

Central Administrative Tribunal  
Principal Bench

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O.A. No. 2364 of 1995

New Delhi, dated this the 10 AUGUST, 2000

HON BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON BLE MR. KULDIP SINGH, MEMBER (J)

Shri Nathu Ram,  
S/o Shri Ganga Shai,  
R/o A-66, Kapara Colony,  
Air Force Road NIT,  
Faridabad,  
Haryana.

.. Applicant

(By Advocate: Dr. D.C. Vohra)

Versus

1. Union Public Service Commission through its Chairman, Dholpur House, Shahjahan Road, New Delhi-110011.
2. Director of Estates, Ministry of Urban Development, Nirman Bhawan, New Delhi-110011.
3. Dept. of Personnel & Training through its Secretary, Central Secretariat, North Block, New Delhi-110001. .. Respondents

(By Advocate: Mrs. Shyamala Pappu,  
Sr. Counsel with Mrs. B.Rana)

ORDER

MR. S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 28.10.90 (Annexure A/1) removing him from service and the appellate authority's order dated 9.1.98 (Annexure A/1) rejecting the appeal.

2. Applicant who at the relevant time was posted as Daftary in UPSC was proceeded against departmentally under Rule 14 CCS (CCA) Rules. vide

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Memo dated 5.3.87 (Annexure R-1) on six Articles of charges with respect to acts of indiscipline and serious misconduct including incitement to pen down strike; shouting of defamatory and derogatory slogan in highly intemperate language; restraining employees from entering the UPSC office premises etc. which were alleged to have been committed by him while participating/organising demonstrations and meetings/rallies between 6.11.86 and 18.11.86 in UPSC premises, and again on 22.1.87 although meanwhile he had been placed under suspension w.e.f. 10.11.86.

3. A copy of the aforesaid Memo dated 5.3.87 was served upon applicant, who denied the aforesaid articles in his written defense statement. Accordingly an Inquiry Officer was appointed to inquire into the charges who submitted his report on 6.3.90 holding that all the Articles of charge except Article IV of the charge (relating to applicant unauthorisedly entering the Confidential Branch of UPSC Office) stood proved. A copy of the I.O's report was furnished to applicant on 9.3.90 for representation, if any. Applicant submitted his representation on 11.4.90.

4. After considering the materials on record, including applicant's representation dated 11.4.90, the Disciplinary Authority agreed with the findings of the I.O. He also held that the inquiry had been conducted according to the procedure laid down in the CCS (CCA) Rules and applicant had been granted adequate opportunity to defend himself. Accordingly by impugned order dated 28.10.90, the disciplinary authority held that applicant's acts of indiscipline and misconduct were of serious nature, and subversive of discipline, and he was not a fit person to be retained in service and ordered his removal from service.

5. Applicant filed O.A. No. 2060/90 against the aforesaid order dated 25.10.94, which was rejected as being premature, as applicant had not exhausted the statutory remedy available to him of filing an appeal against the disciplinary authority's impugned order dated 28.10.90.

6. Applicant filed an SLP No. CC 820/95 against the aforesaid order dated 25.10.94 which was dismissed by the Hon'ble Supreme Court on 2.3.95 (Annexure A/5).

7. Thereupon applicant filed an appeal to the President of India under Rule 24(3) CCS (CCA) Rules, 1965 against the disciplinary authority's order dated 31.3.95 (Annexure A/6) which was rejected by order dated 9.1.96 (Annexure A/7).

8. Thereupon applicant filed M.A. No. 1693/95 on 14.7.99 for amendment of O.A. No. 2364/98 to impugn the disciplinary authority's order dated 28.9.90 as well as the appellate authority's order dated 9-1-98 rejecting the appeal.

9. We have heard applicant's counsel Dr. D.C. Vohra and respondents' Senior Counsel Mrs. Shyamala Pappu assisted by Mrs. B. Rana.

10. Mrs. Pappu has raised the preliminary objection that the challenge to the appellate authority's order dated 9.1.98 is hit by limitation u/s 21 A.T. Act as M.A. No. 1693/99 challenging the aforesaid order dated 9.1.98 was filed as late as 14.7.99.

