

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1462/97
T.A. No.

199

DATE OF DECISION 9. 1.98

Shri R.S.Kundu

Petitioner

Shri K.B.S. Rajan

Advocate for the Petitioner(s)

Versus

UOI & ors

Respondent

Sh.P.H.Ramchandani, Senior Counsel

Advocate for the Respondent

CORAM

The Hon'ble Shri S.R.Adige, Vice Chairman(A)

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? *yes* X

2. Whether it needs to be circulated to other Benches of the Tribunal

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

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(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No 1462/97

New Delhi this the 9 th day of January, 1998.

Hon'ble Shri S.R. Adige, Vice Chairman(A)
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri R.S. Kundu,
S/o Shri Shiv Dhan Kundu,
30-N, Central Government Housing Complex,
Vasant Vihar, New Delhi-110057
working as Senior Technical Assistant,
Directorate of Quality Assurances,
Warship Project, H-Block, New Delhi.

.Applicant

(By Advocate Shri K.B.S. Rajan)

Vs

1. Union of India
through the Secretary,
Department of Defence Production,
Ministry of Defence, South Block,
New Delhi-11

2. The Joint Secretary(Training),
and Chief Administrative Officer,
Ministry of Defence, C-II Hutments,
Dalhousie Road, New Delhi

..Respondents

(By Advocate Shri P.H. Ramchandani, learned Sr. counsel)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Member(J))

The applicant is aggrieved by the order passed by the respondents dated 9.5.97 imposing on him a penalty of reduction of pay by two stages for a period of one year with cumulative effect, during which period he will not earn any increment of his pay and this reduction will have the effect of postponing his future increment of pay. This order has been passed by the President after holding disciplinary proceedings against the applicant under Rule 14 of the CCS(CCA) Rules, 1965.

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2. The applicant has submitted that he being a Group, 'B' Officer, the disciplinary authority who could have passed the penalty order against him is the Director General of Quality Assurance (DGQA) against whom he could have filed an appeal to the higher authority. In this case, since the penalty order has been imposed against him by an authority higher than the prescribed disciplinary authority, it has resulted in taking away his valuable statutory right of appeal. He submits that as the President has assumed the powers of the disciplinary authority, no appeal can be preferred against that order, as under the Rules, no such appeal is provided. Only revision and review lies under Rules 29 and 29 A of the CCS(CCA) Rules, 1965 against the orders passed by the President. The applicant has also submitted that from the charges framed against him, it will be seen that the applicant, who is a Technical Assistant could not identify the wood or quality of the wood. In any case, he was part of the inspecting team which conducted the inspection of the wood to incorporate the guarantee clause. He has submitted that it was the responsibility of the inspecting authority to whom such a certificate of warranty was given by the supplier to interlink the same with the inspection report and to take necessary action. Shri Rajan, learned counsel has, therefore, submitted that the applicant was not expected to certify about the quality of the wood. He submits that it is not a case where the accepting authority blindly accepted

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the certificate given by the Inspecting Team as referred to in detail in paragraph 5 of the application. He has contended that, in the circumstances the charge held proved against the applicant is illegal.

3. The charge-sheet was issued to the applicant by memorandum dated 13.6.91. In this memorandum, it is stated that the President proposes to hold an enquiry against the applicant under Rule 14 of the CCS(CCA) Rules, 1965. The article of charge together with statement of imputation, list of documents and list of witnesses by which the article of charge was proposed to be sustained were given to the applicant along with the memorandum. Learned counsel for the applicant has submitted that the memorandum does not mention that it was proposed to hold common proceedings against the applicant and others and that it was issued under Rule 18 of the CCS(CCA) Rules. He has also submitted that the penalty order was also not a common order which was passed by the President following the common proceedings. The point stressed by the learned counsel was that the applicant was being denied a valuable right of an opportunity to file an appeal, which was otherwise available to him if the disciplinary authority was not the President in terms of the normal Rules applicable to him. He relies on the judgment of the Tribunal in **N.R.Chopra V.Lt. Governor, Union Territory of Delhi and Another** (1993)(23) ATC 23 ; **Surjit Ghosh V. Chairman & Managing Director, United Commercial Bank and Ors** (JT 1995(2) SC 74) and **Balbir Chand**

V. Food Corporation of India Ltd. and Others (1997(3) SCC371).

4. The respondents have filed their reply and we have heard Shri P.H. Ramchandani, learned ~~senior~~ counsel for the respondents. The respondents have submitted that the applicant was a co-accused with ^a Group 'A' Officer, namely, Sh. P. D. Sarwate SSO-I (Retd). In the case of Shri Sarwate, the disciplinary authority is the President and hence the President had ordered initiation of common proceedings under Rule 18 of CCS(CCA) Rules against both the applicant and Shri Sarwate by order dated 13.6. 1991. They have submitted that the applicant had not raised any objection about the disciplinary authority at the time when the charge-sheet was issued to him in June, 1991. They have submitted that as the President had initiated the proceedings, the imposition of the penalty by the same authority is legal, under the provisions of Rule 18 of CCS(CCA) Rules. They have also submitted that since the penalty has been imposed by the highest authority i.e. the President who was the competent authority under the rules in this case, the applicant cannot complain of the deprivation of his remedy by way of appeal. He could avail of the statutory right of filing a review petition to the President against the penalty order under Rule 29-A of CCS(CCA) Rules, which remedy he has not availed of, before filing this application in the Tribunal. In the circumstances of the case they have submitted that no prejudice at all has been caused to the applicant as he has been proceeded under the Rules

