

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1347 of 1996

New Delhi, this the 4th day of May, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.K. NAIK, MEMBER (A)

M.J. Mary

D/o Late Mr. M.T. Joseph

R/o D-138 W.G. Hostel, K.G. Marg,

New Delhi-110 001.

...Applicant

(By Advocate: Shri G.D. Gupta, Counsel
with Shri S.K. Gupta, Counsel)

Versus

1. Union of India
through the Secretary, Ministry of Industry,
Department of S.S.I.,
Agro and Rural Industries, Udyog Bhawan,
New Delhi.
2. The Development Commissioner,
Small Scale Industries, Department of SSI,
Agro and Rural Industries, Nirman Bhawan,
New Delhi-110 011.
3. Dy. Director (Vig.)
Office of the Development Commissioner,
Small Scale Industries, Department of SSI,
Agro and Rural Industries,
Ministry of Industry, Nirman Bhawan (South Wing)
7th Floor, Maulana Azad,
New Delhi-110 011.

...Respondents

(By Advocate: Shri S.M. Arif)

O R D E R.

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 whereby she is challenging the charge-sheet dated 26.2.1993 issued to her (Annexure A-I). The applicant has also challenged the Inquiry Officer's report dated 24.9.1993, Annexure A-2. Further she has also challenged the punishment order dated 5/12.9.94, Annexure A-3 vide which a penalty of removal from service has been imposed upon the applicant.

2. The applicant was proceeded departmentally

[Signature]

on the following allegations:-

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Article-I

Ms. M.J. Mary, SIPO (EI&S); SISI, New Delhi while working as Stenographer Grade 'D' in her application for the post of SIPO (I&S) misrepresented to the Union Public Service Commission regarding her possession of the necessary experience and also suppressed material facts in order to get herself selected for the post of SIPO (EI&S).

By her above acts Ms. M.J. Mary exhibited lack of integrity and unbecoming conduct of a Government servant and thus violated Rule 3(1)(i) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964".

3. An enquiry was conducted. The Inquiry Officer held that the charge against the applicant that in her application for the post of SIPO (EI&S) she had misrepresented to the UPSC regarding possession of necessary experience and also suppressed material facts stands proved.

4. Based on that the disciplinary authority passed an order vide Annexure A-3 imposing a penalty of removal from service.

5. During the pendency of OA, it was further amended as applicant was conveyed rejection of his appeal submitted to the President vide order dated 5/12.9.1994.

6. The OA is being contested by the respondents by filing their counter-affidavit..

7. We have heard the learned counsel for the parties and gone through the record.

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8.. The first and foremost contention raised by the learned counsel for the applicant is that the statement of imputation as well as the memorandum of charge do not disclose any fact which may amount to misconduct on the part of the applicant. The learned counsel for the applicant submitted that according to the Article of Charge it has been alleged against the applicant that she while applying for the post of SIPO (I&S) had stated that she prepares project reports, analysis the economic problems of various small scale industries and feasibility of the projects. Further there is an allegation that she had furnished a false certificate from Late Shri D.S. Chauhan, Ex-Director, SISI, New Delhi to the effect that she was working as Assistant and was instrumental in examining the economic feasibility reports as well as economic investigation survey reports and her analysis and study of certain aspects of problems faced by the Small Scale Industries have been very useful to the office. The learned counsel for the applicant submitted that applicant has nowhere suppressed any material facts as alleged in the charge-sheet.

9.. The counsel for the applicant then referred to the application submitted by the applicant for the said post. Therein in Column No.10 meant for the purpose of post held the applicant had mentioned that she is holding the post of Assistant and in the column meant for nature of duties she has mentioned to prepare project reports, analyse the economic problems of various small scale industries and to study the feasibility of projects and further in a column meant for additional information she

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3 has mentioned that presently she is engaged in investigation and survey of small scale sector in respect of progress as well as problems of various industries especially of the sick units.

10. The counsel for the applicant then referred to a certificate issued by D.S. Chauhan, Director, which is reproduced hereinbelow for easy reference:-

" TO WHOM IT MAY CONCERN

This is to certify that Mary M.J. is working with me in my section as my Assistant. Apart from other duties, she has been instrumental in examining the economic feasibility reports as well as economic investigation survey reports being a Post Graduate in Economics. Her analysis and study of certain aspects of problems faced by the Small Scale Industries have been very useful to this office.

I wish her all success.

(D.S. Chauhan)
Director".

11. The learned counsel for the applicant also submitted that since the applicant was working under D.S. Chauhan and it is he who had certified about the nature of job which she was performing under him so the applicant had stated the same facts in her application and thus there is no misrepresentation on her part.

