

Central Administrative Tribunal
Principal Bench

O.A. 1574/95

New Delhi this the 24th day of December, 1999

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

Raj Mohan Singh,
C/o Dr. B.P. Singh,
D-143, Prashant Vihar,
Pitam Pura,
Delhi.

Applicant.

By Advocate Shri C. Hari Shankar.

Versus

1. Union of India
through the Secretary,
Department of Women & Child Development,
Ministry of Human Resource Development,
'C' Wing, Shastri Bhawan,
New Delhi-110 001.

2. The Central Social Welfare Board,
through its Chairman,
Samaj Kalyan Bhawan,
B-12, Institutional Area South of IIT,
New Delhi-110 016.

3. Smt. Amarjeet Kaur,
Moti Bag, behind NIS,
Patiala,
Punjab. Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel.

O R D E R

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

The applicant who was proceeded against departmentally for certain alleged misconduct, is aggrieved by the penalty order passed by the respondents dated 22.11.1994, removing him from service. In this order, it is stated that the removal from service will not be a disqualification for his future employment  under the Government.

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2. Two charges had been issued against the applicant, namely, (1) that the applicant had recommended the name of one Shri B.Jha for appointment as a Salesman in Hind Products Corporation, a unit of All India Women Voluntary Service (AIWVS) with whom he had official dealings during the said period; and (2) that he had stood as a guarantor for Shri V.N. Tripathi for an amount of Rs.13,650/- with Hind Products Corporation for ensuring the delivery of garments on credit and failed to ensure that Shri Tripathi liquidated the entire amount for which he had stood as a surety.

3. Shri C. Hari Shanker, learned counsel for the applicant has submitted that the first allegation in the charge-sheet, in fact, constitutes no charge at all as the applicant had merely recommended the name of Shri Jha for appointment which cannot be construed as a misconduct.

4. Regarding the second allegation, learned counsel has contended that the applicant having stood surety for a person means that if the amount is not paid, he is bound to make the payment. He has also disputed that dishonouring of the two cheques issued by the applicant cannot be construed as "failing to maintain absolute integrity and devotion to duty". He has submitted that when the cheques were dishonoured, the applicant had offered to liquidate the amount by way of monthly deduction from his salary which shows his integrity and bonafides. Learned counsel has, therefore, submitted that the charge itself has not disclosed any misconduct on the applicant's part which could be said to constitute "failure to maintain absolute integrity and devotion to duty".

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5. Another ground taken by the applicant is that in the Inquiry Officer's report, Charge No.2 against the applicant was held to be proved on the ground that as this is a business deal, the Government officer should not have indulged himself in such affairs. Learned counsel has submitted that firstly there is no such allegation in the show cause notice, the same being only that Shri V.N.Tripathi for whom the applicant had stood surety had not paid up the amount in question. He has, therefore, submitted that the findings of the Inquiry Officer cannot be sustained. According to him, ^{the 13} disciplinary authority in his order dated 12.2.1990 repeats the aforesaid infirmity alleged by him in the Inquiry Officer's report.

6. Learned counsel has submitted that the punishment has been imposed on the allegation which has found no place in the show cause notice and without reference to the actual charges made against the applicant. Further, his contention is that merely recommending the name of Shri Jha for employment as a Salesman in Hind Products Corporation which is a unit of AIWVS and without anything more was not a misconduct or something which shows failure to maintain absolute integrity and devotion to duty, as alleged in the Articles of charge. Similarly, he has submitted that standing guarantee for Shri V.N. Tripathi for an amount with Hind Products Corporation is also not a misconduct.

7. Another ground taken by the applicant's counsel is that the purported review of the applicant's case was illegal as no notice had been given to him that his entire
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case was being reviewed. He has submitted that without affording any such opportunity, the reviewing authority had reviewed the case and held both the charges proved against the applicant, as conveyed to him by Office Order dated 14.1.1994. He has emphasised that the review order has been passed enhancing the penalty order from a penalty of censure to penalty of removal from service based on the observations of the Central Bureau of Investigation (CBI) as well as the Central Vigilance Commission (CVC) which is stated in Office Order dated 31.1.1994. Learned counsel has submitted that the decision to review should have been taken independently and not prompted either by the CBI ~~or~~ CVC. In the present case, he has contended that the same has been done practically in compliance with the observations and directions of the CBI and CVC and, therefore, such a decision cannot be sustained. He has relied on **Nagaraj Shivarao Karjagi Vs. Syndicate Bank** (1991 (3) SCC 219) and **Alfred D'Souza Vs. Collector of Customs** (1993 (23) ATC 910) and has also referred to the reply filed by the respondents in which they have submitted that it was decided to place the matter before the Executive Committee which was the appellate authority for reviewing his case. Shri Hari Shanker, learned counsel has contended that the power of review vests only in the President under Rule 29A(1) of the CCS (CCA) Rules, 1965. The same also applies to the case of revision under Rule 29(1). He has, therefore, contended that the revision by the Executive Committee of the Central Social Welfare Board is without jurisdiction. He has also submitted that the impugned order has not been issued under the signature of the reviewing authority which contravenes Government of India, DP&AR O.M. dated 13.7.1981. In this O.M., it is provided that the decision taken by the authorities is ^{to be} communicated by *✓*

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the competent authority under their own signatures and where the President is the prescribed disciplinary/appellate/reviewing authority and where it has been considered by the concerned Minister, the order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President. For these reasons, the learned counsel for the applicant has submitted that the impugned penalty order may be quashed and set aside.

