

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A.NO. 1705/94

(9)

DATE OF DECISION: 27.7.95

Shri S.C. Roy

Vs.

Union of India & ors.

CORAM: Hon'ble Shri J.P. Sharma, Member (J)  
Hon'ble Shri B.K. Singh, Member (A)

Counsel for Applicant Shri/ ~~Mr.~~ A.K. Bhardwaj

Counsel for Respondent Shri/ ~~Mr.~~ B. Lall

1. Whether to be referred to the Reporter? *Y*
2. whether Reporters of Local Newspapers may be allowed to see the judgement? *A*
3. Whether their Lordships wish to see the fair copy of the Judgement? *X*
4. Whether to be circulated to other Benches? *C*

*B*  
(B.K. SINGH)  
MEMBER (A)

*J.P.S.*  
(J.P. SHARMA)  
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1705/94

New Delhi, this the 27th day of July, 1995.

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

S.C. Roy,  
r/o F-17, Palika Niwas,  
N.D.M.C. Flats,  
Lodhi Colony,  
New Delhi.

... Applicant

By Advocate: Shri A.K. Bhardwaj

Vs.

1. Union of India  
through the  
Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.

2. The Director(Vigilance),  
Ministry of Home Affairs ,  
North Block, New Delhi.

3. The Deputy Secretary,  
Rehabilitation Division,  
Department of Internal Security,  
Jaisalmer House,  
Man Singh Road,  
New Delhi.

4. The Under Secretary,  
Rehabilitation Division,  
Department of Internal Security,  
Jaisalmer House,  
Man Singh Road,  
New Delhi.

... Respondents

By Advocate: Shri B. Lall

ORDER (ORAL)

Hon'ble Shri J.P. Sharma, Member(J)

The applicant joined as a Lower Division

Clerk in 1972 and was subsequently confirmed in the

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Central Secretariat Clerical Services w.e.f. 1.4.77.

He was working in the Department of Rehabilitation in the cadre of Ministry of Labour and Rehabilitation.

This Department is subsequently merged in the Ministry of Home Affairs in July, 1992. On the fateful day

in November, 1978, it is alleged that he was involved

in a theft of 3 typewriters belonging to the

Settlement Wing of the department as a result of which a FIR u/s 380/411 IPC was registered against

him at P.S. Tilak Marg and a criminal proceedings

was initiated against him. However, before the

conclusion of this criminal trial, the disciplinary

departmental proceedings for major penalty ended in

removal from service was also commenced serving

the memo. of charge dated 26.11.81 on the applic-

ant and the charge against the applicant has

been that in the month of November, 1978 he

committed grave misconduct inasmuch as he has

stolen 3 typewriters belonging to the Settlement

Wing of the Department on the night of 7.11.78

and was caught by the Central Security staff

posted at Jaisalmer House, New Delhi as such

displayed lack of integrity devotion to duty and

conduct unbecoming of a Govt. servant violating

the provisions of Rule 3(1)(i), 3(1)(ii) and

3(1)(iii) of the Central Civil Services (Conduct)

J

(2)

Rules, 1964. Alongwith aforesaid articles of charge, the statement of imputations of misconduct or misbehaviour alongwith relied upon documentary and oral evidence accompanying the annexures III and IV were also served upon the applicant.

The Inquiry Officer conducted the enquiry in which the applicant also joined and the witnesses on behalf of administration Shri Sidhu Prasad, PW1, P.R. Ahir, PW2, Vijay Pal, PW3, Ghumman Singh, PW4, Ramphal, PW5, Raghbir Singh, PW6, Dayal Singh, PW7 and Buta Singh, PW8 were examined. The applicant also examined one defence witness Shri Khushi Ram. The Inquiry Officer after appreciating the evidence and rival contention on the basis of oral and documentary evidence submitted the report to the disciplinary authority and Shri N. Radhakrishnan, Deputy Secretary to the Govt. of India agreeing with the report of the Inquiry Officer, Shri M.K. Kensal, Under Secretary passed the order imposing the penalty of removal from service. This order was passed on 6.4.84. The applicant did not prefer any appeal as provided under

(3)

