IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2242/95 199
T.A. No.

DATE OF DECISION 25.7.97

R.K. Jain — Petitioner

B.S. Jain — Advocate for the Petitioner(s)

Versus

UOI & Ors. — Respondent

V.S.R. Krishna — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr.Jose P. Verghese, VC(J)

The Hon'ble Mr. Shri S.P. Biswas, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

(S.P.Biswas)
Member(A)
25.7.97

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2242/1995

New Delhi, 25th day of July, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri R.K. Jain
s/o Shri N.K. Jain
WZ-246, Vill. & P.O. Palam
New Delhi-110045

.. Applicant

(By Advocate Shri B.S. Jain)

versus

Union of India, through

1. Secretary
   M/Agriculture & Animal Husbandry
   Krishi Bhavan, New Delhi
2. General Manager
   Delhi Milk Scheme
   West Patel Nagar, New Delhi
3. Shri Ram Singh
   Former GHM, DMS
4. Shri Baldev Chand
   Former DGM(Admn.)
5. Shri R.L. Luthra
   Section Manager
6. Shri S.R. Verma
   Accounts Officer
7. Shri K.D.P. Sinha
   Manager Distribution
   all c/o R-2

.. Respondents

(By Advocate Shri V.S.R. Krishna)

ORDER

Hon'ble Shri S.P. Biswas

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 12.7.88 of R-4 compulsorily retiring the applicant from service and also revisional order dated 12.7.90 confirming the penalty imposed.

2. The applicant was working as Cash Clerk in the establishment of Delhi Milk Scheme (DMS for short) and his duty was to collect sale proceeds of milk sold at several depots under his charge and deposit the same in the Central Dairy, DMS on day-to-day basis and also to

prepare the list of pending depots for which collection of sale proceeds could not be done by him. By Annexure A order dated 29.4.86, the applicant was placed under suspension by R-3 and a charge-Memo (C.M. for short) was issued to him by A-5 order dated 27.3.87. The charges levelled against him were as under:

> "Charge I - That the said Shri R.K. Jain while functioning as Cash Clerk and deputed on route No.69(M) has misapropriated an amount of Rs.144.15 being the sale proceds by way of short deposit on 6.9.85, 9.9.85,5.11.85 and 11.11.85. He is thus charged with misappropriation of Govt. money which acts of a Govt. servant show dishonesty, unbecoming and are in violation of Rule 3 of CCS(Conduct) Rules, 1964.
>
> "Charge II - That the said Shri R.K. Jain while functioning as Cash Clerk had temporarily misappropriated Govt. money being sale proceeds of milk depots during Dec. 85 by way of retaining the cash several days with him and thereafter depositing with DMS. He is thus charged with temporarily misappropriation of Govt. for his personal use which acts show dishonesty of a Govt. servant, highly unbecoming and are in violation of Rule 3 of CCS(Conduct) Rules, 1964."

3. An enquiry was held and the enquiry officer found the charges against the applicant as established. Agreeing with the findings of the enquiry officer, the disciplinary authority by the impugned order imposed on the applicant the penalty of compulsory retirement. The appeal against this order was rejected on 21.11.88. Revision and review petitions were both rejected on 12.7.90 and 3.1.95 respectively.

4. The applicant has challenged the above orders on a long catalogue of grounds of which the most important ones are as under:

(i) Suspension order is punitive; It was passed by the appellat authority without giving the applicant the right to appeal thereby violating provisions under Article 311(2) of the Constitution;

(ii) The delay in giving charge-sheet by eleven months is in violation of the guidelines laid down by the Home Ministry vide order dated 22.10.64;

(iii) Disciplinary authority did not give an opportunity to the applicant before passing the impugned order of penalty;

(iv) inquiry report was not given to the applicant before inflicting the punishment;

(v) The order of revisional authority is a non-speaking one and it does not show independent application of mind;

(vi) Evidences on record are not sufficient to establish the charges and there were contradictions in the statements of witnesses;

