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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2136 /19 96

DATE OF DECISION : 15.3.2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K. Majotra, MEMBER (A)

M.L. Sharma

... Applicant(s)

-Versus-

Lt. Governor of Delhi & anr.

... Respondent(s)

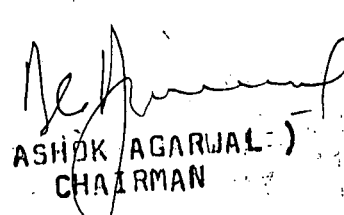
Advocates :

~~Mr./Ms.~~ Applicant in person for Applicant(s)

~~Mr./Ms.~~ None for Respondent(s)

1. Whether to be referred to Reporter? Yes

2. Whether to be circulated to other Benches? No


(ASHOK AGARWAL)
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2136/1996

New Delhi this the 15th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

M.L. Sharma
S/o Late Sh.B.L.Sharma
R/O C-25, Mansarovar Park
Shahdra, Delhi-110 032.

... Applicant

(Applicant in person)

-Versus-

1. Lt.Governor of Delhi
Raj Niwas
Delhi-110 054

2. Govt.of National Capital Territory
of Delhi through
Chief Secretary
5, Alipur Road
Delhi-110 054

... Respondents

(None for the respondents)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

We have heard the applicant, who is present in person. Respondents and their Advocate are absent. We proceed to dispose of the OA in ~~their~~ absence in terms of Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. By an order issued by the disciplinary authority on 30.8.1994 in disciplinary proceedings conducted against the applicant, a penalty of removal from service was imposed upon him. Aforesaid order was carried by the applicant in appeal. By an order passed on 20.5.1996, aforesaid order of the disciplinary authority of removal from service has been reduced to one of compulsory retirement with

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effect from 30.8.1994. Aforesaid order passed by the appellate authority on 20.5.1996 is impugned in the present OA.

3. Applicant at the material time was working as a Sales Tax Inspector.

4. A chargesheet was issued against the applicant on 10.9.1984. Along with the chargesheet, applicant was served with a statement of imputation of misconduct which reads as under:-

" Article-I

That Shri M.L.Sharma, while working as S.T.I. in Ward No.23 had conducted surveys of seven dealers regd./functioning in the territorial jurisdiction of the ward in the month of March, 84.As per report dated 22.5.84 of the S.T.O. Shri M.L.Sharma submitted these survey reports on 21.5.84. He was issued memorandum Nos.754 to 756 dated 22.5.84 from AC-III Sales Tax, wherein he was directed to explain the circumstances under which he retained the aforesaid survey reports with him. In his explanation dated 23.5.85, Shri Sharma has stated that due to excessive burden of achieving recovery targets upto 31.3.84 these reports could not be submitted in time. Shri Sharma denied to have any malafide intention with regard to these survey reports. The explanation offered by Shri Sharma is not convincing to the extent that he could have submitted these survey reports in the first week of April, 84. 5 out of 7 surveys are adverse reports warranting immediate action against the dealer.

Thus, Shri M.L.Sharma had failed to discharge his duties properly and did not maintain absolute integrity and acted in a manner which is most unbecoming of a Govt. servant and thereby contavened the provisions of Rule 3 of the CCS (CCA) Rules, 1964.

Article-II

That on 6.6.84 Shri M.L.Sharma was

detailed for conducting the surveys of a regd. dealer under the supervision of Shri T.R.Meena, S.T.O. (M/s Aman Trading Co., T-29, B-15 Baljeet Nagar, New Delhi and Kashmere Gate, Delhi .) The Sales Tax Officer, Shri T.R.Meena reported on 6.6.84 that during the course of survey Shri Sharma demanded a sum of Rs.10,000/- from the dealer as illegal gratification. Shri Sharma was advised by the S.T.O. not to indulge in such activities but Shri Sharma continued to negotiate with the dealer. Shri T.R.Meena thereupon demanded the survey sheet prepared by the S.T.O. but Shri Sharma refused to hand over the survey sheet to the S.T.O. and stated that he would submit the same in office. There-upon the S.T.O. left the business premises of the dealer and came to the bus stop. Shri Sharma still persisted and tried to persuade the S.T.O. to accept illegal gratification since he will submit the survey report in office and the deptt. will not lose anything. Thus, Shri Sharma demanded illegal gratification and showed indiscipline and mis-conduct in his behaviour while on govt.duty.

