

Central Administrative Tribunal
Principal Bench, New Delhi.

(164)
42

O.A.No.2404/89

New Delhi this the 01st Day of February 1995

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman(J)
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Shri R.K. Sood,
S/o Shri A.C. Sood,
R/o Qr.No.13, N.M.D.C.Bldgs.,
No.5, NIT Faridabad-1. Applicant

(through Sh. B.B. Raval, advocate)

versus

1. Union of India,
through the Cabinet Secretary,
Government of India,
Rashtrapati Bhavan,
New Delhi.
2. Shri A.K. Verma,
Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Government of India,
Room No.8-B, South Block,
New Delhi-11.
3. Shri P.K. Ghildayal,
Under Secretary,
Cabinet Secretariat(R&AW),
Government of India,
Room No.8-B, South Block,
New Delhi.
4. Shri S.K. Dass,
Asstt. Research Officer,
Cabinet Secretariat (R&AW),
Government of India,
Room No.8-B, South Block,
New Delhi-11. Respondents

(through Sh. M.K. Guta -advocate)

ORDER

delivered by Hon'ble Mr.B.N. Dhoundiyal, Member(A)

The applicant Shri R.K. Sood, who was working as Junior Research Assistant in the Research and Analysis Wing, Cabinet Secretariat is aggrieved by the impugned order dated 9.10.1989 dismissing him from service.

61

The applicant was recruited as Laboratory Assistant in October, 1976 and was confirmed on this post in 1983. He was promoted as Junior Research Assistant on 23.12.1985. According to him, his troubles started when he reported the cases of embezzlement in the Printing Section where he was posted at that time. He has particularly alleged that the Assistant Research Officers, Sh. S.K. Dass and P.K. Ghildayal were annoyed with him and as a result he was transferred from the Printing Section to Chemistry Division. The applicant states that there are six different sections in the Laboratory, namely, Chemistry Division, Printing Press, Photo Division, Workshop, Electronic Division and Wireless Division. Those working in different divisions require special qualifications and training for the specific type of work. He was transferred to Chemistry Division though he was not having experience in that line and was neither trained nor qualified to handle the highly health hazardous jobs and poisonous chemicals like Potassium Cyanide. He was also given insulting and humiliating jobs like, cleaning of laboratory, cleaning of utensils, collection of chemicals from tables of various officers and restoring them to the place in their racks and washing of test tubes etc. As a result, his health deteriorated and he suffered from head-ache, vertigo, hyper-tension, throat irritation, mental depression etc., compelling him to take medical leave between May and June 1988 when he went to Shimla for rest. The doctor there advised him not to continue with the work in the Chemistry Division. Hence, he made request for his transfer back to the Printing

Section which was followed by a lawyer's notice dt. 12.9.1988. Thereafter, he requested in writing for a detailed charter of duties. A chargesheet was served on him on 15.12.1988 and the respondents passed an order treating a number of days as dies-non. He was dismissed from service on 9.10.1989 after an ex-parte enquiry. The applicant has prayed that the order of dismissal dt. 9.10.89 be declared illegal and the respondents be directed to give him the pay and allowance from January, 1989 till date with interest.

In the counter-affidavit filed on behalf of the respondents, the main averments are these. The applicant was working as proof reader in'private press for 8 months before his appointment as Lab Assistant. The basic qualification required for recruitment as Lab Assistant is matriculation with Science subjects. The applicant fulfilled this requirement. He worked in the Printing Press till 12.1.1987, when he was transferred to the Chemistry Section on administrative grounds. It was noted that information regarding tenders was being leaked out to the interested parties and this transfer was a ^{part} of reshuffle carried out in the Printing Press. The R&D Division has been entrusted with certain specific items of work and it is for the Head of the Division to allot specific jobs to each section and make sure that the overall need of the organisation is met appropriately. The Lab Asstts. and JRAs are transferable from one section to another and hence there was nothing wrong in the transfer of Sh. R.K. Sood from Press Section to Chemistry Section. After his transfer to the Chemistry Section, he submitted a

petition to the then Additional Secretary (Pers) on 13.8.1987 regarding irregularities in the functioning of the Printing Press. Enquiries were conducted through the vigilance officer and certain directions were issued for streamlining the tender procedure. The allegations made by the applicant against his seniors were found as baseless. He had been informed that there was no specific charter of duties for the JRA's and that they are required to carry out the official work allotted to them by their superiors from time to time, within the overall work to be performed by the R&D Division. They have denied that he was ever asked to do odd and hazardous jobs. He was mainly given jobs which do not require any special skill and can be performed even by a Lab Assistant, junior to Sh. R.K. Sood. A number of people were working in the Chemistry Division and none had complained about the ill affects of the chemical fumes. If the respondents were to act on medical certificates as submitted by the applicant it would be impossible to run the Chemistry Section. They have denied that there was any element of victimisation. As the applicant refused to work on certain dates in January-March, 1989, dies-non was imposed upon him and he was given salary for the rest of the days. A departmental enquiry was ordered against him for his refusal to do the tasks allocated to him. His attitude was that he would attend the enquiry proceedings only after he was supplied a copy of the charter of duties. He was given enough opportunities to attend the proceedings but he refused to do.

