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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1782/2000

New Delhi, this the 1st day of July, 2002

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri Ashok Kumar Parwanda
S/o Late Shri R.A. Parwanda
R/o K-3/B, Kalkaji
New Delhi - 110 019

... Applicant

(By Advocate : Shri George Paracken)

Versus

1. Union of India
(Through Secretary)
Ministry of Information
& Broadcasting
Shastri Bhavan
New Delhi - 110 011

2. Director,
Publication Division
Ministry of Information
and Broadcasting
Patiala House,
New Delhi - 110 001

... Respondents

(By Advocate : Shri A.K. Bhardwaj)

O R D E R (ORAL)

By S.A.T. Rizvi, Member (A) :

On the charge of unauthorised absence from duty without prior application/intimation from 23.8.1988, the applicant, who was a Business Executive in the Office of the respondent No.2, has been proceeded against departmentally for failure to maintain devotion to duty and thereby of violation of Rule 3 (i) (ii) of CCS (Conduct) Rules 1964 and rule 25(i) of the CCS (Leave) Rules, read with Government of India's Decision No.(i), and has been removed from service vide disciplinary authority's order dated 17.6.1995 (A-B). The departmental appeal filed by the applicant was rejected

by the order of the appellate authority dated 24.10.1997 (A-C). The present OA has been filed belatedly thereafter on 7.9.2000.

2. We have heard the learned counsel on either side and have perused the material on record, and find no substance in the present OA, which, in our judgement, deserves to be dismissed.

3. The learned counsel appearing on behalf of the applicant has raised four different issues during the course of hearing. First, according to him, a list of documents and witnesses relied upon by the respondents was not enclosed with the charge sheet issued on 17.4.1990 (A-E), and subsequently the documents actually relied upon during the course of the enquiry were not supplied to him. The fact that his father remained unwell for some time and the further fact that he himself remained under medical care arising from a heart problem has not been properly considered even though medical certificates in respect of his own illness were supplied to the Inquiring Authority (herein after called IA). The third issue raised is with regard to the competence of the Dy. Director (Admn) to issue the charge sheet dated 17.4.1990. The appointment by the same officer, namely, the Dy. Director (Admn) of the IA vide his order dated 19.2.1993 has also been challenged. According to the learned counsel appearing on behalf of the applicant, the order dated 17.4.1990 instituting the disciplinary proceedings against the applicant is an incompetent order, and so also is the aforesaid order

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dated 19.2.1993 appointing a Joint Director as the IA. The further contention raised is with regard to the telephonic message of the IA asking him to participate in the disciplinary proceedings, to which a reply was sent by the applicant in writing on 8.1.1994 (A-G).

4. On the issue of competence of the Dy. Director (Admn) to issue the charge sheet, the learned counsel has relied on rule 13 of the CCS (CCA) Rules, 1965. The aforesaid rule read with part II of the Schedule to the aforesaid Rules, according to the learned counsel, indicates that only that authority can act as disciplinary authority and accordingly issue a charge sheet as is competent to impose on the charged officer any of the penalties specified in rule 11 of the CCS (CCA) Rules, 1965. The Dy. Director (Admn) is not competent to impose on the applicant any of the penalties specified in rule 11. He cannot, therefore, initiate/institute disciplinary proceedings by issuing the charge sheet dated 17.4.1990. Similarly, consistently with rule 14(2), the Dy. Director (Admn) also cannot proceed to appoint an I.A. In accordance with rule 14 (2), the power to appoint an IA stands vested in the disciplinary authority which the Dy. Director (Admn) admittedly is not. In fact, the Dy. Director (Admn) is an authority lower than the disciplinary authority. On this question, the learned counsel appearing on behalf of the respondents has relied on the judgement of the Supreme Court dated 13.8.1997 in Steel Authority of India & Anr. v. Dr. R.K. Diwakar & Ors reproduced in 1997 (2) Vol.25 of

Supreme Court Services Law Judgements. In that particular case the charge sheet was issued by the Director, Medical & Health Services, who was the controlling authority whereas the Managing Director was the appointing authority. The Court held that the disciplinary proceedings could not be challenged on the ground that the charge sheet was issued by the aforesaid controlling authority. In deciding the case, the Court had, in turn, relied on another decision of the Supreme Court in Director General ESI Vs. T. Abdul Razak reproduced in 1996 (4) SCC 708. Answering an identical question, the Supreme Court had in the aforesaid case held as follows:-

> "With regard to initiation of disciplinary proceedings by the Regional Director, we find that the legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority (See: State of M.P. v. Shardul Singh; P.V. Srinivasa Sastry v. Controller & Auditor General and Inspector General of Police v. Thavasiappan). The Regional Director, being the officer-in-charge of the region, was the controlling authority in respect of the respondents. He could institute the disciplinary proceedings against the respondents even in the absence of specific conferment of a power in that regard."

