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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.487/2000

New Delhi this the 9th day of March, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMN)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

N.K. Jain

-Applicant

(By Advocate Shri Amit Singh)

-Versus-

Union of India & Others

-Respondents

(By Advocate Sh. Ashwani Bhardwaj, proxy counsel for
Shri Rajan Sharma)

1. To be referred to the Reporters or not? YES/~~NO~~

2. To be circulated to other Benches of the Tribunal? No

S. Raju
(Shanker Raju)
Member (J)

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

Shri N.K. Jain,
S/o Shri Attar Singh Jain,
R/o 2382-A, Narela Mandi,
Delhi-110040.

...Applicant

(By Advocate: Amit Singh)

-Versus-

1. Union of India
Through Lt. Governor,
Government of N.C.T. of Delhi,
Raj Niwas Marg, Delhi-110054.
2. The Chief Secretart,
Govt. of N.C.T. of Delhi,
5, Sham Nath Marg,
Delhi-110054.
3. The Commissioner,
Food Supplies and Consumer Affairs,
Govt. of N.C.T. of Delhi,
'K' Block, Vikas Bhavan,
I.P. Estate, New Delhi-110002.

Respondents

(By Advocate: Shri Ashwani Bhardwaj proxy counsel of
Shri Rajan Sharma)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, an Inspector in the Food and Supply Department of the NCT Delhi has assailed an order dated 17.2.99 passed on the revision petition of the applicant by the Lieutenant Governor wherein the penalty of compulsory retirement had been reduced to reduction in pay by three stages in the time scale of pay for a period of three years with cumulative effect and the period intervening compulsory retirement and re-instatement treated as dies-non. The applicant while working as Food Inspector in Circle No.39 had been proceeded against in a disciplinary proceeding under Rule 14 of the CCS (CCA)

Rules, 1965 (hereinafter called the Rules) on the allegation that he issued three bogus surrender certificates pertaining to three different persons with ulterior motives. The Inquiry Officer after conclusion of the enquiry vide his report dated 1.8.95 proved the charge against the applicant. The disciplinary authority vide an order dated 3.4.97 agreed with the enquiry officer under Rule 11 (14) of the Rules *ibid* imposed a penalty of compulsory retirement upon the applicant. The punishment was carried in an appeal vide order dated 30.12.97 the appeal was dismissed. Being aggrieved, the applicant preferred a revision petition to the Lt. Governor and vide an order dated 17.2.99 finding the punishment excessive the same was reduced to a penalty of reduction in pay by three stages for the period of three years with cumulative effect.

2. While admitting the OA and after quoting the observations made by the revisional authority a *prima facie* view had been formed by the Tribunal that the misconduct is entirely distinct from the charges levelled against the applicant in the disciplinary proceedings.

3. The applicant in this OA had been working as an Inspector in Circle No.39 and in May, 1989. As due to shifting of the residence of three card holders they applied for issue of surrender certificates from residence at Raj Nagar to Narela in Circle No.42. The surrender certificate is issued with a view to ensure that a citizen of Delhi possesses only one food card at new place of his residence. According to the applicant on verification by

the dealing clerk the surrender certificate is issued and an entry is made in the master register at Fair Price Shop (FPS). As per the applicant he signed the entries in the Register in respect of three applicants, but signed the two surrender certificates of card No.684547 and card No.684506, but due to inadvertence he omitted to sign the surrender certificate of card No.684506 on 2.5.89. On 3.5.89 as the applicant was admitted to Holy Family hospital the third certificate was signed by other Inspector. The applicant alleges various legal infirmities in the enquiry as one of the witnesses Sh. R.K. Madan whose testimony has been relied upon was examined on 6.8.92 when the evidence of PO was closed and the applicant was denied his substantive right of cross examining the said witness. According to the applicant his defence evidence had not been taken into consideration by the enquiry officer. As regards the issuance of surrender certificate on 'J' form is concerned, it has been contended that these forms have been published in the year 1987 then the same being collected on 7.2.85 would be very illogical. It is further contended that even on plain papers the surrender certificates are being issued and in support he has furnished to the court number of such certificates which were not on any prescribed proforma.

4. It has been next contended that the revisional authority in his order observed that he was competent to issue certificates and the punishment has been reduced on a different charge than what has been alleged against him in the disciplinary proceedings. The applicant

has also tried to raise the contention of correctness of the charge by resorting to various material and document in support.

5. On the other hand the respondents refuted the contentions of the applicant by stating that the disciplinary proceedings had been conducted in accordance with law without depriving the applicant a reasonable opportunity. According to the respondents the revisional authority had not gone beyond the scope of the charge and rather taking a lenient view on the punishment as excessive. According to the respondents three surrender certificates issued by the applicant are entered at serial No.540, 551 and 561 as against 840, 841 and 258 mentioned in the surrender certificate mentioned by the applicant. Even the units regarding cereal and sugar were also not corresponding as per the members. The stamps which had been affixed on the surrender certificates did not belong to FSO C-39. According to the respondents J Forms on which the surrender certificates were issued were never issued to Circle No.39 but were in fact marked to circle No.4. As such it was beyond the jurisdiction of the applicant to issue surrender certificates on these forms. The respondents further contended that as the applicant was not the Inspector (HQ) he is not authorised to issue surrender certificates. In this background it is submitted that as the applicant had taken personal interest in trying to get new cards issued to these three persons on the basis of surrender certificates by acknowledging that he is known to them shows his malafides. The respondents further contended that the applicant in his reply dated 6.9.89 had himself admitted the aforesaid fact. According to them the

