

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No. 3422 of 2001

(16)

New Delhi: this the 27th day of August, 2002

HON'BLE MR.M.P.SINGH, MEMBER (A)

HON'BLE MR.SHANKER RAJU, MEMBER (J)

Capt. R.L.Biala,
Dy. Director General,
Civil Aviation,
New Delhi.

.....Applicant.

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India,
Ministry of Civil Aviation,
through
the Secretary,
Ministry of Civil Aviation,
Govt. of India,
Rajiv Gandhi Bhavan,
New Delhi.

2. Union Public Service Commission,
through
its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi.

3. Sh. Amar Pratap Singh,
Inquiry Officer,
Executive Director (Vig.)
Indian Airlines Limited,
Safdarjung Airport,
New Delhi.

.....Respondents.

(By Advocate: Shri R.V.Sinha)

ORDER (ORAL)

Shanker Raju, Member (J):

By this OA, applicant has challenged the Inquiry Report dated 12.11.99 holding him guilty of the charges. Applicant also impugns the penalty order dated 21.8.2001 imposing upon him a penalty of reduction of pay by three stages for a period of 3 years without cumulative effect and without affecting his pension. He has sought all

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consequential benefits on quashing of the impugned orders.

2. Applicant, who was working as Dy. Director General of Civil Aviation, was issued a major penalty charge sheet under Rule 14 of CCS (CCA) Rules, 1965 for the following Articles of Charges:

"Article-I"

That Capt. R.L. Biala while functioning as Director of Flying Training during the year 1994 did not dissociate himself from the conduct of the examinations in which his son Mr. Mohit Biala had appeared for issue of Private Pilot's Licence (PPL) and Commercial Pilot's Licence (CPL) nor informed DGCA/ Govt. the fact that his son is candidate for such examination.

By his aforesaid act, Capt. Biala has violated sub-rule 1 of Rule 3 of Central Civil Services (Conduct) Rules, 1964 rendering himself liable to disciplinary action.

Article-II

Capt. R.L. Biala while functioning as Director of Flying Training during the year 1996 did not obtain the sanction of the Govt. for permitting his son Mr. Mohit Biala to accept scholarship from the Madhya Pradesh Flying Club.

By his aforesaid act, Capt. Biala has contravened the provision of Rule 13 of Central Civil Services (Conduct) Rules, 1964 rendering himself liable to disciplinary action.

Article-III

That Capt. R.L. Biala while functioning as Director Flying Training during 1995 did not obtain the prior sanction of the Govt. for employment of his son Mr. Neeraj Biala as Trainee Pilot in Damania Airways (later changed to Skyline NEPC).

By his aforesaid acts, Capt. R.L. Biala has violated Rule 4 of Central Civil Services (Conduct) Rules, 1964 rendering himself liable to disciplinary action.

Article-IV

That Capt. R.L. Biala while functioning as Deputy Director General of Civil Aviation during 1997 did not obtain the prior sanction of the Government for the employment of his son Mr. Mohit Biala as a trainee pilot in Jet Airways.

By his aforesaid act, Capt. R.L. Biala has violated Rule 4 of Central Civil Services (Conduct) Rules, 1964 rendering himself liable

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to disciplinary action.

Article-V

That Capt. R.L.Biala while functioning as Director Flying Training during 1993 did not obtain the previous sanction of the Government for writing/publishing books on Pilot Training/Aviation which are being sold since 1993 by Flying Clubs with whom Capt. Biala had official dealing.

By his aforesaid act, Capt. R.L.Biala has violated the provision of Rule 15 of Central Civil Services (Conduct) Rules, 1964 rendering himself liable to disciplinary action."

3. After the inquiry was completed, the Inquiry Officer had proved Articles of Charges I, II and III but had exonerated the applicant of Articles of Charges IV and V.

4. Applicant referred his representation against the findings of the Inquiry Officer and the matter had gone to the UPSC for consultation and by an advice dated 21.8.2001 Article of Charge II has not been substantiated and rest of the Articles of Charges an agreement had arrived at with the Inquiry Officer.

5. The Disciplinary Authority, on the basis of advice of the UPSC, by an order dated 29.10.2001 imposed upon the applicant punishment, giving rise to the present OA.

