

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

RA No. 97/96

in

O.A. No. 1229/95

New Delhi this the 2nd day of July, 96

Hon'ble Shri A.V. Haridasan, Vice Chairman(J).

Hon'ble Shri R.K. Ahooja, Member(A).

J.C. Bhandari

..Applicant.

By Advocate Shri B.T. Kaul.

Versus

Union of India & Ors.

..Respondents.

ORDER (By circulation)

Hon'ble Shri R.K. Ahooja, Member(A).

This application is directed against the order of this Tribunal dated the 7th May, 1996 in O.A. 1229/95 whereby finding no merit in the application the same was dismissed. The applicant's case before the Tribunal was that he had been issued a charge-sheet on 21.9.1994 in regard to the certain purchases made by him during the year 1989-90. He denied the charges and his request was placed before the Minister (Surface Transport). The latter finally came to the conclusion that the charge-sheet had been issued to harass the applicant when he was due for promotion and there was no need to pursue the case and the same may be closed. The petitioner's further case was that because of this order dated 11.11.1994, the disciplinary proceedings came to an end on that date and the chargesheet did not survive thereafter. Despite this, the respondents

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wrongly resorted to a sealed cover procedure in the DPC held on 10.1.1995. In the impugned order, the Tribunal considered as to whether a decision taken by the Minister on file tantamounted to a final order of the disciplinary authority. It was held that the test of finality of the order was whether or not such an order on file could be changed by the Minister. On the basis of this test, since no formal order, duly authenticated, to convey the Minister's decision had been issued, the contention of the applicant regarding the disciplinary proceedings having come to an end was rejected.

2. In the review application, the main contention is that the Tribunal did not take into account the ratio of two orders, one by a coordinate Bench of this Tribunal and other by the Hon'ble Supreme Court, ~~the ratio of~~ which had a close bearing on the issues arising in the O.A. The main contention of the applicant is ^{that} / a grave error was committed by the Tribunal in ignoring the judicial interpretation Rule 17 of of / the CCS(CCA) Rules in Balloo Singh Vs. Union of India, 1991 (18) ATC 848, decided by the Jabalpur Bench of the Tribunal, on 15.5.1989. In that case, the disciplinary authority had initially disagreed with the findings of the Inquiry Officer and come to the conclusion that the charges had not been established, but after sometime he reviewed his own order and ordered a de-novo inquiry behind the

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back of the petitioner. As quoted by the applicant in para 3 of his review application, the Bench concluded as follows:

"Although, the Disciplinary Authority's two orders are passed on the note sheets of a file but these cannot be treated to be merely executive orders as departmental enquiry proceedings are quasi-judicial in character and actually the orders should have been passed separately by the Disciplinary Authority publicly with the due communication and notice to the applicant. The Disciplinary Authority had no powers to change his earlier order of June 6, 1984, unilaterally behind the back of the petitioner, without notice to the applicant particularly when his earlier decision was favourable to the petitioner".

3. The claim of the applicant is that he had submitted before this Bench that the ratio of Balloo Singh's case squarely applied to this case. The applicant now submits that the Tribunal fell into an error by altogether ignoring the ratio of this case which it was required to follow or it was required to refer in case of disagreement to a Larger Bench. The applicant is correct in saying that Balloo Singh's case was mentioned by him and relied upon in the course of his arguments. However, we did not find that this case had a bearing on the issue before us since the facts and circumstances of the two cases were different. A perusal of the order of the Jabalpur Bench in Balloo Singh's case would show that there was no mention of any requirement regarding consultation with the Central Vigilance Commission or any other authorities before a final order could be passed by the disciplinary authority.

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This, as mentioned in the impugned order in para 5, was a requirement which had to be met by the Minister as the delegatee of the President in exercise of the powers of the President as a disciplinary authority. Thus, whereas in Balloo Singh's case, the powers of the disciplinary authority were unfettered, the situation was different in this case where the disciplinary authority was required to consult another authority before coming to a final decision. It was for this reason that Balloo Singh's case was not considered relevant.

4. The applicant also states that the Tribunal did not take into account the ratio of the decision of the Hon'ble Supreme Court in DDA Vs. H.C. Khurana, 1993(3) SCC 196. In fact, this has been mentioned in the impugned order in para 3 on page 6. In this case, the Hon'ble Supreme Court had held that when a decision had been taken to initiate disciplinary proceedings and the chargesheet issued to the government servant, then the knowledge of the same on the part of the government servant, through service of the chargesheet, may not be a precondition for following the sealed cover procedure. It needed no elaboration on the part of the Tribunal that the facts in the present application were different since no proper order had been issued, unlike in the case of DDA Vs. H.C. Khurana (Supra) where the chargesheet had been issued, but it had not come to the knowledge of the delinquent official. In case the order of the Minister in the present case

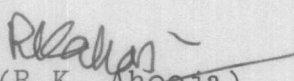
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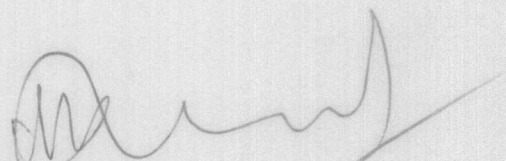
had been followed by issue of a formal order, the same would have sufficed in so far as the matter related to the sealed cover procedure irrespective of whether the same order had reached or/communicated to the applicant.

5. Having given careful consideration to the points raised by the applicant in the review application, we find no cause or reason to change our conclusion, as expressed in the impugned order. The applicant may well have good reasons to consider that his interpretation/ legal position and the facts of the case is correct and that those of the Tribunal as expressed in the impugned order, are misguided.

However, the cure for the same does not lie in the review application and he has to seek his remedy, if so advised, in a different forum by way of an appeal. On our part, as we find no error or deficiency as claimed by the applicant, we dismiss the review application.


(R.K. Ahooja)
Member(A) 2/2/96

'SRD'


(A.V. Haridasan)
Vice Chairman(J)