

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2421 of 2000

New Delhi, this the 17th day of August, 2001

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR.S.A.T. RIZVI, MEMBER (A)

Shri N.K. Yadav
UDC Flyover Division No.1,
PWD (GOD)
Masjid Moth,
New Delhi.

-APPLICANT

(By Advocate: None)

Versus

1. Union of India
Through DG Works CPWD,
New Delhi.
2. Chief Engineer PWD (GOD) Zone-I,
MSO Building,
New Delhi.
3. Director Infrastructure and Planning PWD (GOD)
MSO Building,
New Delhi.

-RESPONDENTS

(By Advocate: Shri Harvir Singh)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member (Judl)

The applicant in this case is aggrieved of an order dated 9.9.2000 whereby the pay of the applicant was reduced to three stages for a period of one year w.e.f. 1.1.1999. The disciplinary authority had passed the order dated 14.12.1998 which was challenged by the applicant vide an OA No.2850/99 while his appeal was pending. Since the appeal had not been disposed of so the Tribunal directed the disciplinary authority to dispose of the appeal mentioned therein within a period of 3 months. The applicant thereafter filed another OA 1464/2000 but in the meanwhile the respondents rejected his appeal on 19.9.2000 and filed the copy in reply to

km



the applicant. Then the applicant withdrew that OA. The present OA has been filed to challenge the order of the appellate authority. The appellate authority's order had upheld the orders of punishment passed by the disciplinary authority.

2. The facts giving rise to the departmental proceedings are that the applicant was working as a UDC in NSGP Division-V, CPWD, Manesar District Gurgaon from February, 1989 to 5.11.1993. On 15.5.91 a running bill of M/s Rajan Agencies was received for necessary action in the office. The bill was passed by the XEN and was received by the applicant on 15.5.1991 and applicant alleges that on the direction of his superior officers, the applicant handed over the bill along with MB to one Shri M.K. Bajaj, Assistant Engineer (Gazetted Officer) who was going over to Gurgaon for handing over the same in the circle office. The said Shri Bajaj and Sh. Ram Singh left for Gurgaon after office hours in the car of Sh. S.K. Rajan the proprietor of M/s Rajan Agencies. The applicant later on learnt that the bill of Shri S.K. Rajan had been forged from Rs.1,41,141/- to Rs.5, 41,141/- and the contractor claimed Rs.5 lakhs more than his entitlement. The matter was enquired into and was also handed over to the CBI, who after investigation charge-sheeted Shri Rajan for fraud and forgery and recommended departmental action against the applicant and Shri Bajaj. Since the CBI could not find any evidence against the applicant on the basis of which the CBI could issue any charge-sheet against the applicant before the criminal court, so the enquiry was conducted by the



department. Shri R.D. Aggarwal, Superintendent Engineer (Enquiry) was appointed as Enquiry Officer. However, the department had deputed the Inspector of CBI Sh.A.K. Chanda, an outsider as Presenting Officer. Once Shri Chanda was appointed as Presenting Officer the applicant requested for an advocate since the Presenting Officer was from CBI but states that his request was turned down.

3. He further states that he was not supplied all the statements recorded by Shri R. P. Sharma during the preliminary enquiry and certain other documents were also not supplied.

4. It is further stated that the Presenting Officer did not examine Shri Ram Singh, AAO deliberately though present at the enquiry on the one excuse or the other under whose orders the applicant states that he had handed over the appeal with MB to Shri Bajaj.

5. It is further stated that despite the fact that there was no evidence against the applicant, the Enquiry Officer held the charge as proved and awarded the punishment in a mechanical manner.

6. The applicant further alleges though two articles of charges have been framed against the applicant but there is no evidence at all to prove either of the charges and to prove the first charge the only essential witnesses were Shri Bajaj and Shri Ram Singh but none of them have been examined.

JK

a

7. It is further stated that the statement of the applicant had been recorded under duress by the CBI while he was in custody and that statement which is being relied is not based on any evidence rather it is based on surmises.

8. It is further stated that prosecution had examined only three witnesses and none of them could be stated to have proved the allegations in question. The applicant thus pleaded that it is a case of 'no evidence' at all and besides that rejection of request for assistance of a lawyer, when the presenting officer was a trained CBI Officer, it violates the principles of natural justice as such the OA should be allowed.

9. The respondents who are contesting the OA submitted in the counter-affidavit that the order passed by the competent authority are legal and as per rules. They further submitted that the running bill of Shri Rajan Agencies was received in the office of the respondents on 15.5.91 and the applicant being the auditor, put the pay order on page 61 of the MB No.106 for a sum of Rs.1,41,141/- and after the same was passed by Assistant Accounts Officer and the Executive Engineer, the bill was returned to the applicant for sending the same to the Gurgaon Circle but instead of sending the same to Circle-II Gurgaon the applicant handed over the said bill along with MB to Shri Bajaj unauthorisedly who further handed over the same to Shri Rajan, the proprietor.

Kw

10. It is further stated that the applicant visited the house of Shri Rajan in Karol Bagh in the evening of 15.5.1991 and made the alterations in the amount in the running bill and the figure 'one' was altered into figure 'six' due to which the contractor was overpaid Rs.5 lakhs. The applicant had done so on account of reward to be paid to him to the tune of Rs.5,000/-. However, it is stated that applicant requested for assistance of an advocate but the same could not be acceded to because the department submitted that they had engaged a CBI Inspector as a presenting officer and not an advocate so as per Rule 14 sub-rule 12 of the CCS (CCA) Rules provides that the applicant could not be allowed to engage a lawyer.

11. It is further stated that no principles of natural justice has been violated and all the documents were supplied to him. It is also denied that there is no evidence against the applicant.

