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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2302/89.

Date of decision: 10/6/94

HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Dile Ram,
s/o late Shri Damroo Ram,
resident of H/38-B,
Garwali Mohalla,
Lakshmi Nagar,
Dekhi-110 092.

... Applicant

(None for the applicant)

versus

Union of India through the
Principal Secretary to the
President of India,
President's Secretariat,
Rashtrapati Bhawan,
New Delhi.

... Respondents

(By Advocate Shri P.H. Ramchandani
with Shri J.C. Madan)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant, who was working as Section Officer (Gazetted Class II post) in the President's Secretariat was dismissed from service vide order dated 15th May, 1989 (Annexure A-1), which order he has assailed in these proceedings.

2. The applicant was initially appointed as a Lower Division Clerk in the President's Secretariat on 21st June, 1956. On 15th May, 1968, he was promoted as an Upper Division Clerk and later on 3rd February, 1969 as an Assistant. From 1st October, 1981, he had been working as Section Officer in the President's

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Secretariat. He was placed under suspension vide order dated 6th August, 1987 (Annexure A-2) which order was signed by the Secretary to the President. impugned

The applicant has also / the legality of the suspension order on the ground that it has not been issued by the Appointing Authority, who is the President in his case under the provisions of President's Secretariat (Recruitment & Conditions of Service) Rules, 1976.

3. He was charge-sheeted vide memo. dated 29th February, 1988 (Annexure A-4) and an enquiry under Rule 14 of the CCS (CCA) Rules, 1965 was conducted against him. Article 1 of the charge referred to the fact that while the applicant was functioning as Assistant during the month of July, 1978 he had committed grave misconduct inasmuch as he submitted an attested copy of a false certificate claiming to belong to a Scheduled Tribe community, as a result of which he was promoted as a Section Officer in the President's Secretariat with effect from 1.10.1981 against the vacancy reserved for a Scheduled Tribe candidate. He was thus accused of failing to maintain absolute integrity amounting to conduct unbecoming of a Government servant thereby contravening the provisions of Rule 3(i) and (iii) of the Central Civil Services

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(Conduct) Rules, 1964. The enquiry officer submitted his enquiry report on 21st April, 1989. According to the applicant, the enquiry had not been held as per the rules and the impugned orders have not been passed by the competent authority but by a subordinate authority to his appointing authority. He states that he had requested for the production of three additional documents and one defence witness for his defence vide his letter dated 25.5.1988 which was denied to him. He has stated that the enquiry officer in his daily order sheet dated 2.6.1988 had after lengthy discussions with the charged officer, his defence assistant and the presenting officer decided to reserve his ruling which has still not been conveyed to him. The applicant's appeal dated 26.6.89 against the dismissal order dated 15.5.1989 was also rejected by the President on merits which he has stated is a non-speaking order and hence also illegal.

4. Another ground on which he has challenged the punishment order is that the enquiry officer's report was not given to him before the order of punishment was passed by the disciplinary authority. In the circumstances, the applicant has prayed that the impugned order dated 15.5.1989 and the suspension

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order dated 6th August, 1987 should be quashed and set aside and he should be reinstated in service with all consequential benefits.

5. The Respondents have denied that the impugned orders are illegal. They have stated in their reply that the applicant while working as Assistant in the President's Secretariat, for the first time on 18.7.1978 submitted an application (Ann.R-1) claiming that he belonged to scheduled tribe with an attested copy of the scheduled tribe certificate purported to have been issued by Tehsildar, Sarkaghat, District Mandi, Himachal Pradesh to which area the applicant belonged. The caste status of the applicant was got verified by the office through District Authorities, Mandi in 1981 when a vacancy of Section Officer reserved for scheduled tribe was due. Subsequently, on a complaint received by them on 15.4.1986 that the applicant did not belong to 'GADDI' caste but, in fact, belonged to 'GIRTH' (Kondal) which is not a scheduled tribe, necessary investigations were made through the concerned State Authorities. The Himachal Pradesh Government authorities

intimated that the certificate supposed to have been issued by them does not seem to have been issued by the Tehsildar, Sarkaghat, District Mandi, Himachal Pradesh as no office number and date and signature of the issuing authority are available on the copy of the certificate. The State Government also informed that no letter was issued in July, 1981 by the Deputy Commissioner, Mandi to the President's Secretariat regarding this matter. Based on this investigation, the applicant was charge-sheeted.

6. We have heard the learned counsels and also carefully perused the records of the case. The learned counsel for the respondents has also produced the original records pertaining to the disciplinary proceedings conducted against the applicant. It is seen from the impugned order of suspension dated 6th August, 1987 and dismissal order dated 15.5.1989 that both these orders have been issued by order and approval of the President of India, which is also evident from the original file/records. We, therefore, find no substance in the allegation made by the applicant that these orders have not been issued by the appointing authorities, namely the President in this case under the President's Secretariat (Recruitment and conditions of service) Rules, 1972.