We have gone through the records of the case and heard the learned counsel for the parties. A preliminary objection was raised by the learned counsel for the applicant that Shri S.K. Sethi, Director, Cabinet Secretariat was neither a party nor authorised on behalf of any of the four respondents. He could not have personal knowledge of the facts and incidents involving, particularly the respondent Nos. 3 & 4 who have been accused of specific acts of commissions and omissions. Citing the judgement of the Allahabad Bench in Ram Rakha Versus Union of India and Ors. (1988(2) CAT 365) he argued that this written statement should not be taken on record. However, we are bound by the decision of the Principal Bench of this Tribunal dt. 22.8.1990 in CCP No.11/90 in O.A.No.520/89 wherein, similar objections were raised and were over ruled. The following observations made by the Tribunal are relevant:-

" Neither the Administrative Tribunals Act nor the rules made thereunder contain any specific provision on the question as to who is competent to file replies or counter-affidavits on behalf of the respondents. The Union of India is invariably the respondent in the cases filed in the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. It is well known that the Union of India functions through its officers who normally perform their duties in their official capacity. The Union of India is one legal entity though it functions in the various Ministries/Departments and attached offices for the sake of administrative convenience. In our opinion, there is no reason or justification for insisting that an officer impleaded as respondent by an applicant should necessarily be directed to file reply or counter-affidavit himself or that we should insist on production of any letter of authorisation from the persons named in the application as the respondents. That would amount to injecting an element of rigidity in the

procedure which will be a retrograde step. Even though this Tribunal is vested with all the powers of a High Court in service matters, it is not bound by the rigid procedural provisions of the Code of Civil Procedure and the only guiding principle is that of natural justice."

Respectfully reiterating the same views, we over-rule the preliminary objection.

The learned counsel for the applicant has stated that the applicant was being ~~persecuted~~ ^{Bw} for having complained against the malpractices in the tendering process. He was working in the Printing Press until 12.1.1987 when he was transferred to the chemistry section. His petition complaining irregularity in the Printing Press was submitted to the Additional Secretary (Per.) on 13.8.1987 (Annexure A-3). There is considerable substance in the argument of the learned counsel for the respondents that if he had found any irregularity in the Printing Press while working there he should have, at that time, pointed out the relevant facts to his superiors. The issues raised by him were examined and suitable directions were given for streamlining the tendering process. It is not necessary for this Tribunal to go into detail as to how, the above examination was carried out. Suffice it to say that applicant has not been able to prove any malafide against either the enquiry officer or the disciplinary authority.

It has also been argued on behalf of the applicant that his posting in the Chemical Lab was irregular and he was deliberately exposed to hazardous

Bw

fumes and chemicals. The learned counsel for the applicant drew our attention to certain observations of VINCENT J. BROOKES, Chief Plant Security Crucible Steel Company of America and Morris B. Jacobs, Ph.d. and "THE MERCK INDEX and Encyclopedia of Chemicals, Drugs and Biologicals published by MERCK & Co. INC.U.S.A. to show that the fumes arising during anodizing process can cause symptoms like head-ache etc. from which the applicant has suffered. However, we have to accept the information given by the Director (R&D) that was involved simple jobs for which the applicant had been trained.

We have gone through the deposition of Shri B.V.V.S. Director, Cabinet Secretariat (R&D). He has clarified that anodizing and preparing envelopes does not involve any use of injurious or poisionous chemicals. These processes have been in existence in the chemical laboratory for a number of years without causing any adverse affect to any member of the staff. The process of anodizing is very simple in nature and the person who has been briefed properly will be able to perform the job satisfactorily. The applicant was given on the job training for such duty. So far as nature of work is concerned, there are two JRAs in the Chemical Laboratory who work under the supervision of US (Chem.). Jobs given to the JRAs are not difficult and can be performed by any person with a reasonable level of intelligence any willingness to work.

The applicant did not comply with the orders of his superiors on the ground that he was not given a charter of duties. He also refused to participate in the departmental enquiry unless he was given a charter of duties. On 6.2.1989 a memorandum was given to him stating that "there is no specific charter of duties for the JRAs(TEch.) and he is required to carry out the directions of his superiors as in case of other employees. He was also informed that the whole time of all Government Servants is at the disposal of the Government and he may be employed in any manner required by the appropriate authority for efficient discharge of official work(Annexure MP-4). The concept of job specification under the standing orders as prevalent in the industrial sector cannot be applied to the Government offices particularly, to an intelligence agency, which do not carry out these operations on a commercial scale. The applicant has failed to point out any rule/regulation which entitles a Government Servant to have a charter of duty as a matter of right.

It has also been argued that while a petition was pending before the Hon'ble Tribunal for decision and further proceedings were abated under Section 19(4) of the Central Administrative Tribunals Act, 1985, no order of dismissal could be passed. The impugned order has not been challenged on the ground of any other deficiency in the proceedings or the orders passed by the disciplinary or appellate authority. We have however, perused the relevant enquiry report filed by the applicant himself as Annexure MP-24. The enquiry officer has listed 17 communications sent to the

applicant between 15.3.1989 and 24.7.1989. The applicant was given numerous opportunities but he chose to abstain from the enquiry on the ground that he was not given a copy of the charter of duties. All the charges were found proved against the applicant. The applicant had filed MP-26 on 3.2.1989 seeking the order from the Tribunal restraining the respondents from giving him any job before a copy of the charter of duties was given to him. Another miscellaneous petition No.2292 of 1989 in O.A.No.489 of 1989 was also filed which was heard on 18.10.1989 and interim relief requested therein was rejected. His dismissal was not ordered in any matter which can be said to have been ⁱⁿ sub-judicature.

In view of the aforesaid considerations, we hold that this is not a fit case for the Tribunal to interfere and the O.A. is hereby dismissed.

There will be no order as to costs.

B.N. Dholiyal
(B.N. Dholiyal)

Member(A)

S.K. Bhaon
(S.K. Bhaon)

Vice-Chairman(J)

/vv/