12. The applicant's counsel further referred to a letter issued by the Department before offering appointment whereby an information was sought from the applicant as to on what basis she was claiming to be engaged in the investigation and survey of small scale industries in respect of their progress as well as of problems specially of sick units as has been claimed in her application and the applicant in her reply had

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4 submitted that vide Annexure XI that since she possessed Post Graduate Qualification in Economics and she had a keen interest in Economic Investigation working to get experience in preparation of feasibility reports, economic survey reports with the permission of Director since she was working as PA to the Director so she had an opportunity to read and examine the various draft reports being prepared by the Institute either at her own initiative or whenever directed to do so by the Director.

13. She had also stated that she was associated with the study of sick units and preparation of rehabilitation proposals she had made substantial contribution due to her qualification and interest and in the same breath she clarified that in support of her contribution to such reports she would like to clarify that since her official status was not an Investigator, it could not have been possible to have any written documents or records.

14. The counsel for the applicant then stated that after receiving the explanation and verifying the same she was offered the job. On the contrary, the learned counsel for the respondents submitted that applicant was merely working as a Stenographer Grade 'D'. She was neither working as Assistant nor as Personal Assistant though the Director had issued a certificate that she was assisting him but the fact remains that she was not working as Personal Assistant to the Director. The language of the certificate would also show that the Director who had issued that certificate had stated that the applicant was working with him in his section as his

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Assistant, so the Director who had issued the certificate had improperly issued the certificate only to facilitate the applicant to make the application for the post concerned which required certain qualifications and experience which applicant could not possess while performing her duties as Stenographer Grade 'D' and that is why while explaining her conduct she had stated that no document would be available which may show that she had prepared such like report or analysed the projects for the rehabilitation of sick units.

15. The learned counsel for the respondents further submitted that applicant while making her application to the UPSC knew it fully well that she was working as Stenographer Grade 'D' so there was no question of filling her form as mentioned as Assistant whereas the fact remains that the department in which she was working there was no cadre of 'Assistants' and secondly when she was asked to give her explanation she had changed this stand also and had stated that she was working as 'Personal Assistant' to the Director and the Director also does not say that the applicant was working as PA or was in the regular cadres of PA but rather the Director in his certificate has simply stated that the applicant was working in his section and was also working as his Assistant but not as a PA holding a cadre post of PA.

16. So in this state of affairs we are of the considered opinion that at the time when the applicant made an application for the post in question she was merely working as a Stenographer Grade 'D' and was

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neither working as an 'Assistant' nor as a 'PA'. Thus there was material suppression on her part to secure the job for which she was not holding requisite qualifications and experience. The certificate issued by the Director also shows that the applicants were working as his Assistant whereas there is no such like post in any of the offices. There may be regular cadre of PAs but the applicant was not borne on the cadre of PA. Hence we are of the considered opinion that the applicant had misrepresented the facts in her application form as well as in her explanation submitted later on in response to a memo issued to applicant on 16.5.1991 which she had replied vide Annexure-XI and this misrepresentation amounts to misconduct on her part.

17. The next contention raised by the applicant is that the Inquiry Officer after completion of the enquiry had not examined the applicant particularly on the incriminating evidence appearing against the applicant and the applicant has thus been deprived of an opportunity to explain about the incriminating evidence which had been brought during the enquiry and the learned counsel for the applicant submitted that this is a violation of Rule 14 sub rule (18) which gives a mandate to the inquiring officer to put such questions to the delinquent official and since that has not been so a great prejudice has been caused to the applicant.

18. In reply to this the learned counsel for the respondents submitted that since in this case most of the evidence consisted of documentary evidence such as application submitted by the applicant and thereafter the

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explanation given by the applicant as per Annexure XII so no useful purpose would have been served by putting those circumstances to the applicant and no prejudice has been caused.

19. However, the learned counsel for the applicant has referred to a judgment given by this Tribunal in case of Charanjit Singh Khurana Vs. Union of India & Others (OA 1826/1990) wherein on similar point the disciplinary orders were quashed. The judgment has been upheld by the Hon'ble High Court as well as by the Hon'ble Supreme Court.

20. The counsel for the applicant has also relied upon a judgment of Hon'ble Supreme Court in the case of U.O.I. Vs. Mohd. Ramzan Khan which has also been relied by this Tribunal while delivering the judgment in the case of Charanjit Singh Khurana (Supra). Sub-rule (18) of Rule 14 is reproduced hereinbelow:-

"(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him".

21. A bare perusal of the same indicates that a duty has been cast upon the inquiring authority who may, after the government servant closes his case and if he has not examined himself then the inquiring authority can question him on the circumstances appearing against him in the evidence for the purpose of enabling the delinquent official to explain any circumstances appearing against him in the evidence. Had this exercise been done by the

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Inquiry Officer, it is quite possible that a reasonable explanation may come from the delinquent employee which may have changed the findings recorded by the Inquiry Officer. Admittedly this has not been done in this case. The delinquent official had not been put questions on the circumstances appearing against applicant in the evidence for the purpose of enabling the applicant to explain the circumstances appearing in evidence against her. Thus to that extent the enquiry is vitiated.

