

Central Administrative Tribunal
Principal Bench

O.A.No.778/95

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

New Delhi, this the 24th day of September, 1999

Shri R.P.Bhatia
LDC, Central Vehicle Depot
Delhi Cantt.
New Delhi.

... Applicant

(By Ms. S.Janani, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Defence, South Block
New Delhi.
2. The Director General Ordnance Services
Master General of Ordnance Branch
Army Headquarters, DHQ P.O.,
New Delhi - 110 011.
3. The Army Ordnance Corps Records
P.O.Box No.3, Trimulgherry Post
Secunderabad - 500 015.
4. The Commandant
Central Vehicle Depot.,
Delhi Cantt.,
New Delhi.

... Respondents

(By Shri Rajeev Bansal, proxy of Shri B.K.Aggarwal,
learned counsel for the respondents).

ORDER

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

The applicant was a civilian employee at Central Vehicle Depot, New Delhi. His case is that in March, 1990 Brig. Avtar Singh, who was appointed as Commandant of the Depot, became prejudicial to the employees who were constrained to resort to agitation and form a trade union due to the anti-employee orders passed by the Commandant. Ultimately, between 18th July to 27th July, 1991 the workers of the Depot went on strike. Thereafter suspension of the applicant alongwith other workers was ordered and disciplinary proceedings were initiated on the charge that the

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applicant addressed an illegal meeting, delivered provocative speech and used abusive language against the Commandant in a meeting in front of the Depot gate on 23rd July, 1991. He also did not mark his attendance in the attendance register and was absent from duty. The applicant alleges that instead of holding a joint enquiry, the Commandant ordered separate enquiries in which separate Enquiry Officers were appointed. These Enquiry Officers were Presenting Officers and witnesses in some other cases. It is also alleged that the enquiries were also not conducted properly as all the Enquiry Officers were subordinates of the Commandant against whom the allegations had been made by the employees. The applicant alongwith four others also approached this Tribunal in O.A. No.3005/91. Noting that the Commandant Shri Avtar Singh had since been transferred and a new Commandant had been appointed, the Tribunal in its order dated 14.1.1994 directed that the interest of justice would be squarely met if fresh orders were passed by the new Commandant after giving an opportunity to the petitioners. The disciplinary authority thereafter passed an order dated 3.7.1993 (Annexure 12) imposing the punishment of compulsory retirement from service. On appeal, the appellate authority vide its order dated 12.1.1995 passed the impugned order modifying the penalty to that of reduction of pay by three stages for a period of three years with cumulative effect. It is against the order of penalty that the applicant has come before the Tribunal.

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2. The case of the applicant is that the enquiry was not conducted properly inasmuch as the documents asked for by him were not supplied and further that ex-parte proceedings were conducted behind his back by means of not informing him of the date on which the enquiry proceedings were to take place. It is also alleged that the request of the applicant for change of enquiry officer was not considered. It is further alleged that the witnesses, enquiry officer and the Presenting Officer were all biased against the applicant and the witnesses of the prosecution were all tutored and had made statements which to their own knowledge were absolutely false and finally there was no application of mind by the disciplinary and the appellate authority.

3. We are unable to find any merit in any of these contentions. The learned counsel for the applicant submits before us that the applicant had asked for certain documents none of which were supplied. We find that the enquiry officer had noted the request of the applicant and had ordered to supply of photostat copies of all the documents which were relied upon by the prosecution as per Annexure to the charge sheet. In regard to other documents, the enquiry officer concluded that most of them were not relevant to the enquiry. As stated in MHA OM No.F.30/5/61-AVD, dated 25th August, 1961 and para 23(2) of Rule 14 of Swamy's Compilation of CCS CCA Rules, 1965, the right of access to official records to the delinquent official is not unlimited and it is open to the Government to deny such records which are not relevant. The question of relevancy has to be

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looked into from the point of view of the defence and if there is any possible line of defence to which the document may be relevant, the request for access should not be rejected. There is a list of such documents at Annexure D-3 to the report of the enquiry annexed with the counter. Neither in the OA nor in the pleadings before us, any effort has been made to show as to which of the documents access to, which was refused, were relevant to the defence and how. A mere bald statement that relevant documents were not provided cannot serve by itself to support the allegation that the applicant was thereby handicapped in his defence. The contention that the enquiry was conducted ex parte and behind the back of the applicant, by means of keeping the applicant in dark about the dates of the enquiry is also not established. The record of the proceedings dated 31.7.1992 shows that the applicant along with his defence assistant was told that the next date of hearing was fixed for 19.8.1992. It was noted that the applicant and the defence assistant had asserted that ~~the~~ no witness should be examined before they were satisfied after the inspection of the documents. This lends credence to the stand of the respondents that the applicant had deliberately avoided the proceedings after 31.7.1992.

4. The allegation in regard to the bias of the witnesses cannot also stand scrutiny. The only basis for the allegation is that defence witnesses were subordinates of the the disciplinary authority. Under CCS CCA Rules, 1965 the disciplinary authority can either hold the enquiry itself or appoint an

enquiry officer. The enquiry officer is, in most cases, bound to be a subordinate of the disciplinary authority. The witnesses are also likely to be from the department itself. The applicant having absented himself from the enquiry and the opportunity to cross-examine such witnesses cannot now raise the plea of bias.

5. The learned counsel also reiterated the point that there was a conspiracy to suppress the union activity and, therefore, false cases were engineered against the applicant and other employees to suppress their legitimate rights. The enquiry officers were subordinates of the Commandant, against whom the agitation was going on and, therefore, the finding against the applicant was the outcome of malice.

6. In so far as the allegation of mala-fide is concerned, the applicant had raised the same point before the Tribunal in OA No.3005/91. The Tribunal had then given a direction that a fresh order should be passed by the successor of Brig. Avtar Singh after giving an opportunity to the applicant and his colleagues to make a representation. This was done by the respondents. There is no allegation of mala-fide against Brig. Yadav Mukherjee, who succeeded Brig. Avtar Singh. Therefore, as a fresh opportunity was given to the respondents as per orders of the Tribunal, it can neither be held that the impugned order was the outcome of malice or that the applicant did not have a proper opportunity to present his case.

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7. We also find that there was evidence from witnesses that the applicant was present on the site and that he had indulged in activities alleged against him. We, therefore find no ground for interference.

8. The O.A. is accordingly dismissed. However, there will be no order as to costs.

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(K.M. AGARWAL)
CHAIRMAN
R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

/RAO/