CCS(CCA) Rules, 1965. In the meantime, the criminal case lodged as said above continued and Metropolitan Magistrate by the judgement and order dated 20.8.86 acquitted the applicant of the charge u/s 360/411 IPC. It appears that when the applicant was apprehended in this criminal case, he also made certain disclosures of having committed theft earlier of the typewriters and those typewriters were sold to M/s. Universal Typewriting Company, Kamla Market, New Delhi. On the basis of disclosure made by the applicant, a FIR was lodged u/s 414 of the IPC against the applicant and he was put on trial before the criminal court and the learned Magistrate had convicted the applicant and given the benefit of probation for one year for keeping his good conduct subject to his furnishing a personal bond in the sum of Rs.3000/- with one surety in the like amount. Against this conviction, the applicant filed a criminal appeal No.125/88 before the Sessions

(X)

Court on the basis of certain discrepancies in the

evidence allowed the appeal quashing the conviction

referred to above u/s 414 IPC by the order dated

23.12.89. It appears thereafter the applicant for

the first time made the representation on 23.9.92

for reviewing his case for reinstatement with full

back benefits in the service. This representation

was rejected by the impugned order dated 30.7.93.

Thereafter, the applicant filed this D.A. on 24.8.94

praying for the grant of the relief that the aforesaid

order dated 30.7.93 be quashed as well as the order

of punishment dated 6.4.94 directing the respondents

to reinstate in service with all consequential benefits

with back wages and seniority etc.

On notice, the respondents contested this

application and filed a reply stating the facts already

referred to above and further that the applicant

did not prefer an appeal against the order of

punishment dated 6.4.84 which has become final

and this present application is hopelessly barred

by time, delay and laches. The applicant was given

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due opportunity in the departmental enquiry and the Inquiry Officer on the analysis of the evidence produced before him submitted the report of the disciplinary enquiry to the disciplinary authority who passed the impugned order dated 6.4.84 against the applicant that he is not a fit person to be retained in Govt. service and that he be removed from the service forthwith. Alongwith counter certain annexures have also been annexed to substantiate the fact stated in the counter.

The applicant has also filed rejoinder reiterating the facts already stated in the G.A. It is stated by the learned counsel that it is averred in the rejoinder that the applicant made a representation in 1992 awaiting the result of the criminal trial and as such he did not prefer statutory appeal as provided under rule 23 of the CCS (CCA) Rules, 1965. He has also referred to certain violation rule 133 of P&T Manual, Vol. III issued by the Govt. of India. It is said in the rejoinder that

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the relief prayed for in the C.A. be allowed.

We heard the learned counsel Shri A.K.

Bhardwaj for the applicant on an earlier occasion

in quite detail and reserved the case for judge-

ment. However, while going through the file,

we find that the applicant should be re-heard

on certain material points and so the case was

listed for rehearing and the hearing concluded

today.

The first contention of the learned counsel is that the charge as framed by the disciplinary authority is not in the same manner as established by the finding of the Inquiry Officer in the impugned report. The second contention is at one point of time the Deputy Secretary Shri P.R. Ahir has exercised the power of disciplinary authority and that one cannot be a judge of his own cause so the whole of the enquiry is vitiated. Thirdly, it is pointed out that since the applicant has been acquitted by the criminal court and the department in the meantime held disciplinary departmental enquiry, so after

X

acquittal the order passed by the disciplinary

authority has to be reviewed and the applicant

is to be reinstated. Lastly, it has been pointed

out that the Inquiry Officer did not examine the

applicant under the provisions of sub clause 18

of rule 14 of the CCS(CCA) Rules, 1965 as a result

of which the procedure prescribed has been

violated and the applicant is entitled to the

benefit of the same.

The learned counsel has also placed reliance

on a decision of Cuttack Bench and also filed

a copy of the judgement which is reported in

ATR 1988(1) CAT 65 - Mrs. P. Bhagyalaxmi Vs.

UDI and ors. which was a case u/s 494/109 IPC

where the Tribunal has considered disciplinary

departmental enquiry and observed that even in

the departmental inquiry satisfactory evidence

must be placed to conclusively come to a finding

that the charge has been brought home against the

delinquent officer.