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After the President's approval the impugned orders have been issued by the Principal Secretaries to the President and there is no flaw in the orders on this account.

7. Regarding the allegation made by the applicant that there has been non-compliance of the requirement under Rule 14 of the CCS(CCA) Rules inasmuch as his request for inspection of three additional documents and for calling one witness had not been decided by the enquiry officer or the decision communicated to him, the learned counsel for the Respondents drew our attention to the relevant portion of the enquiry report which reads as follows:-

Next I ordered that Shri Dile Ram and his defence assistant be offered inspection of all the listed documents on 24th May, 1988 (This inspection was, in fact, carried out as ordered). I also asked Shri Dile Ram to submit by 25th May 1988 a list of additional documents which he felt he needed for the defence of his case and a list of witnesses which he would like to examine in his defence. In response to this, Shri Dile Ram submitted a request for inspection of certain

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documents and for calling one witness. This request is enclosed with the enquiry report as Enclosure 5. It was not considered necessary to show his file No. A 40020/1/76-Admn. because this is a general file relating to examination of claim of all officials with regard to their belonging to a scheduled caste or tribe, all papers relevant to Shri Dile Ram's case contained in this file have been listed as the prosecution's exhibits and Shri Dile Ram has already seen them. I have not found the internal notings of the administration's file to be of any relevance to the charge. Shri Dile Ram's demand for the second document in his list was met by obtaining a certified true copy of the Shajra Nasab from the Dy. Commissioner, Mandi which was shown to Shri Dile Ram (A photocopy of this was also given to him) In support of the third document demanded by him, Shri Dile Ram stated that this internal correspondence "is very much relevant to the charge." As this document is a letter written by the Dy. Commissioner, Mandi to the S.D.O. Sarkaghat in 1981, it does not help in any way to either establish or disprove the charge against Shri Dile Ram and

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hence I did not entertain his demand in this regard. The witness called for by Shri Dile Ram was in the nature of a formal witness to prove the authenticity of a document. The document whose authenticity was to be proved by this witness is a certified copy of a scheduled tribe certificate submitted by Shri Dile Ram, i.e. exhibit P3(b), and since the fact of its being a true copy has not been ^{questioned} sanctioned, I did not consider it necessary to send for the witness whose testimony could have no material bearing on the facts of the case."

8. As seen from the above, the applicant has been given inspection of all the listed documents and ample opportunities to defend his case before the Enquiry Officer. A photo-copy of the second document demanded as additional documents had also been given to him. The Enquiry Officer has also conveyed his decision and given the reasons why the other two documents referred to above were not considered necessary to be furnished to the applicant, which we find are satisfactory. In the facts and circumstances, we are satisfied that the denial of these documents, if any, and production of the particular witness, who at that time is stated to have retired, have not in any way caused prejudice to his case, or can be considered as non-compliance of the provisions of Rule 14 or the principle of natural justice. We, therefore, are not persuaded to accept

allegations on this ground and the same is rejected.

9. His allegation that the enquiry officer was prejudiced against him has not been taken at the initial stage when the enquiry was started and is an after thought and, therefore, rejected.

10. Instruction(8) below Rule 15 of the CCS(CGA) Rules relied upon by the applicant that disciplinary proceedings cannot be closed without intimation to the accused refers to Rule 133 of P&T Manual Vol.3 (Swamy's Compilation of CCS(CGA) Rules 20th Edition (1993) Page 73. This is not a general instruction issued by the Govt. of India nor has the applicant been able to show any other general rule applicable to his case. Hence, this submission is also rejected.

11. The applicant has relied upon the Deptt. of Personal's O.M. dated 26th June, 1989 which provides, inter-alia that a copy of the enquiry report shall be furnished to the accused Govt. servant to enable him to make his submissions in regard to the findings of the enquiry, before the disciplinary authority passes its order imposing the penalty. The ld. counsel for the respondents pointed out this O.M. is to apply prospectively and hence not applicable to the facts of the case as the punishment order has been passed prior to the date of issue of the said O.M. Apart

from this the applicants contention is also contrary to the decisions of the Supreme Court in UDI V. Mohd. Ramzan Khan's case [AIR 1991 SC 471] which has been further clarified in recent decisions in Managing Director, ECIL v. Karunakar [JT 1993 (Vol. 6) SC 1] and Commandant CSIF & Ors v. Bhopal Singh [AIR 1994 SC 573]. The Supreme Court has held that the requirement to furnish copy of the enquiry report to the delinquent official during disciplinary proceedings is applicable only from a prospective date of the decision in Mohd. Ramzan Khan's case i.e. in respect of those orders of punishment which are passed by the disciplinary authority after 24th November, 1990. In view of the authoritative decision of the Supreme Court on this matter, the submission of the learned counsel to the contrary is without any merit and is rejected.

13. We have also carefully considered the other submissions made by the learned counsel for the applicant and did not find them tenable.

14. In the result the application fails and is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

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