6. Learned counsel for the applicant Shri Arun Bhardwaj assailed the proceedings and findings of the Inquiry Officer of guilt including UPSC advice on several legal contentions and on following legal grounds:

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i) According to the applicant, he was deprived of an opportunity to defend himself in so much as he had requested the Inquiry Officer to provide him additional documents vide his letter dated 22.4.99 which has not been acceded to.

ii) According to the applicant, he has been discriminated in the matter of punishment because in the similar circumstances Shri J.S.Wazir, Deputy Director (Operations) has been awarded lesser punishment of Censure by order dated 18.4.2002 which amounts to hostile discrimination and is violative of Articles 14 and 16 of Constitution.

iii) It is stated that the findings arrived at by the Inquiry Officer are perverse and without discussion of the Articles of Charges and reasons, and the same is based on sumises and conjectures and without any evidence on record which is in contravention of Rule 14(23) of CCS(CCA) Rules, 1965. Applicant also assailed the proceedings and findings on account of personal bias of Inquiry Officer Shri Amar Pratap Singh.

iv) It is contended that on a anonymous complaint, the proceedings were initiated without the advice of CVC which is not tenable. Although the complaint was received in 1995 and the inquiry was initiated in 1998 and the impugned order was passed in 2001. The inquiry had been initiated with inordinate delay and the matter was kept in abeyance with a malice view to

withhold the applicant's promotion.

v) It is contended that Articles of Charges I and III have been found proved by the Inquiry Officer without appreciation of evidence. Regarding Article-I of the Charge, it is stated the applicant had set and evaluated the paper of only one subject out of six as a stop gap measure at the verbal request of the Director General, Civil Aviation since no regular examiner was available. When he came to know that his elder son had sat in the exams, the applicant had disassociated himself from the exams. It is further stated that the applicant was not aware about the names of the candidates sitting in the exam as initially he was supplied only with a list of number of candidates and their question papers checked by him did not disclose their names. The applicant tallied the list of roll numbers prepared by him with the result sheet's roll numbers and signed the same. The exams are held after every 3 ^{months} years and his son had not used this exams. for any purpose and had sought for reappearance in the exam. much prior to the initiation of the inquiry. As such to prove this Article of charge, the findings of the Inquiry Officer and the decision of the Disciplinary Authority cannot be said to be a decision as of prudent man.

In so far as Article III of the charge is concerned, the DGCA himself was aware about applicant's elder son looking for employment and in fact he himself had forwarded his application to the Director of Damania Airways and as such he cannot be held guilty under Rule 4 of CCS(Conduct)Rules,1965. This fact

has not been appreciated by the Inquiry Officer which he was bound to do as per the rule and as such non-appreciation of this fact caused prejudice to applicant and vitiated the proceedings and enquiry.

vi) The order passed by the Disciplinary Authority is without application of mind i.e. without dealing with the contentions taken in the representation/reply to the Inquiry report.

7. Respondents represented themselves through Shri R. V. Sinha who denied the contentions and stated that in so far as Article I of Charge is concerned, applicant, who was holding the post of Director of Flying and Training in 1994, prepared the question papers, evaluated the answer sheets and declared the results of Private Pilots Examination held in July, 1994 and Commercial Pilots Exams. held in November, 1994 where his son appeared and passed. He failed to intimate the appearance of his son in these examinations to the competent authority and had not dissociated himself from these examinations. He signed the result sheet on 10.8.94 in which his son's name figured.

8. In so far as Article III of Charge is concerned, it is stated that it was incumbent upon a Govt. servant to inform the competent authority personally and to obtain prior sanction of the Govt./competent authority in the event any family member including son and daughter seek employment in the Organisation/Dept. with which the delinquent officer has official dealings and mere information to DGCA would not be sufficient

compliance. As such taking a lenient view, applicant has rightly been punished on proving of charged.

9. In so far as non-supply of documents is concerned, some of documents were allowed to be inspected and some of them were given to applicant, and as such the applicant has not been deprived of any opportunity.

10. Shri Sinha further stated that on an anonymous complaint a preliminary enquiry was instituted by DGCA which was conducted by the Director, Airworthiness in Central Examination Organisation of DGCA who gave his report on 17.10.97. On this report advised of CVC was sought and the CVC vide its advice dated 1.6.98 advised that the Ministry might decide the case at its own.

11. It is stated that there is no legal infirmity and procedural infirmity in conduction of the enquiry and all the evidence on record has been appreciated by the Inquiry Officer. As such it does not lie within the jurisdiction of this court to reappreciate the evidence and to arrive at its own conclusion assuming the role of Appellate Authority by reappreciating the same.

12. Shri Sinha has contended that the applicant has not been discriminated in the matter of punishment as the charges were identical with that of J.S.Wazir because two unequal's cannot be treated equally.

13. Shri Sinha has referred the decision of

the Apex Court in Director General of Police & others Vs. R. Janibasha (1998 (9) SCC 490) as well as Commissioner and Secretary to the Govt. & Ors. Vs. C. Shanmugam (1998 (2) SCC 394) and lastly the decision of the Apex Court in UOI Vs. Upendra Singh reported in 1994 (3) SCC 357 to contend that in a judicial review in the absence of any perverse finding or infirmity in the procedure, punishment imposed cannot be interferred with.

