

35

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2018/1999
MA 709/2001

New Delhi, this the 23rd day of May, 2002

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

Subhash Saini
S/o Late Shri Nawal Singh
R/o C - 177, Delhi Admn. Flats
Chowki No.2, Sandhara Kalan
Delhi - 110 052.

Employed as :-

Upper Division Clerk in the
Dept. of Social Welfare
at I.C.D.S., Wazir Pur
Delhi.

...Applicant

(By Advocate Shri B.B.Rawal)

V E R S U S

Govt. of NCT of Delhi : Through

1. Shri Omesh Saigal
Chief Secretary
5, Sham Nath Marg,
Delhi.
2. Shri J.P.Singh
Commissioner of Industries
Govt. of NCT of Delhi
Kashmere Gate.
3. The Principal Secretary (Services)
Govt. of NCT of Delhi
5, Sham Nath Marg
Delhi.
4. The Vigilance Officer
Office of the Commissioner of Industries
Govt. of NCT of Delhi, Kashmere Gate, Delhi.
5. The Director of Social Welfare
Govt. of NCT of Delhi
Curzon Road, New Delhi.

...Respondents

(By Advocate Shri George Paracken)

O R D E R

By Hon'ble Shri Govindan S.Tampi,

Order No.F.29(13)/95/Vig/C.I/5465 dated
17.07.1998, imposing on the applicant, the penalty of
reduction in pay, in his existing scale of pay by two
stages for two years, with cumulative effect is under
challenge in this OA.

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2. S/Shri B.B. Raval and George Paracken represented the applicant and the respondents respectively during the oral submissions.

3. Shri Subhash Saini, the applicant joined Delhi Admn. as Lower Division Clerk (LDC), in Sales Tax Deptt. on 17.09.1968, wherefrom he was transferred to Dy. Commissioner's office on 16.08.1995. Though he applied for and passed the Deptt. list for the post of Upper Division Clerk (UDC) in 1973, he was not promoted. His promotion came on 26.04.1997 following his passing in the test held in 1975, which he appeared under protest. As UDC he worked in the office of the Controller of Accounts, wherefrom he was posted to the Development Deptt., but was asked to work as Storekeeper from 31.01.1984 in place of Ballu Ram who was proceeding on leave. The applicant and Ballu Ram could not complete the taking over/handing over procedure, on account of stores being away from one another. Though superiors were informed about this the applicant was directed to perform duties, as Stores Officer. Ballu Ram, on return did not rejoin the stores, and the applicant had to continue as Stores Officer, which he protested about. During 1985, he incurred the displeasure of his seniors (Sh. Agya Singh) as he had declined to enter a bill for Rs.19,800/- for a VCR, till the VCR was produced. He also brought the above fact to the notice of the Development Commissioner, but to no avail. On 17.12.1985, he was asked to hand over charge of the Stores to one Shri Raghbir Singh, but the said person did not turn up. On 18.12.1985

Shri Agya Ram, came to take physical stock verification whereafter he asked the applicant to hand over the keys which he did, but no receipt was given. He was thereafter transferred in quick succession to three places; finally at Dy. Commissioner's Office, with the result his pay for December, 1985, remained to be paid. On 24.01.1986, he was asked to hand over full charge of the Stores, though the keys had been taken over on 18.12.1985. Applicant by his reply dated 27.01.1986, explained the claim of events of 18.12.1985 which annoyed Agya Singh. Following his meeting with the Dy. Deptt. Commissioner, his increment held back from April, 1984 and salary of December 1985 were ordered to be released. On 17.11.1990, a notice was issued to him, by the Joint Director (Edn.) in whose charge the applicant had been posted proposing recovery of Rs.4430.70 being the charges on items found short. Following his representation, dated 10.01.1991 the recovery was held back, but the charge-sheet was issued under Rule 14 of CCS (CCA) Rules on 03.02.1993. This delayed notice, issued after seven years, was only to humiliate and embarrass him and to cover up ^{the respondent} ~~their~~ mistakes. His request for supply of documents relied upon and summoning of witnesses whom he wanted to call ^{were} ~~was~~ not allowed by the disciplinary authority thereby crippling his case. On finding that the Inquiry Officer was acting partially, he requested on 15.01.1994 for the change of the I.O., which did not take place at all. This vitiated the proceedings. I.O. closed the inquiry without giving any opportunity to the applicant to explain his case; and filed his report on 30.06.1994. Applicant filed his

representation on 21.08.1995 seeking the supply of a few more documents, which had not at all been ^{Supplied} so far. It was learnt that on 12.12.1997 Dy. Director had recommended exoneration of the applicant but nothing at all was done. Tired of this delay he filed a representation to the Lt. Governor, which annoyed the Commissioner of Industries, who threatened him with due consequences. On the applicant's moving the Lt. Governor, Commission^Y of Industries issued the impugned order dated 17.07.1998 penalising the applicant by penalty of reducing his pay by two stages for two years, with cumulative effect. His appeal dated 21.08.1998 to the Chief Secretary, was also not acted upon, as the Chief Secretary was annoyed with the applicant for having denied registration of SSI, to the Chief Secretary's brother. The appeal has not been disposed of. Hence the OA.

