

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2422/97

New Delhi: this the 8th day of ~~November~~ December, 2000.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri I.N. Sharma,
S/o Shri K.R. Sharma,
working as SFA (MT) at
Training Institute,
Gurgaon,

R/o 44/B-A, Sadh Nagar-II,
Palam Colony,
New Delhi-45

(By Advocate: Shri B.B. Rawal).

...Applicant.

Versus

1. Union of India
through its
Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House,
Annexe, Shahjahan Road,
New Delhi.

2. Special Secretary,
GOI,
Cabinet Secretariat,
Room No. 7, Bikaner House Annexe,
Shahjahan Road,
New Delhi.

3. Joint Secretary (Pers.),
Cabinet Secretariat,
Room No. 7, Bikaner House Annexe,
Shahjahan Road,
New Delhi

..... Respondents.

(By Advocate: Shri Madhav Panikar).

ORDER

Mr. S.R. Adige, VC (A):

Applicant impugns the Disciplinary Authority's order dated 12.2.97 (Annexure-A Colly.) and the appellate authority's order dated 28.7.97 (Annexure-A Colly.)

2. Applicant was proceeded against departmentally vide chargesheet (Annexure-C) on two counts. Firstly, it was alleged against him that while posted at RRC

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Ghatorni during the period 23.9.91 to 1.9.92 he had been directed on 16.6.92 to report to the Civil Surgeon, RML Hospital, New Delhi for medical exam. on the point whether he could drive a heavy vehicle or not. Applicant submitted to office the original of letter dated 15.6.92 which contained an endorsement that he should avoid driving heavy vehicle, but on enquiry it was found that this endorsement was fraudulently made as no such endorsement was made by doctor of II Medical Exam. of Dr. RML Hospital, New Delhi. Secondly, it was alleged against applicant that during the above mentioned period, while posted at RRC, Ghatorni, he had kept unauthoridely and without permission a Govt. Vehicle outside office premises from 8 p.m. on 15.8.92 to 1 p.m. on 16.8.92 against office instructions and thereby completely disturbed the shift duty schedule of the department.

3. A copy of the Enquiry Officer's report has not been brought on record, but in para 7 of the disciplinary authority's order dated 12.2.97 it is stated that the Enquiry Officer in his report had concluded that Article 1 of the charge, namely fraudulent endorsement regarding medical examination had not been fully proved against applicant. Similarly in para 10 of the disciplinary authority's order dated 12.2.97 it is stated that regarding the second allegation, the Inquiry Officer had concluded that the circumstantial evidence that the vehicle was inside the Hqs' building was slightly preponderant in favour of the applicant.

4. The Disciplinary Authority however disagreed with the IO's findings and in paras 9 and 10 of his

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order held both allegations fully proved and ordered the penalty of reduction to the minimum of time scale of pay of Rs. 975-1600 for a period of 4 years w.e.f. 1.2.97 during which period applicant would not earn increments, but on the expiry of which it would not have the effect of postponing future increments.

5. Applicant's appeal was rejected vide impugned order dated 28.7.97 against which this OA has been filed.

6. We have heard applicant's counsel Shri Raval and respondents' counsel Shri Panikar.

7. The main ground stressed by Shri Raval is that applicant was not permitted to engage a defence assistant to defend him. Shri Panikar has, however, invited our attention to relevant extracts of the disciplinary proceedings where applicant had explicitly stated that he would defend himself. Hence this ground does not have merit.

8. The question then arises whether the Disciplinary Authority was legally required to be given an opportunity of hearing to the applicant before disagreeing with the Enquiry Officer's findings. In this connection, the Hon'ble Supreme Court in State of Rajasthan Vs. MC Saxena (1998 (3) SCC 385) has held as follows:

"The Disciplinary Authority can disagree with the findings arrived at by the enquiring officer and act upon his own conclusion. The only requirement is that the Disciplinary Authority must record reasons for his disagreement with the findings of the Enquiry Officer. If the Disciplinary Authority gives reasons for disagreeing with the findings of the enquiring officer, the court cannot interfere

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16

with those findings unless it come to the conclusion that no reasonable man can come to the said findings. The Disciplinary Authority was therefore well within its powers to award punishment on the basis of findings arrived at by him."

9. However, the ruling in M.C. Saxena's case (supra) which was by a two Judge-Bench of the Hon'ble Supreme Court has been overruled by a 3-Judge Bench of the Hon'ble Supreme Court in Punjab National Bank & Ors. Vs. Kunj Behari Misra (1998) 7 SCC 84 wherein it has been held inter alia:

"When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why any opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officer succeed before the enquiry officer, he is deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and while recording a finding of guilt, imposes punishment on the officer. In any such situation, the charged officer must have an opportunity to represent to the disciplinary authority before final finding on the charges are recorded and punishment imposed."

10. The ruling in the above case has been followed in a recent case namely Y.D. Bagde Vs. State of Maharashtra (1999) 7 SCC 739.

11. In the present case, there can be no doubt that the disciplinary authority disagreed with the findings of enquiry officer and thereupon awarded the penalty.

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17

Applying the aforesaid ruling to the facts and circumstances of the present case, the disciplinary authority should have recorded the reasons for his disagreement in writing and communicated the same to applicant and given him a reasonable opportunity to represent against the reasons for disagreement and should thereafter have disposed of that representation in accordance with rules and instructions before proceeding to award any penalty.

12. In the present case, there are no materials to indicate that the aforesaid procedure which was mandatory, and was in consonance with the principles of natural justice was followed.

13. Respondents' omissions to follow the aforesaid procedure, strike at the root of the proceedings which cannot be legally sustained.

14. In the result, the OA succeeds and is allowed to the extent that the impugned orders of the disciplinary authority and the appellate authority are quashed and set aside. Respondents should restore applicant's pay and allowances along with arrears forthwith as if the punishment had never been imposed. These directions should be implemented within 2 months from the date of receipt of a copy of this order. It will be open to respondents to proceed against applicant departmentally in accordance with law from the stage of communication of the reasons for DA's disagreement with the EO's report. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige

(S. R. ADIGE)
VICE CHAIRMAN (A)

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