Thus, Shri M.L.Sharma, S.T.I. U/S had again failed to maintain absolute integrity, devotion to his duty and acted in a manner which is most unbecoming of a government servant and thereby contravened the provisions of Rule 3 of the CCS (CCA) Rules, 1964."

By an order passed on 8.6.1984, applicant was placed under suspension. By an order passed by the enquiry officer on 27.10.1984, charge contained in Article I was found to be partly proved and that in Article II not proved. The disciplinary authority, however, by his order issued on 9.9.1988 disagreed with the findings of the enquiry officer and proceeded to impose a penalty of removal from service upon the applicant. Appeal filed by the applicant against the aforesaid order of removal from service was dismissed on 4.1.1990. Revision application filed against the said order was also rejected on 6.7.1990. Applicant

De. J.

thereafter on 10.8.1990 preferred OA No.1638/1990 in this Tribunal. By an order passed on 13.5.1994, the said OA was allowed and the orders of the disciplinary authority, appellate authority and the revisional authority were set aside on the ground that no show cause notice has been issued by the disciplinary authority conveying his note of dissent to the applicant for the purpose of giving him an opportunity to make a representation against the same. Disciplinary authority was accordingly directed to issue a show cause notice with reasons of his disagreement and thereafter to proceed to decide the case in accordance with law. Disciplinary authority has thereafter issued a show cause notice along with his reasons of disagreement to the applicant on 29.7.1994. Applicant by his representation dated 16.8.1994 showed cause against the same. Disciplinary authority by his order issued on 30.8.1994 has held both the charges proved and proceeded to impose the penalty of removal from service upon the applicant. As far as charge contained in Article I is concerned, this is what the disciplinary authority has observed:-

"His contention that he was not aware of the circular dated 3.9.1976 cannot be accepted as ignorance of the instructions of the department in dealing with the official matters, cannot be taken as an excuse by Shri Sharma. Even if he was not aware of the procedure, there was adequate time for him to consult his colleagues and submit his reports within a few days. His withholding of report for two months clearly indicates his malafide intentions and it was during this period that one of the dealers managed to obtain S.T. forms from the Department and no adverse notice could be taken by the department."

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As far as the charge contained in Article II is concerned, this is what has been observed:-

"Shri M.L.Sharma's contention in the context of Article No.II that Shri T.R.Meena, who was produced as a prosecution witness was, in fact, the complainant and the uncorroborated hearsay witness of a complainant, if not testified by a witness, cannot be given any credence, is also untenable. The standard of proof required in a departmental proceeding differs materially from the standard of proof required in a criminal trial. It is well established that a disciplinary proceeding is not a criminal trial and that the standard of proof required in a disciplinary enquiry is that of preponderance of probability and not proof beyond a reasonable doubt."

As far as both the charges are concerned, applicant has been found guilty. As far as charge contained in Article I is concerned, appellate authority has observed as under:-

"10. As regards non-submission of survey reports promptly in respect of several establishments earlier surveyed by the appellant during March, 1984, his pleas of having excessive burden of recovery target, and that he was not aware of the departmental instructions relating to the submission of survey reports the following day after survey, are not tenable. The appellant was an experienced hand, and was expected to know the requirement of prompt submission of the survey reports. Nothing prevented him from submitting those reports promptly. There was no justification for withholding those reports for a period of about two months, especially when some of the reports were adverse in their content. It is on record that it was during this period that one of the dealers managed to obtain the statutory forms from the department, and no adverse notice could be taken by the department due to non-submission of the survey reports. Negligence and dereliction of duty on the part of the appellant are apparent and fully established."

