

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.759/97

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New Delhi this the 13th day of September, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (ADMNV)

Deva Chand,
S/o late Sh. Tikam Chand,
R/o 31/10, Ashok Nagar,
New Delhi-110018.

...Applicant.

(By Advocate Shri V.K. Garg)

-Versus-

1. Govt. of NCT Delhi through
its Secretary, 5 Shamnath Marg,
Delhi.
2. The Secretary Services,
Govt. of NCT Delhi,
Delhi Government Sectt.
Delhi.
3. Chief Engineer (I&F),
4th Floor, ISBT Building,
Kashmere Gate, Delhi.

...Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant while working as Inspector (Stamp Auditor) in the office of the Food and Supply Department was served with the charge memo, alleging tampering with the official documents for the purpose of allocating excess quantities of wheat and rice to the fair price shops holders. On the basis of a departmental enquiry, the enquiry officer found the charges proved. The disciplinary authority agreeing with the findings of the enquiry officer imposed the penalty of reduction in three stages in the impugned order dated 19.6.96. It was stated that the appeal was filed but it has not been disposed of, hence the applicant brought the OA against the order of the disciplinary authority.

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2. We have heard the learned counsel for the applicant and the respondents. The learned counsel for the applicant contends that the enquiry officer has misconceived the defence of the applicant. He went on the footing that the applicant admitted the charge. But the applicant had denied the charges. Hence, it is argued that the entire enquiry is vitiated.

3. It is also contended by the learned counsel that the applicant was not afforded any opportunity of cross-examining the witnesses and the official witness whom he requested for summoning have not been made available for examination and defence. The circular dated 12.9.89 of FSO has not been scrutinised by the enquiry officer which resulted in the appreciation of the evidence by the enquiry officer.

4. It is lastly contended that applicant's right of being considered for promotion has been denied, though his juniors have been promoted.

5. The respondents contested the arguments. The learned counsel submits that in view of the clear admission made by the applicant, he was rightly awarded the punishment after holding the enquiry in conformity with the rules and the principles of natural justice.

6. We have given careful consideration to the case of the applicant and the contentions advanced by the counsel. The only allegation against the applicant was that he tampered with the orders of allocation of wheat and rice to the fair price shop holders. The applicant admits

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tampering of order, but in his view it was only an amendment of the order which he has made in consultation with his superior FSO, PW-I. It is also his case that under the circular dated 12.9.88 he was permitted to do so in order to meet the demands in the areas. PW-I, however, denied that he was ever consulted by the applicant or that he allowed the amendment of the orders. The main contention of the learned counsel for the applicant is that he was not given any opportunity of cross-examining PW-I. This plea needs to be examined. PW-I was examined in-chief on 21.4.92. Admittedly, there was no cross-examination of PW-I. In his deposition (Annexure XI) he says that "In case where some wheat bags were left over, he would issue specific instructions to the Inspector concerned as to how much wheat bags he had to give extra to FPS holders. But, in this case, Shri Deva Chand had not taken any verbal or written permission from the undersigned and he was authorised to issue 120 bags of wheat only to FPS No.7008. In fact, this figure was interpolated from 120 bags to 140 bags of wheat in the authority letter without the knowledge of the undersigned for the reasons best known to Shri Deva Chand." From this it is clear that the applicant had wilfully interpolated in the authority letter. In the face of this evidence, if the applicant was not given any opportunity of cross-examination the applicant must have brought this to the notice of the the disciplinary authority or any other higher authority. No such complaint appears to have been made by him. In the absence of any such material and as no malafides are attributed against the enquiry officer it is not possible to accept the contention that he was not allowed to cross-examine PW-I. There can be no reason for the enquiry officer not to allow him to cross-examine the

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sole witness in the case. We are not, therefore, persuaded to uphold the contention that the applicant was deprived of his right to cross-examine PW-I.

7. Much stress is laid on the circular dated 12.9.88 issued by the FSO, which reads as under:

"The above allocation will be subject to demand of the areas, if necessary, AI's may adjust the above allocation mutually.

All AIs to note:

1. Shri V.P. Singh
2. Shri Deva Singh
3. Shri M.P. Singh

sd/-
F.S.O. C-28
12.9.1988"

8. It is stated that though this is a listed document, it was not brought on record. We do not, however, find that this circular is of much assistance to the applicant. This does not show that the Inspectors are permitted to tamper with the orders of the FSO. This order is of 1988 and as per the evidence of the FSO specific instructions were issued to the Inspector concerned as to how wheat bags have to be given to the FPS holders in case some wheat bags are left over. He categorically says that the applicant has interpolated the authority letter.

9. In support of the contention that D.N. Sharma, UDC was not summoned, though requested by the applicant, he relies upon Annexure XII, the operative portion of which reads as under:

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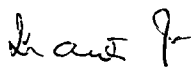
"In connection with the said enquiry Shri D.N. Sharma, the then U.D.C. in Circle 28 Food & Supply Dept. Now U.D.C. South-District Education Dept. (Defence Colony office) can give valuable information/facts. His statement will certainly help the enquiry officer in knowing the full facts.


Therefore, kindly summon Shri D.N. Sharma, U.D.C. to depose before the enquiry officer."

10. This does not show that he required to summon D.N. Sharma to be examined on behalf of the applicant. It only reads as if he asked the enquiry officer to examine him in the enquiry on behalf of the prosecution. But for what reason the enquiry officer thought that this witness was not a necessary witness for the enquiry, we are not aware. From this the enquiry officer cannot be faulted. Only if the applicant wanted to examine the official witness on behalf of the defence then it is necessary for the prosecution to summon him because they are officers of the department. That is not the case here. Much grievance cannot, therefore, be made against the non-examination of Sharma.

11. On the basis of the evidence on record, the enquiry officer has come to a finding which cannot be interfered by us, as it is a finding on facts.

12. What survives is the contention as to promotion. In our view, this question cannot be considered in this OA, as the main issue in this case is as regards the validity of the penalty. If the applicant is aggrieved by his non-promotion he may have to file a separate OA for that specific relief. With this observation the OA is dismissed. No costs.


(Smt. Shanta Shastri)
Member (Admnv)


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

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