

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1729/98
T.A. No.

199

(3)

DATE OF DECISION 15.12.99

Mahla Singh

....Petitioner

Sh.R.K.Sharma

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent(s)

Sh.S.K.Gupta

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)
The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

OA 1729/98

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New Delhi this the 15 th day of December, 1999

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

Shri Mahla Singh,
S/o Shri Amar Singh,
R/o H.No. 3/17, Geeta Colony,
Delhi-31

... Applicant.

By Advocate Shri R.K. Sharma.

Versus

1. Lt. Governor of Delhi,
Govt. of National Capital Territory
of Delhi, Raj Niwas Marg,
Delhi-110054.

2. Chief Secretary,
Govt. of National Capital Territory
of Delhi,
5. Sham Nath Marg,
Delhi-110054.

3. Deputy Commissioner (Revenue Secretary),
Delhi,
Tis Hazari Courts,
Delhi-110054.

... Respondents.

By Advocate Shri S.K. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order dated 28.8.1992 passed by the respondents removing him from service and rejection of his appeal against this order by the appellate authority by order dated 23.3.1998.

2. The applicant had filed an earlier application (OA 26/95) which had been disposed of by the order dated 11.11.1997 directing the respondents to dispose of the applicant's appeal in accordance with law after giving him a reasonable opportunity of being heard by a detailed speaking

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and reasoned order within a period of three months from the date of receipt of a copy of the order.

3. The brief facts of the case are that the applicant who was working as Patwari with the respondents was proceeded departmentally for alleged irregularities, and the aforesaid penalty orders were issued removing him from service. The applicant has submitted that the impugned order has been issued just one day before his date of superannuation. He was issued a Memorandum of charges undated, (Annexure A-3) which reads as follows:

"....While working as Halqa patwari of village Kotla Mubarakpur, Delhi Sh. Mahla Singh,

(a) failed to maintain devotion to duty.

(b) acted in manner unbecoming of a Govt. servant".

The applicant states that the Inquiry Officer had submitted his report on 13.5.1988 but a copy of the report was sent to him only on 29.6.1992 which was received by him in the first week of July, 1992. Shri R.K. Sharma, learned counsel, has submitted that as there was considerable delay in the report being sent to the applicant, he had requested for copies of certain papers to enable him to give a reply which was delivered to the respondents on 14.7.1992. According to him, no reply was given by the respondents and accordingly the applicant reminded them on 20.8.1992. However, the relevant documents were never supplied to the applicant even though he had requested that they should be given to him at his own expense as he had misplaced certain important documents

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relating to the disciplinary inquiry. The disciplinary authority thereafter passed the impugned removal order dated 28.8.1992.

4. Learned counsel for the applicant has impugned the disciplinary authority's order on the ground that it has been passed by a person who was not competent to do so. This order has been passed by Shri A.J.S. Sahney as disciplinary authority/Deputy Commissioner, Delhi. Learned counsel has submitted that this officer was only acting as Deputy Commissioner in place of Shri Arun Mathur who had been transferred to another Department and was, therefore, not competent to issue the order as disciplinary authority. He has submitted that it is not a reasoned and speaking order and is in violation of the Govt. of India's instructions contained in Paragraphs 1 and 2 of O.M. dated 13.7.1981 below Rule 15 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). He has also submitted that in the reply filed by the respondents to O.A. 26/95 dated 3.1.1995, they have stated that the competent authority had taken a decision in the file to impose the penalty of removal from service, before the Inquiry Officer's report was sent to the applicant for his comments and reply. He has drawn our attention to these facts which are stated in the appellate authority's order dated 23.3.1998, namely, that a decision had been taken by the then Deputy Commissioner, Shri Arun Mathur, who had examined the case after receipt of the Inquiry Officer's report and decided that the applicant should be removed from service ^{on 18/} ~~dated~~ 10.3.1992. He has submitted that if the competent authority had already taken a decision to remove the applicant from service in March, 1992, and thereafter sent the Inquiry Officer's report to the applicant in June, 1992, this

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amounts to clearly pre-judging the case and denial of the principles of natural justice which the respondents cannot do. He has submitted that the decision by the disciplinary authority could have been taken only after a copy of the Inquiry Officer's report was submitted to the applicant for his comments, and in the circumstances the supply of the report, after the decision had been taken, is an after thought which is also against the provisions of Rule 15 of the Rules.

5. Another ground taken by Shri R.K. Sharma, learned counsel, is that there has been undue delay in finalising the departmental proceedings against the applicant, even though the Inquiry Officer had submitted his report as far back as May, 1988 and the inquiry itself had been initiated prior to that. He has submitted that the fact of non-supply of the Inquiry Officer's report to the applicant before the disciplinary authority took the decision to impose the penalty of removal from service, was also specifically raised by him in the appeal submitted to the appellate authority but the same was not considered which is bad in law. He has, therefore, prayed that the penalty orders dated 28.8.1992 passed by the disciplinary authority and confirmed by the appellate authority on 23.3.1998 may be quashed and set aside with costs. He has also prayed that a direction may be issued to the respondents to reinstate him in service and make all payments, including retiral benefits.

