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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A.No. 340 of 1997 decided on 27.1.2000

Name of Applicant : Shri R.C.Gupta

By Advocate : Shri M.L.Ohri

Versus

Name of respondent/s Lt. Governor of NCTD & ors

By Advocate : Shri Rajinder Pandita

Corum:

Hon'ble Mr. Justice V.Rajagopala Reddy, Vice Chairman
Hon'ble Mr. R.K.Ahooja, Member (Admnv)

1. To be referred to the reporter - Yes ✓
2. Whether to be circulated to the other Benches of the Tribunal. - No

(V.Rajagopala Reddy)
Vice Chairman

rkv.

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Central Administrative Tribunal, Principal Bench

Original Application No. 340 of 1997

New Delhi, this the 27th day of January, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman(J)
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Shri R.C. Gupta, U.D.C. CDS Bagu Karekhan,
Community Centre, (Directorate of Social
Welfare) R/o 150, Main Bazar, Narela, Delhi-110040 -Applicant

(By Advocate -Shri M.L. Ohri)

Versus

1. Lt. Governor of National Capital Territory of Delhi, 6, Raj Niwas Marg, Delhi-110054
 2. Chief Secretary, National Capital Territory of Delhi, Delhi Admn. Secretariat, 5, Sham Nath Marg, Delhi-110054
 3. The Director, Directorate of Social Welfare, N.C.T. of Delhi, Canning Lane, K.G. Marg, New Delhi-110001.
 4. Shri R.R. Hulkund S/o late Sh. Ramappa Hulkund, Retired Superintendent, Beggar Home I Lampur, R/o House No. 32 III St. Ganj, Gokak Falls, Distt. Belgaum, Karnataka. - Respondents
- (By Advocate - Shri Rajinder Pandita)

O R D E R (Oral)

By Reddy, J. -

The applicant was working as UDC under the Government of NCT Delhi. He was issued a memorandum of charge on 27.4.1989 wherein the following four articles of charge had been levelled against him -

Article I:-

Shri R.C. Gupta is habitual of absenting himself unauthorisedly when leave was refused to him by the Supdt. from 1.2.89 to 28.2.89, he threatened him with dire consequences.

Article II:-

Whenever he absents himself he never bothers to handover keys of store to the supdt or to make any alternative arrangements for supply of ration etc. to inmate.

Article III:-

A shortage of Rs. 1512.13 was detected in the cash chest under his charge.

Article IV:-

A substantial shortage/ excess was detected in stores which was physically verified by the JAO (H.Q.)"

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The applicant denied the charges and thereafter an enquiry had been conducted by the enquiry officer. The enquiry officer examined the witnesses on the side of the prosecution and no witness had been examined by the applicant nor he offered himself as a witness. The enquiry officer, in the consideration of the evidence found that the charges are proved. The disciplinary authority, accepting the findings given by the enquiry officer, passed the impugned order dated 4.4.1996 (Annexure-A-2) ordering the pay of the applicant to be reduced by five stages from Rs.1560/- to Rs.1410/- in the time scale of pay of Rs.1200-2040 for a period of two years with immediate effect. The applicant's appeal has been rejected vide order dated 12.7.1996 (Annexure-A-1). The OA is, therefore, filed challenging the above two orders, Annexures A-1 and A-2.

2. Several contentions have been urged by the counsel for the applicant, Shri Ohri, including that the charge was malafide inasmuch as the allegations levelled against the applicant are untenable and that there was no evidence to establish the charges and that the findings are perverse. He further contends that the enquiry is vitiated as the enquiry officer has not followed sub-rule (18) of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 inasmuch as he has not examined the applicant after evidence of the prosecution has been closed and that this requirement being mandatory in nature, failure of the same vitiated the enquiry.

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3. Learned counsel for respondents, Shri Rajinder Pandita, submits that the enquiry officer's findings are based upon the evidence on record and the same cannot be interfered with by the Tribunal. Shri Pandita further submits that the requirement of examination of the charged official is not a mandatory requirement as the rule itself clearly states that the enquiry officer may examine the charged official. Thus, even if the examination has not been made by the enquiry officer, it would not vitiate the enquiry.

4. We have given careful consideration to the contentions advanced by the learned counsel on either side. We now take the last contention first for consideration. Rule 14(18) *ibid* reads as follows :

"The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him." (emphasis supplied)

The above rule thus clearly enjoins the inquiring authority, when the Government servant has not examined himself, generally to question him on the circumstances appearing against him in the evidence. This rule has been enacted for the purpose of enabling the Government servant to explain the circumstances that are appearing against him in the evidence led by the Government. In the present case, as the charged official has not examined himself as a witness he must have been questioned by the enquiry officer which admittedly has not been done.

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5. The rule 14(18) ibid had come up for discussion in Ministry of Finance and another Vs. S.B.Ramesh, 1998 SCC (L&S) 865 where a decision of Hyderabad Bench of the Tribunal in OA No.27 of 1994 has been approved by the Hon'ble Supreme Court at para 13 of the judgment, which is reproduced below :

"It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal after extracting in full the evidence of SW1, the only witness examined on the side of the prosecution and after extracting also the proceedings of the Enquiry Officer dated 18.6.1991, observed as follows:

'After these proceedings on 18.6.1991 the Enquiry officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18.6.1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18.6.1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/ or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority."

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Again in Smt. R.Bhagya Vs. The Superintendent of Post Offices, Chikmagalour and others, 1998 (1) ATJ 9 a Bangalore Bench of the Tribunal held that it may not be obligatory to examine the charged official when he himself examined as a witness, however, in the absence of the examination of the charged official it was mandatory on the part of the enquiry officer to examine him under Rule 14(18) *ibid*.

6. This is not a case where non-compliance of the mandatory requirement might not vitiate the enquiry as it would not cause any prejudice to the applicant. If the applicant had been examined generally on the evidence led by the prosecution the applicant could have explained the incriminating circumstances and thereafter it was the duty of the enquiry officer to consider the evidence of the prosecution as well as the statement made by the charged official in coming to the conclusion as to the guilt of the applicant. We are, therefore, of the view that the non-compliance of the mandatory requirement did cause a prejudice to the applicant.

7. In view of the judgment of the Tribunal in the case of Smt.R.Bhagya (Supra) and the authoritative pronouncement of the Supreme Court in the case of S.B.Ramesh (supra) we are left with no discretion except to hold that the enquiry was vitiated.

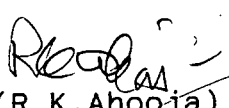
8. In the result the OA is allowed. The impugned orders of the disciplinary authority as well as the appellate authority are quashed. The matter is, however, remanded to the disciplinary authority to conduct fresh enquiry, if he so chooses, from the stage of examining the applicant under Rule 14(18) *ibid* and pass appropriate orders in accordance with law, within a

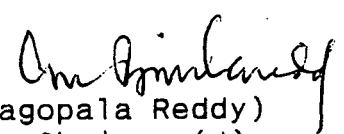
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period of three months from the date of receipt of a copy of this order. The applicant is entitled for all consequential benefits of payment of arrears of pay. No order as to costs.


(R.K. Ahooja)
Member (Admnv)


(V. Rajagopala Reddy)
Vice Chairman(J)

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