certificate have been signed on holidays, i.e, on Sunday and Saturday when the office was closed. In this background it has been contended that the inquiry clearly reveals that the applicant had issued forged surrender certificates. The contention of the applicant regarding clerical mistake in the registration number has been denied by the respondents. As regards the right of cross-examination is concerned, it is contended that the witness was examined and the copy was given to the applicant on 12.11.92 and thereafter the applicant had never requested the respondents for an opportunity to cross-examine this witness as such no prejudice had been caused to the applicant. It is further contended that the applicant had himself abandoned his right of defence as his DWs were not present on the date of hearing in the inquiry. The respondents further contend that the applicant had also failed to submit his written proof to the inquiry officer.

6. The applicant in his rejoinder re-iterated the contentions taken by him in his OA and further given an explanation regarding the mistake in the units cereal and sugar units in the food cards and also re-iterated that he has been deprived of a reasonable opportunity of defence in the inquiry.

h 7. We have carefully considered the rival contentions of the parties and perused the material on record.

8. It is firstly contended by the learned counsel of the applicant that he has been deprived of a reasonable opportunity in the disciplinary proceedings as PW-3 Sh. R.K. Madan was examined behind his back on

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4.8.92 whereas as per the ordersheet of the enquiry proceedings the presenting officer refused to produce any PW in the case. According to the applicant on 12.11.92 he had been given the copy of the statement of Sh. R.K. Madan but the witness was not summoned for affording an opportunity to the applicant to cross examine him. In this conspectus, it is contended that as the inquiry officer while holding the applicant guilty of the charge has taken into consideration the testimony of PW-3 R.K. madan. The applicant has relied upon Rule 14 (14) of the Rules *ibid* to contend that right of cross-examination is a substantive right and the applicant cannot be deprived of his legal right. According to him it was incumbent upon the inquiry officer not to have examined this witness after the presenting officer had chosen not to produce any more PWs and the only course available to the inquiry officer was to call him under Rule 14 (15) *ibid* by giving three clear dates to the applicant and a right of cross-examination. In this background it is contended that by relying upon the evidence of PW-3 to whom the applicant has not been afforded an opportunity of cross examination is violative of the principles of natural justice and as such the inquiry is vitiated. We have gone through the record of the disciplinary proceedings and from the ordersheet of the proceedings attached by the respondents in their reply we find that on 6.4.92 the presenting officer had refused to produce any PW and as such the charged officer had been asked to submit the list of PWs. Thereafter on 4.8.92 without intimating the applicant as there is no evidence to show the same the Inquiry Officer recorded the statement of R.K. Madan and in his statement annexed at Annexure R-C there is no indication as to affording an opportunity to

the applicant to cross examine the witnesses. Admittedly there are no signature of the charged officer on this statement. This is clearly establishes that the above stated testimony of PW-3 R.K. Madan had been recorded exparte on 4.8.92 and on that day according to the ordersheet the applicant was unwell and requested for an adjournment in the proceeding. The contention of the respondents that the applicant thereafter had not requested the authorities to afford him an opportunity of cross-examination with respect to PW-3 is not tenable. In fact the applicant had taken this plea in his reply to the finding as well as in his appellate memorandum. Although the applicant was furnished with the copy of the statement of R.K. Madan on 12.11.92 but the fact remains that the witness was not examined in his presence and no opportunity to cross examine this witnesses was afforded to the applicant. We have perused the findings of the Inquiry Officer dated 1.8.95 where the evidence of PW-3 R.K. Madan had been relied upon to prove certain irregularity in the procedure and further to hold the charge proved against him in the disciplinary proceedings. In our considered view due to denial of right of cross-examination of a material witness whose testimony is relied upon by the Inquiry Officer to hold the applicant guilty of the charge and the fact that the applicant had raised this grievance before the authorities had deprived him of a reasonable opportunity to defend in the inquiry. In our considered view the applicant has been prejudiced due to denial of his substantial right. In this view of ours we are fortified by the ratio of the Constitution Bench decision of the Apex Court in Union of India v. T.R. Verma, AIR 1957 SC 882. As such the proceedings are vitiated.

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9. As the disciplinary proceedings are vitiated on the ground of this procedural illegality the subsequent orders passed by the disciplinary authority as well as by the revisional authority are also rendered illegal. As we are deciding this OA on this short question of 1a the other legal grounds taken by the applicants are not adjudicated upon.

10. We allow this OA by quashing the order of the revisional authority dated 17.2.99 and remand the proceedings back to the Inquiry Officer to be started from the stage of affording a reasonable opportunity to the applicant to cross-examine PW-3 Sh. R.K. Madan and thereafter to pass appropriate orders in accordance with law. The intervening period from the date of compulsory retirement shall be decided by the disciplinary authority after conclusion of the proceedings and after passing the final order, in accordance with rules and instructions. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Member (A)