

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.792/1998

New Delhi, this 30th day of November, 2000

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

(17)

Ashok Kumar Sharma
58, Gali Raja, Kedarnath
Chawri Bazar, Delhi-6 .. Applicant

(By Shri A.K.Bhardwaj, Advocate)

versus

Union of India, through

1. Member(Personnel)
Central Board of Excise & Customs
New Delhi
2. Commissioner, Central Excise
Meerut II
3. Deputy Commissioner (P&V)
Central Excise, Meerut
4. Assistant Collector
Central Excise, DC Unit, Noida .. Respondents

(By Shri N.S.Mehta, Advocate)

ORDER

By Shri M.P. Singh

The penalty of removal from service by order dated 6.8.96 imposed on the applicant and confirmation of the same by order dated 28.10.97 are under challenge in the present OA.

2. Briefly stated, the applicant while posted as Sepoy, Central Excise, Pithoragarh, was issued with Memo dated 6.1.93 calling for his explanation regarding some complaints made in the name of Shri Sanjay Tewari against Shri J.R.Khatri, Superintendent and the applicant submitted his reply on 28.1.93 (Annexure A-7) denying that he had made any complaint in the name of any one. However, he was issued with a charge-sheet on 9.3.94 to the effect that he had made a complaint against Shri J.R. Khatri in the fictitious name of



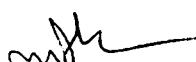
Sanjay Tewari. Applicant submitted his written statement on 16.4.94 denying the charge. An Inquiry Officer (IO, for short) to conduct enquiry against the applicant was appointed. The IO proposed 17.10.94 as the date of preliminary hearing and required the applicant to be present on that day. The applicant not sure whether the enquiry was for the charge-sheet dated 9.3.94 or 17.7.92, attended the inquiry on that date. By letter dated 1.3.95 he was given a copy of preliminary enquiry report and on his request, he was given Hindi version of main inquiry report in July, 1995. Applicant made a representation on 28.11.95 against the inquiry report but the disciplinary authority (DA, for short) without considering submissions made by the applicant, imposed the penalty of removal from service. He preferred an appeal on 30.8.96 which was rejected on 28.10.97. That is how the applicant is before us for setting aside the impugned orders and for directions to the respondents to reinstate him in service with all consequential benefits with backwages.

3. Respondents have contested the case in their counter. They have submitted that a complaint dated nil, purportedly made by Shri Sanjay Tewari was received in the Hqs. Office, Meerut on 6.9.91, wherein it was alleged that one Shri J.R.Khatri, Supdt. had broken the lock of his office room and cup-board on 21.6.91 and apprehension of destruction of govt. records was on him. On inquiry, no person in the name of Sanjay Tewari amongst the declarant units of Range V was found and the address given was also found vague. Since in the police investigation report dated 7.8.91, the needle of

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suspicion was towards the applicant in respect of
incident dated 21/22.6.91 and when the complaint was
found to be pseudonymous, it was also suspected that the
complaint might had been made by him. As such, a leave
application written in the handwriting of the applicant
and complaint in original was sent to the Handwriting
Expert, who examined it and held that the complaint is
written in the handwriting of the applicant.
Explanation was called from the applicant but it was not
found satisfactory and the applicant was issued the
charge-sheet dated 9.3.94 alleging that he made the
false pseudonymous complaint against J.R.Khatri.

4. An Inquiry Officer (IO, for short) was appointed on 26.7.94. The IO concluded his enquiry and submitted his report to the DA. A copy of enquiry report in English was received by applicant's father-in-law on 21.3.95. Hindi version of the same was sent to him on 24.4.95 which was received by the applicant himself on 1.5.95. In the meantime applicant submitted his defence statement on 15.4.94. The applicant was given personal hearing on 17.10.94. He requested to obtain opinion from another handwriting expert which was acceded to. The applicant stated that he had nothing more to say. Thus he was not hindered in or prohibited from submitting his defence. Applicant was shown the relied upon documents. Shri Khatri appeared before the IO on 6.1.95 as a witness but the applicant did not avail the opportunity to cross examine him. The order of removal from service was passed by the DA after considering the inquiry report and applicant's representation and defence put forth by him during the inquiry. Therefore, the OA is not maintainable and deserves to be dismissed.



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5. Heard the learned counsel for the parties and perused the records.

6. Though the applicant has taken a variety of grounds in support of his prayer, the main grounds are that the inquiry was not held as per Rule 14 of CCS(CCA) Rules, 1965 before inflicting upon him the major punishment of removal from service, inasmuch as that copies of relied upon documents and also a copy of the report of second hand writing expert were not supplied to him despite his requests and DA relying upon the report of IO prepared by him on receipt of second hand-writing expert's report, passed the impugned order of punishment.

7. On the other hand, the learned counsel for the respondents would submit that it was not necessary for the respondents to supply a copy of the report of second hand writing expert. In this connection he has relied upon the judgement decided by the Jammu & Kashmir High Court in the case of Zonal Manager, LIC & Ors. Vs. Mohan Lal Saraf 1978(2) SLR 868. However, on a careful perusal of this judgement, we find that this judgement is distinguishable and not applicable to the present case. The J&K High Court has cited the observation of the Full Bench judgement of the Punjab & Haryana High Court in the case of State of Haryana V. Ram Chander, AIR 1976 Punjab & Haryana 381, which reads as under:

"Domestic Tribunals, in the absence of statutory guidance, have the right to regulate their own procedure and are also bound by the strict rules of evidence. The rules of procedure and the rules of evidence observed in Courts are often misplaced in domestic enquiries. A domestic Tribunal whose procedure is not regulated by a statute is free to adopt a procedure of its own



so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever source if it is logically probative...."

8. In the present case, the procedures to be followed before imposing major penalty are available in Rule 14 of CCS(CCA) Rules, 1965. We are satisfied that the respondents have not followed these procedures before imposing the major penalty. They have also failed to produce any evidence that the applicant was furnished with copies of relied upon documents necessary for him to prepare his defence. In this view of the matter, the entire procedure followed by them is vitiated and deserves to be rejected. The applicant has been denied the opportunity to defend his case which is against the principles of natural justice.

9. In view of this position, we allow the present OA. The impugned orders dated 6.8.96 and 28.10.1997 are quashed and set aside. The case is remanded back to the DA. Respondents are directed to conduct fresh enquiry from the stage of supply of relied upon documents and also a copy of the report of second hand writing expert to the applicant in accordance with the procedure laid down in Rule 14 of CCS(CCA) Rules and pass an appropriate order accordingly. This shall be done within a period of six months from the date of receipt of a copy of this order. No costs.

m/sd/s
(M.P. Singh)
Member(A)

k/sd/s
(Kuldeep Singh)
Member(J)

/gtv/