

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1229/2000

New Delhi this the 13th day of March, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

I.J. Giroh,
S/o late Sh. Prabhu Dayal Giroh,
R/o 111/9, Kishan Garh,
Aruna Asaf Ali Marg,
New Delhi-110 070.

...Applicant

(By Advocate Shri A.K. Sinha)

-Versus-

1. Union of India through
its Foreign Secretary,
Government of India,
Ministry of External Affairs,
South Block,
New Delhi-110011.
2. The Consul-General,
Consulate-General of India,
San Francisco-USA,
C/o Ministry of External Affairs,
South Block,
New Delhi-110011.

...Respondents

(By Advocate Shri Sushil Kumar, proxy for Sh. V.S.R.
Krishna, Advocate)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant, formerly a Vice Consul in Consulate-General of India, San Francisco, USA has assailed an order dated 28.8.98 whereby after the disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 a minor penalty of reduction in pay by two stages in the time scale of pay for a period of one year without cumulative effect without adversely affecting the pension has been imposed upon the applicant. The penalty was carried in an appeal and vide an order dated 7.9.99 the punishment imposed was maintained.

2. The applicant has been proceeded against in a disciplinary proceedings on five articles of charges,

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wherein after the conclusion of the inquiry charge No.I,III & IV were proved by the Inquiry Officer while Article II was partly proved and article V dropped. The inquiry was initiated against the applicant on an incident of 1989 vide a memorandum issued on 28.9.93 and thereafter on conclusion of the enquiry no final order was passed for a long time. The applicant preferred OA-415/98 before the Tribunal and vide an order dated 2.3.98 the respondents were directed to take an appropriate decision on the basis of the inquiry report submitted by the Inquiry Officer within a period of one month from the date of receipt of a copy of the order. The disciplinary authority found substantive evidence against the applicant only with reference to Article IV and on that basis the punishment was imposed.

3. Though the applicant has assailed the impugned order on various legal grounds, at the outset, by resorting to Rule 14(23) ibid contended that the Inquiry Officer has held him guilty of articles of charge different from the original article of charge and without providing an opportunity to either admit or deny the said article of charge and without affording a reasonable opportunity to defend himself against such article of charge recorded his finding, which was relied upon by the disciplinary authority to impose a minor punishment upon the applicant, which was further confirmed in the appellate order. The article IV framed against the applicant, reads as follows:

"Shri I.J. Giroh, issued Passport No.E-651343 dated 17-3-1989 in the changed name of Baldev Grewal with changed date of birth as 3rd June, 1956 instead of real name of Baldev Singh with D.O.B. 8-2-1955 as cleared by RPO, Chandigarh.

By his above act Shri I.J. Giroh had exhibited the conduct of unbecoming of a Govt. Servant thereby contravening Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964."

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4. The inquiry officer while recording the finding on this article of charge made the following observations:

"The linkage was only discovered after the charged officer's handing over when in October 1991 when Baldev Grewal applied for a passport in lieu of No.E 651343 dated 17.3.89. There is nothing available on file of 14.7.92 when the concerned assistant has asked for an investigation.

The charge stands proved as the officer has issued Passport No.E-652804 dated 21.2.89 by changing personal particulars and overruling the assistant who had pointed out the discrepancies."

5. Subsequently, the disciplinary authority while imposing the punishment upon the applicant has recorded the following finding on this article of charge:

"4. After careful examination of the Inquiry report and case records, the Disciplinary Authority concluded that out of 5 charges framed against Sh.Giroh only article of charge IV had substantive evidence against him that he had not followed the prescribed procedure before issuing the new passport in lieu of the lost passport to one applicant namely Sh. Baldev Singh Grewal during his tenure at CGI San Francisco as Vice Consul. In this particular case Sh. Giroh, using his power as Vice Consul, had overruled the notings of Consul Assistant and recommended the case to then Consul Sh. P.K. Khanna for issuance of new passport clarifying that all the documents were in order. However, here it was noted that he authorised the issuance of new passport with the approval of the then Consul and not entirely on his own. It was therefore the responsibility of the then Consul to ask the reason from Sh. Giroh for overruling the notings of Consular Assistant before authorising the issuance of said passport. However, it is felt that Sh. Giroh without following the required procedure, had

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recommended the case for issuance of new passport and may therefore, held responsible for the lapse committed on his part."

