

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No.1984/2001

This the 12th day of September, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman

Hon'ble Mr. V.K. Majotra, Member (A)

Pawan Sut,
36/C, New Hira Park,
Dichaun Road,
Najafgarh,
New Delhi-110043.

-Applicant

(By Advocate: Shri L.C. Rajput)

Versus

1. Union of India,
Through its Secretary,
Ministry of Steel,
Udyog Bhawan,
New Delhi.
2. The Joint Secretary (Sh. D.V. Singh),
Ministry of Steel,
Govt. of India,
Udyog Bhawan,
New Delhi.
3. The Director,
(Sh. Jayashree Mukherjee),
Ministry of Steel,
Govt. of India, Udyog Bhawan,
New Delhi.

-Respondents

(By Advocate: Shri A.K. Bhardwaj)

O R D E R

Shri V.K. Majotra, Member (A)

Applicant has assailed punishment of dismissal from service inflicted upon him in disciplinary enquiry w.e.f. 10.11.2000. Disciplinary proceedings were initiated against him on 13.10.99. The applicant had been charged with the following:-

"Article I

That the said Shri Pawan Sut, Peon, while functioning as Peon, on 5.5.99 uttered obscene remarks with in the office premises in the 3rd Floor corridor during office hours in the presence of Shri P.S.Nair, Under Secretary, Department of Steel. Since May, 1999 the said Shri Pawan Sut has been repeatedly misbehaving by making

obscene gestures and using obscene words in the presence of Shri P.S. Nair, Under Secretary. By the above said acts, Shri Pawan Sut, Peon has conducted himself in a manner unbecoming of a Government servant, and acted in a discourteous manner thereby violating Rule 3(1) (iii) and Rule 3 (A) (a) of the Central Civil Services (Conduct) Rules, 1964.

Article II

That the said Shri Pawan Sut, Peon, on 23.9.99 entered the SAIL-I Section of the Department of Steel and used abusive language against the officials seated therein. He was under the influence of alcohol at the time of the occurrence of the incident. By the above said acts, Shri Pawan Sut, Peon, has conducted himself in manner unbecoming of a Government servant, thereby violating Rule 3(1) (iii) and Rule 3(A) (a) of the Central Civil Services (Conduct) Rules, 1964.

Article III

That the said Pawan Sut, Peon, while functioning as Peon, on 23.9.99 assaulted Shri M.P. Rao, Under Secretary, within the office premises grievously injuring him and used obscene and abusive language against Shri M.P. Rao. By the above said acts, Shri Pawan Sut, Peon, has conducted himself in a manner unbecoming of a Government servant, thereby violating Rule 3(1) (iii) and Rule 3(A) (a) of the Central Civil Services (Conduct) Rules, 1964".

2. The Enquiry Officer held all the charges levelled against the applicant as proved. A copy of the enquiry report translated in Hindi had been supplied to him on 14/15.9.2000. The applicant did not make any representation against the enquiry report within the extended time granted by the disciplinary authority. Applicant's appeal against the dismissal order was rejected on 1.3.2001. A presidential appeal filed by the applicant on 5.3.2001 was also considered and rejected. The learned counsel of the applicant made the following contentions during the course of arguments:-

- 1) The enquiry officer did not record the statement of witnesses in the form of direct speech. Adoption of in-direct speech in recording evidence of witnesses is against the prescribed procedure which vitiates the entire enquiry proceedings.

- 2) Whereas the applicant had asked for copies of certain documents and also that certain persons should be examined as defence witnesses, neither such documents were supplied to him nor were defence witnesses examined by the enquiry officer. In this manner, principles of natural justice were violated and the applicant was not afforded a fair opportunity of defence.
- 3) The enquiry officer and the disciplinary authority used extraneous material to prove the charges against the applicant.

As regards use of direct form of speech in recording the evidence of witnesses is concerned, such methodology may be stated to be pretty unusual but it cannot be held that adoption of indirect form of speech for recording evidence would vitiate the proceedings. We have to see whether the exact import of the statement of a witness has been conveyed or not. Preferably the direct form of speech should be adopted for recording statement of witnesses, but when the indirect form of speech can also convey the intended meaning of the statement, no exception can be made thereagainst. This objection of the learned counsel of the applicant, therefore, does not hold water.