Je.A

As far as charge contained in Article II is concerned, appellate authority has observed as under:-

"9. I find from the records that the S.T.O. claims to have overheard the conversation between the appellant Sri Sharma and the dealer, but was not an eye witness to the transaction of money taking place. He has nowhere stated as to how the dealer was prepared to pay a heavy sum of Rs.10,000/-. The dealer was not called to lead evidence in the inquiry to prove the charge of demanding Rs.10,000/-. Though the circumstantial evidence adversely points towards the conduct of the appellant, yet the version of the S.T.O. cannot be fully relied upon in the absence of any corroborating evidence. The whole episode does speak of complete ineffectiveness on the part of the S.T.O. also. He should have assured the dealer that there was no need to give money to the Inspector and should have publicly and strongly warned the Inspector of the consequence of his corrupt practice. The S.T.O. concerned clearly had lax control over his subordinate, the appellant, and therefore, he was also liable for his ineffectiveness."

Aforesaid order of the appellate authority has virtually exonerated the applicant of the charge contained in Article II which charge was the serious charge contained in the chargesheet in question. Whereas the disciplinary authority has been persuaded to place reliance on the evidence of Shri T.R.Meena, Sales Tax Officer, the same apparently has not found favour with the appellate authority. As far as the charge contained in Article I is concerned, appellate authority has found the same having been proved against the applicant. The said charge pertains to delayed submission of the survey reports by the applicant. As far as the first charge is concerned, the disciplinary authority has found that the delay of

two months caused by the applicant in submitting the survey report indicates his mala fide intentions and it was during that period that one of the dealers managed to obtain Sales Tax forms from the department and no adverse notice could be taken by the department. As far as the appellate authority is concerned, though the same affirms the aforesaid findings of the disciplinary authority in respect of the said charge, the same does not allege mala fide intention on the part of the applicant. It merely imputes negligence and dereliction of duty on his part.

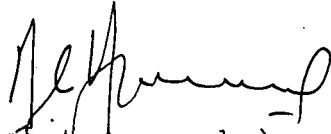
5. As far as the aforesaid findings of the appellate authority are concerned, we are conscious of the fact that we are not a court of appeal. Hence no finding other than the one given by the appellate authority is called for. If one has regard to the aforesaid findings, we are constrained to hold that punishment of compulsory retirement is shockingly disproportionate to the misconduct found against the applicant. If the applicant is merely found to be negligent in submitting the survey reports belatedly, the impugned order of removal from service is found shockingly disproportionate to the misconduct found against him. As has been suggested by the Supreme Court in the case of **B.C. Chaturvedi vs. Union of India**, 1995 (8) SC 65, we are inclined to remand the present case back to the appellate authority for re-considering the penalty imposed upon the applicant. It has now been pointed out by the applicant that the present appellate authority is none other than the disciplinary authority who had passed the order of

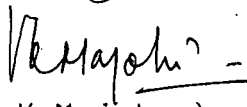
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removal against him on 9.9.1988. Applicant, we are informed, has superannuated in November, 1998. Having regard to the prevailing state of things, we now find that it would be inappropriate to remit the case back to the very same authority who has been the disciplinary authority and had earlier imposed a penalty of removal from service upon the applicant. In the circumstances, we are now inclined to adopt the other course suggested in the case of B.C.Chaturvedi (supra) and to reconsider the penalty ourselves and impose an appropriate punishment having regard to the findings of the appellate authority. We find that the ends of justice would be met by imposing a major penalty as provided in Rule 11 (v) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. We accordingly impose a penalty of reduction to a lower stage in the time scale of pay for a period of three years during which period the applicant will not earn increments of pay and on the expiry of the said period, the reduction will have the effect of postponing the future increments of his pay. Applicant, it goes without saying, will be entitled to all consequential benefits based on the aforesaid modified order of penalty.

6. Present OA is disposed of with the aforesaid directions. No costs.


(Ashok Agarwal)
Chairman


(V. K. Majotra)
Member (A)