

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. Nos. 3243/92 & 2577/94 decided on 12.7.1999

Name of Applicant : Shri K.C. Brahmachari

By Advocate : Shri V.K. Shali

Versus


Name of respondent/s Union of India & others

By Advocate : Shri Arun Bhardwaj through proxy
counsel Shri Bhaskar Bhardwaj &
Shri B.S. Gupta through proxy counsel Shri S.K. Gupta

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

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


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Applications Nos.3243 of 1992 & 2577 of 1994

New Delhi, this the 12th day of July, 1999

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Mr. N. Sahu, Member(Admnv)

(1) O.A.No.3243 of 1992

Shri K.C.Brahmachari, S/o late Dr. K.K. Brahmachari, presently Superintendent, Govt. Boys Sr. Secondary School, Jangpura, New Delhi.

- APPLICANT

(By Advocate Shri V.K. Shali)

Versus

1. Chief Secretary, Delhi Administration, 5, Shymnath Marg, (Old Secretariat), Delhi

S/Shri

2. R.K. Jaiswal
3. H.R. Sharma
4. H.R. Sapra
5. K.L. Bhatia
6. S.K. Thakkar
7. C.L. Khurana
8. R.K. Gupta
9. Mane Ram Sharma
10. S.C. Jain
11. O.P. Jolly
12. Kartar Singh
13. S.S. Bhalla
14. I.S. Saxena
15. P.N. Khanna
16. Mahesh Chander
17. H.K. Sehgal
18. Prakash Raj
19. J.N. Kichlu
20. Balbir Singh
21. P.P. Johrey
22. Sudershan Lal
23. O.P. Bhatia
24. R.N. Khanna
25. K.C. Katoch
26. V.P. Sharma
27. M.L. Bamby
28. J.C. Sharma
29. Y.P. Barera
30. Pyare Lal
31. B.S. Sharma
32. V.P. Jain
33. Jagdish Chander
34. I.R. Verma
35. R.P. Bararia
36. S.K. Miglani
37. Narain Singh
38. I.L. Soorma
39. L.N. Sharma
40. H.C. Pandey

41. R.S.Kapor
42. Jagdish Kumar
43. Rajinder Singh
44. S.K.Bahel
45. R.C.Gupta
46. M.R.Chauhan
47. U.S.Rawat
48. Anand Kumar
49. J.B.Mathur
51. D.S.Bhasin
52. Surjit Lal
53. C.C.Sharma
54. J.K.Khanna
55. K.P.Singh
56. N.C.Verma
57. D.N.Dhingra
58. M.L.Raina
59. Kishan Chand
60. Dharam Vir
61. D.L.Sharma
62. Sadhu Ram
63. J.P. Chadha
64. K.L.Anand
65. A.L.Khanna
66. Surinder Singh
67. Y.L.Arora
68. S.L.Sharma
69. Jagdish Mittar
70. K.K.Mahajan
71. P.C.Aggarwal
72. M.L.Verma
73. B.B.Mittal
74. I.P.Sharma
75. B.D.Khatri
76. I.P.Sharma
77. M.M.S. Bindra
78. R.N.Tiwari
79. H.L.Dung
80. S.L.Gaur
81. J.S.Sharma
82. R.K.Jain
83. P.K.Jain
84. R.L.Srivastava
85. Suraj Kumar
86. K.D.Verma
87. V.P.Singh (II)
88. O.P.Jacob
89. S.S.Naang
90. J.C.Bakshi
91. O.P.Guliani
92. Balbir Singh
93. B.B.Madan
94. Bimbla Sehgal
95. S.P.Choudhary
96. H.S.Rekhi
97. J.N.Gupta
98. S.D.Bhaskar
99. S.C.Jain
100. S.J.B.Saini
101. S.P.Sehgal
102. O.P.Aggarwal
103. Rampal Verma
104. O.P.Arora
105. S.K.Gupta

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106. M.R.Gupta
107. B.R.Sindhvani
108. A.P.Kataria
109. T.R.Sachdeva
110. P.C.Dewan
111. A.T.Khan
112. Ravinder Nath
113. B.N.Vaid
114. Prakash Chand
115. R.B.Kalra
116. Banarsi Lal
117. A.D.Ahuja
118. Raghubir Singh
119. K.L.Kumar
120. S.S.Gupta
121. S.S.Saxena
122. A.N.Sharma
123. S.C.Anand
124. Purshottam Dev
125. Salim Ahmed
126. B.S.Yadav
127. R.K.Sharma
127. B.M.Sharma

NOTE : All to be served through Chief Secretary, Delhi Administration, 5, Shamnath Marg, Old Secretariat, Delhi.)

