

Central Administrative Tribunal
Principal Bench

O.A. No. 807 of 1999

New Delhi, dated this the 22nd December, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Bana Bihari Tarei.
S/o Shri K.M. Tarei,
Indian Foreign Service.
Joint Secretary (Retd.),
R/o Flat No. C-7/53, Safdarjung Development Area,
Hauz Khas,
New Delhi-110016. . . Applicant

(By Advocate: Shri T.R. Kakkar)

Versus

Union of India through
the Secretary,
Ministry of External Affairs.
South Block, New Delhi-110011. . . Respondent

(By Advocate: Shri N.S. Mehta)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns respondents' order dated 9.2.99 (Annexure A) compulsorily retiring him from service.

2. A disciplinary enquiry under Rule 14 CCS (CCA) Rules was initiated against applicant vide Charge Memo dated 2.4.91 (Annexure C) containing four articles of charge pertaining to the period when he was posted in the Indian Mission at Kabul, Afghanistan.

3. The Enquiry Officer in his report dated 24.2.92 held that all the four articles of charge against applicant stood proved.

4. A copy of the E.O's report was sent to applicant to make representation, if any against the E.O's findings. In response to the same, applicant submitted his representation on 8.4.92.

5. Respondents examined the same in consultation with UPSC, whose advice is contained in their letter dated 28.7.93.

6. After considering all the materials on record, the disciplinary authority by impugned order dated 9.2.95 has imposed the penalty of compulsory retirement from service upon applicant, which is challenged in the present O.A.

7. We have heard applicant's counsel Shri Kakkar and respondents' counsel Shri N.S. Mehta.

8. The first ground taken by applicant's counsel are that of delay in concluding the proceedings. The reasons for the time taken in concluding the proceedings are explained by respondents in Para 5 (xv) of their reply. From their averments it is clear that respondents wanted to be absolutely certain before imposing any penalty. When the allegations themselves are as serious as in the present case, delay by itself is not sufficient ground to warrant judicial interference particularly when the delay has been adequately explained.

9. It is next contended by Shri Kakkar that certain documents were not admitted, and photocopies of the same were produced before the E.O. but were not proved. As pointed out by respondents in Para 5 (ix and x) of their reply, certain documents emanating from the Ambassador were signed by him, and some of the denied documents were signed by applicant himself. As regards documents from the Vietnamese Embassy, the same had the seal of that Embassy. So long as applicant could not furnish any reason or proof regarding the non-authenticity of the documents from the Ambassador and those from the Vietnamese Embassy, applicant's contention that they were not authentic could not be accepted. The aforesaid documentary evidence was itself sufficient to bring home the guilt of applicant on the principle of preponderance of probability, and that being so, the non-providing of photocopies of any other documents does not avail the applicant. Hence this ground is also rejected.

10. It was next urged that the E.O. was lower in status and junior to applicant. Respondents in their reply state that Shri Neelakantan was appointed as Commissioner Departmental Inquiry by the Central Vigilance Commission. CDI of CVC are drawn from various services, generally of the rank of Director, function in a quasi-judicial capacity and as such their status in the Government hierarchy is not material. It is averred that the DOPT's instructions dated 6.1.71 to the effect that the inquiry should be conducted by an officer who is

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sufficiently senior to the charged officer would be relevant when the I.O. is appointed from within the department of the charged officer. There is merit in this contention, and applicant has not succeeded in establishing that any prejudice was caused to him by Shri Neelakantan acting as the I.O. Hence this ground is also rejected.

11. It was next contended by Shri Kakkar that a copy of the preliminary report was not supplied to applicant. No materials have been furnished to establish that the preliminary report, if any was relied upon in the D.E. and despite that, access to it was denied to applicant which thereby prejudiced him in his defence in the D.E. Hence this ground also fails.

12. It was next contended that neither the Ambassador nor the First Secretary was called upon to give evidence during the D.E. If respondents did not consider it necessary to produce the Ambassador or the First Secretary during the D.E., and relied upon the documentary evidence itself to prove the charges, they cannot be faulted for the same. It was open to applicant to have summoned such witnesses as he considered necessary for his defence. The ruling in Kuldeep Singh Vs. Commissioner of Police AIR 1999 SC 677 relied by applicant's counsel was delivered in the context of Rule 16 (3) Delhi Police (Punishment and Appeal) Rules, and is not relevant in the present case.

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13. Lastly he has contended that ~~he~~ was in charge of the Commissariat of the Indian Mission in Kabul for barely 2 1/2 months, which was too short a period of time for these acts of omission and commission to be laid at his door. This ground has absolutely no merit, because the misconduct established against applicant did not require any extended period of time to commit.

14. To summarise, this is not a case where the impugned penalty order has been passed by an authority not competent to pass the same. It is also not a case of no evidence or where the finding is perverse, and applicant was granted full opportunity to defend himself in accordance with rules and instructions as well as the principle of natural justice. Having regard to the gravity of the misconduct, it also cannot be said that the penalty is excessive.

15. The O.A. is, therefore, dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S. R. Adige

(S. R. Adige)
Vice Chairman (A)

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