

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 3461/2001

NEW DELHI THIS 7TH DAY OF OCTOBER 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Sh. Ram Baram
S/o Sh. Sarjoo,
R/o Qr No. WC-41
Double Storey, IARI
Pusa Complex, New Delhi

Ex. Chowkidar ,
Under onstruction Division,
CPWD, IARI, Pusa Campus,
New Delhi

.....Applicant
(By Shri B S Mainee, Advocate)

VERSUS

1. Director General (Works)
CPWD, Nirman Bhawan,
New Delhi
2. The Chief Engineer,
Sewa Bhawan,
NDZ III, CPWD
RK Puram, New Delhi
3. The Superintending Engineer,
Delhi Central Circle No. 12
CPWD IP Estate,
New Delhi
4. The Ex. Exngineer, MIS
New Delhi Zone II,
CPWD Room No. 224-A,
Nirman Bhawan,
New Delhi
5. The Executive Engineer,
Construction Division, No. IV,
CPWD, IARI, Pusa Campus,
New Delhi

.....Respondents

(By :None for the respondents)

O R D E R (ORAL)

Termination of the applicant's service with the respondents by order 22.8.2000, and the rejection of the appeal against it by order dated 24.8.2001, has led to the filing of this OA.

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2. Sh. B S Mainee, appeared for the applicant and none for the respondents inspite of adequate notice. Hence this disposal in terms of Rule 16 of CAT (Procedure) Rules 1987.

3. The applicant a permanent Chowkidar, was charge sheeted for major penalty on 18.4.1992 for alleged misbehaviour against two of his superiors, by one of the complainants himself. His request for supply of relevant documents was not answered. He was suspended on 16.6.92 and one more charge sheet was issued, again by the same person. Applicant's request for the supply of documents was agreed to by the Inquiry Officer (I.O.) but it was not adhered to by the Presenting Officer (P.O.). English translations were also not given. Applicant's for charge of I.O. was given effect to on 13.7.94, along with P.O., but both of them were changed once again. While the applicant contested the validity of the second charge sheet and before it was decided upon IO was changed again on 21.7.97. The new I.O., on 17.10.97, 18.12.97 and 20.1.98, called 18 prosecution witnesses and directed them to give their statements, which were taken on record, without subjecting them to cross examination. No mandatory questions were put to the applicant. IO's report was filed on 12.2.98 and the applicant's suspension was revoked on 19.3.98. On being supplied with a copy of the IO's report, the applicant filed his representation on 16.5.98, pointing out the irregularities in the said report. Thereafter fresh enquiry was ordered, from the intermediate stage on 22.9.98, which was challenged in OA No. 2558/98, disposed of on 29.3.2000 directing that the necessary order would have to be passed by a Superintending Engineer and not an Ex. Engineer.

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Superintending Engineer, sought to penalise the applicant without examining the issues and issued notice accordingly which was replied in detail but the Disciplinary Authority by its order dated 22.8.2000 ordered his removal from service. Applicant's appeal dated 21.9.2000, again highlighting all the irregularities and omissions, were ignored by the appellate authority who confirmed the penalty order on 26.4.2000. OA No. 1425/2001 filed against the non speaking appellate order was disposed of on 1.6.2001 with directions to consider the same. Order issued again also were replete with same mistake. Hence this OA.

4. Grounds raised in this OA are that:

- a) Charges are baseless;
- b) entire proceedings were faulty;
- c) second charge sheet had no basis;
- d) statement of twenty witnesses were taken without cross examination;
- e) no mandatory question were put to the applicant,
- f) no reason for differing from IO's report was given;
- g) statements of witnesses not cross examined were relied upon;
- h) disciplinary authority wrongly held that the applicant had refused on official letter;
- j) there was no applicant of mind ;
- k) the complainants never appeared during the Inquiry to tender evidence and
- l) specific direction of the Tribunal to the appellate authority for examining all the issues raised by the applicant were not heeded.

In the above circumstances OA should succeed, pleads
sh. Mainee.

