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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2204/89

New Delhi this the 22nd day of December, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Shri T.L. Verma, Member(J).

N.P. Garg,
S/o Late Shri Kabir Chandra,
R/o 1379, Lodhi Road Complex,
New Delhi.

...Petitioner.

Applicant in person.

Versus

1. Union of India through
The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block,
New Delhi.
3. Shri Dalip Singh,
The then Lt. Asstt. Director,
Subsidiary Intelligence Bureau,
Amritsar. ... Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel.

ORDER

Shri N.V. Krishnan.

This application has been filed to quash the penalty imposed on the applicant in disciplinary proceedings.

2. The facts of the case are very simple though the O.A. itself runs to 69 pages with as many as 52 annexures covering another 160 pages.

3. The applicant was employed in the Intelligence Bureau and at the relevant time he was ACIO-I (WT) in the Subsidiary Intelligence Bureau (SIB), Dibrugarh. Disciplinary proceedings were initiated against him on 15.2.1993 by the issue of Annexure A-14 memo of charges by the 3rd respondent Shri Dalip Singh, the Joint Assistant Director of the SIB, Dibrugarh.

There were seven articles of charges of which charges 3 to 7 were found to be not substantiated by the Inquiry Officer with which finding, the disciplinary authority also agreed. What is material for our purpose is, therefore, only Articles-I and II of the memo of charges. They read as follows:

"ARTICLE-I.

Shri N.P. Garg, ACIO-I (WT) refused to proceed on transfer to Tezu.

ARTICLE-II.

Shri N.P. Garg, ACIO (WT) had not allowed the handing over of charge of WT store of the office by Shri J.P. Singh, ACIO-II (WT) to Shri A.P. Saxena, ACIO-II (WT)".

4. The imputations in regard to these articles of charges read as follows:

"ARTICLE-I.

Shri N.P. Garg, ACIO-I (WT) refused to proceed on transfer to Tezu as ordered vide this office order No. 32/88 dated 20.1.83 (File No. 6/EST(DBR)/82(87).

ARTICLE-II.

Shri N.P. Garg, ACIO-I (WT) had not allowed the handing over of charge of WT store of the office of the AD, SIB, Dibrugarh by Shri J.P. Singh, ACIO-II (WT) who has been transferred to Along (vide this office order No. 33/83 dated 20.1.83) to Shri A.P. Saxena, ACIO-II(WT) as ordered vide this office memo No. 25/E.....(not legible)."

A list of 11 documents by which the charges were proposed to be proved have been mentioned in the Annexure-III to the memo of charges. No witnesses were to be examined.

5. The inquiry was initially conducted at Dibrugarh. However, when the applicant was subsequently transferred to Itanagar, the inquiry proceedings were also transferred. Finally, when the applicant was transferred to Delhi, these proceedings were also transferred and it is at Delhi that the inquiry proceedings were got completed.

6. The Inquiry Officer submitted his report on 4.2.1987, copy thereof has not been filed either by the applicant or by the respondents. The respondents have made available the records of the inquiry which contains the Inquiry Officer's report.

7. As mentioned above, the Inquiry Officer found the applicant guilty of only Articles-I and II of the charges. Agreeing with these findings, the Assistant Director, Shri C.S. Parcha, found him guilty of the two charges and imposed the penalty of withholding his increments for a period of two years with immediate effect vide order dated 30.3.1987 (Annexure A-47). The period of suspension was directed to be treated as duty for all purposes.

8. The applicant preferred an appeal, Annexure A-48, to the Deputy Director (Establishment) Intelligence Bureau on 14.5.1987. This was disposed of by the Annexure A-49 order dated 20.1.1988. The appellate authority agreed with the disciplinary authority in so far as the guilt of the applicant was concerned. But, considering the circumstances of the case, he reduced the penalty to one of censure. A revision was preferred on 1.6.1988 by the applicant which was dismissed on 5.4.1989, Annexure A-52. Hence, this application has been filed to quash the charges, Inquiry Officer's report and the orders of the disciplinary, appellate and revising authority.

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9. The respondents have filed a reply contesting the claim made by the applicant. It is stated that as a proper inquiry has been held against the applicant his guilt has been established and this O.A. has to be dismissed.

