

Central Administrative Tribunal
Principal Bench

O.A.No.2060/95

Hon'ble Mr. Justice K.M.Agarwal, Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 4th day of February, 1998

Shri T.D.Pandey
WZ-42, West Patel Nagar
Khanpur
New Delhi - 110 008. ... Applicant

(In person)

Vs.

1. Union of India through
The Secretary
Ministry of Defence
South Block
New Delhi - 110 011.
2. The Engineer In Chief
Army Headquarters
DHQ, PO Kashmir House
New Delhi - 110 011.
3. The Chief Engineer
Western Command
Chandimandir 134 107.
4. The Chief Engineer
Delhi Zone
Delhi Cantt. 110 010. ... Respondents

(By Shri R.V.Sinha, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A):

The applicant who was working as Lower Division Clerk in the Military Engineering Service (in short MES) is aggrieved by the order of compulsory retirement dated 21.3.1994. The impugned order was passed on the basis of a Charge-sheet dated 31.12.1993 and the subsequent enquiry held on the allegation that the applicant had violated the provisions of CCS (Conduct) Rules, 1964 by participating in a political public meeting.

2. We have heard the applicant and Shri R.V.Sinha, learned counsel for the respondents. The impugned order of compulsory retirement has been challenged on various grounds. Firstly, it

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has been submitted that the charge-sheet was issued by the officiating Chief Engineer in the absence of the regular incumbent of the post. It has been alleged that the officiating Chief Engineer was authorised to initiate disciplinary proceedings only when the regular Chief Engineer was on leave for 31 days but in this case the regular Chief Engineer was away from the station only for 21 days. This ground is to be mentioned only to be summarily rejected. The Supreme Court has held in Steel Authority of India & Another Vs. Dr.R.K.Diwakar & Others, JT 1997(7) S.C. 404 that it is not necessary that the authority competent to impose the penalty can only initiate disciplinary proceedings; this can be done by any superior authority who can be held to be the controlling authority of the delinquent official. The officiating Chief Engineer, during the period his superior was on leave, was the controlling authority of the applicant. The charge-sheet cannot therefore be held to be invalid on the ground taken by the applicant.

3. It has then been alleged that the imputation of allegations which are in the following terms were vague:

"MES - 502387, Shri Tara Dutt Pandey, LDC while functioning as LDC in the office of CE Delhi Zone committed an act of misconduct in that he participated in a political public meeting and thus violated the provisions of Rule 5 of CCS (Conduct) Rules 1964 and rendered himself liable for disciplinary action."

4. It was argued that the aforesaid imputation of charges did not mention the specific date or time when the applicant was alleged to have participated in the political public meeting. This point was also taken in before the appellate authority and we agree with its conclusion that though the date and time of the public meeting was not mentioned in the imputation of allegations, during the course of the enquiry the same came out. We also find that the applicant being fully conscious of the facts of the

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facts produced his defence that the said meeting was not a political one but a social gathering of the residents of the area where some political personalities also came to be present.

5. It has been urged by the applicant that the complaint against his attendance at the public meeting was a forged one inasmuch as Shri Ram Vilas Paswan the purported author of the complaint denied that he had ever written any such letter to the authorities. It has been alleged by the applicant that despite repeated requests made by him, the enquiry officer did not call for Shri Ram Vilas Paswan. In our view the point is not relevant since the question is not whether the complaint was pseudonymous but whether the allegations in that complaint came to be established through the enquiry.

6. The applicant has also raised certain points regarding the conduct of the enquiry. He submits that sufficient time was not given to him to produce his defence, that he was not allowed the assistance of an out station defence assistant and that reliance was placed on certain newspaper reports and photographs published therein without having the same properly introduced into evidence. While we do find that the respondents have shown some urgency in concluding the proceedings, nevertheless, it cannot be said that sufficient time and opportunity was not provided to the applicant to produce his defence. It was also within the purview of the enquiry officer to reject the request for an out station defence assistant, more so when the applicant himself had initially said that he did not need the assistance of any such person. The departmental enquiry is in the nature of a house hold enquiry and strict Rules of 'Evidence' are not required to be followed. The applicant also says that the enquiry officer had on the basis of preliminary investigation, come to the conclusion, that no charge was made out against him

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but yet under some extrenuous pressure he later reversed his decision and issued the charge-sheet. He also submits that the copies of the preliminary investigations were not available to him. Here again we find no bar on the disciplinary authority to review his decision so long as the same was before the issue of the charge-sheet. Further, since the reports of preliminary investigation, if there were any such reports, were not used and relied upon in the disciplinary proceedings, the applicant could not claim copies of the same to be given to him.

7. The applicant has also taken us through the disciplinary proceedings, in order to show that the respondents drew the wrong conclusion from the fact that the applicant was seen in the photographs to be present on the dias along with some political personalities. It is settled law that in the judicial review we are not called upon to reapprciate the evidence or to substitute our own conclusion in place of that of the enquiry officer. This is not a case of "no evidence" since there was a statement from the applicant that he had attended the meeting but the same was a social gathering and also because there was a photographs published in a news paper showing that the applicant had participated in the meeting. As to whether, it was a social gathering or a political meeting the enquiry officer has come to a conclusion with which we in judicial review are not inclined to interfere.

8. The applicant has laid stress on the allegation that the impugned order of compulsory retirement was not passed by the competent authority. He has pointed out that while the appointing authority of Class-III staff in the MES is the Engineer-in-Chief, the impugned order has been passed by the Chief Engineer who is a subordinate authority of the Engineer-in-Chief. In this he has also relied on Judgment of


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this Tribunal in OA No.1368/95 decided on 21.3.1996 (Pranod Kumar Kulshrestha Vs. Union of India & Others). We have perused that order to which one of us was a party but find that the facts and circumstances are different here. In the case of Pranod Kumar Kulshrestha (Supra) the respondents themselves had admitted that the Chief Engineer was not competent to pass the impugned order. Here as the learned counsel for the respondents has pointed out the applicant was initially appointed in an Army Unit by an officer of the rank of Lt. Col.. On being declared surplus, he was absorbed in the MES. Since the appointing authority in the MES is the Engineer-in-Chief, the applicant urges that the applicant's appointing authority must be deemed to be Engineer-in-Chief. We are however unable to agree with this argument. It is a question of fact as to whether the appointing authority of the applicant was the Lt. Col., Incharge of the Regiment or the Engineer-in-Chief and the fact admittedly is that the initial appointment of the applicant was made by an officer of the rank of Lt. Col.. If the applicant had been initially appointed in the MES by the Engineer-in-Chief and then transferred to Regiment, it could not have been asserted that the officer Commanding Regiment could pass an order of major penalty. Conversely, therefore, if the initial appointment was made by the Commanding Officer of the Regiment then an officer higher in rank could certainly pass such an order. Here the impugned order has been passed by the Chief Engineer, who enjoys a higher rank, i.e., of a Brigadier.

9. In the light of the above discussions, we find no merit in the OA which is accordingly dismissed. No order as to costs.



(K.M. AGARWAL)
CHAIRMAN


(R.K. AHOOJA)
MEMBER (A)

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