6. The respondents have controverted the above submissions in their reply. They have, inter alia, submitted that the Inquiry Officer's report was sent to the applicant on 29.6.1992 and the order of removal was passed on 28.8.1992 and hence there was no violation of the principles of natural

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justice. They have also stated that Shri A.J.S. Sahney, Deputy Commissioner, Delhi was fully competent to pass the impugned order as disciplinary authority. Shri S.K. Gupta, learned proxy counsel, has also submitted the original records for our perusal. The respondents have prayed that the applicant is not entitled to get any relief and the O.A. may be dismissed.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. The facts in this case relate to the departmental action taken by the respondents against the applicant under Rule 14 of the Rules on the charges that he had failed to maintain devotion to duty as he had tampered with the revenue records of village Kotla Mubarakpur, Delhi. While we are aware of the powers of judicial review that can be exercised by the Tribunal in such matters, as laid down by the Hon'ble Supreme Court in a catena of judgements, for the reasons stated below, we are of the view that this is one of the exceptional cases where there is ample justification to interfere and set aside the impugned penalty orders.

9. The appellate authority has stated that being aggrieved with the order, the appellant had prayed for quashing the order passed by the disciplinary authority on the following grounds:

1. The order dated 28.8.1992 is passed without jurisdiction.
2. Shri A.J.S. Sawhney, which has been shown as Dy. Commissioner/Disciplinary Authority is not the designated Dy. Commissioner and, therefore, cannot be disciplinary authority.

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3. Impugned order passed without application of mind - not a speaking order.

4. Violation of natural justice without affording the due opportunity of being heard".

The appellate authority has stated that in order to ascertain the veracity of the arguments put forward by the appellant in his appeal, he has gone through the inquiry report and other related documents. It is relevant to note what he has stated on the points raised by the applicant is as follows:

"I find that in respect of Points 1 & 2 the then Dy. Commissioner Sh. Arun Mathur had examined the case after the receipt of the enquiry report and decided for removal from the service of the applicant vide order dated 10.3.1992 by the then Dy. Commissioner, who was competent to issue order for removal of services of Sh. Mahla Singh and which had already been passed by the competent authority, Shri A.J.H. Sawhney the acting Deputy Commissioner had only communicated to the appellant the orders passed by Shri Arun Mathur as Dy. Commissioner".

(Emphasis added)

9A. The above position is also confirmed from the official records submitted by the respondents. It is noted from the file that the ADM (Headquarters) has himself stated in his note dated 27.2.1992 that there has been delay in submission of the file containing the Inquiry Officer's report to the Deputy Commissioner (DC) for taking action for major penalty. The Deputy Commissioner has recorded in his note dated 10.3.1992 that the applicant may be removed from service which has been reproduced in the appellate authority's order. The respondents have admittedly sent the Inquiry Officer's report to the applicant for his comments/reply by Memorandum dated 29.6.1992 (Annexure A-4). In this Memorandum, it has been stated that the disciplinary authority will take suitable action after considering the report and the applicant was

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given an opportunity to make a representation on the report within 15 days. In the circumstances of the case, it is, therefore, seen that the decision to remove the applicant from service has been taken by Shri Arun Mathur, the then Deputy Commissioner by his order dated 10.3.1992 whereas the Inquiry Officer's report has been sent to the applicant only on 29.6.1992. This procedure obviously makes a mockery of the principles of natural justice and gives a total go-bye to the relevant provisions of the CCS (CCA) Rules, 1965. The extract of the appellate authority's order also shows that they have impliedly accepted the applicant's contention that the final order passed by the disciplinary authority i.e. Shri A.J.S. Sahney on 28.8.1992 was not passed by the competent authority as he was only acting as Dy. Commissioner who had only communicated the earlier order passed by Shri Arun Mathur as Deputy Commissioner. All this shows that the respondents have not applied their minds to the facts or the rule position governing such matters of disciplinary inquiries, especially when it is considered that they are passing a major penalty order of removal from service. We also see force in the submissions made by the learned counsel for the applicant that the impugned penalty order dated 28.8.1992 has been passed in a hurry without application of mind, as the applicant was to retire from service on superannuation on 31.8.1992, that is within three days of the issuance of the order. In the circumstances of the case, we are unable to accept the statement of the appellate authority in his order dated 23.3.1998 that the impugned penalty order has been correctly passed by the disciplinary authority after consideration of the facts and available records, as he had done so without receipt of the reply of the applicant to the Inquiry report which was only sent to him by Memorandum dated 29.6.1992.