(vii) The penalty is highly excessive being inconsistent with the gravity of charge besides being blatantly discriminatory. Examples of A.C.Buttan, Ramesh Chand and J.K. Bhanot have been cited where a different stand was taken in terms of penalty;

(viii) It is not a case of misappropriation of funds but mistakes in totalling of the amounts and isssue pertaining to discripancies of facts;

(ix) Disciplinary authority could not have acted as reviewing authority; and

(x) Enquiry Oficer is biased and hence the report is vitiated/based on no evidence. /and is also

5. Learned counsel for the applicant Shri B.S. Jain came out with a series of citations in support of his contentions but those that have a direct bearing on the issues have been mentioned here. Thus, he relied upon the decision of the Supreme Court in the case of A.K.Kraipak Vs. UOI AIR 1970 SC 150. That was the case where it has been held that administrative authorities are to act judiciously. The counsel also drew support

from the decision of the Supreme Court in the case of Surjit Ghose Vs. CMD, United Commercial Bank 1995(2)ATC 474. That was the case where penalty was imposed by the appellate authority acting as disciplinary authority and was held to be discriminatory. In support of his claim against inordinate delay in issuing the C.M., the counsel cited the decisions of the Hon'ble Supreme Court in cases of State of Punjab Vs. Chaman Lal Goyal (1995) 29 ATC 546 and A.R. Antulay Vs. R.S. Nayak (1992) 1 SCC 225. Such delays violated Article 21 of the Constitution.

6. The respondents have filed a counter in which it has been submitted that the guilt of temporary misappropriation of funds has been established as the applicant had failed to deposit the government cash of Rs.1002.50 for a period of about six months and an amount of Rs.345/- for a period of eight months by way of short depositing the cash collected by the applicant from the depots under his charge in the Central Dairy, DMS. Under these circumstances, the issue of the order of suspension and of charge-memo by the competent authority under Rule 14 ofr CCS(CCA)Rules, 1965 by memorandum dated 17.3.87 cannot be faulted. The enquiry officer after recording the evidence concluded that all the charges have been proved beyond doubt. Neither the appellate authority nor the revisional authority considered it necessary to interfere with the disciplinary authority's order which was subsequently confirmed by appellate as well as revisional orders.

7. Shri V.S.R. Krishna, learned counsel for the respondents contended that the enquiry officer has conducted the inquiry proceedings in acordance with the CCS(CCA) Rules, 1965 and there was no violation of Article 31(2) of the Constitution of India. The enquiry officer has given sufficient opportunities to the applicant to defend his case properly. But the applicant had failed to produce any documents before him to show his innocence in the present case. The enquiry officer has rightly proved the charges of temporary misappropriation of Government amount of Rs.1345.15 against the applicant.

8. We have heard the learned counsel for the parties and gone through the pleadings of the case carefully.

9. The scope for judicial review in respect of departmental disciplinary action is very limited. A Court/Tribunal cannot normally enter into the area of assessment of evidence unless the findings of the enquiry officer are found to be perverse. In the leading case of UOI Vs. Parma Nand (1989) 10 ATC,30, the apex court has held as under:

> "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly pervrse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the provision to Article 309 of the Constitution"

10. Similarly, courts/Tribunals will also not interfere in order of penalty on grounds of its quantum being excessive as in the present case unless the quantum is so disproportionate to the gravity of misconduct that the order would appear to be of vindictive in nature. The Hon'ble Supreme Court has unequivocally deliniated the confines of judicial review in respect of quantum of punishment in disciplinary matters. In the case of State Bank of India & Ors. Vs. Samarendra Kishore Endow & Anr. (1994)27ATC 149, their Lordships held that imposition of appropriate punishment is within the discretion and judgement of the disciplinary authority, It is open to the appellate authority to interfere with the matter but not for the high court or the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is more of judicial in nature. It is not an appeal from a decision but reviews of the manner in which the decision has been taken. Similar observations were also made by their Lordships in Parma Nand (supra), viz;

> "If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punisshment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

11. In the instant case, we find that the applicant has accepted the guilt in para 4.27 of the OA. It is necessary to quote the applicant's own avermments in this respect.