The learned counsel for the respondents argued that the Dy. Director (Admn) who had issued the charge sheet in the present case was indeed the controlling authority insofar as the applicant is concerned and, therefore, on an application of the ratio of the aforesaid judgement of the Supreme Court, no fault can be found with the

charge sheet dated 17.4.1990 even though the same has been issued by the Dy. Director (Admn) and not by the disciplinary authority himself. According to him, following the same reasoning, no fault can be found with the order dated 19.2.1993 by which the Dy. Director (Admn) has appointed an IA in the disciplinary proceedings initiated against the applicant. On a consideration of the issues raised, we are inclined to agree with the aforesaid contention raised on behalf of the respondents. Once the important decision of initiation of disciplinary proceedings has been taken by the Dy. Director (Admn), the same authority can, in our view, validly pass the subsequent order appointing an IA. Disciplinary proceedings are set in motion by the order instituting the proceedings. All other orders passed subsequently are in a way consequential orders, not as important as the first order by which the disciplinary proceedings are initiated or charge sheet served on a charged officer. What is material to note is that the IA having been appointed, the report/findings prepared by him has been submitted and considered not by the Dy. Director (Admn), but by the disciplinary authority himself. Thus, if the IA has followed the procedure laid down in the CCS (CCA) Rules, 1965 for conducting disciplinary proceedings, the order passed by the disciplinary authority cannot be faulted merely on the ground that the orders instituting the disciplinary proceedings and appointing IA were issued by the Dy. Director (Admn). Viewed thus, we find no force in the aforesaid pleas raised on behalf of the applicant.

5. Insofar as the issue of supply of documents is concerned, the learned counsel appearing on behalf of the applicant has not been able to show to us any written request from the applicant or from his defence assistant for supplying copies of documents. Such a request could always be made by the applicant at any point of time before the disciplinary authority pass the impugned order. The applicant could raise the issue regarding supply of documents in his departmental appeal as well. A copy of the IA's report was sent to the applicant in March 1995. He made a representation against the same on 21.3.1995. He preferred his departmental appeal on 16.7.1995. The applicant was free, as stated, to make a written request for supplying documents on these occasions. The applicant had attended the departmental proceedings on 4.8.1994 and again on 27.9.1994. He did not make any request for supplying documents on these occasions either. At any rate, the learned counsel appearing on his behalf has not been able to convince us that the applicant ever sought supply of documents on any of the aforesaid occasions. The respondents may not have enclosed with the charge sheet lists of documents and witnesses, but as the proceedings got under way, various documents were relied on and the applicant, but for his reluctance to participate in the disciplinary proceedings, had ample opportunity to request for supply of documents. Having failed to avail of the aforesaid opportunities, it is not open to the applicant to raise the issue apparently for the first time before this Tribunal. The corresponding plea raised on behalf of the applicant is,

therefore, found to be untenable and is rejected.

6. The applicant started abstaining from work w.e.f. 23.8.1988. A number of letters/memos including registered letters were sent at the appropriate address to secure his presence and participation in the departmental proceedings. Similarly, efforts were made to secure the applicant's presence back to work. It was belatedly on 8.8.1989, i.e. nearly a year after he started abstaining from work that a memo was issued warning him that the disciplinary proceedings will be initiated against him if he failed to join his duty or did not apply for leave. In response to the aforesaid memo, the applicant informed on 17.8.1989 that he needed eight weeks leave to be able to look after his ailing father. The said request was rejected and he was informed about it by a special messenger on 5.2.1990. The memo in question was received by his wife on 5.2.1990. Insofar as his illness is concerned, it would appear that he started receiving treatment for coronary artery disease (heart problem) only from July 1993. In none of the medical certificates placed on record has the applicant been advised bed rest or complete rest and not to stir out at all not even for participating in the disciplinary proceedings. In any case, the applicant was, according to the learned counsel appearing on behalf of the respondents, healthy enough for most of the time so as to be able to approach the respondents and file proper leave applications etc. The disciplinary proceedings were initiated on 17.4.1990. The applicant started suffering from heart disease only

from the month of July in 1993. He was thus in a position to participate in the disciplinary proceedings and ensure expeditious disposal of the proceedings by co-operating with the IA and the disciplinary authority. For these reasons, we are convinced that ex-parte proceedings had to be undertaken against the applicant for good and sufficient reasons.

7. Insofar as the issue regarding telephonic message is concerned, a careful reading of the applicant's letter dated 8.1.1994 (A-G) shows that the same related to resumption of duty by the applicant. The telephonic message in question was by no means intended to call the applicant to participate in the disciplinary proceedings. In the circumstances, we find that no rule has been violated by the Business Manager (HQrs) asking the applicant to resume his duties by a message over the telephone. The corresponding plea raised on behalf of the applicant is negatived.

8. Lastly, there is the question of abnormal delay incurred in filing the present OA. The appellate authority passed orders on 24.10.1997. Within a year thereafter, the applicant should have filed the present OA., He has done so, as stated, belatedly in September 2000. In the Application (MA No. 2146/2000) filed on behalf of the applicant for condonation of delay no good or sufficient reason has been assigned. Merely saying that during the period in question he remained unwell on account of heart problem is not convincing enough. Delays incurred in seeking relief are required to be

explained in a serious minded manner. No such attempt has been made in the aforesaid application, which is rejected. Thus the present OA is barred by time.

9. We have carefully perused the report of the enquiring authority as well as the orders passed by the disciplinary and the appellate authorities, and find that the proceedings have been conducted in accordance with the procedure and adequate opportunity was made available to the applicant to state his case. We also find that there has been no breach of the principles of natural justice in conducting the proceedings. The orders passed by the aforesaid authorities are speaking and reasoned orders.

10. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit as well as barred by time and is rejected. No costs.

(S.A.T. RIZVI)
Member (A)

(ASHOK AGARWAL)
Chairman

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