

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1197 of 1998

New Delhi, this the 4th day of February, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S.K. NAIK, MEMBER (A)

Francis Patras
S/o Shri Uday Lal Patras
Aged 50 years
R/o 1903/3
Pushpa Vihar,
Sector-III,
New Delhi.

And Employed As

Monument Attendant in the office of the
Archeological Survey of India,
Delhi Circle,
New Delhi.

-APPLICANT

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India
Through the Secretary,
Department of Culture,
Shastri Bhawan,
New Delhi-110 001.
2. The Director General,
Archaeological Survey of India,
Janpath,
New Delhi-110 001.
3. Shri Dharam Vir Sharma
Superntending Archaeologist,
Archaeological Survey of India,
Delhi Circle,
Safdarjung Tomb,
New Delhi-110 003. ...Respondents

(By Advocate: Shri K.C.D. Gangwani)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA whereby he has assailed an order dated 17.1.1996 vide which he was placed under suspension. The said order is Annexure A. He has also assailed another order dated 8.4.1996 whereby the applicant was issued a charge-sheet under Rule 14 of the CCS (COA) Rules, 1965 vide memo Annexure B.

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2. The OA was being contested but while the OA was pending a final order was also passed so applicant made an application seeking amendment of the OA whereby he wanted to assail another order dated 6.8.1998 vide which he was imposed a penalty of reduction in pay by 4 increments from the last pay drawn in the same scale of pay Rs.2610-60-3150-3540 for a period of 4 years with immediate effect and that the applicant will not earn any increment during the period of reduction. A copy of the said order is Annexure-C.

3. While challenging the order Annexure-A vide which he was placed under suspension and Annexure-B vide which a memo under Rule 14 was issued to the applicant he has taken up a ground that since he was a Member of the Akhil Bharatiya Puratatva Sarvekshan Kaamgar Union (hereinafter referred to as Union) and the Secretary of the said Union had issued a notice for holding a demonstration in front of the office of the Superintending Archaeologist, Archaeological Survey of India, on 16.1.1996 against non-settlement of outstanding demands of the workmen which were not being settled. In pursuance of the said notice peaceful demonstration was in fact held on 16.1.1996. However, immediately thereafter respondent No.3 issued an order dated 17.1.1996 placing the applicant under suspension as the applicant is an Executive Committee Member of the said Union. A charge-sheet was also issued to the applicant on 8.4.1996. The applicant kept on requesting for supply of copies of documents as well as list of witnesses but



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the same were not supplied. The applicant also made a request for supply of Hindi version of entire charge-sheet and the same has also not^{been} provided.

4. The applicant further alleges that he had been bringing to the notice of the higher-up authorities that for the last 25 years of service, there was nothing against him from any officers and he was also elected as Executive Member of the Union and he also brought to the notice of the Director-General the incident of respondent No.3 calling the applicant in his office on 11.1.1996 and threatening him with killing if he did not stop espousing the cause of daily rates casual labours regarding non-payment of wages and employing juniors and freshers and also threatening to wind up his Union activities and when a notice was served by the Union for certain demands, respondent No.3 decided to crush the union activities so he suspended the various persons including applicant. But the suspension of Shri Bega and Mahanand etc. were revoked, however, a charge-sheet was issued to the applicant.

5. Respondent No.3 then also appointed one of the close friend, namely, Shri V.C. Sharma as Inquiry Officer and the applicant alleged bias against him and had also requested for change of the Inquiry Officer as Disciplinary Authority himself was a complainant and his continuance as the Disciplinary Authority and giving the applicant a charge-sheet and prosecuting him on the one hand and remaining a party to it on the other hand was in

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violatinon of the principle⁴ of natural justice. The applicant thus requested for quashing of the charge-sheet issued by respondent No.3.

6. It is further submitted that the President of the Union had also made a representation in December, 1996 for revoking the suspension of the applicant and also for appointment of another disciplinary authority to judge whether the applicant and other had indulged in so called misconduct but nothing has been done.

7. It is further submitted that without supplying the copies of the documents mentioned in the charge-sheet inspite of repeated written requests the enquiry kept on proceeding and applicant was directed to remain present before the Inquiry Officer on 14.1.1997 but since the applicant had submitted in writing that the disciplinary authority had issued the charge-sheet when he was himself complainant and allegation of bias was also levelled against him so the applicant had requested for change of Inquiry Officer but the respondent No.3 was so ill-advised that his bias against applicant continued and thus enquiry was completed and the applicant has been punished.

8. The respondents who are contesting the OA pleaded that the OA is not maintainable since the applicant has not filed any appeal to the appellate authority so without exhausting the remedies the OA has been filed. The respondents pleaded that after the issue of memo. of charges the appliant was aksed to submit his reply within 10 days of the receipt of the memo and did

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not submit any reply and just wanted to delay the proceedings and lastly he asked for Hindi translation which was also given to him on 25.6.1996 but the applicant did not submit any reply.

9. It is further submitted that the competent authority also passed an appropriate order for payment of subsistence allowance in terms of FR 53 in respect of the applicant. The applicant did not submit any reply of the memo of charges so the disciplinary authority appointed Shri V.C. Sharma, ASA as Inquiry Officer who also asked the applicant to submit his reply and he was informed that hearing would be held on 25.4.97 but the applicant did not submit any reply nor attended the hearing on 25.4.1997 onwards..

10. It is further stated that the Inquiry Officer before undertaking the enquiry had asked the applicant to reply to the article of charge within 5 days from the date of issue of the letter failing which the Inquiry Officer would have no option but to take ex-parte decision in the matter though the applicant was asked that in case he wants to engage a defence counsel to defend his case, he was permitted for the same and was directed to be present in the office-chamber of Inquiry Officer on 14.1.1997 instead he had written a letter on 10.1.1997.

