

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 40/89.

~~FAX NO.~~

199

DATE OF DECISION 14.11.1990.Shri N.L. Sehgal

Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.P. Khurana


Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓


 (AMITAV BANERJI)
 CHAIRMAN
 14.11.90.



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SHRI N.L. SEHGAL

APPLICANT

VERSUS

UNION OF INDIA & OTHERS RESPONDENTS

SHRI B.S. MAINEE

COUNSEL FOR APPLICANT

SHRI P.P. KHURANA

COUNSEL FOR RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER(J)

JUDGEMENT

(Delivered by Hon'ble Mr. I.K. Rasgotra, Member(A))

Shri N.L. Sehgal, in his application No.40/89 filed under Section 19 of the Administrative Tribunals Act, 1985 has challenged the order No. 3-11/83 Vig. dated 11.4.1984 placed at Annexure A-I issued by FA & CAO, Delhi Milk Scheme, New Delhi, imposing the penalty of compulsory retirement from service with immediate effect passed on the basis of ex-parte proceedings. He has also challenged the order No 17012/2/87-AVU dated 8.9.1988 issued under the signature of the Chief Vigilance Officer, Ministry of Agriculture, New Delhi at Annexure A-2 rejecting his revision petition maintaining that:

"the findings of the disciplinary authority are justified by evidence on record and that the penalty of compulsory retirement imposed upon the petitioner is justified. The President has accordingly decided that there are no sufficient grounds for interfering with the penalty already imposed by the disciplinary authority."

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2. The applicant was appointed as an Assistant Milk Distribution Officer on 1.3.1964 in the Delhi Milk Scheme and was confirmed in that post w.e.f. 12.8.1971. He was issued a charge sheet on 8.7.1983 for absenting from duty unauthorisedly without prior intimation and sanction of the competent authority. The case of the applicant is that he had been in constant and prolonged medical treatment from the C.G.H.S. dispensary and Ram Manohar Lohia Hospital and consequently was not able to attend his duties. He has, however, been submitting leave applications duly supported by medical certificates issued by the respective medical authorities to the respondents from time to time. His leave was sanctioned and he was first directed to a panel of Doctors for examination. He was kept under observation in Ram Manohar Lohia Hospital from 17.6.1982 to 22.7.1982, when he was declared fit to resume duty on 22.7.1982. Later he again fell ill from 24.8.1982 and was directed by the respondents to have himself checked up by Medical Superintendent, RML Hospital vide memorandum no. 2-2/64-E.I(Part II) dated 7.1.1983. According to him the Medical Superintendent refused to examine him as a copy of the said memorandum was not endorsed to him. While the respondents have stated that Ram Manohar Lohia Hospital was separately advised to examine him, the applicant maintains that in spite of his letter dated 17.1.1983 addressed to the respondents no instructions were sent to the Medical Superintendent RML Hospital. Be that as it may, the applicant did not attend duty thereafter leading to the issue

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of the charge sheet dated 8.7.1983. Various notices were sent to the applicant, thereafter to attend the inquiry and once the enquiry was postponed at his request. Despite he did not participate in the enquiry proceedings and ultimately the enquiry was conducted ex-parte leading to his compulsory retirement from service w.e.f. 11.4.1984. In the meantime he had also put in his papers seeking voluntary retirement w.e.f. 1.5.1984.

There is some dispute about the applicant having regularly advised the respondents about his illness duly supported by medical certificates and the respondent's contention that after a specific date viz. 31.12.1982 no intimation of his illness was received by the respondents. / he did not file any appeal against the order dated 11.4.1984 retiring him compulsorily but submitted a revision petition dated 21.8.1987 to the President of India. The revision petition was rejected, as earlier pointed out, on 8.9.1988. The main grounds of challenging the orders ^{issued} /by the respondents are malafides of the respondents, lack of opportunity to defend himself in the enquiry conducted ex-parte and the denial of opportunity to explain his case to the disciplinary authority before it imposed the penalty of compulsory retirement.

In paragraph 5 T of the application, the applicant has submitted that:

"That another illegality committed by the Respondents was that they did not furnish a copy of the Enquiry Report to the applicant to make a representation to be considered by the Disciplinary Authorities before imposing any penalty."

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3. There is no dispute regarding the basic facts of the case. The respondents also accept that the applicant had been under treatment for a prolonged period. They, however, submit that the applicant did not appear before the Medical Superintendent, Ram Manohar Lohia Hospital in terms of their memorandum dated 7.1.1983, nor did he resume duty as directed vide telegram acknowledged by one of his family member named Sarla Sehgal on 18.5.1983. He was therefore issued a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 on 8.7.1983 which was sent at his residential address and the same was acknowledged by one of his family member. In spite of this the applicant did not participate in the inquiry. The proceedings had, therefore to be completed ex-parte. It is also admitted that the applicant sought voluntary retirement from service vide his letter dated 1.5.1984. But at that stage, he had already been compulsorily retired from service vide order No. 3-11/83 Vig dated 11.4.1984 by the disciplinary authority.

4. Leaving all the above issues aside the major fact that emerges from the record is that the respondent had not made available a copy of the inquiry report to the applicant before the order imposing the penalty was passed by the disciplinary authority. In paragraph 5 (t) of the counter the respondents have submitted that:

"Denied. Enquiry report was sent to the applicant along with penalty order which was acknowledge by the applicant himself."

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5. We have heard the learned counsel for both the parties. In all fairness it may be recorded that the learned counsel for the respondents admitted that there has been a legal lacuna in not supplying a copy of the enquiry report to the applicant to enable him to submit a representation explaining his case to the disciplinary authority before it took a decision in regard to imposition of the penalty. In view of the submission of the learned counsel for the respondents and the apparent fact on the face of the record that the delinquent was not supplied a copy of the enquiry report and given an opportunity to make a representation to the disciplinary authority, the order dated 11.4.1984 passed by the disciplinary authority compulsorily retiring the applicant is not sustainable. This action of the respondents is in contravention of the law laid down by the Full Bench Judgement of the Tribunal in the case of Shri Prem Nath K. Sharma Vs. UOI & Ors. in TA No. 2/1986 decided on 6.11.1987.

6. The non-supply of the enquiry report to the applicant to enable him to make a representation to the disciplinary authority before imposing penalty, constitutes violation of principles of natural justice ^{is} and /against the law laid down by the Full Bench Judgement - Prem Nath K. Sharma (Supra).


Accordingly we set aside the:


- (i) Order No. 3-11/83 Vig. dated 11.4.1984 at Annexure-I issued by FA & CAO, Delhi Milk Scheme, New Delhi; and
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(ii) Order No. 17012/2/87-AVU dated 8.9.1988 issued under the signature of the Chief Vigilance Officer, Ministry of Agriculture, New Delhi at Annexure-2.

We further order that the applicant will be taken back on duty. The period of absence from the date of compulsory retirement upto the date of reinstatement shall be treated as leave due including leave on Half-Average pay, subject to the production of medical certificates, in accordance with the rules. He would also be entitled to all consequential benefits subject to his certifying that he was not gainfully employed during the period from the date on which he was compulsorily retired to the date of reinstatement. We further direct that the above directions shall be implemented by the respondents within a period of six weeks from the date of communication of this order.

There will be no orders as to the cost.


(I.K. Rasgotra)
Member (A) 14/11/1990


(Amitav Banerji)
Chairman