

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 972 of 1997

New Delhi, this the 21st day of May, 1999

HON'BLE MR. T.N.BHAT, MEMBER (J)
HON'BLE MR. S.P.BISWAS, MEMBER (A)

Sh. Siyaram Sharma, S/O Sh. Bure Lal
Sharma, Ex-Warder, Central Jail, R/O V.
& P.O. Gajawali, Tehsil Atrauli, Distt.
Aligarh.

--APPLICANT.

(By Advocate: Sh. S.C.Luthra)

Versus

Goyt. of NCT of Delhi - Through

1. Secretary, Home, 5, Shamnath Marg,
Delhi - 110 054.
2. Inspector General of Prisons,
Central Jail, Tihar, New Delhi -
110 064.

--RESPONDENTS.

(By Advocate:- Sh. Vijay Pandita)

ORDER

By Mr. S.P.Biswas, Member (A) -

Applicant, Ex Warder in Central Jail No.II, Tihar New Delhi, is aggrieved by Annexure A-1 and Annexure A-2 orders dated 12.5.1994 and 15.1.1996 respectively. By Annexure A-1, the penalty of compulsory retirement has been imposed on the applicant and by Annexure A-2 order, the applicant's appeal stands rejected by respondent No.1.

2. The background facts relevant for our purpose are as under. The applicant was served with a major penalty charge sheet under rule 14 of the CCS (CCA) Rules, 1965 on the following grounds:-

2
P

(2)

i) That he was unauthorisedly absent for a period of more than six to seven months from 15.12.1990 onwards and thus acted in a manner unbecoming of a Govt. servant and thereby violated CCS (Conduct) Rules, 1964. 18

ii) That while being absent from duty, he entered the Jail No.IV with a T.V. of a prisoner and thereby maintained questionable relations with a prisoner thus, violating norms of Delhi Jail Manual.

iii) He failed to reply to the show cause notice dated 23.11.90 thus disobeying the orders of his seniors.

3. Pursuant to a regularly constituted departmental enquiry, the applicant was awarded with a major penalty punishment of compulsory retirement from services under Rule 11 of CCS (CCA) Rules, 1965 vide orders at Annexure A-1.

4. The applicant has assailed the aforesaid orders of punishment on the ground that since the applicant did not defend his case in the manner he could have, it was incumbent on the part of the Inquiry Officer to question the circumstances that forced him to commit the alleged misconduct. The I.O., therefore, did not comply with the requirements of Rule 14 (18) of CCS (CCS) Rules. Again, since the applicant had submitted a Leave Application to establish that his absence was for reasons of illness and

2

death of a relation which was beyond his control, the initiation of disciplinary proceedings and imposition of penalty of compulsory retirement is unjust and unfair, the applicant could contend. As regards the appellate order as at Annexure A-2, the applicant would argue that the same has been issued without any application of mind. The inquiry has been conducted in the most perfunctory manner. Only one witness was cited and against that two have been examined. The Inquiry Officer has failed to notice that the applicant wanted to join duties on 12.12.1990 but was not allowed to do so. All this would indicate that applicant's case was dealt with by the Inquiry Officer in violation of the principles of natural justice. To place his contention, in this respect, Sh. Luthra, learned counsel for the applicant drew our attention to the orders of this Tribunal in OA 1465/95 decided on 1.12.1998. That was the case where a Railway Official was removed from service and the inquiry was held to be vitiated on account of violation of the principles of natural justice.

5. The respondents have denied the claims. It has been contended that the I.O., in course of the inquiry, had clarified as to how the applicant remained absent unauthorisedly for about seven months. Thereafter, the applicant had sent representation mentioning that he was not allowed to join the duties. If the applicant wanted to join duties, he could have approached the higher authorities even earlier as he did not join till 22.8.1991. The learned counsel for respondents strenuously argued that it is well settled in law that compulsory retirement is not a punishment or stigma and

(4)

that the Courts/Tribunal should not interfere when the same is justified in terms of law. To buttress his contentions, in this respect, learned counsel cited the judgements of the Apex Court in the cases of Brij Mohan Singh Vs. Union of India, 1987 (2) SCC 188 and Inderjit Rajput Vs. Union of India & Ors., 1990 Supp. SCC 796. In M.Raja Mohan Singh Vs. Union of India & Ors., 1977 (1) SLR 23 (SC), the Apex Court held that whether the order of compulsory retirement is in public interest or not, cannot be gone into by the Courts or Tribunal. Again, learned counsel cited the judicial pronouncement of the Apex Court in the case of State of U.P. & Others Vs. Ashok Kumar Singh & Another, (1996) 1 SCC 302, to highlight that absence from duty is a grave misconduct and Tribunal/ Court ought not interfere with the orders of punishment in such cases.

6. We are not required to adjudicate the relative merits of contentions of either parties in the face of the fact that we find a clear illegality on the part of the respondents in dealing with the applicant's appeal against the order of compulsory retirement. The appellate order as at Annexure A-2 mentions the following:-

"Reference his appeal received through Secretary to Minister of Industries, Govt. of N.C.T. of Delhi vide letter dated 1.2.95, Sh. Siya Ram, Warder No. 440, Central Jail, Tihar, New Delhi, is hereby informed that his appeal against the order of Compulsory retirement from service has been considered and rejected."

7. We are satisfied that the aforesaid orders have been issued by respondent No.1 without application of mind and violation of the requirements of Rule 27 (2) of CCS (CCA) Rules, 1965. The relevant provisions of the said rules read as follows:-

"27 (2). In the case of an appeal against an order imposing any of the penalties specific in Rule 11 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider:

- (a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) Whether the findings of the disciplinary authority are warranted by evidence on the record; and
- (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders -

- (i) confirming, enhancing, reducing, or setting aside the penalty, or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any authority with such direction as it may deem fit in the circumstances of the case."

8. Respondents have faulted in not disposing of applicant's appeal in terms of aforesaid provisions of CCS (CCA) Rules, 1965. We find that in the case of R.P.Bhat Vs. Union of India & Ors., A.T.R. 1986 S.C. 149, the impugned order of major penalty was passed by the Director General, Border Roads Organisation and the same was set aside by the Apex Court with the direction that the appeal could be disposed of afresh after

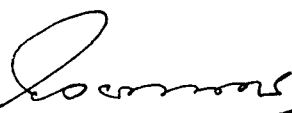
applying mind to the requirements of the Rules under 21
(2) of the COS (CCA) Rules, 1965. We find that the same
situation prevails here.

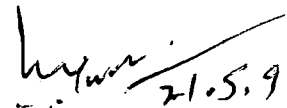
9. In the result, we allow the OA partly with
the following directions.

i) Annexes A-2 orders shall stand quashed.

ii) The matter shall stand remitted to the
respondents to initiate further action
afresh from the stage of appeal as per law.
The applicant shall be informed of the
decision within six weeks from the date of
issue of this order. He will have the
liberty to re-agitate the issue if he has
any case thereafter.

10. There shall be no order as to cost.


(S.P. BISWAS)
MEMBER (A)


(T.N. BHAT)
MEMBER (J)

/SUNIL/