

9

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 511 of 1989

New Delhi this the 4th March, 1994.

Shri Justice B.C. Saksena, Vice-Chairman.
Shri S.R. Adige, Member(A).

Shri N.L. Sharma,
S/o Shri Omkar Mal,
R/o B-2856, Netaji Nagar,
New Delhi.

... Petitioner.

By Advocate Shri B.B. Raval.

Versus

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Surface Transport,
Transport Bhawan,
New Delhi-110001.
2. The Chief Engineer-cum-Administrator,
Inland Water Transport Directorate,
Ministry of Surface Transport,
Transport Bhawan,
New Delhi-110 001.
3. The Joint Secretary (Transport),
Ministry of Surface Transport,
Transport Bhawan,
New Delhi-110 001.
4. The Secretary to the Govt. of India,
Ministry of Personnel,
Public Grievances and Pension,
North Block,
New Delhi-110 001.
5. The Director of Estates,
Directorate of Estate,
Nirman Bhawan,
New Delhi-110 0001.

... Respondents.

By Advocate Shri P.P. Khurana.

O R D E R

Shri Justice B.C. Saksena

Under challenge in this O.A. is the order dated 7th December, 1988 (Annexure A) by which a penalty of compulsory retirement was imposed. The applicant filed an appeal under Rule 23 of the CCS(CCA) Rules, 1965 against the said penalty but the same was rejected by an order dated 17.2.1989. The applicant has also prayed that the respondents be directed to reinstate him in service with all consequential benefits treating

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the period from 7.12.1988 as duty with full pay and allowances etc.

2. The applicant initially joined the Inland Water Transport Directorate of the Ministry of Transport and Aviation in 1967. While he was working in the IWT Directorate, he along with certain other officials was sent on deputation to the Inland Waterways Authority of India (I.W.A.I). This was a newly constituted autonomous body under the Inland Waterways Authority of India Act, 1985. The applicant along with three other officials of IWT Directorate challenged the transfer to I.W.A.I in O.A. 347 of 1987 in this Tribunal and by judgement/order dated 28.5.1987 the respondents were directed "to complete the process of absorption of willing employees in I.W.A.I. and recalling of the unwilling as provided in Section 11(1)(f) on or before the end of the next academic year i.e., 31.5.1987". The respondents filed an SLP No.9888 of 1987 before the Hon'ble Supreme Court. The Supreme Court passed the following order on 22.8.1988:

"Having heard learned counsel for the petitioner and the learned Solicitor General, we do not find any merit in the challenge made to the order passed by the Central Administrative Tribunal. The Special Leave Petition is accordingly dismissed. Solicitor General points out that the time fixed by the Central Administrative Tribunal for completing the process of absorption of willing employees in I.W.A.I and recalling those not willing for absorption as provided in Section 11(1)(f) viz., on or before the end of 31.5.1987 has since elapsed and hence, the time should be extended till December 31, 1988 to comply with the directions. Time is accordingly extended till 31.12.1988. We direct that till such time the employees who have not agreed to the absorption are recalled and given posting, they be allowed to retain possession of the quarters allotted to them".

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The applicant was recalled in accordance with the above order and by office order dated 18.11.1988 (Annexure A-3), he was temporarily taken on the strength of the Ministry of Surface Transport after his reversion. The applicant joined duty in the Ministry of Surface Transport on 16.11.1988. He was served with the impugned order of penalty of compulsory retirement with immediate effect. The order of penalty was passed after conclusion of the departmental inquiry. A chargesheet was served on the applicant dated 2.1.1982 but the same was unconditionally withdrawn by the competent authority by memo dated 27.5.1982. Another chargesheet dated 24.6.1982 contained in Annexure A-8 was issued. One Shri R. Ravi Kumar was appointed as an Inquiry Officer. The applicant made repeated representations for change of the Inquiry Officer. The Inquiry Officer concluded the inquiry on 23.11.1984 ex-parte since the applicant did not appear before the Inquiry Officer. The Inquiry Officer submitted his report on 23.4.1985 and the disciplinary authority viz., the Director of Ministry of Transport issued the order of compulsory retirement.

