

12

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.371 of 1989

This 24th day of February, 1994

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

L.S. Batta,
S/o Shri Lal Chand Batta,
B-70 Sarvodaya Enclave,
New Delhi.

..... Applicant

By Advocate: ~~None~~ *↓*

Versus

Union of India, through

1. The Secretary,
Ministry of Finance,
North Block,
New Delhi.
2. The Additional Secretary,
Ministry of Finance,
Department of Economic Affairs
(Insurance Division)
Nirvachan Sadan, Ashoka Road,
New Delhi.

..... Respondents

By Advocate: ~~None~~ present

O R D E R

(By Hon'ble Mr. B.K. Singh, M(A))

This O.A. No.371/89 has been directed against the impugned order dated 27.11.1973 dismissing the applicant from service, passed by the Director, Emergency Risk Insurance Scheme, and also order dated 28.1.88 passed by the Appellate Authority being Additional Secretary to the Government of India. The brief facts are as follows:

- 2- The applicant was appointed and joined as Senior Clerk on 17.7.48 in the pay-scale of Rs.80-220 in the Rehabilitation Finance Administration (Corporation) and was promoted as Sub-Inspector w.e.f. 1.9.59 in the pay-scale of Rs.150-250, subsequently revised to Rs.210-425 w.e.f. 25.8.52. In the meanwhile the Rehabilitation Finance Administration (Corporation) was wound up and its staff was taken into government service w.e.f.1.1.61 in the reconstituted Rehabilitation Finance Administration Unit. The applicant was transferred along with post to the Office of the Dy.

Contd.....2/-

Director, Emergency Risk Insurance Scheme from 1.9.65 and was redesignated as enforcement Officer in the same pay-scale, i.e. Rs.210-425/-. He was subsequently promoted in the senior grade of the Enforcement Officer (Rs.325-530/-) w.e.f. 1.9.70. The applicant continued to be posted in the Directorate till July 1966/when he was shifted from Ambala to Ludhiana where he remained by the middle of August 1968 and was subsequently transferred to Amritsar Sub-Centre.

3. The applicant was placed under suspension w.e.f. 6.5.71. He was served with a memo of charges which is marked as annexure 'A' of the paper-book. The first charge states that while functioning as Sub-Inspector/Inspector/Enforcement Officer in the Rehabilitation Finance Administration Unit, Directorate of Emergency Risk Insurance Scheme from 1.3.61 to 5.10.70, the applicant failed to maintain absolute integrity and that he acquired and is in possession of movable/immovable assets of the value disproportionate to his known source of income.

The second charge states that during the period from May 1956 to February 1970, Shri Batta, the applicant, contravened the provisions of Rule 15 and 18 of the CCS(CCA) Rules 1955 and 1964 in that he acquired movable (including cash receipts from his father) and immovable property without any permission from/intimation to the authorities prescribed for the purpose.

The third article of charge states that during the period from August 1968 to September 1970 while functioning as an enforcement Officer at Amritsar Sub-Centre of the Directorate of Emergency Risk Insurance Scheme, Shri Batta committed acts of gross misconduct amounting to moral turpitude in demanding and accepting cash amounts as illegal gratifications on the pretext of collecting penalties under the Emergency Risk (Goods)/(Factories) Insurance Act, 1962.

Contd.....3/-

The fourth article of charge states that during April 1970 and while functioning as Enforcement Officer at Amritsar Sub-Centre, Shri Batta committed acts of gross misconduct and failed to maintain absolute integrity in that he demanded and accepted illegal gratifications in kind, that is to say, free transport of steel bars from Amritsar (Chhehrata) to New Delhi by Truck No. PNP 3266 belonging to Hans Raj Aggarwal of Janta Rice Mills & Bhagwati Oil Mills, Batala.

The Fifth charge states that During February 1970 while functioning as Enforcement Officer at Amritsar Sub-Centre of the Directorate, the conduct of Shri Batta was unbecoming of a government servant inthat he got allotment of and purchased a new Scooter (Registration No. PUA 998) from the manufacturers' quota.

The sixth charge states that during April 1970 while functioning as Enforcement Officer at the abovementioned Amritsar Sub-Centre the conduct of Shri Batta was unbecoming of a government servant inthat he paid a sum of Rs.3000/- only ^(Saria) for steel bars to firm M/s Ravi Engineering Works (Chhehrata) ~~for steel bars (Saria)~~ against the actual price of Rs.4238.55.

4. The applicant submitted his reply/representation against the said charges, copy of which is placed at annexure 'B' of the paper-book and supplementary brief is at annexure 'B-1'.