4. Grounds raised by the applicant are that :

i) Procedure adopted was illegal and arbitrary, as he was asked to hand over full charge of the stores, when he himself had not received the same; list of shortfall was not signed by any senior officer and the verification was done behind the back of the applicant ;

ii) Chargesheet was delayed by over 7 1/2 years ;

iii) Enquiry was vitiated throughout as procedures were not followed;

iv) Applicant was no chance to explain his stand;

v) The biased enquiry officer was not charged despite the applicants' protest and

vi) the order was issued only after the applicant started moving the superior authorities.

vii) The proceedings were done in a secretive manner.

In the above scenario, the OA should succeed, with full reliefs to him, prays the applicant.

Reliefs thus claimed are :

(i) to quash the impugned Annexures "A" and "B" as being illegal, arbitrary and issued with extraneous considerations ;

(ii) consequent to relief at (i) being granted, direct the respondents to treat the Charge-sheet as null and void as if the same was not issued and release all the service benefits of the applicant withheld due to the pendency of this Charge-sheet with all consequential benefits like seniority, increments, promotion, Bonus, Pay & Allowances etc., with 24 % interest till realization.

Note :- The respondents may be particularly directed to explain the illegal with-holding of his pay from 1st December, 1985 to 23rd December, 1985 and release the same forthwith with 24 % interest till realization and also to release the pay and allowances for the months of October, November and December, 1998 and also the difference of the payment of minimum wages from January, 1999 to June, 1999 and actual amount due.

(iii) Award exemplary cost for this application to be recovered from the pockets of the persons accountable after

fixing the responsibility/accountability and not to tax the exchequer for the same.

(iv) pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit and proper in the light of the facts and circumstances of the case.

5. In the reply filed on behalf of the respondents, it is pointed out that the applicants has no cause of action as the Appellate Authority has, by its order No.F.4/20/99/5-II/3950/53 dated 05.11.1999 reduced the penalty by holding that it will not have the effect of postponing the future increments of pay" and the original authority's order has been superseded. According to them the applicant who was working as Storekeeper, in the IADP project office, was transferred out of the charge on 17.12.1985, but he refused to hand over charge to the persons, appointed to relieve him. He did not obey the instructions of the senior officers also and remained away from office upto 24.12.1985, leading to a memo being issued to him on 24.12.1985. On 27.12.1985, he came to the office and desired a senior officer to take over the keys, when he was asked to give the keys to the new Storekeeper, which he declined to do. As he had not made over the charge and the keys, his LPC was held back, which was released only after he made good the deficiencies in his action. Thereafter, he made no efforts to replace the missing items or to effect recovery of Rs.4430.70, or the items found short on 12.11.1986, as the applicant had not acted properly, the store was broken open by a Committee of three officers and he was informed about the losses noticed. He did not make good the loss and has thus misappropriated/embezzled ^{Rs.4430.70/-} violation of Rule 3 of the

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CCS (Conduct) Rules, ^{for which} he was chargesheeted under Rule 14 of the CCS (CCA) Rules, on 03.02.1993. Enquiry was ordered thereafter, and after perusing the I.O.'s report and the applicant's representation the Disciplinary Authority passed orders on 17.07.1998, imposing the penalty of reduction in the pay scale by two stages, with cumulative effect. In the appellate order dated 05.11.1999, the penalty has been reduced, taking away the cumulative effect. Respondents point out, on the one hand that the OA has become infructuous, the disciplinary authority's order having been modified and on the other ^{by now} that OA is hit by limitation, as it sought assail the chargesheet dated 03.02.1993 after six years. Besides all the averments made by the applicant casting aspersions on the senior officers are wrong and the same was in bad taste as one of them (Agya Singh) had already expired. The applicant had not handed over charge of the store, appointed to take over charge, despite specific directions and had also not made good the loss of items worth Rs.4430.70. The chargesheet was not issued late to cover up the lacunae as alleged. He had been supplied all the relevant documents and he was also permitted to cross examine the prosecution witnesses. Disciplinary Authority had passed the punishment order, after examining all the facts and correctly too, and even if as the applicant alleges it was severe, the ~~severity~~ ^{severity} has been taken away by the appellate order, which removed the cumulative effect. All the grounds raised in the OA are baseless and the OA deserved to be dismissed according to the respondents.

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6. In the detailed rejoinder, the applicant has reiterated all the points raised by him in the OA. The only additional factor he has brought in is that the appellate order has been issued on 05.11.1999 after the OA has been filed and to meet the requirement of the notice. This was a clear manipulation and should not be permitted. It is also argued through MA No.709/2001 that the appellate order was also non-speaking and unsatisfactory and deserved to be set aside.

