

Central Administrative Tribunal, Principal Bench

OA No. 1801/97

New Delhi this the 25th day of August, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Mr. Govindan S. Tampi, Member (Admnv)

K.G. Mohanachandran ...Applicant

(By Advocate Shri R.P. Aggarwal)

-Versus-

Union of India ...Respondents

(By Advocate Shri N.S. Mehta)

1. To be referred to the Reporters or not? YES

2. To be circulated to other Benches of
the Tribunal or not? NO

(V. Rajagopala Reddy)
Vice-Chairman(J)

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K.G. Mohanachandran,
R/o ~~AT~~ E-110, M.S. Apartments,
Kasturba Gandhi Marg,
New Delhi-110 001.

...Applicant

(By Advocate Shri R.P. Aggarwal)

-Versus-

Union of India through its
Secretary,
Ministry of External Affairs,
South Block,
New Delhi.

...Respondent

(By Advocate Shri N.S. Mehta)

O R D E R (ORAL)

By Justice V. Rajagopala Reddy:

The applicant was working as a Attaché (Administration) in the Embassy of India, Belgrade. Three articles of charge were levelled against him, viz.

- (i) payment to an outsider without getting the approval of the Head of the Chancery;
- (ii) submission of claim for reimbursement of medical expenses on himself and members of his family and inflated the amount of two hospital bills by altering the same and claimed the inflated amount from the Government; and
- (iii) submission of false bill containing forged signature of the Head of the Chancery; claiming Taxi charges.

[Signature]

2. Since the applicant had denied the charges the disciplinary enquiry under Rule 14 of the CCS (CCA) Rules, 1965 was initiated against him. The enquiry officer found that the charges were not established. The disciplinary authority, however, disagreeing with the findings of the enquiry officer, found the applicant guilty of the charges and imposed the penalty of reduction to a lower scale in the time scale of pay for a period of five years with cumulative effect in the impugned order dated 14.10.96. The present OA is filed, challenging the above order.

3. The learned counsel for the applicant Sh. R.P. Aggarwal has contended that there is no acceptable evidence in support of the charges and that the disciplinary authority had not properly appreciated the evidence. He also contends that the disciplinary authority has not considered the representation made by the applicant in response to the notice giving reasons for disagreement with the enquiry officer's findings. It is also contended that it was not the disciplinary authority who had disagreed with the findings of the enquiry officer but by the Director CNV and Deputy CVO. Hence, the impugned order is vitiated and is null and void.

4. The learned counsel for the respondents Sh. N.S. Mehta, however, refutes the contentions and submits that the Tribunal will not interfere with the findings of the enquiry officer as the findings were arrived at by the disciplinary authority on the basis of the evidence on record. He also contends that there is no lacuna in the procedure that has been adopted by the enquiry officer or the disciplinary authority.



5. We have given careful consideration to the contentions raised by the learned counsel for the applicant and the respondents.

6. The enquiry officer had found that the charges against the applicant were not proved. From the impugned order of the disciplinary authority, it is clear that it had disagreed with the findings of the enquiry officer. But the proceedings dated 27.9.94 giving reasons for disagreement have been issued by the Director, who, admittedly, is a junior officer to the disciplinary authority who is Joint Secretary. He had considered the findings of the enquiry officer and had recorded certain reasons for disagreement and afforded an opportunity to the applicant to make representation. But under law, it is the disciplinary authority who has to consider the findings of the enquiry officer and if it agrees with the findings of the enquiry officer the final order could be passed on the basis of the findings of the enquiry officer. If it does not agree, disciplinary authority has to record reasons for disagreement and give an opportunity to the charged officer to make his representation, which has to be considered by the disciplinary authority while passing the final order, imposing the penalty. In the present case the impugned order, appears to be erroneous for two reasons, viz. (a) the reasons for disagreement have not been recorded by the disciplinary authority and (ii) it has also not considered the representation made by the applicant in response to the reasons for disagreement. The law is well settled that it was necessary for the disciplinary authority to consider the

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representation of the charged officer and then only come to the conclusion as to the truth or otherwise of the charges.

Otherwise it would be an empty formality.

7. In the view we have taken, we are not going into the merits of the case, as it is for the disciplinary authority to consider whether the findings of the enquiry officer have to be agreed to or not.

8. In the circumstances, the OA succeeds. The impugned order is set aside. The disciplinary authority is directed to consider the enquiry officer's report afresh, in the light of the observations made by us supra and pass final order in accordance with law. This should be done within a period of two months from the date of receipt of a copy of this order.

8. The O.A. is accordingly disposed of. No costs.

(Govindan S. Tampi)
Member (Admnv)
'San.'

Ambyyapanday
(V. Rajagopala Reddy).
Vice-Chairman (J)