5. An enquiry was instituted and Shri A.P. Veeraraghavan, Commission for Departmental Enquiries was appointed as Enquiry Officer to enquire into the allegations levelled against the applicant. On 20th July 1973 the Enquiry Officer submitted his report to the Disciplinary Authority and the applicant was found guilty of all the said 6 charges by the Enquiry Officer. A copy of the enquiry report is annexed to the OA as annexure 'C'.



Contd.....4/-

6. The competent authority was Director, Emergency Risk Insurance Scheme who agreed with the findings of the Enquiry Officer in respect of all the 6 charges and came to the conclusion that the applicant was not a fit person to be retained in government service and he issued a show-cause notice to the applicant to show cause as to why he should not be dismissed from service. The applicant was given an opportunity of making representation against the penalty proposed on the basis of evidence adduced during the enquiry.

7. the applicant submitted his representation against the proposed penalty, a copy of which is marked as annexure 'D' of the paper-book. After considering the representation and the enquiry report, the Disciplinary Authority passed an order of dismissal from service dated 27.11.73 (annexure 'E'). The applicant filed an appeal to the President of India instead of the Appellate Authority as required under CCS(CCA) Rules 1965. The appeal of the applicant was taken to be an appeal addressed to the Appellate Authority. The Appellate Authority upheld the penalty of dismissal of the applicant passed by the Disciplinary Authority and the decision of the Appellate Authority was conveyed to the applicant by the Under Secretary, Department of Revenue and Intelligence on 25.7.75.

8. The applicant filed a writ petition in the Hon'ble High Court of Delhi, Civil Writ Petition No.1094/76 under Article 226 of the Constitution of India for issue of a writ of certiorari ^{for} quashing of the orders dated 27.11.73 and 25.7.75, dismissing the applicant from government service, and rejecting the appeal of the applicant. While the matter was still pending in the High Court, the Central Administrative Tribunal came into being in 1985 and the Hon'ble High Court of Delhi transferred the writ petition of the applicant to this Hon'ble Tribunal. In its judgment dated 27.7.87 the Tribunal quashed the order passed by the Appellate Authority directing him to rehear the appeal of the applicant after giving him an opportunity



to be heard in person. This order of the Tribunal is annexed as annexure 'F' of the paper-book. A supplementary appeal was also filed by the applicant to the Appellate Authority (annexure 'G'). In the light of the Tribunal's order the Appellate Authority considered all aspects involved in the dismissal of the applicant, gave him an opportunity to be heard in person and considered the supplementary appeal filed by the applicant and then dismissed the appeal on 28.1.88 with a speaking order giving cogent reasons in support of his contention (annexure 'H').

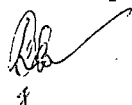
9. Reliefs sought by the applicant include quashing of the impugned order dated 27.11.73 and the final order passed by the Appellate Authority dated 25.1.88 taking into consideration the supplementary appeal and the original appeal and affording an opportunity to the applicant to be heard in person.

10. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for by the applicant.

11. Heard the learned counsel Shri V.P. Sharma for the applicant. No one was present on behalf of the respondents.

12. Since this is an old matter, we have decided to dispose of the application on merit. We have very carefully gone through the counter affidavit and rejoinder filed by the respondents and the applicant and other relevant papers and documents attached. While passing judgment on 27.7.87 in T-208/85 (CW 1094/75), the Tribunal had only desired the Appellate Authority to hear the petitioner and to pass a separate order giving reasons as to why ^{he} agreed with the findings of the Disciplinary Authority and the penalty imposed upon the applicant.

13. The Appellate Authority in the light of the observation of this Tribunal has given cogent reasons for accepting the findings of the Disciplinary Authority. The applicant had argued before the



17
Appellate Authority that the Disciplinary Authority did not take into consideration the loan of Rs.5000/- shown in the books of Royal Pharmacy, gifts made by his father from the sale of ancestral property and the income received by him from the agricultural land which belonged to HUF of which he was a member. He tried to establish the factum of loan by saying that the same was repaid to him vide letter of Punjab National Bank dated 8.11.73 indicating repayment of loan to him by Royal Pharmacy by three cheques and one Draft during the period 14.11.61 to 13.12.61. He also argued before the Appellate Authority that an interest amounting to Rs.1069/- was also received by him. He further argued before the Appellate Authority that a sum of Rs.7284/- was received by him consequent on encashment of his FD with the Central Bank of India on 7.2.61 and that it should be treated as part of his income. He also stated before the Appellate Authority that a certificate to that effect was issued by the Central Bank of India dated 6.9.72. The Appellate Authority did not accept this argument of the applicant because he did not produce any proof of his being a member of HUF and consequently the Appellate Authority held that the Enquiry Officer was justified in rejecting his claim in regard to agricultural income. The Appellate Authority also said that the Enquiry Officer had given Shri Batta a credit in respect of his share from the sale of ancestral property. Thus the Appellate Authority agreed with the findings of the E.O. to these two issues. He rejected the argument advanced by the applicant regarding letters of the Bank since there was no corroborative evidence to show that he had advanced a loan to Royal Pharmacy as claimed by him.