3. The respondents have filed a reply to the O.A. and the applicant has filed a rejoinder. The pleadings of the parties will be adverted to while dealing with the submissions advanced by the learned counsel for the parties.

4. The learned counsel for the applicant Shri B.B. Raval has made the following submissions:

- (1) That the request for change of the Inquiry Officer was made repeatedly but no heed was paid to the same. The Inquiry Officer was prejudiced and, therefore, the inquiry was vitiated.
- (2) That the applicant was not furnished with copies of the order sheets recorded by the Inquiry Officer in the course of the disciplinary proceedings.

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- (3) That the inquiry was completed ex parte while the applicant was on sanctioned leave.
- (4) That the first charge-sheet was withdrawn unconditionally and accordingly the second charge-sheet could not have been issued and it is illegal.
- (5) That the impugned order has not been passed by the disciplinary authority viz., the Chief Engineer-cum-Administrator of I.W.T. Directorate. The ^{an} impugned order has been passed by/authority not competent and who was not the disciplinary authority of the applicant.
- (6) That there has been violation of the principles of natural justice inasmuch as the applicant was not furnished with the copies of the Inquiry Officer's report.

5. As far as the first ground is concerned, the applicant has filed a copy of the representation dated 14.8.1988 as Annexure A-11. It was addressed to the Inquiry Officer and it ~~partly~~ ^{boldly} ~~boldly~~ ^{BoR} stated that the applicant had no faith in the Inquiry Officer and it would be against the provisions of the CCS(CCA)Rules, 1965. Along with this representation, a copy of the representation dated 1.8.1984 was also enclosed which is on record as part of Annexure A-11. A perusal of the same shows that the applicant was, in fact, challenging the issuance of a second charge-sheet after the first charge-sheet was withdrawn unconditionally. It was pleaded that in the circumstances, initiating fresh proceedings unless the reasons for cancellation of the original charge-sheet are appropriately mentioned would be illegal and it was requested that pending finalisation of the representation, the Inquiry Officer may be instructed not to proceed with the inquiry. This representation dated 1.8.1984 was addressed to the Chief Engineer-cum-Administrator, I.W.T. Directorate. The applicant made a further representation on

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20.10.1984 as per Annexure A-12, addressed to the Inquiry Officer. This was in furtherance of the earlier representation. In the same vein, further representations were filed copies of which are Annexures A-13 and A-14. Thus, it would be seen that the charge of the petitioner was primarily on the ground of the competence to initiate fresh proceedings after withdrawal of the first charge-sheet unconditionally. The learned counsel for the applicant invited our attention to Instruction No. 9 of the Government of India given under Rule 15 of the CCS(CCA) Rules, 1965. The instructions are contained in Swamy's Compilation of the said Rules. Rule 15 prescribes 'Action on the Inquiry report'. Hence, these instructions have to be viewed in the light of the provisions of Rule 15, that is to say, the instructions would be applicable only if the proceedings on the first charge-sheet had culminated and the Inquiry Officer had submitted his report. In the present case, the first-
~~chargesheet~~ was ^{Cancelled} ~~present~~ even before the Inquiry Officer held the inquiry. The respondents in their reply have indicated that the matter was referred for opinion to the Ministry of Law and they gave an advice that the second charge-sheet can be issued. In support of the said opinion, reliance was placed on the decision of the Calcutta High Court reported in 1976(2) SLR P.53 Sudhir Chakravarthy Vs. State of West Bengal. The learned counsel for the applicant has not been able to make any submission to distinguish the said decision nor has cited any contrary decision. He has merely placed reliance on Instruction No. 9 given by the Government of India under Rule 15 of the CCS(CCA) Rules. We have already dealt with the scope of the said instructions. Consequently, we are of the opinion that there ~~was~~ ^{is} no merit in the demand for change of the Inquiry Officer. In para 4.8(e) of the reply, it has also been stated that no documentary evidence or valid reasons were given against the appointment of the Inquiry Officer by the applicant. Therefore, Shri R. Ravi Kumar, who was appointed as Inquiry Officer,

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was in no way connected with the work of IWT Directorate and that there was no question of his being biased against the applicant. We, therefore, find no merit in the submission that the request for change of the Inquiry Officer had not been replied to by the authority and further we also negative the other submission that after withdrawal of the first charge-sheet unconditionally, no fresh disciplinary proceedings could have been initiated. Both the submissions are without force.

