

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 483/89

DATE OF DECISION: 13.3.1991

SHRI CHAMAN LAL BATRA

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

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

FOR THE APPLICANT

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

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

Shri Chaman Lal Batra, aggrieved by the order of compulsory retirement dated 7.1.1988 passed by the Disciplinary Authority, as confirmed by the Appellate Authority vide order dated 9.8.1988 has filed this application under Section 19 of the Administrative Tribunal Act, 1985 to seek redressal of his grievance.

2. The applicant who was working as UDC in the Army Ordnance Supply Corps, Delhi Cantt. remained absent continuously without prior permission on account of various ailments from 6.10.1985 to 10.2.1987. The periods of his absence were covered by three medical certificates issued by Dr. C.L. Sachdeva of Gaziabad, while last spell of absence is covered by medical certificate issued by Dr. T.C. Taneja of 2657, Nangal Raya. The applicant claims that he was advised bed rest for most of the period covered by the Medical Certificates and that he could not send appropriate intimation of his sickness to the authorities. There is, however, no such advice in the medical certificates annexed to the application at Annexures A, B, C & E. He was certified fit to

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resume duty by Dr. C.L. Sachdeva on 12.10.1987 (Annexure D). He further states (paragraph 5.5 and 5.6 of the application) that his absence was regularised by the respondents upto 26.10.1987. He has however not produced any documentary evidence to that effect. He resumed duty on 26.10.1987 when he noted down the letters dated 19.5.1987 and 26.7.1987 issued by AOC (R), Secunderabad. He was compulsorily retired from service vide order dated 7.1.1988 for having exhibited conduct unbecoming of a government servant in violation of Rule 3 of Central Civil Service (Conduct) Rules, 1964. The main charges levelled against him, which were the subject matter of the disciplinary proceedings conducted ex-parte were 'absence without leave' and 'disobedience of orders' as he did not respond to the notices sent to him at his address, 15-C, Mathura directing him to report for duty. The applicant contends that he had left Mathura in 1974 and that his recorded address with the respondents was 'EA-91, Inderpuri, New Delhi' since 1980. Since the notices etc. were sent to him at the wrong address he cannot be held responsible for not responding to the notices sent to him directing him to resume duty/apply for leave supported by medical certificates. He therefore denies being guilty of the charges levelled against him, first because the period of the absence is covered by medical certificates and secondly because of the notices etc. sent to him in connection with the disciplinary proceedings were sent at the obsolete address and not at the address recorded with the respondents. He further submits that he was neither given a copy of the charge sheet nor a copy of the report of the oral enquiry conducted against him. In the circumstances he contends that since the notices were sent to him at the wrong address, the ex-parte inquiry and the conclusions arrived at are in violation of principles of natural justice and Article 311(2) of the Constitution of

India.

He filed an appeal against the order of compulsory retirement dated 7.1.1988 but the same was rejected by the appellate authority on 9th August, 1988. The said order of the appellate authority was communicated to him vide registered letter dated 7.9.1988 at his correct address viz. EA-91, Inderpuri, New Delhi-12. In the grounds for seeking relief from the Tribunal vide paragraph 8 of the application he has specifically stated that "the contents of the proceedings of the oral enquiry were never shown to the applicant nor was he given any copy of the same or the charge sheet and was thus prevented from making a proper appeal before the appellate authority against the order dated 7.1.1988. By way of relief the applicant has prayed that the order of compulsory retirement dated 7.1.1988 as confirmed by the appellate authority vide order dated 9.8.1988 be quashed with the direction to the respondents to treat him as having been continued in service with all consequential benefits.

3. The case of the respondents is that the applicant remained absent without prior permission. He was directed to rejoin duty, or in case of sickness to submit medical certificate together with leave application vide letters dated 18.10.1985, 4th December, 1985 and 28th January, 1986 sent under Registered A.D. post. These letters were however received back undelivered. He also did not submit any medical certificate to the respondents along with his application. It has, therefore, been averred that the medical certificate were obtained by the applicant subsequently to cover up his lapses. Further while he was found fit by Dr. C.L. Sachdeva on 12.10.1987 he obtained another medical certificate from Dr. T.C. Taneja at Nangal Raya certifying him sick from 12.10.1987 to 21.10.1987. In this situation the respondents had no

alternative but to take disciplinary action against him under the rules. Regarding discrepancy in the address the respondents submit that in his leave application dated 23.9.1985 he had mentioned his address as 756, Type I, DESU Colony, Pankha Road, New Delhi 110 058. Thereafter, he submitted another leave application on 28.10.1987 wherein he mentioned his address as EA-91, Inderpuri, New Delhi-12. Regarding the non-furnishing of the charge sheet and a copy of the inquiry report, to the applicant, the respondents have submitted that besides noting the disciplinary proceedings on 27.10.1987, the applicant never asked for any more details relating to his case.

In his rejoinder, the applicant has more or less traversed the same grounds as in the OA.