by way of common proceedings. They have submitted that with regard to the merits of the case, the Enquiry Officer has analysed the facts placed before him and considered the defence taken by the applicant while recording his findings in his report. They have also submitted that the penalty order shows that the disciplinary authority has applied his mind and has recorded reasons for imposing the penalty. Shri Ramchandani, Learned Counsel has submitted that the contention of the learned counsel for the applicant that the applicant has been deprived of his valuable right by way of appeal has no basis, as the common proceedings have also been conducted in accordance with the Rules by the President who is so empowered to do in the facts and circumstances of the case. He has also relied on the observations of the Supreme Court in **Balbir Chand's case** (supra), in which it has been held that 'there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action'. He has submitted that the judgment in **Surjit Ghosh's case** (supra) was based on the facts and rules applicable to that case, which are not applicable here. It was held in that case that in the normal circumstances, the Managing Director being the appellate authority should not have passed the order of punishment so as to enable the delinquent employee to avail of his right of appeal. Shri Rajan, learned counsel, however, contends that based on the same judgment in **Balbir Chand's case**, the appeal provided under the Rules cannot

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be denied which would cause prejudice to the delinquent.

5 The applicant has filed a rejoinder in which he has reiterated the stand taken by him in the application, particularly that his very valuable legal right of appeal has been taken away from him by the fact that the penalty order has been passed by the President.

6 We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7 In this case the memorandum of charge issued to the applicant on 13.6.91 clearly shows that it was the President who had proposed to hold an enquiry against the applicant under Rule 14 of CCS(CCA) Rules, 1965. As the applicant has contended that his disciplinary authority was the DGQA, the memo. of charge-sheet itself gave him clear indications that the highest authority has proposed to proceed against him under Rule 14 of the rules. This was sufficient notice to him that it was the President who was to hold the enquiry against him and he has apparently not raised any query or objection at that time. The main contention of the learned counsel for the applicant is that because the penalty order has been passed by the President he has been deprived of his valuable statutory right of appeal. In **N.R. Chopra's case** (supra) the Tribunal has merely noted that as the impugned order was passed by the Lt. Governor, Union Territory of Delhi, the remedy of appeal is not available, which is the same position in the present case. In **Surjit Ghosh's case**

(supra), the Supreme Court has held that an employee cannot be deprived of his substantive right i.e. remedy by way of an appeal which is given to him by the Rules/Regulations. However, that case has to be read in the context of the Rules/ Regulations which the Hon'ble Supreme Court was dealing with. ^{Supreme Court} In that case, the Court held as follows:-

"What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. In such cases, the right of the employee depends upon the choice of the higher/appellate authority, which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted. The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside."

(Emphasis added)

The observations in Surjit Ghosh's case (supra) would not be applicable to the facts in the present case. Rule 18(1) of the CCS(CCA) Rules, 1965 reads as under:-

"Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding."

(17)

In the present case, the other officer against whom proceedings were held being a Group 'A' Officer, his disciplinary authority is the President. Therefore, this is not a case where the President i.e. the appellate authority chose to exercise the power of the disciplinary authority but had no other choice under the Rules, as one of the co-accused was a Group 'A' Officer. We also find no illegality in the common or in the final order passed by that authority. proceedings initiated by the President/. The rules themselves provide that against an order passed by the President, revision and review lies under Rules 29 and 29-A. We are further fortified in the view we have taken by another judgment of the Supreme Court relied upon by both the parties, namely, **Balbir Chand V. Food Corporation of India and Others** (Supra)

In this case, the Supreme Court held:-

"In the instant case, a joint enquiry was conducted against all the delinquent officials. The highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee to avail of right of appeal. An authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that in doing so there will be discrimination violating Article 14 of the Constitution or causing material prejudice."

(emphases added)


9. In any case where common proceedings were held as provided under Rule 18 of CCS(CCA) Rules, where the disciplinary authority is the President it cannot be concluded that it is illegal. Therefore, having regard to the facts of the case, the provisions of Rule 18 of CCS(CCA) Rules and the decision of the Court in **Balbir Chand's case** (Supra), we are of the view that there is no discrimination against the applicant/^{or} violation of Article 14 of the Constitution in depriving him of his right of appeal causing ^{any} prejudice to him. It is relevant to note that the penalty order has been passed by the highest authority, namely, the President.

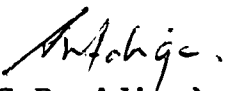
10. With regard to the merits of the case, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction of the departmental authority to re-appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal (See **State of Tamil Nadu and Anr. V. S. Subramaniam** (JT 1996(2)SC 114, **UOI V. Parma Nanda** (AIR 1989 SC 1185) and **N. Rajarathinam V. State of Tamil Nadu** (JT 1996(8)SC 447)). In the facts of this case, we are satisfied that the departmental proceedings have been held in accordance with the rules and the

applicant has also been afforded reasonable opportunity to defend his case in accordance with the principles of natural justice.

11. In the facts and circumstances of the case, therefore we see no good grounds justifying any interference in the case. The application lacks merit and the same is accordingly dismissed.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


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