6. The next contention of the learned counsel for the applicant was that the copies of the order sheets and the statement of the witnesses recorded by the Inquiry Officer have not been furnished to the applicant. The Inquiry Officer was appointed on 9.5.1983 and the second charge-sheet had been issued on 24.6.1982. The matter remained under correspondence between the Department of Personnel and Training and the Ministry of Law as to the validity of the second charge sheet. After the Ministry of Law and Department of Personnel and Training held that the second charge sheet can be issued, the Inquiry Officer was appointed. Thereafter, the Inquiry Officer served a notice on the applicant on 3.11.1983 requesting him to be present for the preliminary hearing on 14.11.1983. Several dates were intimated to the applicant for preliminary hearing but he did not appear and the Inquiry Officer concluded the inquiry. If the applicant as has been shown did not appear before the Inquiry Officer, we see no justification in the complaint that the applicant had not been furnished with the copies of the order sheets which were recorded daily by the Inquiry Officer and was not furnished with the statement of witnesses. The Inquiry Officer because of absence and non-cooperation of the applicant evidently proceeded ex parte and thus, there was no infirmity if the applicant had not been furnished with the copies of the order sheets or the statement of the witnesses.

17

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7. The next submission of the learned counsel for the applicant that needs to be considered is that the Inquiry Officer completed the inquiry while the applicant was on leave. In the reply, it has been indicated that the applicant at no time informed the Inquiry Officer that he has been sanctioned leave nor did he request the Inquiry Officer to postpone the Inquiry for the duration of the sanctioned leave. The applicant has not informed the Inquiry Officer about the grant of leave to him. We, therefore, see no justification to hold that the Inquiry Officer erred in concluding the inquiry ex-parte. The learned counsel for the applicant also submitted that the Inquiry Officer had concluded the inquiry on 23.11.1984 but after about six months of the actual inquiry proceedings, he finalised his report on 23.4.1985. It was urged that the Inquiry Officer did not submit his report to the disciplinary authority immediately but handed over the same to the Chief Engineer-cum-Administrator on 11.3.1986. The learned counsel for the applicant also submitted that the abnormal delay in submitting the Inquiry Officer's report to the disciplinary authority itself proves the malafide intention of the Inquiry Officer. In the reply, the respondents have stated that the Inquiry Report was handed over by the Inquiry Officer to Shri W.S.J. Thambudurai, the then Joint Director, ITW Directorate, on 23.4.1985 itself and thus, there has been no abnormal delay on the part of the Inquiry Officer. In reply to the assertion by the applicant that the disciplinary authority after having received the report did not take any action as required by Rule 15 of the CCS(CCA) Rules, 1965, it is alleged that the report was submitted to the Chief Engineer-cum-Administrator of I.W.T. Directorate and he did not take any action on the stale report and filed the same, this has been countered by the respondents in the reply and it has been stated that the Chief Engineer cum-Administrator might have not taken any action on the Inquiry report due to exigencies of other work. It is denied that he