11. We are of the view that it would not be fair to applicant to reject his case merely on this preliminary objection taken by respondents and propose to deal with his challenge to the disciplinary authority's impugned order

dated 28.10.90 as well as the appellate authority's impugned order dated 9.1.98 on merits. Hence this preliminary objection is rejected.

12. The first ground taken is that the charge sheet was amended and a number of additional witnesses were added and a number of additional documents were introduced to fill up the gaps, but <sup>applicant</sup> has not succeeded in establishing that these amendments if any to the charge sheet, and/or additional documents which were introduced were not furnished to him well in time which thereby prejudiced him in his defense. Hence this ground is rejected.

13. Next it has been asserted that the I.O. was partisan, but no details to support this allegation have been made and the I.O. himself has not been made a party in the C.A. to enable him to deny this allegation. Clearly these allegations are vague and general in nature, and in the absence of specific materials furnished by applicant to establish the allegations, this ground also fails and is rejected.

14. Next it has been asserted that applicant has been denied opportunity to cross-examine the PW, but particulars of the PWs whom applicant had sought specifically to cross-examine, permission for which was denied have not been furnished by him to establish this allegation. Hence this ground also fails and is rejected.

15. Next it has been alleged that the evidence of witnesses was not recorded, as adduced/stated by them, but only selective parts, which suited the prosecution, were recorded. No specific materials have been furnished to establish this allegation either. Hence this ground also fails and is rejected.

16. Next it has been asserted that the evidence of witnesses was allowed to be recorded in each others hearing, which gravely violated established procedure but applicant was unable to establish the veracity of this assertion during hearing of the O.A. Hence this ground also fails.

17. It has next been alleged that the request for change in I.O. was arbitrarily rejected. Applicant has not furnished any specific materials to enable us to establish conclusively that the I.O. was biased towards him and in the absence of such specific materials it cannot be said that the decision of the competent authority to reject the request for change in the I.O. even if made by applicant was arbitrary, and illegal which warrants judicial interference. Hence this ground also fails.

18. It has next been asserted that the examination of certain DWs was arbitrarily disallowed. Paragraph 3 of the I.O.'s report reveals that four DWs were examined on applicant's behalf. Applicant has not specifically stated which other DWs, whose examination applicant had pressed, was disallowed, and how their non-examination has prejudiced him in his defence. Hence this ground also fails.

19. It has next been asserted that the presenting officer was allowed to put leading questions to the witness, when they did not yield to indirect pressure and did not depose as required, they were declared hostile. No specific materials were furnished during hearing of the O.A. to establish this allegation either. Hence this ground also fails.

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20. It has next been urged that the I.O. used his personal knowledge to dominate the proceedings and did not allow PWs to be examined effectively and on many points cross-examination was disallowed. In the absence of any materials furnished during hearing of the O.W. to establish this allegation, the same also fails.

21. It has next been urged that applicant was not well conversant with English, and when the Defence Assistant requested that the evidence be read out the same was disallowed by the I.O. as a result of which applicant was deprived of my reasonable opportunity to examine the PWs effectively. Nothing has been shown by applicant to establish that he lodged any protest at the relevant time to the I.O. and no materials have been furnished by him to substantiate this allegation either. Hence this ground also fails.

22. It has next been alleged that applicant's request to the I.O. to inspect the site of the alleged incident was refused. Even if the I.O. did not consider it necessary to inspect the site of the alleged incident, that by itself does not disprove the allegations which have been established during the course of the enquiry.

23. It has next been asserted that none of the PWs have deposed that applicant was shouting defamatory/derogatory slogans or delivering any inflammatory speeches or organising/conducting any such prohibitory meetings.

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The Tribunal is not a Court of Appeal and reappreciation of evidence is outside the Tribunal's ambit while exercising writ jurisdiction. Hence this ground also fails.