6. It is contended by the applicant that this charge of issuing passport No.E-651343 dated 17.3.89 in the changed name of Baldev Grewal with changed date of birth as 3.6.1956 instead of real name of Baldev Singh with date of birth 8.2.1955 as cleared by RPO, Chandigarh had been alleged against him, but what has been proved against him by the Inquiry Officer pertaining to this article of charge is that he issued passport No.E-651343 dated 17.3.89 by changing personal particulars and overruling the Assistant who had pointed out the discrepancies as well as issuance of passport No.652804 dated 21.2.89 which was not the article of charge. According to the applicant in the statement of imputation the aforesaid facts had not been alleged against the applicant regarding over-ruling the Assistant and issuing the passport by changing personal particulars. It is further contended that the disciplinary authority while exonerating the applicant from other articles of charge with reference to article No.IV held him guilty and punished him on the ground that he misused his power as Vice Consul by overruling the notings of Assistant and by recommending the case for issuance of new passport by clarifying that all the documents were in order. On the other hand, the respondents in their reply by referring to several documents stated that the applicant with a view to escape his own discrepancy committed while issuing the passport on 21.2.89 had avoided mentioning of the fact of this passport on page 5 of the new passport issued on 17.3.89 vide passport No.E-651343. It is further contended that the charge was rightly levelled against him and the same was amply proved from the material brought on record

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and as such the Inquiry Officer had rightly proved the charge of not adhering to the recommendation of the Assistant and without verifying the correct particulars the passport was issued and thereafter another passport was issued on 17.3.89. According to the respondents' counsel the penalty imposed is already negligible in lieu of the gravity of the misconduct committed by the applicant.

7. We have gone through the rival contentions of the parties and perused the material on record. We are of the confirmed view that the charge levelled against the applicant in the memorandum and imputation in support of it does not disclose or incorporate the charge proved against the applicant as article IV with regard to overruling the Assistant despite existence of discrepancy and issuing passport by changing personal particulars. There is no whisper about this article of charge in these documents, referred to above. What has been alleged against the applicant in the memorandum is issuance of passport but there is no charge alleged against him for not taking into account the discrepancy referred to by his Assistant and issuing the passport by overruling the same. Rule 14 (23) *ibid* is a substantive provision. The applicant has not been put this charge which is different from article IV alleged against him to either admit or deny the same. The applicant has also been deprived of a reasonable opportunity to defend this part of charge in absence of being not put to notice. In our view, this has greatly prejudiced the case of the applicant, as the disciplinary authority has in its order imposed a minor punishment upon the applicant on the basis of this different charge. The appellate authority too, agreeing with the disciplinary

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authority rejected his appeal, maintaining this part of charge. The applicant has projected this legal infirmity in para 5.20 of his OA regarding contravention of rule 14 (23) ibid and the respondents have not denied the same and rather stated that the same does not in any way erase the irregularity committed by him in issuing passport No.E651343 dated 17.3.89 and issuance of passport No.652804 dated 21.2.89 which was not even the reference in the article of charge IV alleged against the applicant. In this view of the matter and on the basis of the reasons arrived at and the fact that the charges pertain to the year 1989 and the applicant has faced an ordeal of disciplinary proceedings for 11 years and only a minor penalty is in issue, we allow this OA and set aside the impugned order of disciplinary authority dated 28.8.98 as well as the appellate order dated 7.9.99. The applicant shall also be entitled for all the consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

V.K. Majotra

(V.K. Majotra)
Member (A)