

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-686/89

Date:

23.7.93

Shri Krishan Lal Kathpalia Applicant

Versus

Chief Secy., Delhi Admn. Respondents

For the Applicant Shri G.R. Matta, Counsel

For the Respondents

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)
Hon'ble Mr. N.K. Verma, Administrative Member.

1. To be referred to the Reporters or not?

Yes.

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The applicant was working as Area Inspector of
Brahmpuri area. A memo. dated 16.6.1984 was issued to
him for initiating disciplinary proceedings with the
following charge:-

"The holder of FPS No.4574 had entered in his
stock register 25 quintals of rice on 17.2.84
as having been received from the FCI godown
on 16.2.1984. The FPS holder had shown its
receipt in his stock register on 17.2.1984.
The Sub-Inspector Shri K.L. Kathpalia had
also allowed sale of these 25 quintals of
rice on 17.2.1984. The same quantity of rice
in respect of this FPS holder was actually
issued from the FCI godown on 20.2.1984 and
was seized in a godown at Sarai Pipal Thala
while it was being unloaded from a truck on
that date.

The 'Talpatti' produced by the FPS holder
was in fact a bogus one and indicated receipt
thereof under his own signatures dated 22.2.84.
The fact of its being a bogus 'Talpatti' has
been confirmed from the records of the FCI.

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From these facts it is seen that the entry of 25 quintals of rice in the stock register as made by the FPS holder on 17.2.84 is incorrect. Subsequently the sales shown by him after 17.2.84 are also bogus. This fact is further proved from the fact that the FPS holder could not produce the cash memos and the sale register at the time of checking by the Enforcement staff.

These facts indicate that the Area Inspector, Shri K.L. Kathpalia, S.I., had allowed the sale of 25 quintals of rice on 17.2.84 as mentioned in the inspection book and also signed by him on 17.2.84 when actually there was no stock of rice at the shop. Shri Kathpalia has thereby colluded with the FPS holder to sell 25 quintals of rice in black market.

The above mentioned acts on the part of Shri K.L. Kathpalia, S.I. is highly objectionable and reflect lack of devotion of duty. He had failed to exercise proper supervision on the FPS holder. His collusion with the FPS holder with ulterior motives indicate that he failed to maintain absolute integrity, which is highly unbecoming of a Government servant. Thus he has, violated Rule 3 of the CCS(Conduct) Rules, 1964."

Earlier, he was placed under suspension w.e.f. 28.2.1984.

Shri R.L. Srivastava, Assistant Commissioner (Enforcement) was appointed as the Enquiring Authority. The Enquiry Officer, in the findings given in the report (Annexure A-V) held that the charges against the applicant stood proved. The disciplinary authority, by the order dated 25th Oct., 1985, imposed the punishment of removal from service (Annexure A-VI). An appeal against this order was referred to the Chief Secretary, Delhi Admn. (Annexure A-VII). The appellate authority, by the order dated 11th October, 1988, dismissed the appeal, affirming the order of the disciplinary authority.

2. The applicant had filed this application on 29th March, 1989 for quashing the impugned orders of punishment and that the charges against him are not at all established, giving directions to the respondents to reinstate him, ordering for payment of consequential benefits of pay and other allowances.

3. The respondents contested this application and in their reply stated that the enquiry was conducted according to the CCS(CCA) Rules, 1965. The applicant was given adequate opportunity to meet the charges framed against him. He has also examined the defence witnesses. The finding given by the Enquiry Officer is solely based on the oral and documentary evidence produced before him. The disciplinary authority applied its mind and passed the punishment order which has been duly considered by the appellate authority in the appeal. There is no case for interference and the application is without merit and deserves to be dismissed.

4. We have heard the learned counsel for the parties at length and perused the records. The first ground taken by the learned counsel for the applicant is that the finding arrived at by the Enquiry Officer is not based on any evidence. However, it is not so. The Enquiry Officer has analysed the statements of J.B.

Dhania, Inspector, A.L. Grover, Inspector, Enforcement Branch, and K.S. Roy, Depot Officer, F.C.I. Godown. The Enquiry Officer has also relied upon the listed documents produced during the course of the proceedings. The Enquiry Officer also considered the statements of Shri Anand Prakash, DW1, Shri Jai Prakash, Partner of Fair Price Shop, DW2 and arrived at the finding that the charges against the applicant stand proved. Thus, it cannot be said that this is a case where there is no evidence. The Enquiry Officer considered the fact that the rice was actually issued on 20.2.1984 from the Shakti Nagar F.C.I. Godown. He has further held that the FPS holder No.4574 has made fictitious stock entry and sale entry. The Enquiry Officer also adversely commented on the defence witness, Shri Jai Prakash, who is partner of Fair Price Shop that he could not explain as to how he obtained the copy of the weight check memo. No.2348/134707 dated 16.12.1989 when other copies of this number are blank. Thus, the applicant has allowed sale of 25 quintals of rice to the FPS No.4574 when there was no stock of rice at the shop. The sale at the F.P.S. could not have commenced unless and until the Inspector would have given clearance for the sale. This Tribunal cannot re-appreciate the evidence adduced before the Enquiry Officer. The Tribunal can also not sit as an appellate authority. On careful reading of the evidence, oral and

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documentary, goes to show that there is preponderance of evidence to establish the charges framed against the applicant. The finding of the Enquiry Officer that there was no stock of rice on 17.2.1984 and the applicant opened its sale, is fully established from the documents on record.

5. The learned counsel for the applicant also took the ground that there is a violation of sub-rule (18) of Rule 14 of the C.C.S. (CCA) Rules, 1965. This rule envisages that the enquiring authority shall generally question the delinquent, if he is not examined himself. However, we find that the applicant has submitted a detailed defence statement to the Enquiry Officer. Thus, this irregularity has not caused any prejudice to the applicant as he has explained the evidence produced in the enquiry against him.

6. The learned counsel for the applicant also argued that the Enquiry Officer has relied upon the report of the Food & Supply Officer, Shri Maluk Singh, which was not a listed document and it was not brought in evidence by the disciplinary authority. However, under Sub-Rule (15) of Rule 14 of the C.C.S. (CCA) Rules, 1965, the enquiring authority may permit the Presenting Officer to produce evidence not included in the list given to the Government

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servant, or may himself call for the new evidence, or recall or re-examine any witness. The applicant has been given due opportunity to defend himself and the report of Shri Maluk Singh has been only taken into account to further reinforce the findings about the proof of the charge.

7. No other point has been argued before us. In view of the above circumstances, the present application is devoid of merit and is dismissed, leaving the parties to bear their own costs.

N.K. Verma 23.7.93
(N.K. Verma)
Member(A)

J.P. Sharma 23.7.93
(J.P. Sharma)
Member(J)