

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO.1822/1999

New Delhi, this the 29th day of March, 2011

CORAM: Hon'ble Mr. Justice P. Swaroop Reddy, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

Shri R.S. Gupta,
S/o Shri C.B. Gupta,
Aged about 43 years,
R/o C/o Shri Ashok Anand,
B-2/21, Rana Pratap Bagh,
Delhi - 7
And was previously working as Assistant Teacher
In Deptt. of Social Welfare,
Govt. of Delhi, New Delhi-1

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...Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of N.C.T. of Delhi
through : Chief Secretary,
Govt. of N.C.T. of Delhi
5, Sham Nath Marg,
Delhi
2. Pr. Secretary (Social Welfare)
Govt. of N.C.T. of Delhi
5, Sham Nath Marg,
Delhi - 110 054
3. The Director,
Department of Social Welfare,
Govt. of N.C.T. of Delhi,
1, Canning Lane,
New Delhi-1

..Respondents

(By Advocate: Shri Vijay Kr. Pandita)

ORDER

Dr. Veena Chhotray, Member (A):

This is a remanded case from the Delhi High Court vide its order dated 13.9.2010 in the WP (C) 11764/2004. Setting aside the



Tribunal's Order dated 30.3.2001 dismissing the OA 1822/1999 and the subsequent order dated 18.5.2001 dismissing the RA No.204/2001; the RA was restored and directions given to rehear the Review Application on merit. Accordingly, the RA was reheard and allowed vide the Tribunal's order dated 10.03.2011. The OA is being reconsidered on merit after hearing the learned counsels, Shri S.K. Gupta and Shri Vijay Kr. Pandita respectively for the applicant and the respondents.

2. The applicant, an Ex-employee under the Department of Social Welfare, GNCTD was working as an Assistant Teacher in the Government Lady Noyce School for Deaf, Delhi Gate. Through this OA, he is challenging the penalty of dismissal imposed vide the order dated 24.3.1998 pursuant to a major penalty charge sheet under the CCS (CCA) Rule 14. The penalty had been upheld vide the Appellate Authority's order dated 21.8.1998.

2.1 The applicant had been placed under suspension vide an Office Order dated 12.8.1994 pending a contemplated disciplinary proceeding against him. He was served a charge memo dated 28.7.1995. The Articles of Charge (five in number) pertained to not taking interest in official duties, disobeying the orders of the senior officers, misbehaviour with the parents of the students and the Head Master of the said School. Besides, they also included allegations of physically assaulting a colleague as well as the Head Master of the said school. Another allegation was of offering Rs.100/- as illegal gratification to the Principal for falsely implicating him in a criminal case.



2.2 In an inquiry report dated 15.7.1997 the charges were held as proved; which finally resulted in the impugned penalty orders.

3.1 On behalf of the applicant, the plea of denial of natural justice for defence on several grounds would be taken. It would be submitted by the learned counsel, Shri S.K. Gupta that even before the applicant could submit his written reply (which could not be done as according to the request, he had not been given copies of the relied upon documents) the inquiry officer was appointed in this case. Further, the applicant had not been given the copies of the complaints, which had formed the basis of the charges against him. Our attention would specifically be drawn to the relevant portions of the Inquiry Report which does contain a mention of the Complaint dated 1.8.1994 by Mr. Siddique regarding the incident of 29.7.1994 forming a part of the Article of Charge-IV, having been relied by the IO. As per the counter rely (Ground 5.3) it is stated that since there were several complaints against the applicant, it had not been found necessary to give a copy of this complaint to the applicant as the same had not been listed in the Annexure III with the Charge Memorandum.

To reinforce the plea of denial of a reasonable opportunity for defence, the learned counsel would also submit that the applicant had not been given the copies of the documents relied upon by the Respondents along with the charge sheet. As per the counter affidavit these statements had been exhibited during the inquiry (Para 4.4). The learned counsel would submit that mere exhibition could not be considered as sufficient, as the basic purpose is to afford the charged official a reasonable opportunity to defend himself.