22. We may further mention that since this has been so held in the case of Charanjit Singh Khurana (Supra) and then also in the case of another OA decided by another Co-ordinate Bench on 6.4.2002 in the case of S.C. Gupta and Another VS. U.O.I. and Others where the court had held that this provisions goes to the root as well as the consequent order. We have also no option but to follow the judgment of Charjit Singh Khurana (Supra) and that of S.C. Gupta and Another (Supra) and on the basis of the same the inquiry in this case is also vitiated to that extent.

23. The next contention raised by the applicant is that the department had consulted UPSC but the copy of the report had not been supplied to the applicant. The copy of the advice of the UPSC has been placed on record as per Annexure R-I to the counter-reply filed on behalf of the respondents. This is dated 4.12.1992. The respondents in their counter also admitted that the matter was referred to the UPSC and it is only after receiving the advice the respondents had given a go ahead to proceed with the disciplinary case so further action

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was taken but the opinion of the UPSC was not given to the applicant as it is not necessary to give opinion of the UPSC to the charged official. In our view also this advice of the UPSC had been obtained before initiating the enquiry against the applicant which was initiated. Memo for the same was issued to the applicant on 26.9.93 and this document had not been relied upon by the department as a piece of evidence to be produced against applicant in the enquiry so it was not necessary to supply the copy of the same. This contention of the learned counsel for the applicant has no merits.

24. Had it been a case of obtaining an opinion from the UPSC and the impugned order was based on that opinion then it was essential to supply a copy of that opinion but as this opinion was obtained only for the purpose of initiating the enquiry and the same had not been relied upon to pass final order passed by the disciplinary authority so in the circumstances we find that this opinion was not required to be supplied.

25. The learned counsel for the applicant further submitted that the disciplinary authority had not passed a speaking order as Rule 15(2)(a) requires that after the enquiry report is supplied to the delinquent official and the delinquent official makes a representation on the said report given by the Inquiry Officer. Then Rule 15(2)(a) mandates the disciplinary authority to consider the representation if any submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rule (3). The counsel for the applicant then referred to the Government

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decision on this subject which also requires that the order so passed by the disciplinary authority should be self-contained, speaking and reasoned order and the Government decision also mentioned a judgment given in the case of Mahavir Prasad Vs. State of U.P. AIR 1970 SC 1302 wherein the Supreme Court had observed that "recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expedience. The necessity to record reasons is greater if the order is subject to appeal".

26. After referring to the this the counsel for the applicant submitted that the order passed by the disciplinary authority is also an appealable order and the disciplinary authority simply stated that on careful consideration of the material and other records of the case in the light of the submission made by the applicant in her observation on the report of the enquiry the disciplinary authority had decided to accept the findings of the Inquiry Officer but no reasons have been given as to why the explanation or comments given by the applicant were not acceptable and on this aspect the counsel for the applicant again referred to a judgment of this Tribunal in the case of C.S. Khurana (Supra). In the said case also the court found that the contentions of the applicant on the findings of the enquiry report nor any reasons have been recorded in support of the order so the order was found to be violative of judgment of the Hon'ble Supreme Court in Mahavir Singh's case (Supra) and also against the OM issued by the Government of India based on the judgment of Mahavir Prasad and it was held

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that the order was not legally tenable.

27. In this case also we find that the order passed by the disciplinary authority did not discuss the contentions raised by the applicant while making representation against the Inquiry Officer's report. Thus the order has been passed without giving any details of the contentions and without any reasons why those contentions are not acceptable. Thus the order has been passed mechanically without application of mind. Thus such type of order cannot be sustained.

28. In view of the discussion above, we find that the order passed by the disciplinary authority being violative of Rule 15(2)(a), the same cannot be sustained and is liable to be quashed (Annexure-A3). We do hereby quash the same. Consequent appeal order dated 7.1.1997 is also quashed. We also quash the Inquiry Officer's report dated 24.9.93 (Annexure A-2) as the Inquiry Officer had not observed Rule 14(18) of the CCS (CCA) Rules. Respondents are further directed to reinstate the applicant in service.

29. However, at the same time we permit the respondents that they may proceed afresh against the applicant from the stage of putting up of the circumstances appearing against the applicant and seek her explanation as per Rule 14(18) of the CCS (CCA) Rules. Thereafter the Inquiry Officer to pass an order in accordance with rules and judicial pronouncements on the subject.

30. Thereafter that the disciplinary authority may also pass the orders as per the rules and instructions on the subject as well as judicial pronouncements on the subject in accordance with law.

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31. In case the disciplinary authority chooses to proceed against the applicant then the exercise must be completed within a period of 4 months from the date of receipt of a copy of this order. No costs.

Rakesh
(S.K. NAIK)
MEMBER (A)

Kuldip Singh
(KULDIP SINGH)
MEMBER (JUDL)

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