

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1065/2000

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 13th day of July, 2001

B.K.Chadda
s/o Sh. Late S.L.Chadda
Assistant (AFHQ)
254 - A -I, MS/PR South Block
Ministry of Defence
New Delhi - 11
and r/o H - 40, Sector 23
Sanjay Nagar
Ghaziabad.

... Applicant

(By Shri V.K.Sidharthan, Advocate)

Vs.

1. Union of India through
Secretary, Ministry of Defence
South Block, New Delhi - 11.
2. Joint Secretary (Training)
& Chief Administrative Officer
Ministry of Defence
CII Hutmments
Dalousy Road
New Delhi - 11.
3. Shri S.S.Dhalwal
Inquiry Authority/CSO
213, Pers-9, DRDO, Sena Bhawan
'B' Wing, New Delhi - 11.

... Respondents

(By Shri S.Mohd. Arif, Advocate)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

The applicant, who had been promoted as Assistant w.e.f. 12.9.1986 and joined on deputation as an Administrative Officer with the respondents at Ghaziabad from 1.11.1995 to 30.9.1998 and re-joined as Assistant in his parent department on 1.10.1998, has assailed an order passed by the disciplinary authority whereby after holding disciplinary proceedings the Chief Administrative Officer-cum-Joint Secretary (Training) imposed a major punishment of reduction of pay by five stages from Rs.7425 to Rs.6550 in the pay

scale of Rs.5500-175-9000 for a period of three years with withholding of future increments and postponement of future increments of pay vide order dated 26.10.1999. The aforesaid order was carried in an appeal and the same was rejected vide order passed on 31.1.2000. Thereafter, the review preferred by the applicant was also rejected on 29.3.2000. The above stated orders are assailed in the present OA.

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2. Briefly stated, the applicant was allotted a Government accommodation on 13.7.1989 and as the Government accommodation was small and the family was big the wife of the applicant and his son stayed at Ghaziabad before allotment of Government accommodation. The CGHS card which was made at Ghaziabad address was not changed to Delhi address as the applicant's family believe in Yoga/Neturopathy and Sidh Science only. After occupation of the Government quarter the applicant possessed new ration card in the year 1989, after verification, which was also renewed in 1997. The applicant was also issued a Voters Identity Card and also after thorough police verification, driving licence was issued on the same address. While on deputation at CIPL, Ghaziabad the applicant surrendered his Government accommodation on 20.8.1998 and stayed at his father's house. It is also stated that in the year 1981 a small LIG Flat in Ghaziabad was purchased in the name of the applicant to be obtained in equal instalments and later on the same was validly acquired by the applicant through conveyance deed executed in the year 1999 and before that he had intimated the information regarding the

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acquisition of immovable property by filling up the requisite form as provided under Rule 18 of the CCS (Conduct) Rules (hereinafter called 'Rules').

3. The applicant contends that he has been proceeded under Rule 14 of the CCS (CCA) Rules, 1965 on the allegation that he sublet the Government accommodation, which was allotted to him, to some other unauthorised person before he handed over the same to the Government on 20.8.1998 as well as he has failed to obtain sanction of the competent authority and also failed to inform about the immovable property and after the examination of the evidence and presentation of defence, the enquiry officer proved the charge. The disciplinary authority on the basis of the findings of the enquiry officer imposed the major punishment of reducing his pay by five stages for a period of three years and withholding of increment and postponement of his increment which was maintained by the appellate authority as well as by the reviewing authority.

4. The applicant has assailed the impugned orders on the ground that as regards the first article of charge, i.e., subletting the Government accommodation before he surrendered the same to the Government, the same has not been proved by any evidence on record and the respondents who had the onus to prove the charge against the applicant have not discharged the same by producing any evidence to show that the accommodation has been subletted. Drawing our attention to the finding of the enquiry officer it is stated that in his report the enquiry

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officer has on presumption, suspicion and also on surmises and conjections held the applicant guilty of the charge on the ground that he failed to change the residential address in official records and had given the address of Ghaziabad in the hospital despite his wife living in Ghaziabad. He got a ration card, voters identity card and motor licence on the Delhi address and on the basis of substantial evidence came to the conclusion that the applicant has sublet the accommodation is not admissible evidence to prove the charge as the documents of the applicant which had been tendered to the enquiry officer to prove his defence rather relied upon to hold him guilty. In this back ground, it is stated that it is for the respondents to prove the charge first then to the delinquent to disprove the same. It is also brought to the notice that as per the amended Rule 15(A) of CCS (Conduct) Rules, ibid subletting has been made misconduct only by an amendment made on 31.8.1996. In this back ground, it is stated that articles of charge and statement of imputation it has not been pin pointed or brought against the applicant as to when he subletted the Government accommodation. As such allegations levelled against the applicant are vague, lacking material particulars and are not definite.

