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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA 1867-1999
with MA 333-2000

New Delhi the 2nd day of March 2001.

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Om Prakash Kain,
Junior Employment Officer,
Directorate of Employment
Government of NCT of Delhi,
S/o Late Shri Nathu Ram,
R/o House No. 113, Bakoli
Post Office Alipur,
Delhi -110036.

.....Applicant
(By : Shri H.B. Mishra, Advocate)

Versus

1. Chief Secretary,
(Appellate Authority)
Govt. of NCT of Delhi
5- Samnath Marg, Delhi -110054
2. Secretary-cum-Director
(Disciplinary Authority)
Directorate of Employment
Govt of NCT of Delhi
2 Battery Lane,
Delhi -110054.
3. Shri S.K. Sachdeva,
Sub- Regional Employment Officer,
(Inquiring Authority)
Directorate of Employment,
Govt. of NCT of Delhi
2 Battery Lane, New Delhi.

.....Respondents
(By : Shri Ajesh Luthra, Advocate)

O R D E R

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

Punishment of compulsory retirement imposed on the
applicant by the disciplinary authority on 4.5.1999, its
confirmation by the appellate authority on 30.7.99 and

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consequent loss of promotion to Grade I in Delhi Administrative Subordinate Service (DASS) are under challenge in this application.

2. To narrate in brief, the facts of the case are that the applicant who was working as Jr. Employment Officer since 21.11.94 in Sub - Regional Employment Exchange (SREE), Pusa, New Delhi, was placed on suspension on 2.7.1997, alongwith one Pradeep Kumar, Peon. A charge-sheet was issued to him on 29.9.97, containing six (6) articles of charge. His having denied the charges, Enquiry Proceedings were taken up in which the E.O. held Articles I and VI as not proved, and those from II to V as proved. Accepting the above findings, Disciplinary Authority imposed on him the punishment of Compulsory retirement on 5.4.99, which was confirmed by the appellate order on 30.7.99. The applicant's promotion to Grade I in DASS, ordered on 7.10.1997, was not given effect to. All the above orders are impugned in this application.

3. Heard both the counsel for the applicant and the respondents. Pleas raised on behalf of the applicant and forcefully reiterated by Sh. H.B. Mishra, learned counsel for the applicant are as below:-

- i) Proceedings were one of no evidence at all wrongly foisted upon him by one Shri A.S. Khullar, Jt. Director of Employment.

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- ii) Though a number of documents were originally listed by the Prosecution all were not produced.
- iii) Applicant's requests for supply of a number of documents, made time and again were not heeded.
- iv) Though A.S. Khullar was one of the material witnesses, he was subsequently dropped from the list, thereby depriving the applicant of the opportunity to cross examine him.
- v) Inquiry Authority's report was completed in a hurry.
- vi) Disciplinary Authority while forwarding the I.O's report did neither indicate that he agreed with it nor did he grant an opportunity of personal hearing to the applicant.
- vii) Disciplinary Authority passed the order mechanically imposing on the applicant the punishment of compulsory retirement, which involves two more punishments - first withholding and then rejecting his authorised promotion to Grade-I, DASS.
- viii) Appellate Authority's order, confirming the punishment was non-speaking in nature.

ix) Punishment inflicted on the applicant, a S.C. officer with thirty six years of unblemished service was humiliating and defamatory.

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x) As the accusation based on which both the applicant and Pradeep Kumar were suspended has not been proved , imposition of punishment of compulsory retirement was improper.

xi) Not making available A.S. Khullar for cross examination has rendered the proceedings vitiated as the entire charge against the applicant was trumped up by that individual's animus towards him.

xii) Proceedings were initiated only to deprive the applicant of his rightful claim for promotion.

xiii) Articles of charge II and to V refer to cases where the applicant was alleged to have suppressed the eligible candidates, sponsored the wrong candidates for employment gave registration to ineligible individuals and destroyed registration certificates, all on 3.7.97. This was not possible as he had been arrested by Police and had been placed under

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suspension on 2.7.97 and he could not have therefore come to office and dealt with official papers.

xiii) Prosecution has not at all proved that the lists of candidates which were sent on 3.7.97, were prepared and sent under his authorisation or direction. Moreover furnishing the names of candidates to the prospective employers was not his responsibility. None of the prosecution witnesses also had supported the Department's case.

In the above circumstances, the application should succeed and the punishment imposed on him should be set aside with full consequential reliefs to the applicant, argues Sh. Mishra, learned counsel.