12. It is further stated that the applicant and the contractor both admitted during the course of investigation that Rajan had paid Rs.5, 000/- to the applicant for alteration of the required amount.

13. However, Shri R.N. Singh counsel for the applicant though was not present at the time of arguments but submitted written arguments later on.

14. The main contention of the applicant is that he had been denied the services of a lawyer. His contention is that the department had engaged the

fn

11

services of Shri A.K. Chanda, Inspector of CBI who is a trained prosecutor from the CBI so the applicant should have also been allowed to engage the services of a trained defence counsel to defend him during the departmental proceedings. The counsel for the applicant in support of his case referred to a judgment entitled as C.L. Subramanyam Vs. Collector of Customs, Cochin reported in AIR 1972 SC 2179 wherein it was held as follows:-

"(B) Central Civil Services (Classification, Control and Appeal) Rules (1967), Rule 15(5) - Opportunity to engage a legal practitioner - Government appointing a trained prosecutor to present its case against the government servant - Refusal to permit government servant to engage a legal practitioner vitiates the enquiry".

15. The applicant also referred to another judgment, i.e. The Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, AIR 1983 SC 109 wherein it was held as follows:-

"Where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.

Where the request of an employee of the Bombay Port Trust in an enquiry against him for being represented by lawyer was refused while legally trained officers were appointed as presenting officers for the employer-Trust, the enquiry would be deemed to be vitiated for denying the employee a reasonable opportunity of hearing especially when the request was not acceded to even after coming into force of Regn. 12(8) of Bombay Port Trust Employees Regulations at a time when only one out of 25 witnesses to be examined on behalf of the employer was examined. In such a case, it could not be urged that after the Regulation 12(8) came into force, the request was not renewed. That is hardly relevant. The unjustly refused request was already there and

k

(P)

obligation under the regulation coupled with fair play in action demanded that the employer should have suo motu reviewed his order refusing the request."

16. The counsel for the applicant relying upon these judgments submitted that this is an admitted case of the respondents that the department had appointed Shri A.K. Chanda, Inspector, CBI as presenting officer so according to the OM dated 23.7.84 of the DOP&T the applicant should have also been given the assistance of an advocate.

17. Besides that the counsel for the applicant also submitted that it is a case of no evidence since a reading of the order passed by the disciplinary authority itself goes to show that various witnesses who were cited by the department as departmental witnesses have not been produced. The department had relied to prove the admission of the applicant by examining an investigating officer of the CBI who had recorded the statements during the investigation of the applicant which should not have been taken on record on the basis of which the Inquiry Officer should not have concluded the findings that the applicant had admitted about his involvement with regard to alteration of figures and handing over of bill to Shri Rajan.

18. The counsel for the department has argued that the request for the assistance of an advocate for the applicant could not be acceded to as the department had appointed one Shri A.K. Chanda, an Inspector of CBI as investigating officer and the rejection of his request was justified under Rule 14(21) of the CCS (CCA) Rules.

K

19. To my mind, this contention of the learned counsel for the respondents has no merits because the OM dated 23.7.84 the extracts of which has been annexed as per WA-1 by the applicant shows that the DOP&T has stated that "it is clarified that where on behalf of the disciplinary authority the case is being presented by Presenting Officer of the Central Bureau of Investigation or a Government law officer such as Legal Adviser, Jr. Legal Adviser, there are evidently good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of the discretion is contrary in such cases is likely to be held by the courts as arbitrary and prejudicial to the defence of the delinquent government servant". The DOP&T's instructions as reflected in the OM dated 23.7.84 and the judgments referred to above by the counsel for the applicant do support the case of the applicant that in case the Government employee is pitted against a legally trained mind then he can avail the assistance of legal practitioner and the denial of the same would amount to violation of principles of natural justice which would vitiate the domestic enquiry.

20. The respondents in their reply have submitted that the engagement of a counsel is not permitted as per Rule 14(21) of the CCS (CCA) Rules and from a perusal of Rule 14(21) we find that this rule does not speak of engagement of defence counsel by the delinquent official at all rather the Government of India Instruction No.21 as complied by Swamy's in the CCS (CCA) Rules talk about

h

defence assistance but the said decision is also based on the OM dated 23.7.84 issued by the Ministry of Home Affairs, DP&AR which does speak that when on behalf of disciplinary authority, the case is being presented by a Prosecuting Officer of the CBI or a Government Law Officer then there are good and sufficient circumstances for the disciplinary authority to exercise its discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner and commenting upon this that the Hon'ble Supreme Court in the case of Board of Trustees (Supra) has observed that denial of assistance of a legal practitioner by the Inquiry Officer would vitiate the enquiry proceedings if the Presenting Officer is an officer of the CBI.

21. In view of the law as laid down by Hon'ble Supreme Court and even as per the instructions laid down by DOP&T, we find that the entire enquiry conducted by the Inquiry Officer when Presenting Officer was an officer from CBI is vitiated as admittedly the department had not acceded to the request of the applicant for availing the request of providing a legal practitioner. In view of this, we need not discuss the other points raised by the applicant in the OA and we find that since the entire enquiry is vitiated so consequently the punishment orders passed by the disciplinary authority and the order passed by the appellate authority cannot be sustained and the same are liable to be quashed. Accordingly, we quash the impugned orders and direct that the pay of the applicant be restored. This may be done within a period of 3 months from the date of receipt of a copy of the order. *kr*

However, the department is at liberty to take up the enquiry proceedings afresh from the stage of appointment of Presenting Officer, if they so desire. No costs.


(S.A.T. RIZVI)

MEMBER (A)


KULDIP SINGH)
MEMBER (JUDL)

/Rakesh