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Firstly we find that the present application is hopeless, barred by time and also that the applicant did not exhaust departmental remedy provided therein.

The order of imposing penalty of removal from service is dated 6.4.84 and an appeal against that order should have been preferred within a period of 45 days but that has not been done. Even if the contention of the applicant's counsel is wholly relied upon, the acquittal in the criminal case came in August, 1986 even then no judicial review or an administrative order on the appellate side was sought. The fact that the applicant thereafter tried in another criminal case is totally irrelevant for the purpose of this enquiry. In that case which has arisen out of certain statements made by the applicant while arrested on 7.11.78 and FIR u/s 414 IPC was registered.

The present enquiry is with respect to the sealing of typewriters on 7.11.78. The earlier occasion appears to be of selling the typewriters sometime in June, 1978 much earlier to the present incident.

(a)

Thus, the applicant has totally failed either on his moral conviction or lack of relevant rules in preferring an appeal departmentally as envisaged under the service rules. In any case though the application is hopeless only barred by time and the learned counsel has also referred to the authority of Gyanendra Prasad Misra Vs. UOI reported in SLD 1995(1) CAT 57-58, Allahabad Bench. The facts of this case are totally different. However, we have heard the learned counsel on earlier occasions and even today so we are disposing of this application on merits even though the application is barred by time.

Regarding the first contention of the applicant, the charge is unambiguous, clear and to the point. The three typewriters were stolen is not disputed. The applicant was arrested on the same day about about 8.30 P.M. near the office premises while passing through the muddy lane coming to Shahjahan Road by Central Security staff in front of 7, Nan Singh Road

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and one of the associate was however able to escape.

Immediately after arrest, the higher officers as well as police force arrived and the applicant remained in the custody of the police. In order to establish this fact, the Inquiry Officer has examined as many as 8 witnesses produced by the administration.

The finding attacked by the learned counsel is that though the Inquiry Officer has created doubt regarding the immediate arrest of the applicant with typewriters but in concluding with inference the Inquiry Officer has held that the charge of theft against the applicant is proved. The learned

counsel therefore pointed out that this is the contradictory report. However, it is not so.

The theory of immediate arrest has been doubted by the Inquiry Officer shows the fairness he has dealt with the matter he has come to a conclusion, on the basis of 8 witnesses examined particularly Vijay Pai, Security Guard on duty and Rambahal Singh, Shri Sidhu pressed, Asstt. was on duty in the night and the matter was reported by him immediately to the higher authority.

Human agency may be faulty in expressing picturisation of actual incident but the circumstances cannot fail.

The presence of the applicant at odd hours near the office premises and immediate arrest and is not moving the higher authorities that he has been wrongfully implicated in a criminal case go to show that the inference drawn by the Inquiry Officer cannot be perverse. The learned counsel for applicant, however, asserted that the applicant to was to go meet someone but if that too is taken into account, retaining himself in the office premises, coming to Shahjahan Road from the office which is just behind the office in the Jaismalmer House behind UPSC office, and that too going in surreptitious manner through the muddy lane in the winter season of November, 1978 creates doubt on bonafide of the applicant projected by the learned counsel. In view of this, the finding of the Inquiry Officer on this count cannot be interfered with. The charge is clear unambiguous as said above.

(23)

The next contention of the learned counsel is

regarding the acquittal from the criminal case.

