

CAT/102

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1623/97

T.A. No.

199

(5)

03.09.98

DATE OF DECISION

Sh. S.K. Bhatnagar

Petitioner

Sh. K.C. Mittal

Advocate for the Petitioner(s)

Versus

Respondent

U.O.I. & Ors.

Sh. Rajeev Bansal

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.N. Bhat, Member (J)

The Hon'ble Mr. S.P. Biswas, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(S.P. Biswas)
Member (A)

Cases referred:

1. N. Gopalakrishnan Vs. Member (Personnel), Telecom Board, New Delhi & Ors. (1989(11) ATC 745.
2. Brijbasi Lal Srivastava Vs. State of M.P. (1974 SCC 1080)
3. State Bank of Patiala & Ors. Vs. S.K. Sharma (1996(3)SC 722.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1623/97

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New Delhi this the 3rd day of September 1998.

Hon'ble Sh. T.N. Bhat, Member (J)
Hon'ble Sh. S.P. Biswas, Member (A)

Shri S.K. Bhatnagar,
S/o late Sh. R.K. Bhatnagar,
R/o Sector 8/602,
R.K. Puram,
New Delhi.

Applicant

(through Shri K.C. Mittal, advocate)

versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Chief Administrative Officer
& Joint Secretary (Training),
Government of India,
Ministry of Defence,
Office of Joint Secretary (TRNG)
& Chief Administrative Officer,
DHQ P.O., New Delhi-11.
3. Dy. Chief Administrative Officer (P),
Ministry of Defence,
Office of C.A.O., DHQ P.O.,
New Delhi-11.
4. Mr. Subhash Kapoor,
Photo Supervisor,
AF.F.P.D., H. Block,
Ministry of Defence,
H. Block, Krishna Menon Marg,
New Delhi-11.
5. Asstt. Director of Estates,
Allotment TB/A Section,
Director of Estates,
Nirman Bhawan,
New Delhi.

Respondents

(through Sh. Rajeev Bansal, advocate)

ORDER

Hon'ble Shri S.P. Biswas, Member (A)

Applicant, a Senior Photographer under the
respondents, is aggrieved because of his appeal dated

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25.3.97 compulsorily retiring him from services by A-2 order dated 12.3.97 has been rejected by the Appellate Authority by A-1 order dated 13.6.97. He is challenging here both A-1 and A-2 orders and seeks issuance of direction to respondents to reinstate him with all consequential benefits/reliefs.

2. To appreciate the legal issues involved, it would be appropriate to bring out the background facts, in brief, leading to filing of this O.A. Those facts are as under:-

On 7.2.96 a theft of NIKON Camera alongwith its accessories from the custody of Shri S.C. Kapoor, Photo Supervisor (R-4) was reported. It was reported to the Director, Armed Forces Films and Photo Division (AFFPD for short) by respondent No.4 that on 7.2.96 the said camera was handed over to him by Sh. G. Paul, Photo Officer. Respondent No.4 did put the camera in a box and kept it in the almirah. On 8.2.96, later in the afternoon when respondent No.4 opened the almirah, he found the camera missing. A report of theft was lodged with Police Station Tughlak Road vide AFFPD's letter dated 9.6.96 (A-6). The Security Officer of the Ministry was also informed of the incident. Complaint to the Police was lodged by Sh. Gurdeep Singh, Dy. Director, AFFPD who was accompanied by Sh. Rajesh Kumar, Sub-Inspector from Security Office. In the meantime, P.S. Tughlak Road was informed through their counterparts of PS Kotala Mibarakpur that they are detaining Sh. Satish Bhatnagar, i.e. the applicant herein alongwith the stolen camera. Sh. Gurdeep Singh alongwith

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Sub-Inspectors Rajesh Kumar and Yashwant Paul went to PS Kotala Mubarakpur. The camer alongwith its accessories was handed over to the officer from AFFPD in present of family members of the applicant. Subsequently, the security office under the respondents informed that the stolen camera was mortgaged by the applicant to one Sh. Baldev Bajaj, the money lender for an amount of Rs.10,000/-. Next day Shri Bajaj took the camera to the Police Station Kotala Mubarakpur alongwith the applicant. On receiving information, officers under the respondents also reached PS Kotala Mubarakpur. The camera was identified and returned to the officers. The SHO wanted to register FIR against the applicant which was held up for some time at the request of Sh. Gurdeep Singh. Ultimately, with the consent of the respondents, the complaint loged with the Police authorities was withdrawn by submitting that departmental action would be initiated against the applicant. This resulted in initiation of proceedings against the applicant by memorandum dated 29.3.96 (A-7) under Rule 14 of the CCS(CCA) Rules 1965. on the basis of the charges indicated in the aforesaid memorandum.