3. As to the point raised by the learned counsel of the applicant that the applicant was not supplied the demanded documents nor were the defence witnesses examined by the enquiry officer, the learned counsel of the applicant relied on Ram Niwas Bansal Vs. State Bank of Patiala (Punjab and Haryana High Court) and another 1998 (4) SLR 711 to contend that this has denied the applicant a fair and reasonable opportunity. On the other hand, the learned counsel of the respondents stated that applicant was provided ample opportunity. Applicant had made an application on 2.3.2000 requesting the enquiry officer to allow him to produce witnesses and the documents. He drew our attention to Daily Order Sheet dated 5.1.2000 of the enquiry which states:

- a) C.O. inspected the listed documents in original. He was provided with a photocopy of each of the

statements listed as Sl. Nos 1 to 3 of the first charge, 4 to 8 of second charge and 1 to 3 of 3rd charge of the chargesheet. The list of witnesses is already available with the C.O.

- b) C.O. will confirm to me in writing by 13th January, 2000 latest by 11.00 AM whether he accepts authenticity of the same or not. If he does not accept authenticity of any of the documents, he should give reasons for the same. If no such intimation is received by the stipulated date, it shall be assumed that authenticity of the documents are acceptable to him.
- c) C.O. shall give me by 13th January, 2000 latest by 11.00 AM the list of additional documents, if any required by him giving full details regarding reference no. of documents, its custodian and relevance of the same in each case. A copy of this list shall be furnished to Presenting Officer as well. Such of the documents as allowed by him will be intimated to P.O. and C.O. P.O. shall procure the additional documents admitted and in respect of the documents which are not forthcoming, he shall obtain a non-availability certificate from the respective custodian. P.O. shall facilitate inspection of available documents to C.O. within 15 days from the date of receipt of communication from me and send a confirmation in this regard immediately.
- d) Alongwith the listed additional documents, C.O. shall also intimate the additional witnesses, if any, proposed to be examined on his behalf giving their name, address for correspondence, address of their controlling authority and their relevance in each case. A copy of the list of additional witnesses shall be given to P.O. as well".

4. Vide Daily Order Sheet dated 13.1.2000, the applicant was provided another opportunity by the Enquiry Officer to submit list of additional documents and additional witnesses, if any, before 9.2.2000. ^{As per Vb} Order sheet dated 9.2.2000, the documents were procured and the applicant inspected the documents. He confirmed that the documents were inspected. A photo copy of the documents was also handed over to him. He did not intimate the names of any additional witnesses. Although non-supply of enquiry report and documents can cause prejudice to the case of the petitioner amounting to violation of rules of natural justice as held in the case of Ram Niwas Bansal (supra), in the present case the enquiry officer had granted adequate opportunity to the applicant



to produce his witnesses as also all documents desired to be seen by the applicant were allowed to be inspected by him. In this background, in our considered view no prejudice has been caused to the applicant in relation to supply of documents and examination of defence witnesses. The objection raised by the learned counsel of the applicant in this behalf, therefore, must also fail.

5. With reference to use of extraneous material against the applicant, the learned counsel of the applicant stated that the disciplinary authority in the final orders (Annexure A-8) has stated that several written complaints of use of abusive, unparliamentary and obnoxious language were received by him from various officials such as S/Shri V.M. Gupta, R.K. Tiwari, A.D. Roy, M.C. Luther, B.K. Verma and Narain Das. These complaints according to the applicant constitute extraneous material used against the applicant in the disciplinary proceedings.

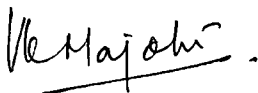
6. The learned counsel of the respondents stated that whereas the applicant had admitted use of abusive language within the office premises and during office hours during his deposition, the disciplinary authority had also come across various complaints of officers and staff regarding use of abusive, obnoxious and derogatory language by the applicant. The learned counsel stated that the charge against the applicant was proved beyond doubt by the enquiry officer based on the deposition of witnesses and documents ^{and as such were} reference to some personal records of the applicant indicating complaints against him would not amount to any illegality affecting the merits of the case. In our view too, reference to such material may be a superfluity but it is certainly not an illegality having not caused any prejudice to the defence of the applicant.


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7. The enquiry officer on analysis of evidence had found that the applicant had used abusive language in the discharge of his duties. On the basis of evidence and documents, the enquiry officer as well as the disciplinary authority have proceeded to hold the charges against the applicant as proved. The scope of enquiry is entirely different from that of criminal trial in which the charges ^{are} required to be proved beyond doubt. Preponderance of probabilities and some material on record is necessary to reach a conclusion whether or not the delinquent has committed misconduct. Placing reliance on High Court of Judicature at Bombay Vs. Shri Udaysingh & Ors 1997 (2) SCSLJ 71 and finding from the record, that there is some material on record, and following the principle of preponderance of probabilities, there is no infirmity in the disciplinary proceedings held against the applicant on the basis of which punishment of dismissal from service was imposed upon him.

8. If one has regard to the above discussion, there is no merit in this OA and accordingly the same is dismissed. No costs.


(V.K. Majotra)
Member (A)


(V.S. Aggarwal)
Chairman

cc.