produce the relevant files and indicated that the Tribunal may take appropriate decision on the basis of the facts brought on record and submission already made.

10. We have carefully deliberated upon the rival contentions raised in the written pleadings and during oral submissions. In this OA the extreme penalty of removal from service is imposed on the applicant a Food Inspector, with over 31 years of service, on the alleged ground that he had issued three food cards, on clearance from his senior FSO Ganga Prashad, which were found on subsequent verification, to be bogus. Applicant has assailed the charge-sheet, both on merit and on legal pleas and has sought for the Tribunal's intervention against the harsh penalty imposed on him. It is reiterated by the applicant and it emerges from the evidence brought on record that the entire proceedings relate to the issue of the Food

cards to three individuals by the applicant who on consulting his superior and FSO Ganga Prashad on 19.2.96, was advised to do so on post verification basis. The charge raised against the applicant is that the issuance of the food cards ~~by~~ the applicant, even if was under directions of the FSO, Ganga Prashad the same did not save him, as in terms of the latest instructions notified on 8.1.96, issue of Food Cards on post verification had been dispensed with. At the same time, it has not been brought out that the applicant who had joined in the new office was aware of the latest instructions, or that the above instructions were been duly notified or circulated. It is also not on record that the supervisory officer (FSO), who was consulted by the applicant in connection with the issue of Cards on post verification basis had advised the applicant against it. The evidence if any is that FSO had indeed advised the applicant to issue the Cards a fact which he had also agreed in the beginning. It is only on a much later occasion, he has changed his version and has taken the plea that he had only advised the applicant to issue duplicate. This volte face is hardly convincing. It is only an attempt to escape the responsibility, and the respondents have totally accepted this play which had hurt the applicant. The applicants role, if any was of diminished and reduced responsibility and the respondents have failed to appreciate the same but were only interested in punishing him, evidence or not.

11. According to the inquiry report, FSO Ganga Prashad was not guilty, as he had apparently directed the applicant to issue duplicate Food Cards on post verification and not new cards. On the other hand even if the applicant had received directions from Ganga Prashad,

he was guilty as he had issued new Food Cards, which were prohibited by instructions of 8.1.96 issued prior to the issue of the Cards. Though it has not been proved that the instructions have been circulated, the Disciplinary Authority have taken the view that it was for the applicant to have brought it to the notice of the FSO that instructions did not permit issuance of Food Cards on post verification basis. According to the disciplinary authority, applicant has done it to cover up his mistake, by making the endorsement 'previous application traceable'. It is not clear as to how such an interpretation can be taken, except to exculpate the FSO. This has been accepted by the appellate authority, without any demur to uphold the disciplinary authority order. So much for the facts.

12. As far as procedural irregularities are concerned, they galore. Firstly, the applicant has been dealt with in common proceedings along with his senior and supervisor Ganga Prashad, FSO, as is clear from the I.O's report. At the same time no order seems to have been issued for holding common proceedings as required in terms of Rule 18 of CCS(CCA) Rules, 1965. The respondents have adopted the stand that it was not mandatory to hold common enquiry proceedings when two or more government servants are involved. This is patently wrong as when related issues are involved common proceedings would have to be initiate, but only after obtaining orders for the purpose. Otherwise such proceedings become vitiated as laid down in the case of Tripurari Charan Chatterjee (Calcutta High Court) and Shayama Kant Tiwari (MP High Court)(Supra). According to the respondents only separate but simultaneous proceedings had been gone through. This has been disproved by the IO's report itself. Secondly, the

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penalty in this case has been imposed by the Chief Secretary who in fact was the appellate authority, for the applicant whose disciplinary authority was respondent no.4 (Commissioner of Food and Supplies). That being the ^{right} case, the applicant's ^{first} stage of appeal is lost. This was incorrect in view of Delhi High Court's decision in the case of V.K.Ranade Vs. F.C.I. Thirdly, the decision for imposing the penalty on the applicant has been taken by the Disciplinary Authority keeping in mind the statement given by Ganga Prasad, the applicant's superior who was also concerned in the case, but without supplying a copy thereof to the applicant. This was a clear violation of the principle of natural justice. Fourthly it is on the record that the respondents have not communicated to the applicant, the opinion received by them from CVC before the imposition of penalty, as instructions directing the communication of CVC's opinion, came to be issued only as a subsequent date. This was incorrect, as the respondents having relied upon the advice of CVC for imposing the penalty should not have shied away from communicating the same to be charged official. Hon'ble Supreme Court's directions relating to communication of UPSC's advice issued in the case of State Bank of India Vs DC Aggarwal [JT1992(6)SC673] and A N D Silva Vs UOI [AIR1962 SC 1130] are relevant in this context. This also vitiated the proceedings.

13. It has been clearly brought on record that the applicant had issued three Food Cards on the basis of the directions of ^{the} senior (FSO) a fact not at all disputed but agreed to by the senior officer ^{himself} though he had sought to modify it later and no loss is found to have been caused to revenue by the applicant. What has occurred is

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a minor irregularity which could not at all have invited any penalty than Censure, at worst, the imposition of the extreme penalty of removal was harsh, excessive and totally unjustified. We are therefore fully convinced that the entire proceedings are vitiated and that penalty was wrong and misplaced. The same have to be quashed and set aside. In the circumstances of the case, there is also no ground at all for remanding the matter for fresh consideration, as it would ^{only be an} ~~be an~~ exercise in futility.

14. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned orders are quashed and set aside. Respondents are directed to reinstate the applicant back in service within a month from the date of receipt of copy of this order, with full consequential benefits including pay and allowances for the period between the date of removal and the date of reinstatement. We also direct that the respondent shall pay him Rs.5,000/- (Rupees five thousand only) towards the costs in this OA.

(GOVINDAN S. TAMPI
MEMBER (A))

Patwal/

(KULDIP SINGH)
MEMBER (J)