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10. The Inquiry Officer had given his report on 13.5.1988 (copy placed on page 29 of the paper book). However, the respondents have sent the report to the applicant after four years on 29.6.1992. In the circumstances, the contention of the applicant that because of the delay and the fact that he had misplaced some of the documents, he had requested the respondents to supply them in order to enable him to give a proper reply to the Inquiry Officer's report is not unreasonable. The respondents' action has caused, therefore, prejudice to the applicant. Apart from this, the respondents have themselves admitted that the disciplinary authority has taken a decision to remove the applicant from service much earlier, that is, on 10.3.1992, in which case, their action becomes even more arbitrary. In the facts and circumstances of the case, we ~~see no force in the~~ contentions of the applicant's counsel that the impugned disciplinary authority's order dated 28.8.1992 based on the earlier order of the then disciplinary authority of 10.3.1992 is arbitrary and illegal and cannot be sustained.

11. We have also taken into account the fact that in pursuance of the Tribunal's order dated 11.11.1997 in OA 26/95, the appellate authority has stated that he had given a personal hearing to the applicant on 12.3.1998 but he had failed to produce any supporting evidence which could support his views. However, in view of the respondents' own infractions of the law, rules and instructions, including the principles of natural justice in this case, their action cannot be supported. We have also no doubt that from the factual averments of the respondents themselves as reflected in the appellate authority's order that a decision to remove

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the applicant from service had been taken by the disciplinary authority, as early as 10.3.1992 i.e. much before the inquiry report was sent to him which would cause grave prejudice to the applicant (See. **State Bank of Patiala & Ors. Vs. S.K. Sharma** (JT 1996(3) SC 722). The procedure adopted by the respondents is also in clear violation of the principles of natural justice and the settled law (See. **Managing Director, ECIL Vs. B. Karunakar & Ors.** (JT 1993(6) SC 1; **Union of India Vs. Parma (Nanda)** AIR 1989 SC 1185). In the circumstances of the case, we are satisfied that the major penalty orders imposed on the applicant by the respondents deserve to be quashed and set aside and we do so. In this case, the applicant has superannuated from service w.e.f. 31.8.1992. In the circumstances, the prayer of the applicant that a direction may be given to the respondents to reinstate him in service as it will be only for a period of three days would not be reasonable or practicable.

12. In the facts and circumstances of the case, on quashing the penalty orders, normally the case should have been remitted to the competent authority to proceed and pass an appropriate order in accordance with law. However, in this case, the applicant has retired from service more than seven years ago on 31.8.1992 and the disciplinary proceedings have been pending for more than a decade. In **B.C. Chaturvedi Vs. Union of India & Ors.** (JT 1995(8) SC 665), the Supreme Court has held as follows:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of

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judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof".

(Emphasis added)

13. The penalty order of removal from service passed by the disciplinary authority on 28.8.1992 has been confirmed by the appellate authority after nearly six years by order dated 23.3.1998. These orders suffer from several legal infirmities, referred to above. At this stage, we do not think that it would, therefore, be appropriate to remit the case to the disciplinary or appellate authority to reconsider the case and give the applicant a reasonable opportunity to reply to the Inquiry Officer's report dated 13.5.1988 and pass fresh orders. There is no doubt that the respondents have **action** inordinately delayed/in finalising the disciplinary proceedings against the applicant which could have been done in accordance with law many years before his date of superannuation. This is the second round of litigation, the earlier O.A. 26 of 1995 having been disposed of with the direction to the respondents to dispose of the applicant's appeal within three months, which has been done by order dated 23.3.1998. Taking into account these facts and circumstances and the observations of the Hon'ble Supreme Court in **B.C. Chaturvedi's case** (supra), we consider that this is one of the exceptional and rare cases where it would be appropriate for us to substitute the penalty already imposed by the lesser punishment of compulsory retirement w.e.f. 28.8.1992.

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14. In the result, the O.A. succeeds and is allowed. The impugned penalty orders are quashed and set aside with the following directions:-

(a) The applicant shall be deemed to have been compulsorily retired from service with effect from 28.8.1992, and his claim for reinstatement in service is accordingly rejected;

(b) The respondents are directed to make payments of the amounts due to the applicant as retiral benefits from 28.8.1992 in accordance with law, Rules and Instructions, within three months from the date of receipt of a copy of this order.

(c) The respondents to fix responsibility on the erring officials for the inordinate delay caused in finalising the disciplinary proceedings in this case and to ensure that such lapses do not occur;

(d) In the facts and circumstances of the case, we also consider it appropriate to award costs of Rs.2000/- in favour of the applicant and against the respondents.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

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

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