5. The applicant has also contended that as regards the second part of the charge though the house was purchased in 1981 by his father by his own money though in his name had been actually acquired when a conveyance deed was in the name of the applicant and for this he had already discharged the formalities by informing the respondents by filling up the form under

Rule 18 of the CCS (Conduct) Rules much before the initiation of the proceedings and thus not violated Rule 18(2) and (3) of the CCS (Conduct) Rules, 1964. As Rule 18(3) applies to a situation where the value of the property exceeds Rs.15000 and Rs.10000 for Class-III and IV and is to be applicable when the transaction is that a person having official dealings with him and applies to movable property. As far as Rule 18(2) is concerned, the Government servant has to inform the department if he acquires any immovable property in his name and further contended that no previous sanction is required and only information is to be given, which he has already given prior to initiation of enquiry and after he acquired the property by conveyance deed and before that allotment would not amount to acquiring property. It is also stated that the respondents on such a trivial misconduct and on technicalities imposed an extreme punishment upon the applicant and the proportionality of punishment has not been gone into either in the appeal or by the reviewing authority. The applicant has also challenged the jurisdiction and competence of the disciplinary authority as well as the reviewing authority on the ground that they are not authorised to issue the orders being not entrusted or delegated the powers. As CAO has imposed the punishment and further rejected the appeal and review, he cannot assume role of disciplinary authority as well as appellate authority and this shows bias on the part of the CAO.

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6. On the other hand, respondents rebutted the contentions of the applicant have stated that the charge against the applicant has been proved from the evidence and in accordance with the procedure laid down and there is no legal infirmities in conduct of the enquiry. It is also stated that the charges have been proved on the basis of preponderance of probability and sufficient evidence was there to sustain the charge. It is also stated that the defence produced by the applicant has not been found plausible and circumstantial of evidence did indicate that the applicant was not in the possession of the Government accommodation. As regards not informing the Government about the allotment of House from GDA, it is stated that the same was allotted to the applicant in 1981 and as such the same is to be conveyed to the department within one month of the transaction. The delayed information is not in accordance with the rules. As regards the competence of the disciplinary authority as well as the appellate authority and reviewing authority, it is contended that the disciplinary authority was discharging the dual responsibilities of Joint Secretary (Trg.) and Chief Administrative Officer and the post of CAO has been upgraded to that of JS (Trg.) and CAO in the year 1985, the responsibilities attached to the post are being discharging by officer of the rank of JS. As the applicant was holding a Group 'B' (Non-Gazetted) post the CAO was the competent disciplinary authority in the case of the applicant. As regards the orders being issued in an appeal and review by the CAO, it is stated that the respondent No.2 has acted in accordance with the provisions of the Government of

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India (Transactions of Business) Rules and the orders have been issued in the name of President of India by the competent authority.

7. We have carefully considered the rival contentions of the parties as well as perused the material on record. As regards the objection of the applicant regarding competence of the disciplinary and appellate authorities is concerned, we find and satisfied that the orders have been passed by the JS(Training) who was also holding the charge of Chief Administrative Officer and was competent under the rules meant for Group 'B' (Non-Gazetted) post and as such he was within his jurisdiction as disciplinary authority and the post of CAO has been upgraded to that of JS & CAO and the responsibilities attached to the post are being discharged by officer of a rank of JS as such there is no violation of Article 311 of the Constitution of India.

8. As regards the contention of the applicant that the order passed on review as well as in an appeal are not passed by the competent authority and in fact was passed by the Chief Administrative Officer is concerned the same is also not legally sustainable. The orders have been passed in accordance with law and under the provisions of the Transaction of Business Rules of Government of India and on behalf of the President of India who is the competent authority and as such the orders are valid and as per the rules laid down in the subject CAO has only communicated the

orders passed by the President and as such it cannot be said that the orders have been passed by the CAO acting as an appellate and reviewing authority.

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9. As regards the contention of the applicant that he has been punished on no evidence with regard to the charge of subletting of the Government accommodation and also applicability of Rule 15(A) retrospectively is concerned we do agree with the learned counsel for the applicant and we find that before 31.8.1996 there was no provision under the CCA (Conduct) Rules, 1964 defining subletting as a misconduct. The same has been introduced only on 31.8.1996 and in absence of any provisions to the affect in the rules, the same would not be applied retrospectively. From the perusal of the Articles of Charge framed against the applicant, we find that there has been a vague allegation against the applicant of subletting the Government accommodation to some unauthorised person before he handed over the same to the Government on 20.8.1998. In the imputation of charges also it has not been specified as to when the applicant, after his allotment of the accommodation in 1989, had subletted the Government accommodation. In this view of the matter, the charge of subletting of the accommodation in 1989 to 30.8.1996 cannot be alleged against him as Rule 15(A) ibid would not be applied retrospectively to the applicant. In absence of any specific evidence to indicate that during which period applicant has subletted the Government accommodation and without specifying as to whom the same has been subletted after 31.8.1996 till 20.8.1998 when the accommodation

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was handed over. There cannot be an evidence to the fact to sustain the charge of subletting of the accommodation against the applicant. Then cardinal principles have to be applied in a departmental enquiry the onus of proof is on the Government to prove the charge against the applicant by production of sufficient evidence which conclusively points at the guilt of the applicant. In the instance case, we find no evidence to show that to whom the applicant has subletted the accommodation. Merely on the basis that the applicant had not changed the address in CGHS dispensary card, ration card and motor licence card, etc. after 1998 would not be legally tenable and points conclusively towards the guilt of the applicant. We have no hesitation to observe that as regards charge-I no evidence has been brought to prove the charge.