14. We have carefully considered the rival contentions of the parties and have perused material on record.

15. In so far as the supply of documents to the applicant is concerned, we find that all the documents have been attached with the memorandum. Moreover, on the request of applicant for supply of documents, some of them were allowed to be inspected and some of them were supplied to him and the documents which were not available on record have not been served upon him. As such the applicant has miserably failed to show as to what prejudice was caused to him in not supplying the documents which is amply proved on the basis of material produced by the department.

16. As regards the contention in respect of arbitrary treatment meted out to applicant in awarding punishment which is violative of Articles 14 and 16 of the Constitution. We find that in the case of J.S. Wazir he had been charged for not obtaining the previous sanction of the Govt. for employment of his son and daughter in Damania Airlines. Keeping in view the fact that the charged official was sick and could not seek sanction, and as such he has been awarded

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a minor penalty of Censure. The facts and circumstances of Wazir's case are different from the present one and the applicant is not identically situated and being unequal he cannot be meted out similar treatment. Moreover, in the matter of punishment, the concept of discrimination has a limited scope subject to established case on parity.

17. In so far as anonymous complaint against the applicant is concerned, the same was specific and was substantiated. On the aforesaid complaint an advice of CVC was sought which recommended an action to be taken by the respondents and accordingly a disciplinary proceeding was initiated and this ground fails.

18. In so far as the contention of the applicant that his defence has not been considered, we have meticulously gone through the enquiry report and find that all the contentions of the applicant have been taken into consideration and after discussing the same, the Inquiry Officer has reached a well reasoned finding which is in consonance with Rule 14 (23) CCS(CCA) Rules, 1965.

19. As regards the perverse finding of the Inquiry Officer, reliance has been placed on the ruling of Apex Court in Kuldeep Singh Vs. Commissioner of Police & others reported in JT 1998 (8) 603 wherein it has been held that in a judicial review in the absence of any perverse finding, the punishment imposed cannot be interfered with. In view of the aforesaid ruling and in the light of the findings arrived at the Inquiry Officer where only I and III Articles of charges were found to be proved and

applicant has been exonerated by the Inquiry Officer of Articles IV and V of Charges which have not been disagreed by the Disciplinary Authority.

20. As regards the allegation against the applicant regarding dissociation from the conduction of the examination of Private Pilots Licence and Commercial Pilots Licence where his son Mohit Biala had appeared, the conclusion arrived at by the Competent Authority is on the basis of evidence adduced during the course of inquiry. The applicant was very much aware of appearing of his son in the examination and he himself had signed the result sheet on 10.8.94 where his son's name figured. The defence that his son subsequently reported the prescribed authority, this does not minimise the punishment or exonerate the applicant of the charges levelled against him. It was his moral duty to have dissociated himself from the conduction of the examination in which his son appeared. His defence is an after-thought and is not found logical. The conclusion of the Inquiry Officer was arrived at on the basis of evidence and defence adduced before the Inquiry Officer.

21. As regards the allegation of non-information to DGCA regarding employment of his son Shri Mohit Biala, the defence that a letter was sent to DGCA by applicant's son and the same was forwarded by DGCA, it would not be a sufficient compliance of Rule 4 CCS (Conduct) Rules, 1965, which inter alia stipulates that in the event a Government servant becomes aware of the acceptance by a member of his family of an employment in any company or firm, he shall intimate whether he has or has had any official/ dealings

with the company. The mere fact that the information was sent by his son, would not be suffice. As such the charge has rightly been proved.

22. In net shell, both the Articles I and III of charges have been fully established and proved during the course of enquiry.

23. In so far the challenge to the Disciplinary Authority's decision and advice tendered by the UPSC is concerned, we have carefully gone through both these orders and find that the UPSC, after considering the entire material on record including the representation of the applicant, has clearly established Articles I and III against the applicant and Article II was not found substantiated.

24. In so far as the contention of malafide is concerned, no ~~base~~ ^{relevant material} has ^{put} forward regarding the malafide against the officer concerned. This ground also fails.

25. In view of the decision of the Apex Court in Upendra Singh's case (Supra) in a judicial review the Tribunal/Court cannot go into the truthness or correctness of the findings or reappreciate the evidence if the findings are ^{neither} ^{nor} perverse and are based on surmises and conjectures.

26. In the result, having regards to the reasons recorded above, the OA does not warrant any interference. The OA is bereft of merit and the

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same is accordingly dismissed. No costs.

27. MA No. 509 of 2002 is also rejected.

S. Raju

(SHANKER RAJU)
MEMBER (C)

m.p.singh
(M.P.SINGH)
MEMBER (A)

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