8. We have seen the reply filed by the respondents and heard Shri P.H. Ramchandani, learned Sr. counsel for the respondents. Learned counsel has submitted that the allegations against the applicant show that he had failed to maintain absolute integrity and devotion to duty inasmuch as he was instrumental in securing employment of Shri B.Jha as a Salesman in Hind Products Corporation, a unit of AIWVS with whom he had official dealings during the said period. The applicant had stood as a guarantor for Shri V.N. Tripathi for an amount of Rs.13,650/- with Hind Products Corporation for ensuring the delivery of garments worth the aforesaid amount on credit and failed to ensure that Shri Tripathi liquidated the entire amount for which he had stood surety. Respondents have stated that the CVC by letter dated 15.6.1988 had advised that the Central Board should initiate major penalty proceedings against the applicant. They have submitted that the Inquiry Officer had not, however, found that Charge-I was proved but had only held Charge No. 2 as proved. The Chairman of the Board after going through the report had decided to impose a minor penalty of censure on the applicant vide order dated 3.5.1990. Respondents have clearly stated in their reply that both the CVC as well as the CBI have taken a view that the Board had shown undue

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leniency towards the applicant and recommended major penalty to be imposed. It is also clear from the reply filed by the respondents that based on the recommendations of the CBI and CVC, they had re-examined the matter by way of revision and withdrew the minor penalty order and substituted it with a major penalty of removal from service on the recommendations of the Executive Committee. Shri P.H.Ramchandani, learned counsel, has submitted that before imposing the penalty, the applicant had been afforded an opportunity to make a representation on the penalty as well as personal hearing and there was nothing wrong in the procedure adopted by the respondents. They have stated that the matter was discussed in detail by the Executive Committee in its 112th meeting held on 16.12.1993 when it came to the conclusion that both the allegations were fully substantiated against the applicant. They have further stated that the explanation of the applicant in the context of personal hearing was again considered by the Executive Committee in its 115th meeting held on 27.9.1994, but it had confirmed to execute the decision earlier taken in its meeting held on 16.12.1993.

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

10. It is seen from the reply filed by the respondents that the Chairman of the Board had, after considering the Inquiry Officer's report and giving the applicant an opportunity of hearing, come to the conclusion that the applicant should not have ^{had 13} direct financial dealings with the firm with whom he was dealing officially. The Chairman had imposed only a minor penalty of censure. Later, from the reply of the respondents themselves, it is observed

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that they have done a somersault, after receipt of letters from CBI and CVC which had recommended for major penalty and that punishment should be re-examined in revision. After conducting a revision by the Executive Committee, the aforesaid major penalty order of removal from service has been imposed on the applicant after taking ^{a/s} decision that both the charges were fully proved. Admittedly the revisional authority has not given any reasons as to how they have come to a different conclusion on the recommendations of the Inquiry Officer with regard to the first charge as he had held that this was not proved. It is also relevant to note that from the least of the minor penalties which had been earlier imposed by the Chairman of the Board, that is censure, on revision the major penalty of removal from service has been imposed on the same allegations without substantiating the reasons for the same based on the facts, the evidence and records produced before them or the Inquiry Officer. The revisional authority has not recorded its reasons for disagreeing with the Inquiry Officer's report or the earlier findings of the disciplinary authority. In the circumstances, merely giving an opportunity to the applicant to submit his representations or even be heard personally will not suffice in the circumstances of the case. In Punjab National Bank & Ors. Vs. Shri Kunj Behari Misra (JT 1998 (5) SC 548), the Supreme Court has held that disciplinary authority must afford opportunity of being heard where he differs from the findings of the Inquiry Officer in reversing findings favourable to the delinquent official before passing a final order and giving contrary findings. In the facts and circumstances of the case, we are of the view that the revisional authority has not afforded the applicant an

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opportunity to be heard before reversing the findings of the Inquiry Officer that even Charge No. I is also proved against the applicant.

11. It is also evident from a perusal of the reply of the respondents that the revisional authority had decided to reopen and review the case of the applicant based on the recommendations of the CBI and CVC which had recommended major penalty in the case. Nothing has been placed on record by the respondents to show on what basis the Executive Committee which is stated to be the revisional authority had come to its conclusion. We also find merit in the contentions of Shri Hari Shanker, learned counsel that the revisional authority has acted purely on the recommendations and dictates of the CVC and CBI which is, therefore, bad in law, as held by the Supreme Court in *Nagaraj Shivarao Karjagi's case (supra)*. It is also relevant to note that the decision of the revisional authority to impose the penalty of removal from service on the charges levelled against the applicant which (1) relate to his recommending the appointment of Shri B. Jha and (2) regarding standing surety for V.N. Tripathi, appears to be excessively severe, especially considering the fact that the disciplinary authority had initially come to the conclusion that a penalty of censure will suffice on the same allegations.

12. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

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(a) The punishment order dated 22.11.1994 removing the applicant from service is quashed and set aside and the applicant shall be reinstated in service. He shall be entitled to all consequential benefits in accordance with law, rules and instructions.

(b) The above action shall be taken within two months from the date of receipt of a copy of this order. However, the respondents may, if so advised, proceed against the applicant from the revisional stage, in accordance with law and keeping in view the observations made above.

No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S. R. Adige

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

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