

Central Administrative Tribunal
Principal Bench

O.A. No. 885 of 1998

(3)

New Delhi, dated this the 23rd October, 2001

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

Shri R.K. Jain,
S/o late Shri B.M. Jain,
R/o 3152/228, Chander Nagar,
Tri Nagar,
New Delhi.

.. Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

1. Union of India through
the Secretary,
Ministry of Agriculture,
Dept. of Animal Husbandry & Dairying),
Krishi Bhawan, New Delhi.
2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi. .. Respondents

(By Shri Mohinder Singh,
Law Assistant)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 1.5.85 (Ann. A/3) imposing the penalty of compulsory retirement from service and the review order dated 3.11.97 (Ann. A-1) rejecting the prayer for review.

2. Applicant was proceeded against departmentally vide Memo dated 19.3.82 (Ann. A-6) on two charges of attempting to draw withheld salary for a number of days during September-October 1981 and December, 1981-January 1982 by forging the signatures of his superior officers on the attendance

(32)

certificate, while working as Store Clerk in Delhi Milk Scheme.

3. The E.O. in his report dated 24.11.84 observed that there was no direct evidence to prove that the forged signatures on Exhibit P-1 and P-2 had been fixed by applicant himself, and the Government handwriting expert had also refused to confirm this suspicion, but it was only applicant who could have benefitted by producing the forged signatures in the Accounts Branch to get his salary released, and no other person would have been interested in forging the signatures on applicant's attendance certificate. On that basis he concluded that the charges against applicant had been proved.

4. Agreeing with the E.O.'s report the disciplinary authority by impugned order dated 1.5.85 imposed the penalty of compulsory retirement from service upon applicant.

5. Applicant thereafter appears to have submitted a revision petition on or about 5.7.85 but a copy of the same is not ^{on} record. When he did not receive any reply to the same, he filed a petition for review under Rule 29A CCS (CCA) Rules addressed to the President of India on 30.6.93 (Ann. A-18) followed by several reminders. The same was rejected by impugned order dated 3.11.97 giving rise to the present O.A.

2

(33)

6. We have heard Shri G.D. Bhandari for applicant and Shri Mohinder Lal Departmental Representative appeared on behalf of respondents.

7. The first ground taken is that a copy of the E.O's report was not supplied to applicant, as a result of which the disciplinary proceedings are vitiated. In Para 44 of the case of Managing Director ECIL, Hyderabad Vs. B. Karunakar JT 1993 (6) SC 1, the Hon'ble Supreme Court has held that ^{any} order of punishment passed by the disciplinary authority before 20.11.90, on which day Mohd. Ramzan Khan's case was decided, would ^{not} be challengeable, merely because of the failure to furnish a copy of the inquiry report to the delinquent employee. Under the circumstances even if a copy of the E.O's report was not furnished to applicant, the disciplinary proceedings cannot be challenged on that ground, as the disciplinary authority passed the penalty order on 1.5.85 itself, much before [^] 20.11.90. Hence this ground fails.

8. The next ground pressed by Shri Bhandari was that the both charges spoke only of 'attempt' to commit misconduct and not the actual committing of misconduct. A perusal of the charges that the gravamen of the charge is the alleged forging of signature of applicant's superior officers. The use of the word 'attempt' is only with respect of the drawing of withheld salary. In other words applicant allegedly used forged signatures and by using the

(BA)

same attempted to draw his withheld salary. Hence this ground advanced by Shri Bhandari does not help applicant, and is rejected.

9. The next ground pressed was that slips for the relevant period, duly signed by the competent authority, were already submitted, and as per usual practice and convention, they were prepared in applicant's hand, but as a result of making repeated enquires from the Accountant and on being told that the same had not reached him, applicant prepared the receipts again, and after getting the signatures of the competent authority, submitted the same to the Accountant. In this connection, it must be stated that whether the slips for the relevant period duly signed, had already been submitted or not is not material. It is the slips which were prepared again which are material, and it is in respect of the forging of signatures ~~in respect~~ of those slips that applicant was charged. Hence this ground is also rejected.