- RESPONDENTS

(By Advocate Shri Arun Bhardwaj through proxy counsel Shri Bhaskar Bhardwaj)

(2) O.A.No.2577 of 1994

Shri K. C. Brahmachary, S/olate Dr.K.K. Brahmachary, R/o E-815, Chittranjan Park New Delhi.

- APPLICANT

(By Advocate Shri V.K.Shali)

Versus

1. Chief Secretary, Govt. of National Capital Territory of Delhi, 5, Sham Nath Marg, Delhi - 110 054
2. The Director (Vig), Govt. of National Capital Territory of Delhi, Old Secretariat, Delhi - 110 054
3. The Lt. Governor, Govt. of National Capital Territory of Delhi, Raj Niwas, Civil Lines, Delhi.

-RESPONDENTS

(By Advocate Shri B.S.Gupta through proxy counsel Shri S.K.Gupta)

Common O R D E R

By Mr. N.Sahu, Member(Admnv)

The first OA is directed against the non-promotion of the applicant and the second one (2577/94) is directed against the major penalty of reduction in two lower stages in the time scale of pay of the applicant for a period of two years by an order dated 12.6.1991 which was served on him exactly after two years on 22.6.1993. If the applicant succeeds in the second OA he prays for consideration of promotion in the first OA. We, will therefore, first dispose of OA 2577/1994.

2. The background facts leading to the imposition of the impugned penalty are briefly as follows - in the year 1982-83 the applicant while functioning as Assistant Sales Tax Officer, Ward-22 of Sales Tax Department, New Delhi, had allowed amendment of Registration Certificate in respect of two firms of East Patel Nagar, New Delhi under Section 19 of the Delhi Sales Tax Act and the rules framed thereunder. He, relied on a circular no.29 which permitted an amendment of the registration certificate without spot verification; if the application had been pending for a long time. These applications were pending from 1976 and 1978 in the case of both the firms. A charge sheet was issued to the applicant on 14.10.1987. This charge sheet was received by the applicant on 17.11.1987. The charges framed against the applicant were besides allowing additional items in the registration certificate to M/s International Trade Link - a non-functional

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dealer and also similar permission to another firm M/s Pragati Auto Private Limited; also included the following charge -

"That Shri K.C. Brahamchari, while functioning as Asstt. Sales Tax Officer in Ward-22 of Sales Tax Deptt., New Delhi committed misconduct, gross negligence and dereliction of duty by showing favour to a bogus/ non-functioning dealer namely M/s Wings Motor Co., T-193, Baljit Nagar, New Delhi in the matter of issuance of statutory forms (400 ST-I forms and 219-'C' forms) on six occasions between 29.5.82 to 26.3.83 inspite of the adverse report dated 8.9.81 of the ward inspector about the nonfunctioning of the said dealer and thus by doing so, Shri K.C. Brahamchari, ASTO failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Govt. servant and thus violated Sub-Rule I of Rule 3 of the C.C.S. (Conduct) Rules, 1964.

3. After the charge sheet was issued an enquiry officer was appointed on 18.3.1988. The Commissioner for Departmental Inquiries by his report dated 31.5.1988 (Annexure-A-8) has held that the charges were not proved. The findings of the enquiry officer were as under -

"The CO had passed orders amending this in Ex. S-13 on 25/9/82 and 17/8/82 respectively. It is thus seen that a gap of about 6 years had elapsed between the first application of the party, and Ex. S-13 (RC dt. 25/9/82), in which the CO had amended this, and a gap of about 4 years between the second application dt. 22/5/78 (Ex. S-10) and Ex. S-13 (RC dt. 17/8/82). In fact, after the application, 3 assessments had been passed, it is assumed that the firm had carried out its business in accordance with the registration. The case of the prosecution depends on Ex. S-11. The relevant portion reads :-

"I, therefore, cancel the above said registration certificate of the dealer w.e.f. 26/11/85 under section 20(1)(a) of the Act. The dealer is directed to surrender unused ST-1 forms, original registration certificate and also to render

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account of ST-1 forms issued to him within 7 days of the receipt of this order."

What is more astounding is that this document is dated 28/11/85 while the alleged transactions of the CO are said to have taken place in 1982. Thus, to hold the CO responsible for allowing amendment to the firm on 25-9-82 because the licence of this firm was cancelled, subsequently on 28/11/85 is ludicrous. By no stretch of imagination could the CO be held responsible for some subsequent event.