> "That the rejection of review petition is not based on facts (the applicant deposited Rs.1002.15 P on 3.3.86 before issue of C.M.on 27.3.87. It is, therefore not correct (as stated in rejection letter dated 3.1.95) that the applicant deposited the amount out of fear of disciplinary action. Moreover, he deposited the money within 6 months and not one year as stated in the order."

12. In view of the above admission by the applicant, the grounds taken by him which referred to the validity of the findings of the inquiry officer and the quantum of penalty have no force. A few contradictions in the evidence of the prosecution witnesses with regard to exact amounts of late deposits (like Rs.243/- instead of Rs.343/-) or the timings of deposits or even the totalling mistakes as pointed out by the applicant, apart from being minor in nature, are not of much significance unlike in criminal proceedings where exact time of occurrence of the alleged crime has some importance. In addition to exhaustive pleadings, a thorough scrutiny of the materials placed before us leave us in no doubt that the enquiry held was consistent with rules and in accordance with principles of natural justice. Based on above, neither it is a case of no-evidence.

13. As regards the grounds taken by the applicant that he was not given a copy of the inquiry report before passing the impugned order dated 12.8.88 and was not given adequate opportunity to represent, after 42nd amendment to the Constitution, the second opportunity to

show cause is no longer available to delinquent employee. However, the Hon'ble Supreme Court has ruled in the case of UOI vs. Ramzan Khan AIR 1991 SC 471 that report of enquiry must be given to the delinquent but the decision in Ramzan Khan's case has no retrospective application as decided by the apex court in the case of Director, ECIL Vs. B.Karunakar, 1993(25)25 ATC 704.

14. In the case before us, the impugned order of penalty was passed priot to 20.11.90 when Ramzan Khan's case was decided. We, therefore, cannot hold that the disciplinary proceedings are vitiated by not giving a copy of the inquiry report to the applicant before imposition of the penalty.

15. As regards the plea that the order of the disciplinary authority is not speaking one and that it was by non-application of mind, we find that the impugned order dated 12.7.88 clearly stated that the disciplinary authority has carefully considered the enquiry report and has agreed with the findings of the enquiry officer and held that the charges levelled against the applicant are established beyond doubt. It is also stated therein that the disciplinary authority has taken a lenient view by imposing the penalty of compulsory retirement. It cledarly indicates application of mind on the part of the disciplinary authority before issuing order of penalty. Moreover, in case of Ram Kumar Vs. State of Haryana, AIR 1987 SC 2043, the Supreme Court held:

"In our opinion, when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order, the punishing authority has accepted the findings of the enquiry officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order."

16. The decision in Ram Kumar's case was followed with approval by the Hon'ble Supreme Copurt in the case of IIT, Bombay Vs. UOI & Ors, 1991 Suppl.(2)SCC 12.

17. The applicant has also taken a plea of punishment having been imposed on him when the appeal was still pending. In a decision of this Tribunal in the case of Mohd. Saghir Vs. UOI 1993(8)SLR (CAT, New Delhi, 616), it has been held that order of compulsory retirement based on the proceedings of the disciplinary enquiry, when held in accordance with the rules, cannot be questioned even though appeal against the order of the said authority was still pending. We hold the same view.

18. Drawing support from the case of Surjit Ghose (supra), the applicant has taken yet another plea that the same officer (namely Shri Baldev Chand) could not have acted as Disciplinary as well as Revisionery authorities. The above case is of no assistance to the applicant herein as the petitioner Surjit Ghose in the cited case was denied the right of appeal and also the

right of review. The present case of the applicant does not fall in the same category, since he did get and availed the right of appeal and review.

19. In view of the foregoing, we find that the application is devoid of merits and deserves to be dismissed. We, accordingly, dismiss the application, but in the circumstances, without any order as to costs.

(S.P. ~~Biswas~~)
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairman(J)

/gtv/