10. The next ground taken is that one of the persons whose signature applicant is alleged to have been forged, namely Shri Socrates, had himself stated in the D.E. that his signature differed on occasions. It is well settled that the Tribunal exercising writ jurisdiction is not competent to reappreciate the evidence. This ground ~~taken~~ involves reappreciation of the evidence tendered by Shri Socrates. Hence this ground is rejected.

(B5)

11. It is ~~next~~ contended that there has been a violation of procedure, in as much as applicant was himself not examined. Rule 14 (16) CCS (CCA) Rules provides that when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence orally or in writing as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer if so appointed. Rule 14 (17) lays down that the evidence on behalf of the Government servant shall then be produced, who may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined, and shall be liable to cross-examination, re-examination and examination by the Inquiry authority, according to the provisions applicable to witnesses for the disciplinary authority. Rule 14 (18) lays down that the Inquiring authority, may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him of the circumstances appearing against him in the evidence, for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

12. in this connection, we have perused the relevant D.E. file and note that after the PWS, had been examined, and cross-examined, ^{and the} prosecution case was closed, applicant submitted his written statement

(36)

of defence on 19.1.83 inter alia asking for the production of three DWs and certain documents. Thus Rule 14 (16) was complied with. Thereupon the three DWs named by applicant were examined and cross-examined. There is nothing to indicate that applicant exhibited any preference at that stage to be examined himself. Thereafter applicant himself, in his representation dated 4.2.83, requested that the specimen initials of Shri S.S. Maken obtained in the course of the inquiry, and the initials of Shri C.E. Socrates available on three different documents, be sent to the Government handwriting expert for expert opinion, and in case his request was not accepted, he prayed that he be permitted to avail of the services of a private handwriting expert to prove the fact that the initials alleged to have been forged by him had actually be put by the two officers themselves. As it is the signatures of Shri Maken and Shri Socrates which applicant is said to have forged, and they were also examined as PW1s in the DE, it is clear from applicant's own representation dated 4.2.83 that he was aware of the circumstances appearing in the evidence against him. Thus in our considered opinion there has been a substantial compliance of Rule 14 (18) also and hence this ground is also rejected.

2

(B7)

13. The next ground pressed by applicant's counsel Shri G.D.Bhandari is what is contained in paras 5.14, 5.15 and 5.16 of the OA namely that the evidence of Government handwriting expert was brought on record after the evidence was closed and reliance on this report was, therefore, illegal. Respondents in the corresponding paras of their reply state that applicant during the course of enquiry proceedings had himself submitted in writing to the Inquiry Officer on 4.2.87, for obtaining the opinion of a handwriting expert in the interest of justice so as to find out the truth. Hence opinion of the Govt. handwriting expert was obtained, and the applicant also engaged a private handwriting expert. It is noticed on a perusal of the Enquiry Officer's report dated 24.11.84 (placed on Department File No. 3-4/82 vig-Vol.II) that on a consideration of the opinions given by both the handwriting experts, he found that the said opinions are quite different from each other. On a close examination of the relevant material he observed that the conclusions drawn by the private handwriting expert are not convincing and that he cannot rely on the observations and opinion of the said expert. The conclusions of the private handwriting expert were not accepted by the Enquiry Officer. He agreed with the opinion given by the Govt. handwriting expert. Ultimately, he gave the finding that the charges have been proved. In the light of applicant's own request for summoning of a handwriting expert, it cannot be said that prejudice was caused to him when the aforesaid action was taken. Hence this ground by itself is not sufficient to warrant interference in the O.A.

14. Lastly Shri Bhandari has invited our attention

38

to delay in the conclusion of the proceedings, but in view of the foregoing discussion grounds of delay alone are not sufficient to warrant interference in the OA.

15. From the foregoing discussion it is clear that applicant was given full opportunity to defend himself in the DE and there is no illegality, infirmity or impropriety in the conduct of proceedings which prejudiced applicant in his defence. It is also clear that on the basis of the preponderance of probability applicant has been found guilty as charged.

16. Under the circumstances, the OA warrants no interference. It is dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

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