4. We have heard the learned counsel of both the parties. In our view the following issues emerge for our adjudication:

- (a) Whether the notice in connection with the disciplinary case were sent to the applicant at his correct address;
- (b) Whether he was furnished a copy of the oral enquiry report to enable him to make a representation to the disciplinary authority before it decided to impose any penalty on the applicant.

To resolve the above issues we thought it appropriate to direct the respondents to submit the records dealing with the disciplinary case against the applicant. The same was produced on 19.2.1991. A perusal of the record shows that the Security Office of the respondents after verification had advised the Administrative Officer that the applicant was not residing in House No. 756, Type-I, DESU Colony, Pankha Road, New Delhi. The respondents also addressed SHO,

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Janakpuri Police Station on 15th July, 1986 to investigate the whereabouts of the applicant as the chargesheet etc. sent to him at his latest known address, viz. House No. 756, Type-I, DESU Colony had been received back undelivered. It is not disputed that the said address was given by the applicant in his initial leave application. There is however no convincing reason put forth by the respondents as to why the papers connected with the disciplinary proceedings were not sent to the officially recorded address of the applicant, i.e. 'EA-91, Inderpuri, New Delhi. It is further observed from the findings of the inquiry that the Enquiry Officer was aware that the applicants reported for duty on 11.2.1987, 12.2.1987 and 16.2.1987 (para 27 (d) of the Enquiry Report), yet no effort was made to serve the charge sheet, furnish a copy of the report etc. to the applicant and Enquiry was finalised ex parte.

In view of the above, it cannot be denied that no effort was made to direct the applicant to receive the necessary documents and to participate in the enquiry when he was available in the office, knowing well that the notices directing him to resume duty or produce medical certificate together with leave application, chargesheet etc. had been received back undelivered from his initial permanent address at Mathura and the latest known address as per his first leave application. We also find from the memorandum No.6953300/- UDC/ADM(Civ) AI dated 19th May, 1987, reproduced below, that a copy of the inquiry report was furnished only along with the order of the disciplinary authority.

"1. Refer to:

(a) this office memorandum No.6953300/UDC/ADM(Civ) A1 dated 06 Jun 86;

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(b) this office Inquiry Order No. 6953300/UDC/ADM(Civ) A1 dated 05 Oct 86;

2. The undersigned is directed to enclose a copy of the Inquiry report submitted by Major Mehar Singh appointed to inquire into the charges against No. 6953300 UDC Shri Chaman Lal Batra of COD Delhi Cantt.

3. On a careful consideration of the inquiry report aforesaid, the undersigned agrees with the findings of the Inquiry Officer and holds that the articles of charges are proved. The undersigned has, therefore, provisionally come to the conclusion that Shri Chaman Lal Batra is not a fit person to be retained in service and so that the undersigned proposes to impose on him the penalty of "Removal from Service."

4. Shri Chaman Lal Batra is hereby given an opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during the inquiry. Any representation which he may wish to make on the penalty proposed will be considered by the undersigned. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this Memorandum by Shri Chaman Lal Batra.

....."

Incidentally, the above memorandum and/enclosures were furnished to the applicant when he attended office in 27 October, 1987.

It is well established law that the delinquent official must be provided with a copy of the inquiry report on conclusion of the enquiry to enable him to make a representation to the disciplinary authority explaining his conduct before the disciplinary authority makes up its mind to inflict any penalty on the delinquent. The non-furnishing of Inquiry

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Report to the applicant violates the principles of natural justice.

In **Prem Nath K. Sharma Vs. UOI & Ors.** decided by the Full Bench of the Tribunal on 6.11.1987 it was held that:

"the findings of the disciplinary authority are bad in law because the applicant was not given a copy of the report of the Enquiry Officers and was not heard (given an opportunity of making his representation) before arriving at the finding."

The said decision of the Full Bench of the Tribunal has been fortified by the judgement of the Supreme Court in **Union of India & Ors. Vs. Mohd. Ramzan Khan JT 1990(4) SC 456** / their Lordships of the Supreme Court have observed:

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and nonfurnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

We are therefore of the view that the application must succeed and that the applicant is entitled to the reliefs prayed for. Accordingly we set aside the order No.6953300/- UDC/ADM(CIV) dated 7.1.1988 passed by the disciplinary authority and order No.B/12060/719/068C(ii) dated 9.1.1990

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passed by the appellate authority, conveyed to the applicant vide Memorandum No.3552/1/6953300/EST-(NI) dated 7th September, 1988. We further direct that the applicant shall be deemed to be in service with effect from the date the order of compulsory retirement dated 7.1.1988 was implemented. He will be entitled to full pay and allowances w.e.f. the date the order dated 7.1.1988 compulsorily retiring him from service was implemented and the date of reinstatement in service with other consequential benefits, if any. This will however not preclude the disciplinary authority from revising the proceedings and continuing with it in accordance with law from the stage of supply of enquiry report to the applicant and from taking a decision in accordance with law in regard to the period of continued absence on account of sickness of the applicant.

There will be no orders as to costs.

  
(I.K. Rasgotra)  
Member (A) 3/3/91

  
(Amitav Banerji)  
Chairman