4. Shri Ajesh Luthra, learned counsel for the respondents denied the allegations made by the applicant. He pointed out that all the proceedings in this case have been gone through correctly and therefore there was no cause for the applicant to be aggrieved. It is true that the applicant's promotion to Grade I DASS ordered on 7.10.97 was held back and subsequently cancelled but the same was inevitable as he was under suspension between 2.7.97 and 24.7.98 and he had been charge sheeted for major penalty under Rule 14 of CCS (CCA) Rules on 29.9.97. When the suspension was revoked the proceedings were on and without their completion there could have been no promotion. The contents of the charge-sheet having been

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denied, Inquiry Proceedings were ordered in which articles I & VI which related to the Supervisory role of the applicant vis-a-vis peon Pradeep Kumar were found not proved, while articles II to V dealing with his functioning as Jr. Employment Officer were found proved. Hence the decisions by the Disciplinary Authority and the appellate authority. The same could not be assailed, pleads Sh. Luthra the learned counsel. The applicant's main challenge of the proceedings revolves around the role of Sr. A.S. Khullar, Jt. Director of Employment. According to him, his suspension was engineered by Khullar, still he was not made available for cross examination. Sh. Luthra learned counsel stated that this was not at all material as Khullar was concerned only with Articles I & VI in the charge-sheet, which have been held to be not proved. The charges which stand proved are those relating to forwarding of the lists of candidates to prospective employers, wherein eligible candidates' names were omitted and ineligible candidates were sponsored. These squarely relate to the job he had to perform, which he had failed to discharge as a Govt. servant. The applicants' plea that as he was arrested by the Police and was under Suspension w.e.f. 2.7.97, he could not have been in the office is belied by the fact that all the lists of candidates issued on 3.7.97 bears his signature as records would show. The same cannot be obliterated. The Inquiring Authority had considered the pleas put forward by the applicant, permitted him to cross examine the witnesses, peruse all the relevant document and after considering all the evidence on record, gave his findings. Obviously therefore, the findings were accepted by the Disciplinary Authority and the Appellate Authority argues

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the learned counsel. Inspite of having completed 36 years of service the applicant committed irregularities in performance of his duties as Junior Employment Officer. This has been proved on record. Still keeping in view of his long service and the fact that he was to retire in March 2002 the Disciplinary Authority has taken a very lenient view and has ordered the imposition of least severe among the major penalties i.e. compulsory Retirement on him. The appellate authority had properly confirmed the same. There was no reason, this decision could be assailed in any manner by the Tribunal in the circumstances the case, Shri Luthra, learned counsel for the respondent points out.

5. We have carefully considered the matter and perused the written pleadings as well as the records placed before us. While the applicant holds that this is a case of no evidence trumped to spoil the chances of an officer like him belonging to the Scheduled Caste Category for advancement in the evening of his long and unblemished career the respondents point out that he has been correctly but leniently punished for his proven misconduct. We find that in this case the charge sheet issued to him on 29.9.97 under Rule 14 of the CCS (CCA) 1965 enumerates 6 articles of charges . Articles I and VI deal with charges pointing to lack of control and supervision on the part of the applicant regarding one Pradeep Kumar peon in the office who was also suspended along with him. These two charges not having been held to be proved by the I.O. and the said opinion being accepted by the Disciplinary Authority no comments are warranted on them. Articles II,III,IV and V relate to his performance

as Junior Employment Officer working in Zonal Employment Exchange Najafgarh wherein he was expected to sponsor the names of candidates from those who have registered with the Exchange to prospective employers. All these articles relate^o to what has been done by him on 3.7.97. Article II refers to the preparation of a list of 223 candidates by him for Group 'D' vacancies, forwarded to Sub Regional Employment Exchange which included the names of 15 ineligible and bogus candidates and assigning wrong seniority to other registrants so as to bring them in the eligible Zone; Article III relates to ignoring the claims of six genuine candidates duly registered, with the candidates while forwarding the names of candidates and sponsoring ineligible and bogus candidates in their places; article IV refers granting bogus registration numbers to nine bogus candidates whose names did not appear in the X-63 register and article V concerns the removal/destruction of X-1 Cards of fifteen candidates with the purpose of removing the evidence against him. All these 4 articles of charges relate to his activities with reference to 3rd July 1997. The applicant's plea is that as he has already been arrested by the Police and placed under suspension on 2.7.97 itself he could not have entered the office or anything to do with these documents. He also states that these are all manipulations carried out at the instance of Shri A.S. Khullar Joint Director of Employment who has some animus against him. However, the perusal of the records ~~.....~~ placed before us does not support his charge but tell^o different story. It is seen that all the above four charges are based on the documents duly brought on record and in each of which his signature dated 3.7.97 is present. These have been taken