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5. Rebutting the pleas of the applicant, it is pointed out in the respondent's counter that the OA was not maintainable as UOI has not been impleaded. The applicant who was a Chowkidar, misbehaved with the Head Clerk and the Executive Engineer in the organisation he worked, leading to his suspension and the charge sheet issued by one of the complainants. OA 2558/99 filed by him was disposed of on 29.3.2000 directing that the Supdtg. Engineer be the Disciplinary Authority and the Chief Engineer, the appellate authority. Applicant's ~~filed~~ OA No. 1425/2001 against the appellate authority's order, was disposed of on 1.6.2001, with directing to reconsider the appeal, which was ultimately decided upon on 24.8.2001, still upholding the disciplinary authority's order terminating the applicant's services. Since the orders have been issued after proper deliberation of facts and law, Tribunal cannot interfere in the matter. It is also for the Disciplinary Authority to determine the nature and extent of the penalty and the courts shall not sit in appeal on the question of quantum of penalty as pointed out in State of UP Vs. Nand Kishore Shukla & Others (1994 (1) JT SCC 62). There was no ground for interference by the Tribunal. The applicant had misbehaved with his seniors and the respondents could not have countenanced the above. Applicant therefore had to be penalised. Charges of his misbehaviour have been proved and therefore he was not entitled for any further relief. Respondents had dealt with the matter in the correct perspective and in accordance with law and instructions and Tribunal's order in OA 1425/2000. The same was done on 24.8.2001 and nothing further remained to be done. The respondents had corrected acted and there was no way the Tribunal could modify the orders impugned.

6. We have carefully considered the matter. The applicant in this case has alleged that the disciplinary proceedings indicated against him and the penalty imposed on him were vitiated on account of a number of irregularities. On the other hand the respondents hold that the Tribunal should not sit in appeal and once the appellate authority had passed a reasoned and speaking order nothing further has to be done. We do not agree. In terms of order dated 1.6.2001 in OA No. 1425/2001 the Chief Engineer new Delhi Zone III CPWD was to reconsider the appeal in accordance with law. Therefore it was incumbent on the appellate authority to consider all the points raised by the appellant (applicant in the instant case) and pass the order. Applicant has pointed out specific instances where the Inquiry was faulty as the witnesses / statements were taken on record without cross examination, no statutory question was put to the applicant and no reason was adduced by the disciplinary authority for differing from the Inquiry Officer's report. These points which have vitiated the proceedings and raised in the appeal have not been considered by the appellate authority and the said order was therefore faulty and vitiated. Proceedings culminating in the imposition of extreme penalty of removal could not have been undertaken in a slipshod and haphazard manner as has been done in this case. The respondents are absolutely correct when they state that the Tribunal shall not arrogate to itself the role of an appellate authority. We are in fact not doing anything of that sort. We are keenly aware of the parameters within which we have to function and we do not intend to tread upon turf which are not strictly ours. However, while exercising the powers of judicial review we have to see whether the procedures have been fully and correctly gone through and whether the statutory prescriptions have.

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been strictly adhered to. We have no doubt that in the instant case the respondents have not acted in accordance with the necessary law and instructions. As pointed out earlier, all the points raised by the applicant in the appeal, with specific reference to those relating to irregularities noticed, should have been examined by the appellate authority. The result would have been accepted only in such a scenario and not otherwise. At the same time, these observations are not to be treated as observations ^{on the} ~~under~~ merit of the issue.

7. The OA in the above circumstances succeeds and is accordingly allowed. The Appellate Order dated 24.8.2000 passed by the Chief Engineer is quashed and set aside. The respondents are directed to reinstate the applicant in service immediately. They shall proceed with the appeal keeping in mind the above observation and fully in accordance with law and after examining all the points raised by the applicant, which had ^{initiated} ~~officialised~~ the proceedings. This exercise shall be completed within three months of the receipt of the copy of this order. Regularisation of the applicant's service from the date of his removal to his reinstatement is left to the respondents, to be determined in accordance with the law, and keeping in mind the final decision in the disciplinary matter. No costs.

8. The operative portion of this order was pronounced in the court at the end of the oral submissions.

S. Raju

(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

Patwal/