14. The applicant produced record of Income Tax Officer vide his assessment order for the year 1971-72 declaring the valuation of his house in Sarvodaya Enclave at Rs.56,265/- less withdrawals after 15.10.70 amounting to Rs.7300/-, thus taking the approved value of Rs.48,862/-. The Inquiry Officer has, however, taken the approved value at Rs.57,500/- thus resulting in a difference of Rs.8,538/.

B

....Contd....7/-

According to the I.O. there was a difference of Rs.29,615/- between the applicant's known source of income and movable/immovable properties in his possession and this remained unexplained. The Appellate Authority heard the applicant in person and carefully considered the Income Tax Officer's assessment order. The Appellate Authority did not think it proper to take into account the withdrawals after 15.10.70 because the computation by the I.O. was for the period prior to 15.10.70. The Appellate Authority felt that the valuation of Rs.57,500 arrived at by the I.O. was not substantially different from the valuation of Rs.56,262/- given by the Income Tax Officer.

15. The Appellate Authority considered the question of gifts made by the applicant's father as stated by him but there was no relevant document in the nature of gift deed and the same could not be furnished before the I.O. nor was it furnished before the Appellate Authority when the applicant appeared before him the second time to explain the facts in person. During the course of hearing, Shri Batta could not give any rational explanation to the Appellate Authority regarding non-submission of gift deed. The deposition by his father and brother could not be relied upon. It is difficult to believe that a father would also give a gift to his son in addition to share of income from agricultural property belonging to the joint family. The Appellate Authority found no reason to differ from the findings of the Inquiry Officer.

16. As regards the claim of the applicant regarding savings of Rs.25,830/- from his salary during the relevant period the I.O. admitted the version of Shri Batta in regard to expenditure of Rs.340/- on household, Rs.140/- rent for the house and Rs.101/- towards average premium of Life Insurance policies. Taking this expenditure from his net income of Rs.739/-, a saving of Rs.138/- (i.e. 19% per month) only could be reckoned. The I.O. allowed 19% saving for the check period. This saving came to Rs.10,906/- and not to Rs.25,830/- as claimed by the applicant. The Appellate

Contd.....8/-

Authority felt that the Inquiry Officer was a bit liberal in computing the saving at the rate of 19% during the check period and thus there is no substance in the arguments of Shri Batta. Shri Batta also argued that there was a saving from his TA/DA. No cogent reasons and no proof of saving from TA/DA could be furnished by Shri Batta to the Appellate Authority. The applicant claimed that the I.O. had made a mistake in arriving at the total balance in his Savings Bank Account as Rs.20.128/- when it was actually Rs.19,640/- He asserted that the mistake occurred because the saving Bank Account No.14634 of Punjab National Bank, Ludiana, had a balance of Rs.57.49 and not Rs.545.09. The applicant did not produce the pass-book before the Appellate Authority but the difference was absolutely marginal.

17. Shri Batta further claimed that he got a rebate of Rs.591/- for the payment of price of plot of land in New Delhi which was not allowed to him by the I.O.. The Appellate Authority felt inclined to accept it. In the premia paid there is a difference of Rs.477/- during the period December 1954 to December 1960 and December 1959 to December 1960 and this could be admitted.

18. The Inquiry Officer did not accept the receipt of Rs.8000/- from one Banarsi Das for sale of his plot in Green Field Haryana, received in two instalments of Rs.5000/- and Rs.3000, because the applicant did not inform the concerned office about this transaction and as per conduct rules he ought to have reported of any transaction above Rs.2000/- to the superior authorities. In this respect the Appellate Authority did not feel inclined to disagree with the findings of the I.O. Further, computing the whole thing the Appellate Authority found that the difference in his assets and income would get reduced from Rs.29,615/- to Rs.26,929/-. Even after making this allowance there was still a yawning gap of Rs. 26,712/- and thus the charge No.1 stands proved.



Contd.....9/-

19. Regarding Charge No. 2, the applicant argued that as regards transaction in immovable property of HUF he was not required to report to the office. No documents regarding information communicated to the RFA Unit was available and thus the intimation of the transaction in immovable properties under Conduct Rules was not amply substantiated.