The criminal case was on the basis of evidence

which should be beyond doubt, while in the departmental

enquiry the findings are based on the preponderance of

evidence. In the criminal case the inference cannot

be drawn while in the departmental enquiry

from the proved facts, the inference can be drawn,

those inference can be taken into account in

arriving whether the charge levelled against the

delinquent is established. Beyond doubt is a must

in criminal case while it is not so in the

departmental enquiry. Res gesta is a good piece

of evidence which goes to show that things

which occur immediately at the time of occurrence

or thereafter give a live to the investigation

as well as to the nexus with the

crime. In this case, it is misconduct which is

alleged against the applicant. So surrounding

circumstances is his arrest and ultimate

registration of criminal case against the applicant

are ample evidence to show that in the criminal

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trial minor details were not gone into. The law has been laid down by the Hon'ble Supreme Court in the case of Nelson Motis Vs. UOI & ors reported in 1993 ATC Vol.23 page 382 where it is laid down that if after acquittal from the criminal court, punishment can be imposed in the departmental enquiry. However, it is a case where the applicant has been earlier removed from service in disciplinary departmental enquiry before his acquittal. The order of the criminal court cannot be a bar for the departmental enquiry and the law has also been laid down in the case of Kusheswar Dubey Vs. Bharat Coking Coal Ltd. reported in AIR 1988 SC 2118. Even for the sake of arguments if the applicant apprehended an early action from the side of the respondents it was open to him to knock the door of judicial review for staying the disciplinary departmental enquiry which he has not done or to say he has not filed an appeal against the order dated 6.4.84.

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Further he has not come after acquittal from the criminal court in August, 1986. All these things combined together do not make the contention of the learned counsel acceptable.

The other point taken by the learned counsel is non examination by the Inquiry Officer under sub clause 18 of rule 14 of the CCS (CCW) Rules, 1965. The examination is must. The Inquiry Officer should have examined the delinquent on certain points which have come against him in the departmental enquiry. However, this flaw on the part of the Inquiry Officer will not make the enquiry proceedings vitiated because the applicant has himself filed the defence statement. Defence statement gives a clear explanation of all the points which have been deposed either by oral testimony or documents against the applicant. In such a case when there is defence statement already on record, it was not mandatory to examine the delinquent. The regularity has

(25)

been condoned by the act of the applicant himself,

he cannot take the benefit of the same.

The learned counsel has also referred to the fact that the Inquiry Officer has not observed the provisions of sub clause 19 of rule 14 of the CCS (CCA) Rules, 1965. This contention also does not prevail as ~~delinquent~~ <sup>has</sup> already submitted ~~in the~~ written arguments in the case.

There is another vital point which has come during the course of the hearing that the applicant was not provided with a defence assistance.

Normally when there is a presenting officer there is a right available to the delinquent to take the services of a defence assistant which may help him in ~~eliciting~~ <sup>of</sup> the correct facts by cross-examination ~~of~~ <sup>of</sup> the witnesses of the department.

However, this plea has not been taken by the applicant in his representation which he has filed in 1992. Moreover, the applicant has filed annexures, the statement of the witnesses and it is found that though the examination only in one para, the cross examination runs in several

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pages of each of the witnesses. It goes to show that the applicant has sufficient material to understand the charge against him and also put thorough questions to bring out certain contradictions in the statement of these witnesses. Thus the defence **assistant** was not available to the applicant either he did not call for it nor the Inquiry Officer did not care about it, will not make the enquiry **vitiates**.

The learned counsel has heavily hammered that there are contradiction in the testimony of the witnesses and the analysis done by the Inquiry Officer cannot be said on the reasonable standard by reasonable men. In fact this is a case where we are not convinced that there is no evidence against the applicant. Circumstantial evidence is more heavy against the applicant than the oral testimony. In any case the appreciation done by the Enquiry Officer cannot be reviewed by us as an appellate authority and the matter has come before the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu Vs.

A. Rajapandian reported in JT 1994(7) 1 SC 492.

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The relevant para 4 is reproduced below:-

"The Administrative Tribunal set aside the order of dismissal solely on reappreciation of the evidence recorded by the inquiring authority and reaching the conclusion that the evidence was not sufficient to prove the charges against the respondent. We have no hesitation in holding at the outset that the Administrative Tribunal fell into patent error in reappreciating and going into the sufficiency of evidence. It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority."

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It will be clear from the above observation of Hon'ble Supreme Court that there is restricted power of judicial review available in the case of appreciation of evidence by the Inquiry Officer.

It is only in those cases where there is no evidence or there is perverse finding that interference can be made, this is not the case here.

In view of the above facts and circumstances, we find that the present application is totally barred by time and also devoid of merit and is dismissed.

  
(B.R. SINGH)  
MEMBER(A)

  
(J.P. SHARMA)  
MEMBER(J)

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