3.2 The Inquiry Officer in this case was one Mr. P.C. Mishra. The applicant's learned counsel would submit about the Officer himself being a tainted one; and hence even by *prima-facie* reasoning not being an appropriate one to be entrusted with an inquiry. The observations of the Hon'ble Delhi High Court on this subject would also be referred to by the learned counsel. Paras 6 and 7 are extracted below:

"6. Seeking review, the petitioner highlighted certain facts and in respect thereof brought out the admissions of the department. The facts were that the enquiry officer, while working in the Sales Tax Department, was booked by the Central Bureau of Investigation on 01.03.1996 while accepting bribe and in respect thereof was even arrested. The petitioner highlighted the said pleadings with respect to the response filed by the Govt. of NCT Delhi in OA No.1691/1999 as per which Shri P.C. Mishra, the enquiry officer under a serious cloud arrested from 01.03.1996.

7. Surely, whether the pleadings relied upon along with the Review Application, in reference to the one Shri P.C. Mishra was the F.C. Mishra who acted as the enquiry officer against the petitioner required consideration. It is required to be considered whether a tainted man could act as an inquiry officer."

It would also be contention of the learned counsel that this very IO had demanded illegal gratification from the applicant which fact had been brought by him to the notice of the Disciplinary Authority vide a series of representations dated 3.6.97, 13.6.1997 and 23.6.1997.

3.3 The applicant's counsel would also be submitting regarding the findings as well as the penalty orders not being sustainable in law as the inquiry itself had got vitiated by denial of principles of natural

justice to the CO. The harshness of the extreme penalty of dismissal imposed would also be averred to be disproportionate to the charges.

4. The OA has been contested by the respondents, rebutting the rival contentions. It had, *inter alia*, been submitted that prior to the appointment of Shri P.C. Mishra, the respondents had appointed another Inquiry Officer, Shri P.N. Jha, against whom the CO had levelled allegations of bias. Only to ensure fair play, the IO had been changed. It is also submitted that the charges against the applicant are grave and the inquiry had been conducted in accordance with the rules. However, as despite Notices from the I.O. the applicant had not attended the inquiry, it had to be completed ex-parte. The orders of the DA as well as the AA have been justified as having been passed after due consideration of the relevant facts as per the record available.

5. A perusal of the Inquiry Report reveals that the applicant who had appeared at the preliminary stages of the inquiry, did not subsequently participate in the same. As per the IR, this was despite service of several Notices on him. However, the fact remains that the findings of the Inquiry holding the charges as proved, was an ex-parte inquiry. Besides, the credentials of the I.O. himself have been questioned by the applicant. As the above extracts show, the Hon'ble High Court while setting aside the Tribunal's orders had been duly seized with these averments. The learned counsel for the applicant has also been able to show how in certain important aspects, the principles of natural justice by way of providing a reasonable opportunity for defence to the CO, seem to have been violated. The



resultant imposition of the penalty of dismissal, termed as "economic death of an employee" by the Hon'ble Apex Court in ***Shall Sher Bahadur Singh vs State of Uttar Pradesh & Ors*** {1993 (2) SLJ 16} and the nature of charges themselves merit consideration too.

6. Having heard both the learned counsels and carefully perused the material on record, to meet the ends of justice, the OA is disposed with the following directions:-

- i) The impugned orders dated 24.3.1998 and 21.8.1998 are quashed and set aside;
- ii) The matter is remitted to the Respondents for resuming the inquiry from the stage of giving copies of the relied upon documents to the applicant and providing him fresh opportunity for defending himself. The plea taken regarding the need for supply of the Hindi version of these documents, in the interest of justice, is also to be favourably considered by the respondents. While re-conducting the inquiry, the respondents would consider the need for a change in the Inquiry Officer, in case the applicant's averments of this official being a tainted one are found to be factually correct;
- iii) The inquiry is to be completed within a period of four months from the date of receipt of a copy of this order. This would however, be subject to extension of full cooperation by the charged official;



- iv) As a result of setting aside of the penalty of dismissal, the applicant would be reinstated in service and his status quo at the point of initiation of the inquiry i.e. being under suspension, would be restored. For the intervening period, the applicant would be entitled to grant of subsistence allowance as per law. This is to be granted, along with a speaking order, within a period of two months from the date of receipt of a copy of this order.



(DR. VEENA CHHOTRAY)
MEMBER (A)



(P. SWAROOP REDDY) 273-
MEMBER (J)

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