20. Charge 3 involved moral turpitude of accepting illegal gratifications. This charge stands proved from various complainants who had made their deposition in writing and as such the Appellate Authority did not find any reason to ask the I.O. to take oral evidence when each of the complainants had given everything in writing. There was no point in taking oral evidence of the complainants because of the possibility of ^{the applicant} influencing them ~~by the applicant~~ and as such the Appellate Authority felt that this charge had been thoroughly proved during the course of enquiry.

21. Charge No.4 relates to non-payment by the applicant for the goods and its freight for its carriage from Amritsar to New Delhi. It stood proved because the applicant could not produce any evidence to the contrary. The Appellate Authority did not place any credence on the oral statement of the applicant that the driver of the truck was sacked by the employer for not giving the freight charges to him after receiving the same from the applicant.

22. Charge 5 relates to purchase of scooter from manufacturer's quota. Purchase of scooter from manufacturers' discretionary quota required prior approval of the government under the Conduct Rules. ~~Government~~ had a special quota of its own for release of scooter on priority to its employees for efficient discharge of their duties. In accordance with the Conduct Rules a government servant is required to seek prior approval of the government before seeking any pecuniary obligation. The question whether he got the scooter as a result of his relations is not material since he did not seek permission nor was it granted to him. Thus the Appellate Authority did not find any scope to differ from the findings of the I.O. in regarding this charge.

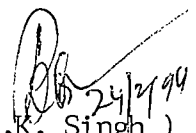
23. As regards charge No.6, the Inquiry Officer found out that Shri Batta did not make payment of Rs.1238.55 to M/s Ravi Engineering Works for over three years even after receiving registered reminders from the suppliers of steel bars. Thus the fact of lesser payment of the bill was completely established against him and he could not explain away this charge. The charge of non-payment of freight for carrying steel bars from Amritsar to Delhi was also established against him. Shri Batta argued that the driver of the truck was sacked by the employer for not submitting the money he had paid as freight for carriage of these steel bars. This could not be accepted as it was an after-thought and there was no proof to accept this oral evidence of the applicant.

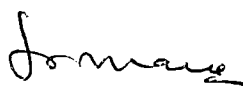
24. Shri Batta has been given all opportunity as envisaged under Art. 311 (1) and (2) of the Constitution. Art. 311(1) and (2) do require that the employee should be served with a charge-sheet in which charges should be clear and not vague and these should be legally sustainable not involving breach of any statutory rule. The CCS(CCA) Rules ~~are only supplemental to~~ Art.311 of the Constitution and these rules have been framed only to supplement the procedure required to be followed when a departmental proceedings for grave misconduct are initiated against an employee. The principles of natural justice also envisage the same thing, i.e. the employee should be informed of the charges on which he is going to be proceeded departmentally and that he should be given full opportunity to state his case and that the order passed by the Disciplinary Authority should be ^a well reasoned one. In other words, it should be a speaking order. Looked at from this angle, the findings of the I.O. and that of the Disciplinary Authority in the instant case are fully reasoned and the orders passed by him are fully speaking. ~~XXXXXXXXXXXX~~ The Appellate Authority who had in the first instance agreed with the findings of the Disciplinary Authority was not required to record detailed reasons but subsequently as per orders of this Tribunal he has examined each charge and heard the applicant in person and also examined the

supplementary appeal filed by the applicant and thus has eliminated any possibility of arbitrariness and non-application of mind. It has facilitated the task of this Tribunal in the sense that we do not find any scope for interference since there is no arbitrariness, no irregularity in procedure and no illegality involved in arriving at the final decision of dismissal from service by the competent authority and the Appellate Authority. In the absence of any arbitrariness or illegality there is no scope for taking a lenient view, especially in a case like this where the applicant has been found guilty of moral turpitude.

25. The Hon'ble Supreme Court in the case of Union of India Vs. **Permanand** (1989) 10 ATC 30 (SC) and also in Dev Jani Das Vs. Union of India (1990) 12 ATC 22, has categorically stated that the quantum of punishment should be left to the competent authority to decide and the Courts should refrain from interfering with this. To our mind the penalty imposed on the applicant is neither arbitrary nor excessive in the light of gross misconduct committed by him and established against him. All the doubts regarding inadequacy of opportunity also have been removed by the Appellate Authority when he gave fullest opportunity to the applicant to be heard in person and also to submit his supplementary appeal which were all examined along with the findings of the I.O. and then a very reasoned order was passed by the appellate authority upholding the order of dismissal from service against the applicant.

26. In the facts and circumstances of the case we do not find any merit or substance in the present application and accordingly the same is dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)