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over by the Vigilance Wing of the Directorate of Employment during the course of the investigations. Even a cursory look of the signature with the relevant sheets would ensure that there were the applicant's signature. This could not have been possible but for his coming to office and signing these documents. It is also on record that though he was arrested by the police on 2.7.97 he was released that evening. Therefore, his defence that he could not have come to the office on 3.7.97 has been correctly negatived by the Inquiry officer. During the hearing, Shri Mishra the learned counsel for the applicant raised a plea that as a Junior Employment Officer the preparation and submission of the list of the eligible candidates was not part of his duty. Shri Luthra learned counsel for the respondents emphasised that the applicant was the matching officer in the employment Exchange and states that the relevant papers could not have been prepared and submitted to the other organisation without his authorisation. The plea merits acceptance. This shows that he had misused his official position while forwarding the names of the candidates by including the names of some ineligible and bogus candidate, excluding the names of some genuine candidates while furnishing information to prospective employers, granting bogus registration numbers to few and removing/destroying the X-I cards. Evidently therefore he has acted in direct violation of the responsibilities cast on him and the I.O. has correctly held the charges to be proved. There cannot be any complaint with the findings.

6. Shri Mishra the learned counsel for the applicant has further submitted that the entire case has been foisted upon ~~against~~ him on account of the animus which A.S. Khullar, Joint Director had against him but he was not brought as a witness in the proceedings so that he could have been cross examined by him. This plea has no basis or relevance as no prejudice whatsoever is found to have been caused to him by the decision to drop Khullar as a witness, as articles of charge I & VI, in which Khullar was concerned have been held as not proved. The articles of charges II to V which have been found as proved are based on records which have been produced during the enquiry and which the applicant had opportunity to examine ^{and challenge}. He was given the opportunity to cross examine the other witnesses. It is also seen that the I.O. had made available all the relevant documents on which the charges were based and therefore applicant can not raise a plea that he was ~~discriminated~~ discriminated against.

7. In view of the above we have to hold that the Inquiry proceedings have been gone through correctly and that the I.O. has arrived at his findings properly and in correct appreciation of the evidence placed before him. There is no reason at all to find fault with the findings of the I.O.

8. In the above circumstances we also do not feel that either the Disciplinary Authority or the Appellate authority has erred in their actions. Their having correctly accepted the findings of the I.O. they could only have imposed a severe penalty on him as was proposed in the charge sheet. Still considering the fact that the

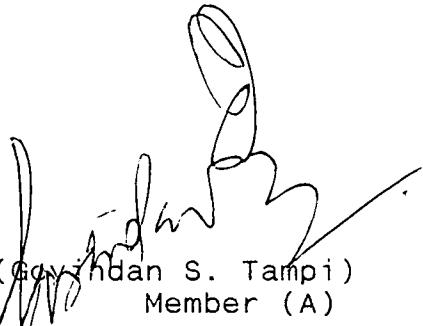
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applicant has rendered more than 35 years of service and therefore his dismissal/removal from service would have caused great financial hardship to his family a lenient view has been taken and the penalty of compulsory retirement has been issued. In the circumstances of the case the punishment is neither harsh nor unconscionably high.

9. The applicant has also referred to his promotion to Gr.I DASS which was issued on 7.10.97 but held back and subsequently cancelled and has pleaded that the Department has on the basis of subsequent developments denied him his due promotion. He had also referred to the decision dated 30.9.97 of the Tribunal in OA 2518/1996 and In our view this judgement would not come to his case as what has been decided in that application is that holding of a review DPC was not permissible as it would have rendered the interim Order of the Tribunal infructuous. Present application is on a totally different footing in that promotion order which has been issued on the basis of earlier decision had to be held back as before the issuance of such order, the applicant was placed under suspension. The subsequent revocation of his suspension did not entitle the applicant to get promotion as he was by that time charge sheeted for major penalty proceedings. The allegation that the charge sheet had anything to do with his ^{social} background or any prejudice on the part of any individual senior ^{officer} is totally baseless and far fetched.

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10. In the above view of the matter we are convinced that the applicant has not at all made out any case for our interference. The application is totally devoid of merit and is accordingly dismissed. No costs.



(Govindan S. Tampi)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice Chairman(J)