10. The applicant was earlier represented by Shri B.B. Raval, Advocate. However, when the matter came up for final hearing he intimated that he would argue the case himself. Shri B.B. Raval, Advocate, therefore, withdrew himself from this case. The arguments were heard in great detail. The applicant also submitted a written notes. Though the O.A. is lengthy and the record is bulky, the issues involved are simple.

11. The impugned orders are challenged on 15 grounds mentioned in para 5 of the O.A. In the circumstance, attention was concentrated on these grounds of attack. After having perused these grounds, it is found that the only grounds which are relevant for consideration of this O.A. are as follows:

- (i) Shri Dilip Singh, Joint Assistant Director, SIB, Dibrugarh (Respondent No. 3) did not have any authority to initiate the disciplinary proceedings by the issue of the memo of charges, Annexure A-14. Therefore, all proceedings are liable to be struck down.
- (ii) The applicant has been denied the services of Shri S.R. Bagchi, Assistant Technical Officer whom he had nominated to act as his defence assistant.
- (iii) The appellate and the revising authority have failed to apply their mind before they passed the impugned Annexure A-49 and A-52 orders.

12. There are two other minor grounds which may be disposed of in the first instance. These are being set out in the own words of the applicants from para 5 of the O.A.

The first allegation is as follows:

"Because the Respondent No. 3 was not on the speaking terms with the Assistant Technical Officer, who was the seniormost officer and Head of the WT Section at Dibrugarh and by misusing and abusing his position as administrative head at the station at Dibrugarh, he illegally, arbitrarily and criminally pressurised the applicant to succumb to his illegal orders and by-pass and ignore his official, legal and logical senior Shri S.B. Bagchi, ATO and for refusal of obeying such blatantly illegal orders, the applicant was harassed materially, mentally, physically with no holds barred. The resultant action of persecution culminating into punishment of stoppage of two increments, converted into censure is, therefore, also liable to be struck down as malafide, bade in law and without any authority".

We are of the view that this is entirely irrelevant. The only question is whether the charges are established or not. If the charges are established, this has no relevance unless it is alleged that for similar acts of misconduct by another person, who was a favourite of Respondent No. 3, no action was taken against him.

The second allegation is as follows:

"Because the last Inquiry Officer had tampered with the proceedings of the enquiry and has even carried out certain over-writing behind the back of the applicant, it amounts to tampering with official documents for which penal action should have been launched against him and the enquiry declared null and void on this ground alone".

Paras 4.70, 4.71 and 4.78 contain references to the dates of hearing being changed or altered behind the back of the applicant by the last Inquiry Officer who concluded the inquiry proceedings. It is stated that this discloses

the bias of the Inquiry Officer and that, therefore, the inquiry report should be discarded on this ground alone. We have seen the original records which had been produced by the respondents. In so far as the proceedings dated 28.7.1986 are concerned to which a reference has been made in para 4.70 and para 4.71, we notice that on 7.5.1986 the proceedings were adjourned to 16.5.1986. However, there are no proceedings on that date. There is a proceeding dated 28.7.1986 and the applicant has signed the proceeding of that date without raising any objection. That is also true of the proceedings dated 8.9.1986 wherein the date for the next hearing which was typed as 19.9.1986 has been corrected in ink to read as 17.9.1986.

We are unable to understand how anything sinister can be attributed to the Inquiry Officer in regard to the change of dates, particularly when the applicant had not taken any objection to the hearing on the changed dates. In the circumstance, this objection is frivolous and will not affect the validity of the proceedings.

13. The applicant has stated that as he was appointed by the Deputy Director (E), no officer below that rank can impose any punishment on him.

14. The respondents have stated in reply to this ground that the Joint Assistant Director, Dibrugarh was fully competent to issue the chargesheet. In support of this contention, Annexure R-2 notification dated 16.3.1972, issued under sub-rule (2) of Rule 9 of the CCS(CCA) Rules, 1965, has been produced. The part-II of the Schedule to this notification relates to General Central Services Class-III. This notification states that in so far as the offices of the Assistant Director, Central Intelligence Officer/Joint Assistant Director are concerned, the appointing authorities are respectively Assistant Director, Central Intelligence Officer and Joint Assistant Director

respectively and they have powers to impose all penalties. The applicant was unable to state how in the light of this provision, it can be contended by him that the Joint Assistant Director, Respondent No. 3, did not have the legal authority to initiate the disciplinary proceedings against him. The respondents have produced the appointment order of the applicant as ACIO-2 which has been issued by an Assistant Director, Intelligence Bureau. The penalty has also been imposed by an Assistant Director. In our view, the authority under whom an official is working can initiate a disciplinary proceeding, unless, the service rules specifically stipulate anything to the contrary. What is material is only that the penalty may be imposed only by a person authorised by the service rules. We do not find any violation in this behalf. It is thus clear that the Annexure R-III notification gives powers to the third respondent to initiate disciplinary proceedings. Hence, this ground has no substance.