"*****"

So, whatever, the CO did, was done within the framework of Law and in compliance with the orders of the Commissioner contained in Circular No. 29. In the event, this charge was not established against the CO.

"*****"

The CO further states that under Section 19(2)B of the Delhi Sales Tax Act, it was mandatory on the part of the assessing authority to dispose off an application within 90 days of application, and the dealer was under an obligation to submit an application for the addition of items, or any other amendment, in the Registration Certificate within 30 days. So, whatever, the CO did, was done within the framework of Law and in compliance of the orders of the Commissioner, Sales Tax in Ex. S-8. The PO in his brief harps on the alleged loss of revenue to the Delhi Admn. There is no mention of any loss of revenue either in the chargesheet or in the imputations. How the PO thought it fit to include this in his brief, apparently in an effort to pad up a hopeless situation, defies logio."

6.15 Nowhere had it been mentioned that a firm cannot diversify its business to another line. For instance, you see a Paanwala selling cough drops and by any stretch of imagination, cough drops cannot be said to be in the same line of business as Paan. In this case, assessment had been completed by the CO's predecessor and the CO obviously, and quite rightly, went by that assessment in allowing the amendment to be included. An abnormal delay was involved in this during the period of CO's predecessor. The chargesheet has not only been carelessly drafted, it has been drafted without due attention to the prosecution documents themselves. In the event, this charge also stands not established."

The Commissioner of Inquiries in May, 1988 held in a long report that none of the charges was proved.

4. This matter was reviewed by the Directorate of Vigilance and a memorandum dated 30.1.1991 was issued. The disciplinary authority felt that even though guidelines existed yet the applicant should not have dispensed with spot verification because the guidelines said that verification could be dispensed with where deemed necessary. The charge against the applicant was that he did not apply his mind. He should not have allowed the assessment to be passed when items totally different from the primary business of the dealer was allowed a go by. According to the disciplinary authority spot verification was crucial and dispensing with the same led to undue benefit to the firm in question.

5. Para 4 of the order of Directorate of Vigilance dated 12.6.1991 (Annexure-A-1), reproduced below, is what all we have in the pleadings about his reasons :

"AND WHEREAS the undersigned has examined the enquiry report conducted by the I.O. and observed that items not included in the registration certificate distinctly different from the usual line of firm's business may have been allowed only after spot verification report. It is pointed out that orders existing for disposal of pending application without spot verification as far as possible are to be seen as guidelines and perusal of orders shows that these definitely do not provide for dispensing with the spot verification. The order clearly lays down that the verification can be dispensed with where deemed necessary. The C.O. is supposed to apply his mind according to the particular case before him. In the particular case referred to in the charge

sheet, it was observed that the assessments passed in respect of these firms were irregular in that items not included in the registration certificate had been passed and in respect of Article-III items not included in the Registration Certificate were included in the registration certificate at a later stage, which were totally different from the primary business of the dealer."

6. The applicant had given an elaborate representation contesting each and every finding proposed in the letter dated 30.1.1991. His case was that the alleged charges did not constitute misconduct. By an order dated 12.6.1991 (Annexure-A-1) the applicant was imposed the major penalty of reduction to two lower stages in the applicant's time scale of pay, for a period of two years with the direction that this reduction will not have the effect of postponing the future increments of his pay. The applicant received this communication after two years namely on 22.6.1993. He filed an appeal before the Lt. Governor, National Capital Territory of Delhi on 19.7.1993 (Annexure-A-2) within a month of receipt of the penalty order. His grievance is that his appeal-petition has not been disposed of although a direction was given by this Tribunal to the respondents that the appeal should be disposed of expeditiously. This order was dated 14.5.1998 passed in OA 3243/92 in the following terms :-

"Applicant had since retired on superannuation and in the interest of justice therefore we call upon respondents to dispose of applicant's appeal petition by detailed, speaking and reasoned order in accordance with rules and instructions within three months from the date of receipt of a copy of this order."

