

Central Administrative Tribunal, Principal Bench

O.A. 1740/98

New Delhi, this the 18<sup>th</sup> day of August, 2000

Hon'ble Mr. Kuldip Singh, Member (J)

Hon'ble Mrs. Shanta Shastri, Member (A)

S.D. Sharma S/o Sh. Ram Parshad Sharma

R/o Sector-25, H.No.56,

Noida District: Ghaziabad (U.P).

...Applicant

By Advocate: Shri Yogesh Sharma.

Versus

1. NCT of Delhi through the Secretary,  
Government of Delhi,  
Delhi Administration, Old Secretariat,  
Delhi.

2. The Chief Secretary,  
Delhi Administration,  
5, Alipore Road,  
Delhi.

3. The Director of Education,  
Delhi Administration,  
Old Secretariat,  
Delhi.

...Respondents

By Advocate Shri Vijay Pandita.

ORDER

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

The applicant impugns the order of punishment Annexure A-1 passed by the Director of Education vide which order of removal has been confirmed. The applicant was proceeded departmentally on the following charges:-

(i) Article I of the charge pertained to unauthorised absence.

(ii) Article II pertained to refusal on the part of applicant to hand over the charge to drawing teacher.

(iii) Article III pertained with regard to tampering with the attendance register.

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2. The Inquiry Officer submitted his report holding that all the three charges against the applicant had been proved. On the report of the Principal, who was the Inquiry Officer, the disciplinary authority passed the order of punishment vide order dated 27.5.87. The applicant then preferred an appeal before the Chief Secretary, but the same was rejected. Thereafter, the applicant filed an OA 1025/87 and the order of punishment was quashed and while disposing the OA it was observed "suffice it to say that so far as the old charges of the applicant's absence is concerned, the same could not have been made. However, the first absence was regularised and this aspect was also not considered by the Inquiry Officer or the disciplinary authority and the order of punishment dated 27.5.87 was quashed and the case was remanded back to the disciplinary authority to consider the case again with the specific consideration that the charge No.1 for which the default had happened in the past could not be included and the disciplinary authority was also asked to consider the quantum of punishment and to dispose of the case by passing a speaking order".

3. It is further pleaded that the disciplinary authority in compliance of the judgment had not passed any order as in the case of the applicant the disciplinary authority was Director of Education, but the Deputy Director of Education passed the order on 17.6.93 and disposed of the case of the applicant holding that the applicant has no merits in his pleas and the punishment awarded earlier is confirmed.

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4. It is further pleaded that when the appeal of the applicant was decided earlier vide order dated 20.5.88, the appellate authority had held that the charge No. III was not proved for want of direct evidence meaning thereby that the charge No. III has been quashed. Now the applicant pleads that the Charge No. I has been quashed by the Tribunal and the Charge No. III has been quashed by the orders of the appellate authority so only Charge No. II remained, for which penalty of removal is too harsh and the order of removal should not have been awarded particularly in the background of earlier round of litigation wherein the Tribunal had given the direction to the respondents to consider the quantum of punishment.

5. We have heard the learned counsel for the parties and have gone through the records.

6. The respondents in their reply particularly to para 4.8 have also admitted that the appellate authority has not upheld the charge No. III for want of direct evidence. The respondents also did not deny the direction given by the Tribunal in the earlier OA filed by the applicant.

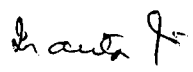
7. We have gone through the order of the Tribunal passed in the earlier OA. In the earlier OA, the Tribunal had particularly stated that "suffice it to say that so far as the old charges of the applicant's absence is concerned, the same could not have been made", which means that the Charge No. I was also diluted to certain extent and since as admitted by the respondents themselves that

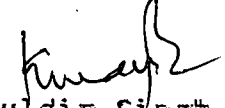
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the appellate authority had not upheld the findings on Charge No. III, so we are of the considered opinion that the charges levelled against the applicant had been diluted to a large extent and only Article II of the charge survived and for this purpose, the disciplinary authority should have given some consideration for awarding the punishment.

8. The disciplinary authority had earlier passed an order holding that all the three charges are proved and had inflicted the punishment of removal. But since now we have observed above that the appellate authority itself has observed that the Charge No. III has not been proved and Charge No. I stands diluted, so the order of punishment maintaining the same penalty of removal seems to be quite harsh. Though we are conscious that this Tribunal in normal circumstances should not have interfered with the order of punishment but in this particular case since the order of punishment inflicting removal when all the three charges are proved and maintaining the same punishment when charges stand diluted, do require re-consideration by the disciplinary authority.

9. In view of the above, OA is allowed and the order of removal is quashed. We remand back the case to the disciplinary authority to pass a fresh appropriate order considering all the pleas and the fact that charges have been diluted within a period of 3 months from the date of receipt of a copy of this order. No costs.

  
( Mrs. Shanta Shastri )  
Member (A)

  
( Kuldip Singh )  
Member (J)