

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...
O.A.No.1452 of 1989

Dated New Delhi, this the 10th day of May, 1994

Hon'ble Shri J. P. Sharma, Member(J)
Hon'ble Shri B. K. Singh, Member(A)

Shri Subhash Kundra
Skilled operator
Delhi Milk Scheme
West Patel Nagar
NEW DELHI

... Applicant

By Advocate: None

VERSUS

1. Union of India
Through its Secretary
Ministry of Agriculture
(Department of Agriculture & Cooperative)
Krishi Bhawan
NEW DELHI

2. Shri V. Kohli
Director(Personnel) & Chief Vigilance
Officer, Govt. of India
Ministry of Agriculture
Department of Agriculture &
Cooperative, Krishi Bhawan
NEW DELHI

... Respondents

By Advocate: Shri N.S. Mehta

O R D E R
(Oral)

Shri J. P. Sharma, M(J)

The applicant was working as Skilled Operator in Delhi Milk Scheme in the Ministry of Agriculture. His services were terminated on account of certain misconduct w.e.f. 26.3.81 under Rule 19(ii) of CCS (CCA) Rules, 1965. The applicant preferred a revision which was considered by the President under Rule 29 of CCS(CCA) Rules, 1965 and the order of dismissal was quashed vide order dated 30.5.83. While quashing that order further enquiry was ordered to be held under the provisions of CCS(CCA) Rules, 1965.

Contd...2

(9)

Thereafter ^{oral} ~~review~~ enquiry was held against the applicant. The charges against the applicant are that he, along with three other officials indulged in a riotous behaviour raised slogans and ^{abusive} ~~used~~ unparliamentary language against the Chairman, Managing Committee of Delhi Milk Scheme. The applicant also gheraoed and wrongfully confined Chairman and Member of the Managing Committee of Delhi Milk Scheme. The Enquiry Officer gave the findings that the aforesaid charges labelled against the applicant have not been established and submitted the report on 27.3.86. The Disciplinary Authority exercising the power under Rule 15(ii) of the CCS (CCA) Rules, 1965, disagreed to the findings of the Enquiry Officer and without giving him any opportunity on the reasons of disagreement reflected in the order of punishment imposed the penalty of reduction of pay by one stage in the scale of Rs.550-750 for a period of six months. The applicant preferred an appeal and the same was ^{partly} allowed. He was allowed to draw 95 per cent of his pay and allowances as subsistence allowance during the period of deemed suspension i.e. 28.3.81 to 6.6.83 instead of 90 per cent already allowed by the Disciplinary authority. The applicant was also conferred the benefit of the past service for all purposes. The applicant again preferred an revision appeal on the aforesaid order. The revision was rejected by the President vide order

dated 21.12.88. Thereafter the present application has been filed in 20.7.89 praying for the grant of reliefs that the impugned order dated 21.12.88 be quashed and the applicant be granted full benefits in accordance with law without any reduction from his salary.

2. The respondents contested this application.

In the counter reply, the respondents have taken their stand that the Disciplinary Authority having disagreed with the finding of the Enquiry Officer, passed the order of punishment under the provisions of Rule 15(ii) of the CCS(CCA) Rules, 1965. The Disciplinary Authority has also recorded the reasons of disagreement dated 10.4.86. Thus when the Disciplinary Authority has already applied his mind, the applicant has no case. The Appellate Authority and the Reviewing Authority have considered the appeal and revision respectively filed by the applicant and passed a detailed speaking order. It is said that the applicant has no case. Applicant has not filed any rejoinder.

3. We heard the learned counsel for the applicant, Shri Mahesh Srivastava on 27.4.94 and we found that the order imposing penalty on the applicant is not on record. The learned counsel therefore had sought

time to take further instructions from the applicant. To-day the learned counsel for the applicant nor the applicant is present. Since this is an old matter, we propose to dispose it of on merits after hearing the arguments advanced by the learned counsel for the respondents, Shri N. S. Mehta.

4. We find that there is a patent illegality in the impugned order of punishment imposed by the Disciplinary Authority on 10.4.86. The Disciplinary Authority did not agree with the findings of the Enquiry Officer wherein it was held that the charges against the applicant have not been substantiated and without assigning any show cause notice nor indicating the reasons of disagreement to the applicant, passed the impugned order of punishment on the applicant. The provisions under Rule 15(ii) of CCS(CCA) Rules, 1965 do not specifically mention about the issue of a show cause notice in case of disagreement with the findings of the Enquiry Officer but the law as has been interpreted in precedents, clearly goes to show that there shall be violation of principle of natural justice if the applicant is taken unaware of the reasons giving disagreement by the Disciplinary Authority. It may be that after hearing the applicant that the Disciplinary Authority may have considered


the reasonings which he had given disagreeing with the findings of the Enquiry Officer. The Hon'ble Supreme Court considered the similar matter in the case - Narain Misra versus State of Orissa reported in 1969 S.L.R. (3) page-657 where the case of a Forest Guard who was exonerated in an departmental enquiry and the disciplinary authority imposed punishment giving reasons of disagreement without calling for any representation from the delinquent. The Hon'ble Supreme Court held that the delinquent should have been given show cause notice along with reasons for disagreement and thereafter the disciplinary authority should have passed the order. The illegality committed initially cannot be cured by subsequent orders on the appeal or review filed by the aggrieved person against the initial irregular order. Thus, the order passed by the Appellate and Reviewing Authority cannot cure initial defect which has crept into by non observance of principles of natural justice. We have given a careful consideration to the arguments advances by the learned counsel for the respondents but he could not show any specific instruction/DM/Guidelines or precedent to the contrary.

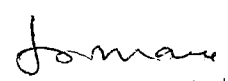
5. The application, therefore, is partly allowed and the order passed by the Disciplinary Authority

(13)

is quashed so also the orders passed by the

Appellate and Reviewing Authorities and the case is remitted to the Disciplinary Authority to give a show cause notice to the applicant also furnishing the reasons for disagreeing with the findings of the Enquiry Officer and calling for a representation within a reasonable time and thereafter pass the final order. The applicant shall be free to assail any adverse order to the higher authorities as per rules, and if so advised and if he is still aggrieved, he can assail the final order for judicial review. The respondents are to comply with the directions within a period of three months from the date of receipt of this order. In the circumstances, the parties are to bear their own costs.


(B. K. Singh)
Member(A)


(J. P. Sharma)
Member(J)

dbc