10. Even in the departmental enquiry, sufficient evidence should be shown to prove the charge and on merely presumption and suspicion and surmises a delinquent official cannot be held guilty as the suspicion and surmises cannot take place of proving the charge. In this view of ours, we are fortified of the Hon'ble Apex Court in Union of India Vs. H.C.Goel, AIR 1964 SC 364. We find from the record that the enquiry officer has held the applicant guilty of first part of the charge on the ground that he has given the Ghaziabad address in Hospital and also not changed his address in official records and the fact that the applicant was residing at Ghaziabad before allotment and merely on the circumstantial evidence which was not even specified it, has been

concluded that the applicant was continued to stay even after allotment of Government accommodation has been allotted to him. The enquiry officer has not at all given credence to official documents of motor licence and ration card, etc. issued by the government accommodation address. Merely on suspicion and surmises, held the applicant guilty of the charge. It is also relevant to point out that even though the strict rules of evidence are not applicable to a departmental enquiry and preponderance of the probability is the rules, but yet department is bound to adduce sufficient evidence to prove the charge against a delinquent official and in the instance case the same has not been discharged by the respondents. We are also aware and conscious regarding interference in a departmental enquiry. However, when it is found that the finding of the enquiry officer is perverse and is not based on any material evidence and the finding does not pass the test of any reasonable prudent man the findings are not sustainable. In this view of ours we are fortified by the ratio of Hon'ble Apex Court in Kuldeep Singh Vs. Commissioner of Police & Others, JT 1998 (8) SC 603. In this view of the matter, we have no hesitation to conclude that the enquiry officer has failed to prove the charge of subletting of the Government accommodation against the applicant and the allegations are vague and indefinite and depriving the applicant an opportunity to defend the same.

11. As regards the charge of not informing the department about the acquiring of property, we find that in accordance with Rule 18(2) of the Rules

ibid, what has been required is to inform the department and to bring the same into the knowledge before acquiring any immovable property. According to the applicant by allotment of the house of immovable property in the year 1981 the same is not acquired in a legal sense and the transaction concluded when a conveyance deed has been executed in the year 1999 and before that the applicant has informed the department by filling up the form and completing the relevant formalities is concerned, we do not agree with the same. Allotment of a House amounts to acquiring an immovable property and in the instance case the same has been completed in the year 1981. Admittedly the applicant has not brought to the knowledge of the respondents before acquiring the said property which is admittedly in his name. We also find the explanation of the applicant justified as an execution of the conveyance deed and before initiating the enquiry he informed the department and has not withheld any information. The House was purchased and the money was to be deposited in instalments. As per the OM dated 7.12.1977 it has been provided that a misconduct of trivial nature should be eliminated for the purpose of considering the misconduct against the Government servant. Though it was incumbent upon the applicant to have brought into the knowledge of the respondents previously about acquiring of an immovable property but by a subsequent information the alleged misconduct has been mitigated to some extent. We are not expressing any opinion as to sufficiently of the punishment imposed upon the applicant but it is for the purposes of judging the proportionality of the punishment. The same has not at all been gone into

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either by the appellate authority or by the reviewing authority. We proceeded to consider the same. From the perusal of the order passed in the appeal as well as in the review, we find that proportionality of punishment has not at all been taken into consideration, as the charge of subletting the accommodation which is the main allegation against the applicant has not been established the appellate authority as well as the reviewing authority should have gone into, the proportionality of punishment and should have also taken the facttt of information by the applicant about immovable property before he was served a charge sheet. In our view, reducing the pay of the applicant by five stages and withholding his increments for three years, with a future affect, definitely shocks our conscious and in this view of our we are fortified by the Hon'ble Apex Court in B.C.Chaturvedi Vs. Union of India & Others, JT 1995(8) SC 65 wherein in it has been held that in such a situation, the matter can be remanded back to the authorities. In this view of ours and having regard to the discussion made and reasons recorded above, we set aside the orders passed by the appellate authority and reviewing authority and remand back the case to the appellate authority to reconsider the proportionality of punishment in view of the observations made above and to pass detailed and speaking orders within a period of two months from the date of receipt of a copy of this order. The OA is disposed of in the above terms. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

V.K. Majotra
(V.K. MAJOTRA)
MEMBER(A)