11. It is also submitted that though the applicant had made a request in his letter that the enquiry should not be proceeded since there was allegation of bias against the Inquiry Officer also but the matter was referred to the Director General and the



appointment of Shri V.C. Sharma as Inquiry Officer was confirmed by the Director General vide his confidential letter dated 4.6.97.

12. It is further stated that the S.A. Delhi (Circle), i.e., the disciplinary authority on receipt of the inquiry report approached the Director General, Archaeological Survey of India to obtain his concurrence on the quantum of punishment to be imposed on the applicant and the Director General, Archaeological Survey of India had informed that the disciplinary authority to take appropriate action on the Inquiry Report as deemed fit by the disciplinary authority. Thus on receipt of enquiry report penalty was imposed.

13. We have heard the learned counsel for the parties and gone through the record.

14. The applicant has alleged that he has not been supplied the list of witnesses nor certain documents but we find from the memo of charge-sheet Annexure-B that it does not contain any list of witnesses nor it contains any list of documents to be proved during the enquiry. So examining the articles of charge it is to be seen whether the same could be proved without any oral testimony of any witness on the basis of the record itself, for the purpose we may reproduce Articles of Charge:-

" Article-I

Shri Francis Patras while functioning as M/Attendant for the period of January 1996 has played a very important role to participate in the Gehrao in the office of the Superintending Archaeologist, Archaeological Survey of India, Delhi Circle on 16.1.1996

[Signature]

and involved forcible confinement of Government service within the office premises by surrounding the place of duty of the Government servants and entire monument area of national importance known as "Safdarjung Tomb". He is participated in demonstration during the office hours and after the office hours within the protected limits of the centrally protected monuments without the prior permission of the competent authority. Thus Shri Francis Patras M/Attd has violated Rule Nos.3, 7 and 11 of CCS (Conduct) Rules 1964 for the aforesaid act.

Article-II

On 16.1.1996 Shri Francis Patras M/Attd. participated in the demonstration with outside people in collaboration with ABPSK Union which is unauthorised and not recognised by ASI. The cause of act on for participating in such demonstration with outsiders within the protected limits of monuments of Humayun's Tomb, Hauz Khas and Qutb Minar which are the monuments of National Importance leads to the trespassing of the monument's premises and violation of AMASR Act, destroying the environment of the monuments premises and violation of AMASR Act, destroying the environment of the monuments, public safety Act and violation of Rule 7(1) CCS (Conduct) Rules, 1964".

15. The perusal of the charges of Article I goes to show that the allegations against the applicant are that a Gehrao in the office of the Superintending Archaeologist, Archaeological Survey of India, Delhi was held on 16.1.1996 and Superintendent of Archaeologist was none else a person other than the respondent No.3 who is also the Disciplinary Authority so basically it is he who became a witness if he was present in the office.

16. The Hindi translation of the charge-sheet also shows that the Gehrao in the office of the Superintending Archaeologist, Archaeological Survey of India was held and applicant has played a significant role while holdin the Gehrao. The allegations cannot be proved on the basis of any record and the same have to be proved on the basis of the oral testimony. Neither the original memo in English (Annexure-B) nor the Hindi translation would go to show any list of witnesses had

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been annexed, so it is not known as to who has deposed against the applicant. Nor there is a list of documents to show as to what documents are to be proved. So there is nothin to suggest as to how the charges were to be proved and by what evidence, the applicant had not been informed at all.

17. On the contrary the applicant has placed on record that he had been making representation to supply list of witnesses and documents also and it appears that the same have not been supplied at all to the applicant nor in the reply the department submits that if any such document or list has been supplied.

18. In the counter-affidavit the respondents had not specifically denied about the demand made by the applicant for supply of witnesses and supply of documents but a vague reply has been given that the applicant had been raising up irrelevant issue when he asked for Hindi translation of the charge-sheet. The perusal of Rule 14 of the COS (CCA) Rules would go to show that a proforma of memo of charges also requires that whenever a memo of charge-sheet is issued the disciplinary authority is supposed to supply to the applicant the list of witnesses as well as the documents which may be used to prove the charges against the applicant but in this case the charge-sheet as placed on record does not show that if any list of witnesses or list of documents have been supplied to the applicant.

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19. The applicant has also alleged that before punishing the applicant inquiry report has not been supplied to the applicant and the department has not denied this fact that the enquiry report has not been supplied to the applicant.

20. Hence we find that the charge-sheet submitted to the applicant is a defective one since it did not contain any name of the witnesses nor the documents which were required to prove the charges as levelled in the Article of Charge against the applicant. The applicant had also made a request that he may be supplied copies of documents as well as list of witnesses as well as Hindi versions of the said charge-sheet. This letter was replied vide Annexure A-6 which states that Annexures-III and Annexure-IV as requested and will be made available to the Inquiry Officer at the time of the conducting of the enquiry meaning thereby that Annexures-III and IV had not been supplied to the applicant to enable him to give a reply before the commencement of the enquiry. Thus we find that the entire charge-sheet itself was a defective and the same could not be sustained as the same has not been issued in accordance with the rules and the proforma provided thereunder.

21. Thus the charge-sheet itself is liable to be quashed and consequently the orders passed on the basis of this defective charge-sheet cannot also be sustained.



22. Hence we allow the OA and quash and set aside the impugned orders Annexures A, B and C and his pay be restored within a period of 2 months. However, it is open to the respondents that they may hold an enquiry after supplying fresh charge-sheet in accordance with the CCS (CCA) Rules and judicial instructions on the subject and in case they choose to hold an enquiry the same shall be finalised within a period of 6 months. No costs.


(S.K. NAIK)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

Rakesh