3. Shri K.C. Mittal, learned counsel for the applicant brought out fairly a long list of grounds on the basis of which the respondents action in A-1 & A-2 deserve to be quashed. For the sake of brevity, we only bring out those which highlight the alleged infirmities in the conduct of the proceedings.

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4. The learned counsel for the applicant argued that evidence of PWs has not been recorded and that the details of chief prosecution witnesses have not been shown in appropriate manner. Statements recorded by the respondents earlier have been relied upon which amounts to no proceedings at all. In support of this contention, he cited the decision of this Tribunal in the case of Dr. D.P.S. Luthra Vs. U.O.I. & Ors. (1988(8) ATC 815). In that case, decided by this Tribunal, the non examination of the main complainant who was the key witness in the enquiry was considered to have vitiating the proceedings in its entirety.

5. The Enquiry Officer added an additional witness, Shri Baldev Bajaj, who is not amongst the PWs listed alongwith the chargesheet. No notice was given to the applicant nor his statement was supplied to him enabling the applicant to conduct an effective cross examination. To buttress his contention, the learned counsel drew out attention to para-4 of this Tribunal in the case of N. Gopalakrishnan Vs. Member (Personnel), Telecom Board, New Delhi and Others (1989(11) ATC 745). In that case it was held the names of witnesses in the list of witness to be appended to the memorandum of charges to afford an opportunity to the Government servant to prepare himself effectively for purpose of cross examination. In the present case, the fact that Sh. Baldev Bajaj was being brought as an additional witness was not known to the applicant. Necessary documents demanded by the applicant, as per his representation dated 19.6.96, were not provided. This is despite the fact that the enquiry officer accepted the

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relevancy of all those documents. Those were relevant to the defence of the applicant and as such non supply of those documents vitiates the whole proceedings, the learned counsel argued.

6. The confessional statement of the applicant was allegedly procured under pressure, duress and threat and it was not a voluntary statement. There is not even a single word in the alleged voluntary statement showing that the same was given willingly. As per the learned counsel for the applicant, such a statement obtained under duress cannot be relied upon in terms of the law laid down by the Hon'ble Supreme Court in the case of Brijbasi Lal Srivastava Vs. State of M.P. (1979 SCC 1080). In that case their Lordships held that where a confession is made by a delinquent officer to his superior, after administration of oath to him by the superior officer though not so empowered and the delinquent pleads that it was not voluntary but was taken under duress, such an admission is clearly inadmissible under Section 24 of the Evidence Act. Again, even inspection of the documents was not allowed by the Presenting Officer on the fixed date i.e. 9.7.96 which is evidently clear in applicant's representation dated 12.6.96. In an order dated 13.8.96, the Presenting Officer undertook to produce PWs for recording their evidence but no evidence was recorded at all during the proceedings.

7. Shri Rajeev Bansal, learned counsel for the respondents contested all the claims. As has been indicated in para 16 of the Enquiry Officer's report, all

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the available evidence - both documentary and circumstantial clearly establish that the camera was brought to the money lender Shri Bajaj by the applicant with the request for giving him Rs.10,000/- by mortgaging the camera. The applicant himself has admitted in his confessional statement dated 13.2.96 about the theft of camera and its subsequent mortgage to Sh. Baldev Bajaj. All the 4 listed prosecution witnesses deposed before the Enquiry Officer and the charged official also cross examined all those witnesses. It has been further submitted that name of Sh. Bajaj later on came to the knowledge of the Disciplinary Authority through confessional statement of the Charged Officer himself. The request for producing Sh. Bajaj as a prosecution witness was made by the P.O. and the request was acceded to in course of the hearing on 13.9.96 when the C.O. himself was also present. Sh. Bajaj was produced on 24.7.96 i.e. after 10 days and was also cross examined by the CO on that date. The CO never raised any objection or taken more time regarding production/examination of the said witnesses nor did he raise any objection regarding presence of Sh. Bajaj as witness. The respondents, therefore, held that the objections raised by CO in this regard is baseless and not valid.