24. It has next been urged that the statement of witnesses obtained in the preliminary enquiry were denied to applicant and even copies of complaints lodged in regard to the incident were not supplied. Nothing has been shown by applicant's counsel during hearing of the O.A. to establish that the materials in any preliminary enquiry were relied upon by respondents in the departmental proceedings, or that statements of witnesses recorded during the preliminary inquiry were denied to applicant despite his request for supply of the same, and their non-supply has prejudiced him in his defence in the D.E. Hence this ground also fails and is rejected.

25. It has next been asserted that no hand-writing expert was examined in regard to the posters which were stuck on the wall to establish applicant's misconduct. Even if no hand-writing expert was examined, that by itself is not sufficient for us to conclude that the charge as stated in Paragraph 2 above were not established against him. Hence this ground also fails.

26. It has next been asserted that there was no allegation of intimidation etc., but mere absence of allegation of intimidation does not necessarily mean that the charge outlined in Para 2 above have not been established against applicant. Hence this ground also fails.

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27. It has next been urged that the disciplinary or appellate authority's orders were not speaking orders. A bare perusal of the same makes abundantly clear that this allegation has no merit. Hence this ground also fails.

28. During hearing applicant's counsel has laid stress considerable ~~on~~ on the Tribunal's order dated 18.11.93 in O.A. No. 300/90 Gurcharan Singh Azad Vs. U.O.I. & Others. He pointed out that Shri Azad was also charged with the same misconduct as applicant, but in Azad's case (supra) the Tribunal by its order dated 18.11.93 had concluded that the imputation of the articles of charge were an offshot of hurt egos resulting in imposition of unreasonable restrictions on freedom of speech and expression enshrined in the Constitution of India and as such could not be sustained in law. In Azad's case (supra) the Tribunal had held that the charges were imaginary and arbitrary and malafide and had to be struck down as violative of the fundamental rights of freedom of speech and expression and thus there was no breach of statutory rules and instructions and there was no case for disciplinary proceedings under CCS (CCA) Rules. It has been urged on applicant's behalf that the aforesaid ruling in G.S. Azad's case (supra) should also cover applicant's case, and for the reasons contained in the aforesaid order dated 18.11.1993, the present O.A. should also succeed.

29. In this connection it has also been contended that certain other employees, who had also been similarly proceeded against departmentally had been allowed to rejoin duty, and any different view adopted in the present case would be discriminatory and violative of Articles 14 and 16 of the Constitution.

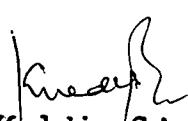
30. We have considered these contentions carefully.

31. We note that in O.A. No. 354-A/89 V.K. Mittal Vs. Secretary, UPSC and another, decided by a coordinate Division Bench of this Tribunal on 25.7.94 it was held that the departmental enquiries conducted against the employees out for misconduct arising out of the incidents between 6.11.86 and 18.11.86 were separate and different enquiries, and therefore the results of one inquiry would not necessarily be applicable in another case. Indeed this is also the conclusion of another coordinate Division Bench of the Tribunal in Ved Prakash Vs. Union of India & Others bearing O.A. No. 2504/89 decided on 26.8.93. We as another coordinate Bench of the Tribunal are bound by those findings and under the circumstances we hold that the Tribunal's decision in G.S. Azad's case (supra) is not binding in the present case.

32. In so far as the question of other similarly proceeded against departmentally, but being allowed to rejoin duty is concerned, the following concluding paragraph of the Tribunal's order dated 26.8.93 in Ved Prakash's case (supra) which was dismissed is relevant.

"This will, however, not preclude the respondents from considering the case of the applicant for his rehabilitation in service, if he chooses to make a request to that effect, on humanitarian grounds. This observation is being made in view of the submission made at the Bar during the course of arguments that some of the participants in the same agitation were reinstated in service due to various reasons."

33. Under the circumstances, while dismissing the present O.A. also, we hold that nothing contained in this order will preclude respondents from themselves considering applicant's rehabilitation in service if upon a request made by him, they are so disposed to do. No costs.

  
(Kuldip Singh)  
Member (J)

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

/GK/