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Thereafter if any grievance still remains it will be open to applicant to assail the appellate order if so advised by amending the present OA"

7. It is stated that the appeal was not disposed of. The applicant's counsel submitted that under Circular No.29 issued by the Commissioner of Sales Tax the amendments in the Registration Certificate could be allowed especially because they were pending for such a long time without spot verification. The charge unfortunately is that he ought to have conducted spot verification. The applicant, in our view, legitimately asks : Should an officer be held guilty for obeying the instructions? Secondly, in the instant case both the applications for amendment of form were pending for more than four and six years respectively. Third. There was no allegation, much less evidence that the amendment was carried on with an ulterior motive. As the assessments were already done by his predecessors, allowing the applications was a fait accompli. The applicant might be wrong in his judgment but error in judgment could not constitute misconduct. The counsel relied on - (i) Union of India Vs. J.Ahmed, (1979) 2 SCC 286, (ii) State of Punjab Vs. Ram Singh, 1992 (4) SCALE 54. The second ground of the applicant is delay. The applications for amendment were pending from 1976-78. They were allowed. The first charge-sheet was issued after a lapse of more than 5 years on 14.10.1982. The Inquiry Officer gave his report on 21.5.1988. The punishment was imposed in 1991 after a lapse of more

than 3 years. It was communicated after a lapse of two more years in 1993. The appeal is still not disposed of.

8. The most important ground raised by the applicant relates to violation of Rule 15 of the Central Civil Services (Classification, Control & Appeal) Rules. Rule 15(2) states as under -

"The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence record is sufficient for the purpose."

(emphasis supplied)

9. We are satisfied that there is no record of reasons for disagreement with the findings of the enquiry officer. The Supreme Court has held in a number of cases that the conclusion arrived at must have an organic and causal relationship with the facts. In the present case it was the bounden duty of the disciplinary authority to apply its mind and meet what looks to us the well-documented reasons that led the enquiry officer to hold that the charges were not proved and thereafter record his reasons as to why he disagreed with such a finding. After that the disciplinary authority must be in a position to evaluate the existing evidence on record and come to the conclusion that such evidence is adequate for returning a finding of guilt. Under Rule 15(3) the advice of the Central Vigilance Commission (in short "CVC") should have been obtained. In fact in reply to para 4.5 of the OA the respondents did not give any categorical reply. They have not furnished a

copy of the CVC report to the applicant. In view of the decision of the Hon'ble Supreme Court in State Bank of India Vs. D.C. Agarwal, 1993 SCC (L&S) 109 the order of penalty suffers from a grave infirmity due to non-supply of report of CVC, in spite of specific request by the applicant. Coming to violation of Rule 15, we have already extracted some of the observations & findings of the Commissioner of Departmental Inquiries above Charges II & III. His findings on charge-I is as under :-

"6.3. The report of the Inspector appears to have been in the nature of an intermediate report. He had found the premises locked and could not, thereby, inspect the premises and, he had mentioned that he would come again. This indicates that he had no reason at that stage to conclude that the party was not functioning. Moreover, it is seen that the CO had issued these forms in the year 1982-83. There was not a single adverse report submitted by the Ward Inspector during this period. In 1982-83, the assessment of the firm was completed by another assessing authority and not by the CO in the last week of March 1983. The firm had also filed quarterly returns, paid its dues regularly and had responded to the assessment notices received from the registered place of business. This leads to the conclusion that the party was indeed functioning in 1982-83, and that there was no adverse report against this firm during that period. The report of the Inspector in Ex.S-5, being only in the nature of an interim report, cannot be taken as an adverse report, and, in any case, if the firm was not carrying out its business, it was the duty of the Ward Inspector, SW-1, to issue a notice asking the party to show cause why their registration ought not to be cancelled. The prosecution has not brought anything on record to show that this was done. As such, it is held that the party was carrying on its business during the period in question and the action of the CO in issuing statutory forms was in order. In the event, this charge is held not established."

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10. What Rule 15 enjoins on the disciplinary authority is application of his own mind to the findings of the enquiry officer. The Hon'ble Supreme Court in the case of Mahavir Prasad Vs. State of U.P., AIR 1970 SC 1302 observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The disciplinary authority had gone on hypothetical reasoning, arrived at hypothetical conclusion and had never applied his mind to the evidence brought on record and to the reasons recorded by the enquiry officer in coming to his conclusion. Any a priori inference unrelated to facts is totally impermissible. The disciplinary authority has not been able to meet a single reasoning or finding of the inquiring authority. We are, therefore, of the view that the disciplinary authority had violated the provisions of Rule 15(2) and his disagreement was not on the basis of the merit of the case.

11. There is an element of carelessness, callousness and a sense of indifference in dealing with the applicant's case. The sequence shows that the applications were given for change of licence in 1976-78. It was not disposed of for years together. Several assessments had been made. These assessments were not done by the applicant himself. When, therefore, he disposed of pending applications, he only followed the instructions and disposed of the

same. What then is the material to hold him guilty? We find that the guilt returned by the disciplinary authority is based on no evidence whatsoever.