8. Confronted with the claims and counter claims, we have to decide whether the proceedings have been vitiated by infirmities and if the delinquent official was denied natural justice.

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9. We find from the records that Sh. Baldev Bajaj was called for deposition before the Enquiry Officer as his name stood mentioned in the chargesheet. The decision to call Shri Bajaj was taken by the Enquiry Officer during the proceedings held on 13.9.96 when the applicant himself was present. It is not in doubt that Sh. Bajaj is the most important prosecution witness. The attendance of Sh. Bajaj was never objected to by the applicant. That apart, fact that Sh. Bajaj was to appear on 24.9.96 (after a gap of 10 days) was known to the applicant and, therefore, he had ample time to prepare himself for cross examination of the main witness. We also find that the statement made by Sh. Bajaj has not been challenged by the applicant in the cross examination though he was given full and fair opportunity in the matter.

10. The inspection of documents listed in the chargesheet was conducted by the applicant and he confirmed this fact to the Enquiry Authority during the hearing conducted on 13.8.96. The Disciplinary Authority has not tried to avoid production of any documents. All the documents produced as evidence was made available to the applicant. It is also seen that the Enquiry Authority has never directed the respondents to file any document about the non-availability of the documents.

11. We find no basis for the contention of the applicant that he was under duress from Respondent No.4 and Sh. Bajaj and was pressurized for making a confessional statement to Deputy Director AFFPD. If at all this statement was made under any pressure, the

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applicant was free to bring it to the notice of the higher authorities which he never did. For the first time the applicant came up with this plea was only in course of the enquiry proceedings. The applicant has not stated what was the motive for Respondent No.4 who has recorded confessional statement as alleged. The applicant had himself requested the officer of AFFPD, after the recovery of the camera, that no police action be taken against him and only departmental proceedings could be initiated and prayed for the mercy. It is because of this mutual settlement that the Police Authorities accepted the requests of the respondents for not going ahead with the enquiry at this level. At no stage earlier, the applicant had protested against the statement taken under duress. What is not in dispute is that the C.O. had made his confessional statement on 13.2.96 admitting to have removed and mortgaged camera in question due to financial hardship. All available evidence - both documentary and circumstantial - establishes that the camera was brought to the money lender by the CO himself with the intention to mortgage it, though the same did not take place in terms of transaction of the amount. On examination of the facts and circumstances of the case, the following points emerge.

(i) The CO had gone to the money lender Sh. Bajaj with the camera and expressed his intention to mortgage the same for Rs. 10,000/-. This is

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evident from Sh. Bajaj's deposition during the enquiry. This has not been disputed by the applicant.

(ii) The money lender did not pay the amount as requested by the CO. The camera as such was not mortgaged though the CO had expressed his intention to mortgage it.

12. The standard of proof required in a departmental enquiry differs materially from the standard of proof required in a criminal trial. The Hon'ble Supreme Court has held that the standard of proof required in a disciplinary case is that of preponderance of probability and not proof beyond reasonable doubt. On this basis, the finding of the Enquiry Officer cannot be questioned.

13. We are tempted to indicate here the principles that need to be observed by the Courts/Tribunals in examining disciplinary proceedings alleged to have been vitiated by violation of principles of natural justice or procedural steps. Applying the comprehensive principles on "Test of prejudice" as enunciated by the Apex Court in the case of State Bank of Patiala & Ors. Vs. S.K. Sharma (JT 1996(3) SC 722), we do not find any valid grounds, much less convincing ones, warranting our interference in the matter.

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14. That apart, this Tribunal does not sit as an Appellate Court on facts. Even assuming that some of the findings on facts are not correct, interference will be justified, only if the findings are unreasonable that no person instructed on law or facts would have come to such a conclusion. We do not find any such unreasonable stand in this O.A.

15. In view of the detailed reasons aforesaid, the O.A. deserves to be dismissed. We do so accordingly with no order as to costs.


S.P. Biswas

(S.P. Biswas)
Member(A)


T.N. Bhat
3.9.98

(T.N. Bhat)
Member(J)

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