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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1488/96

New Delhi this the 19th Day of March 1999

Hon'ble Shri R.K. Ahooja, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Mr. S.S. Kanbargimath
S/o Col. S.S. Kanbargimath
(Working under Respondent No. 1)
as Tennis Coach),
Residence of 2C/201, II Cross, III Block,
H.R.B.R. Layout,
Bangalore-560 084.

(By Advocate: None)

Vs.

1. The Sports Authority of India,
Jawaharlal Nehru Stadium,
Lodi Road, Complex,
New Delhi-110 003.
2. The Union of India,
Ministry of Sports,
(Through its Secretary),
New Delhi.

Respondents

(By Advocate: Shri K.C. Sharma)

O R D E R

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

The facts giving rise to the present litigation may be briefly stated.

2. The applicant who was working as a Lawn Tennis Coach in the Sports Authority of India at Bangalore was transferred to Patiala where he joined willingly on 20.6.1988. He states that while coming to collect his belongings he learnt that his wife was seriously ill and there was no one to look after his minor child. For this reason, he could not report back at Patiala though he claims to have kept his superior authority duly informed. On account of his alleged misconduct in connection with unauthorised absence from duty, he was served with the charge

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sheet dated 17.7.1989. This charge sheet was issued by Dr. C.M. Muthiah, an Executive Director, Sports Authority of India, Patiala. The applicant states that he participated in the enquiry and came to know that the Enquiry Officer absolved him of the charges. His grievance is that by order dated 19.8.1994, the Director General of Sports Authority of India, New Delhi allegedly in the exercise of his suo-moto powers of review held that the charge sheet served on the applicant had been signed by an authority not empowered to do so, and therefore, the proceedings instituted against the applicant ~~have~~^{were} void ab-initio. On that, the Director General issued a fresh Memo dated 25.8.1994 though the article of charge and the statement of imputation were, according to the applicant, entirely identical to the earlier charge sheet dated 17.7.1989. The applicant thereupon represented that since an enquiry had already been conducted on these charges, the second enquiry was not warranted under Rule 29 of the Central Civil Services (Conduct) Rules and the same therefore should be dropped. The applicant has now come before the Tribunal as the respondents did not consider his representation and have continued with the disciplinary proceedings on the basis of the second charge sheet.

3. When the matter came up for admission on 18.7.1996, the O.A. was admitted and the Bench granted the following interim relief:

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"As regards the interim relief, in the facts of the case it is directed that the disciplinary enquiry may further proceed against the applicant. However, the final order in the departmental inquiry shall not be pronounced without the permission of this Tribunal."

4. The respondents in their reply have stated that as per Rule 39 and 40 of the Sports Authority of India (Service) Bye Laws and Conditions of Service Regulations, 1992, the CCS (CCA) Rules 1965 have been made applicable to the employees of the Authority. Under these Bye-laws the Director General is one of the authorities competent to make appointments and also competent to impose major penalties in respect of the Coaches including the applicant whose maximum of pay scale is not more than Rs.4500/-. The respondents claim that the disciplinary authority, under Rule 15(1) of the CCS (CCA) Rules, 1965, is competent to remit the case to the inquiry authority for further opinion if the inquiry report is deficient in any manner or is vitiated on account of any procedural irregularity. They submit that the enquiry conducted by Shri M.P. Ganesh RD of the Authority in respect of the first charge sheet was defective as the Enquiry Officer did not give an opportunity to the presenting officer of the prosecution side to attend the enquiry on any of the dates. As a result neither the documents nor the evidence in support of the charges could be presented. They also say that the Inquiry Officer only recorded the statement of the Charged Officer without giving an opportunity to the Presenting Officer or the prosecution to cross examine the charged officer who appeared as the only witness on behalf of the defence. It was on this ground that the disciplinary authority found it necessary to have

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a proper enquiry conducted in accordance with the procedure laid down in Rule 14 of the CCS (CCA) Rules, 1965.

5. None appeared for the applicant. Shri P.H. Ramchandani, learned counsel for the respondents produced for our perusal a copy of the proceedings of the Enquiry Officer as well as his report to the disciplinary authority. On perusal, it clearly shows that the Enquiry Officer has proceeded on assumption that the prosecution was not required to present its case and it was necessary only to hear the charged officer before reaching his findings. The following excerpt from the report of the Inquiry Officer makes this amply clear:

"The charged officer has submitted his written statement of defence, explaining the circumstances under which he kept from official duties and not admitted the charges specified in the articles of charges.

Thereafter the notices for personal hearing have been delivered to the charged officer to appear in person before the enquiry commission to defend himself. The charged officer appeared before the enquiry commission on various occasions pursuant to the notices of enquiry. The charged officer appeared in person before me and expressed that he had nothing more to state except the defence taken in the written statement of defence submitted earlier and further expressed that there is no necessity to go on further to hold enquiry personally, and ultimately clarified the position to proceed on the merit of the matter on the strength of available records, written statement of defence and the copies of certificate of postings produced by the charged officer to the Inquiry Officer".

6. The concluding paragraph of the report of the Inquiry Officer dated 11.2.1993 also clearly establishes that the Inquiry Officer proceeded in a

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curious manner by visiting the house of the charged officer to see for himself whether his plea, that his wife was ill, was true or not. This part of the report is also being reproduced:

"After perusing the defence documents, I personally along with Asstt. Director (Admn) SAI(Southern Centre), Bangalore, verified by visiting the Residence of the Charged Officer three times and seen the actual Health position of Mrs. Veena Kanabargimath which is in a pathetic condition. The Charged Officer living with his wife and his son and the position of the family has deteriorated to that extent, where I feel it is humanly impossible for the Charged Officer to part from the ailing family. At present, Mrs. Veena Kanabargimath is undergoing a treatment at National Institute of Mental Health and Neuro Sciences at Bangalore for Schizophrenia, Hypertension for mental disorder which is in advanced stage. The doctors treating the patient have advised her to continue the treatment without any break. Under these circumstances, I strongly feel that both husband and wife have to stay together till she recovers completely from the mental disorder".

7. We have no doubt that the Inquiry Officer flouted Rule 14(11) of CCS (CCA) Rule which reads as follows:

Rule 14 (11)

"The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence."

(i) Inspect within five days to the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3)

(ii) submit a list of witnesses to be examined on his behalf;

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but, not mentioned in the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise".

Similarly Rule 14(14) reads as follows:

Rule 14(14)

"On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any point on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

8. Since neither presenting officer was called nor prosecution evidence allowed to be produced nor defence witness allowed to be cross-examined, we find that the conclusion is irresistible that considering the manner in which the first inquiry was conducted, it was, in fact, no inquiry. Being clearly in violation of the Rule 14 of the CCS (CCA), it was illegal and non est in the eyes of law. The issue of another charge sheet is of course not covered by Rule 15(1) of the CCS (CCA) which provides as follows:

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" (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiry authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be".

9. However, it is the contention of the applicant himself in the O.A. that the second fresh charge sheet is virtually identical to the first charge sheet. Thus even if there is a procedural lacuna the interest of the applicant has not been prejudiced since there would be no difference if the inquiry had been conducted under Rule 15(1) on the basis of old charge sheet or as has been done on the basis of the new charge sheet.

In the light of the above discussion, we dismiss the case. Respondents may now complete the proceedings as per law.

S. B. Jain
(S. B. Jain)
Member(J)

R. K. Ahooja
(R. K. Ahooja)
Member (A)

Mittal