12. In the case of Kuldeep Singh Vs. Commissioner of Police and others, (1999) 2 SCC 10 the Apex Court held that finding of guilty of the disciplinary authority can be interfered with if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of superior authority. "If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it the order would be perverse". We find that no case of misconduct was made out. There was no evidence to support the finding of any of the charges and that Rule 15(3) *ibid* was violated.

13. As regards delay, as the sequence of event recorded earlier shows that the delay is unconscionable. In State of Andhra Pradesh Vs. N. Radhakishan, 1998(1) SCSLJ 631 it was held that a Government servant has a right that disciplinary proceedings against him are expeditiously concluded so that he will be saved the mental agony and the monetary loss. "Delay causes prejudice to the charged officer unless it can be shown that he is to blame for delay". In this case no justification has been given for the delay. The alleged offence was in 1982 and the penalty order was communicated in 1993. The delay is entirely due to the negligence and

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carelessness of the disciplinary authority. On this ground alone the penalty order is liable to be cancelled. Further order of penalty is liable to be cancelled on the ground that the appellate authority having not disposed of his statutory appeal he has been deprived of the right of being heard and thus the elementary principles of natural justice has been violated in this case. What can a subject do if such senior authorities like the Lt. Governor of Delhi entrusted with the right of disposing of an appeal fails to do so in spite of an order of the Tribunal to this effect? The applicant is deprived of justice by the denial of his right of being heard and, therefore, the principles of natural justice have been infringed. The penalty order deserves to be quashed.

14. To sum up, the order of penalty is quashed as it is a case of no evidence; as compliance with Rule 15(2) is only formal without application of mind; as there is a delay in the disposal of proceedings; as principles of natural justice have been violated; and what is more there is an attitude of indifference on the part of the respondents totally inimical to the very concept of rule of law. There is no rational explanation as to why when the enquiry officer submitted his report in May, 1988, till Sept. 1991 for 30 months kept this in cold storage and no explanation as to why for the last 6 years the appeal has not been disposed of.

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15. The applicant's allegation of delay in communication of the order of penalty by two years is rebutted by the respondents by saying that there was a stay order given by this Tribunal in OA No.2473/91. The order of the CAT dated 19.4.1993 passed by this Tribunal disposing of OA 2473/91 is as under :-

"The applicant in this case was working as Assistant Sales Tax Officer. He was given a charge memo. An inquiry has been held and a show cause notice was issued to him on 30.1.1991. He gave a reply to the show cause notice raising various issues including the competency of the officer who issued the show cause notice. The disciplinary authority has yet to pass an order on the findings of the inquiry officer, after taking into consideration the representation filed by the applicant. Thereafter he will have the remedy of filing an appeal, if he is aggrieved by the order of the disciplinary authority. The application, therefore, at present is pre-mature. The ex parte interim order was granted to the applicant on 25.10.1991 by which the respondents were directed not to proceed on the memorandum dated 30.1.1991."

Here again the respondents did not come clean before the Tribunal. By the time the stay order was passed on 25.10.1991 not to proceed with the memorandum dated 30.1.1991 the respondents had already passed the penalty order dated 12.6.1991, making the stay order look superfluous. Unfortunately, they did not place the full facts before the Tribunal.

16. In OA no. 3243/92 the relief prayed for by the applicant is to promote him in the cadre of DANICS from the day his juniors were promoted to the post of DANICS and to fix his seniority and pay consequential monetary benefits. Promotion is not a matter of right. We will only dispose of this OA by

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giving a direction to respondent no.1 Chief Secretary, Delhi Administration to constitute a review DPC at the stage at which the applicant was due for promotion within a period of 12 weeks from the date of receipt of a copy of this order. The review DPC should consider his fitness for promotion from the date his juniors were promoted. If he is found fit for promotion, his prayer for seniority and consequential monetary benefits shall also be considered and communicated in the same order within four weeks from the date of the meeting of the review DPC.

17. In the result OA No. 2577/94 is allowed and the order of penalty is set aside. Accordingly, the OA No. 3243/92 is also disposed of with a direction to the respondents to pass suitable consequential orders if the review DPC clears him for promotion relating to pay and allowances in accordance with the rules within a period of twelve weeks from the date of receipt of a copy of this order. If the review DPC does not clear him for promotion, then the consequential order becomes simpler. In the circumstances of the case a cost of Rs.1,000/- (Rs. One thousand only) is awarded in favour of the applicant payable by respondent **no.1.**

N. Sahu
(N. Sahu)
Member (Admnv)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)