7. During the oral submissions both the learned counsel Sh. Raval for the applicant and Shri George Paracken for the respondents very ably and forcefully reiterated their respective pleas.

8. I have very carefully deliberated upon the rival contentions raised both in the written pleadings and during oral submissions and considered all the facts and circumstances brought on record. In this case, it is seen that the applicant has been dealt with for an alleged indiscretion, which had occurred during December 1985 - January 1986, by issue of a show cause notice as late as on 3-2-93 i.e. more than seven years after the alleged event. The allegation is that he had not handed over charge of the store of which he was the keeper, when the successor came to join duty and that he was responsible for not accounting a few items in the store valued at Rs.4430.70/- The disciplinary authority had by its order dated 17-7-98, penalised the applicant by reducing his pay, in the existing pay scale by two stages for two years with cumulative effect. The

47

appeal filed by the applicant on 21-8-98 remained unattended to for quite some time, but following the institution of this OA, the same was disposed of on 5-11-99, modifying the original order to the extent that the "penalty will not have the effect of postponing the future increments of the pay of the appellant". Thus by the appellate order, the cumulative effect of the penalty has been removed.

9. In the OA, the applicant has referred to a number of incidents, which had occurred in the organisation where he was working, which according to him, had led to the proceedings being initiated against him, finally culminating in the above penalty. In addition to the inordinate delay in issuing the chargesheet, he has also stated that the procedures were not followed properly, documents relied upon were not made available to him, his request for producing defence witnesses was not allowed, his plea for change of the Inquiry Officer (IO) who was showing bias against the applicant, was not heeded and that the punishment had been imposed on him only to embarrass and humiliate him. The respondents have only generally refuted the allegations and had held on to the view that the proceedings had been correctly gone through and that the severity of the penalty, having been taken away by the appellate authority, which removed the cumulative effect, nothing remained to be done in the OA. On examination of the facts and circumstances of the case, I am not convinced that the respondents' actions have been correct. To start with, for the alleged irregularity of not handing over charge of the store to the newly designated person as

well as not accounting for goods found short worth Rs.4430.70/-, during December 1985 - January 1986, the applicant has been chargesheeted after seven years on 3-2-93. Nothing has been brought on record to show that any investigation in to the above matter was going on during the intervening period, which alone could have justified such an inordinate delay. ^{shown} Respondents also have not been able to properly show that the applicant had been supplied with all the documents relied upon by them, as he had asked or that his request for presenting defence witnesses was denied. The respondents' only averment is that he was permitted to cross examine the prosecution witnesses and that the decision had been taken correctly. The above is not fully supported by documents brought on record. Permitting the charged officer to cross examine the prosecution witnesses is not the same as permitting him to produce his own defence witnesses. The respondents have failed in their duty and the said failure had vitiated the proceedings. It is also on record that the applicant has, on 15-1-94, sought the change of the IO on the ground that he was taking a biased attitude towards the applicant. The same also was not acted upon. Further, though the enquiry report dated 30-6-94, was served on the applicant on 17-8-95 and his representation against the same was filed on 21-8-95, another three years went by before the disciplinary authority decided the case. Here also there was considerable delay. The applicant's appeal filed on 21-8-98 also took more than a year for being disposed of and the same has been done only

after the applicant has approached the Tribunal in this OA.

10. While the disciplinary authority's order has generally followed the findings of the Inquiry Officer, he has stated that the applicant had been served with a number of letters asking him to hand over charge, which he had declined to do, though none of such letters has been brought on record. He has added that non-adherence to the time schedule fixed for finalising disciplinary proceedings would not in any way reduce the gravity of the mis-conduct. This is also not acceptable as the alleged mis-conduct was not as grave as to warrant the delay of seven years to issue the chargesheet and three years to pass the order after the applicant has filed his representation on receipt of the IO's report. This only shows that in addition to procedural lacunae, the respondents were also guilty of delay and inaction and this cannot be permitted. The disciplinary authority's order has to be quashed and set aside.

11. The appellate order does not make any specific analysis to the points raised in the appeal but only states that ^{in its} view, the punishment was a bit severe and therefore warranted reduction. However, as the disciplinary authority's order has been struck down on account of procedural failures and delay, the appellate order also has to fall. I also do not feel that in the circumstances of the case, remanding the proceedings back to the respondents for

rectifying the mistake, would not lead to anything but another exercise of avoidable delay.

12. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned orders dated 17-7-98 passed by the disciplinary authority and the appellate order dated 5-11-99 are quashed and set aside with consequential benefits to the applicant. MA 709/2001 is disposed of in the above terms. No costs.

(GOWINDAN S. TAMPI)
MEMBER (A)

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