15. The second ground relates to the denial of the services of Shri S.P. Bagchi as a defence assistant to the applicant. It is true that the applicant had requested Shri Bagchi to be permitted to act as a defence assistant. Such a permission was also granted when the proceedings were continued in Dibrugarh and Itanagar. Shri S.P. Bagchi was a defence assistant of the applicant. The respondents have produced for our perusal the proceedings dated 29.10.1984 at Itanagar which indicates that the defence assistant Shri Bagchi could not attend the hearing as he could not be spared by the SIB Calcutta. However, this is not material, for, the disciplinary proceedings were got completed at Delhi. This is clear from the Inquiry Officer's

proceedings
effectively
commenced

report. Para 2 of the report states that the first hearing was held on 10.4.1986. The articles of charges were read over to the charged officer. Thus, the disciplinary at New Delhi. With regard to the defence assistant, the Inquiry Officer's report states in para 5 that the attention of the applicant was drawn to Rule 14(8) of the CCS(CCA) Rules, and he was advised to nominate any defence assistant posted at Delhi to facilitate the inquiry, particularly as the entire case was based on the written documents without any witness. It is stated that the applicant informed the Inquiry Officer on 9.4.1986 that he proposed to represent this case himself before the Inquiry Officer. In fact, even earlier, on 29.10.1984, in the proceedings before the Inquiry Officer, Itanagar, the applicant took the same stand that he would represent himself. In the circumstance, we find that this ground is baseless and the applicant cannot be permitted to agitate this issue now.

16. The next ground relates to the lack of application of mind by the appellate and the revising authority. A perusal of these two orders shows that, these authorities, have merely narrated the above facts and come to the conclusion that the charge against the applicant is proved. In particular, the appellate authority ought to have recorded a speaking order disposing of the grounds raised by the applicant. That does not mean that there has been no application of mind. They refer to the Inquiry Officer's report and the order of the disciplinary authority. Further, these shortcomings are of no avail to the applicant because of the averments made by him in para 4.26 of the O.A. wherein the applicant has stated as follows:

"On 24th January, 1983, the applicant submitted a note to the Joint Assistant Director (Respondent No. 3) regarding illegal and arbitrary transfer to Tezu saying:-

(a) that he cannot proceed to Tezu on transfer because he is the only one ACIO-I (W/T) and the seniormost officer of the W/T Section incharge of whole W/T grid of SIB Dibrugarh for maintenance of communication and allied matter.

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(b) For the transfer the approval of Deputy Director (Tech.) IB Hqrs., is necessary.

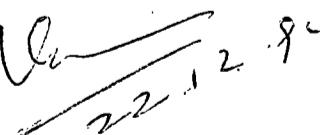
(c) Because in the absence of applicant, if he is relieved on transfer, the charge of the W/T grid would be in the hands of Shri A.P. Saxena, ACIO-II (W/T) who was accused of mis-management of stores while at Lucknow and for which he was suspended and terminated, but got back to service because of some technical flaw in orders".

It is clear from the averments that he disobeyed the order of transfer, whatever be the reasons. He also resisted the handing over of the charge by I.P. Singh to A.P. Saxena. At the final hearing, respondents produced the note dated 24.1.1983 sent by the applicant to the Respondent No. 3 which is referred to in para 13 of Inquiry Officer's report. With reference to the order of the Respondent No. 3 in this behalf, the applicant stated "As such, because of the past background of Shri A.P. Saxena, ACIO-II(WT) I would not allow him to take over the stores without making a reference to the I.B. Headquarters and taking their permission". Justifiably, the 3rd respondent considered this as a defiance of legitimate orders and suspended him. Therefore, these two charges stand proved.

17. As all the grounds raised by the applicant are found to be untenable, we find no case has been made out for our interference. The O.A. is, therefore, dismissed.


(T.L. VERMA).
MEMBER(J)

'SRD'


(N.V. KRISHNAN)
VICE CHAIRMAN(A)