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did not take any action on the report, the same being stated. There is no material on the record to satisfy us that after receipt of the Inquiry Officer's report, the action has not been taken because the Chief Engineer-cum-Administrator was satisfied that no action was called for and the report was stated one. Action on the Inquiry Officer's report was duly taken and the impugned order had been passed. Now, we come to the submissions which relate to the competence of the Director, Ministry of Transport in passing the impugned order of compulsory retirement. This submission is based on the footing that the applicant's parent department was Inland Water Transport Directorate which is a non-participating attached office of the Ministry of Surface Transport. It is urged that the Head of Department of the I.W.T. Directorate is the Chief Engineer-cum-Administrator and he was the appointing and disciplinary authority of the applicant. The respondents have indicated that with the passing of the Inland Waterways Authority of India (IWAI) Act, 1985 on 30.12.1985, the I.W.T. Directorate stood abolished and according to the provisions of Section 11(f) of the said Act all the employees of the erstwhile IWT Directorate were to be treated on deputation to the authority till such time they are recalled by the Government. Shri Sharma was recalled, as he had not opted for his being absorbed in the Authority, by the Ministry of Transport and the orders for compulsory retirement were issued on the basis of the Inquiry Officer's report. The respondents pleaded that the applicant was one of such employees who was not willing in I.W.A.T. and as such his services in I.W.A.T. were considered to be on deputation. By order dated 16.11.1988 he was recalled from deputation. He was recalled from deputation to meet the requirements of Rule 20 of CCS(CCA) Rules, 1965. After recall from deputation and attachment with the Ministry, it is urged by the learned counsel for the applicant that the Director of Ministry of Surface Transport was not competent to impose the punishment on the applicant. Admittedly, the applicant

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had been recalled from deputation and the applicant had filed a copy of the order dated 15.11.1988, Annexure-A1, which shows that the applicant was relieved from service of the IWAI w.e.f. 15.11.1988 and was directed to report to the Establishment Section of the Ministry of Surface Transport immediately. Consequent to his transfer from Inland Waterways Authority of India, the applicant was temporarily taken on the strength of the Ministry of Surface Transport along with one post of UDC as it would be evident from the office order dated 18.11.1988 filed as Annexure A-3 along with the O.A. The applicant after the order dated 15.11.1988 submitted his representation dated 16.11.1988 to the Under Secretary, Government of India, Ministry of Surface Transport. In this representation, the applicant indicated his gratefulness in recalling him back to his parent department, that is to say, Ministry of Surface Transport. Obviously, he raises contrary submissions and takes up the plea that the Chief Engineer-cum-Administrator was his appointing authority and the Director of Ministry of Surface Transport was not competent to pass the order of punishment. The learned be counsel for the applicant submitted that not much importance need be attached to the representation dated 16.11.1988. The applicant had submitted the same not knowing the legal implications. Be that as it may, the fact remains that the applicant joined in Ministry of Surface Transport w.e.f. 16.11.1988. The order of compulsory retirement was passed subsequent thereto on 7.12.1988. The effect of Section 11(f) of the Inland Waterways Authority of India Act, 1985 clearly ~~says~~ ^{is for} that every employee holding any office under the Central Government immediately before 30.12.1985 was to be treated as on deputation with the authority, that is to say, the Inland Waterways Authority of India. He ceases to be in the Inland Waterways Directorate. Thus, we find no merit in the submission that the impugned order has been passed by an authority who was not competent in that behalf.

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8. The learned counsel for the applicant also made a submission that the Inquiry Officer's report was not furnished to the applicant. The same was furnished along with the impugned order of compulsory retirement. The learned counsel submitted that the Supreme Court in a decision reported in AIR 1957 SC 882 Union of India Vs. T.R. Verma had observed that the rules of natural justice require that the party should have the opportunity of adducing all relevant evidence on which he relies and the evidence of the opponent should have been taken in his presence and opportunity to cross-examine the witnesses should have been given. We have already held that despite repeated intimation about the date of the inquiry, the applicant did not attend the inquiry proceedings nor he requested the Inquiry Officer to postpone the inquiry. The was impugned order was passed after the amendment/made under Article 311 by the 42nd amendment. The question whether after the 42nd amendment, there was a right to be furnished with the copies of the Inquiry Officer's report before passing/the order of punishment has been subject matter of consideration by the various courts. In Union of India Vs. Mohd. Ramzan Khan, the Apex Court clearly laid down that the decision given therein would be only prospective in operation. The said decision was rendered on 29.11.1990. The impugned order having been passed earlier, thus, cannot be assailed on the ground that the Inquiry Officer's report had not been made available before passing/the order of punishment. No other point has been urged.

9. In view of the conclusions reached hereinabove, we find no merit in the O.A. It deserves to be dismissed and is accordingly dismissed. No costs.

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(S.R. ADIGE)
MEMBER(A)

Dasgupta
(B.C. SAKSENA)
VICE CHAIRMAN(J)