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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. NO. 933 of 1989

This 16th day of March, 1994

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

Virendra Kumar,
Foreman (Civil),
Ordnance Factory,
Muradnagar.

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Applicant

By Advocate: Shri B.S. Mainee

VERSUS

Union of India, through

1. The Secretary,
Ministry of Defence (Productions)
New Delhi.
2. The Chairman,
Ordnance Factories Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager,
Metal & Steel Factory,
Ishapore, 24-Pargana.
4. The DDG, Estt./CVO Ordnance
Factory Board,
10-A, Auckland Road,
Calcutta.

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Respondents

By Advocate: Mrs. Raj Kumari Chopra

ORDER

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

This O.A. No.93/89 has been directed against the order No.8024/A/Vig. dated 8.4.1988 passed by DDG/Estt./CVO Ordnance Factory Board, Calcutta.

2. The applicant was appointed as Chargeman grade-II in the scale of Rs.250-380 on 11.1.63 in the Ordnance Factory, Dehradun. He was promoted as Assistant Foreman w.e.f. 1.11.65 in the grade

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rs.370-475/-. On promotion he was transferred to Gun Carriage Factory, Jabalpur. He was further promoted as Foreman in Gun Carriage Factory, Jabalpur and was transferred to Trichirapalli on 14.3.77 from where he was retransferred to Jabalpur Vehicle Factory in August 1979. While he was working as Foreman (Civil) in the Vehicle Factory, Jabalpur, a memo of charge-sheet for major penalty was served on him vide letter No.99/Vig./DGOF/10552 dated 12.6.1981. This is annexure A-2 of the paper-book. The article of charge reads as follows:

"Gross misconduct. Defrauding the Government by claiming TA/DA on the basis of false/fake cash receipts -- failure to maintain absolute integrity and conduct unbecoming of a government servant".

It also states that Virendra Kumar, applicant, while on transfer to Vehicle Factory, Jabalpur from Ordnance Factory, Tricharapalli vide letter dated 3.8.79 and OF/Tricharapalli F.O. Part-II No.1453 dated 20.8.79 had drawn Rs.4000/- on account of advance TA/DA. He submitted an application dated 24.10.79 for adjustment of TA/DA advance drawn by him stating that his wife and son (aged 5 years 3 months) have performed journey on 18.8.79 by road and arrived at Jabalpur on 23.8.79 covering a distance of 2275 Kms from Tricharapalli. He also requested permission to perform the journey for his sons aged 17 and 15 years from Trichirapally to Jabalpur within 6 months. Since the said Virendra Kumar had not furnished the supporting documents for the fare paid by him for journey along with his above application, he was directed to furnish the same. The said Virendra Kumar along with his letter dated 16.3.80 had produced two cash receipts on plain paper regarding taxi fare for preparation of final adjustment of TA/DA, of a receipt for Rs.700/- only covering a distance of 920 Kms from Madras to Vijaywada signed by one E. Ganesan (Taxi No. TMP 9576) and another receipt for Rs.750/- signed by one Natarajan from Madras to Vijaywada for journey performed on 26.12.79. The applicant did not submit any cash receipt for the distance covering the journey from Tricharapally to Madras and from

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Vijayawada to Jabalpur for self, wife and son aged 5 years and 3 months and from Tricharapally to Madras and from Vijayawade to Jabalpur for his two sons aged 17 years and 15 years for having performed the journey in the month of December, 1979. It is alleged that the said Virendra Kumar had submitted false/false cash receipts under his letter dated 16.3.80 as revealed by the facts stated below:

"Tourist taxi permits were issued to the vehicles TMP-9576 and TNR-1095 to ply only in the State of Tamilnadu. On 19.8.79 the owner of the vehicle No. TNR-1095 was Mr. P. Tamilpandyan who had purchased the same vehicle from Mrs. A. Jagajyothi, wife of Mr. Ayyanader on 14.4.79 and Mr. Tamilpandyan is the owner-cum-driver of the said vehicle and as such cash receipt for Rs.750/- produced by the said Virendra Kumar for taxi No. TNR-1095 signed by one Natarajan for plying from Madras to Vijayawada is false/fake.

This amounted to gross misconduct and defrauding the government by claiming TA/DA on the basis of false/fake cash receipts and shows failure to maintain absolute integrity and also amounted to conduct unbecoming of a government servant."

3. List of documents along with the article of charges were supplied to the applicant. He was also supplied with list of witnesses. Departmental inquiry was initiated against the applicant. He gave his show cause on 18.6.81 denying the charges levelled against him in the memo of charge-sheet. A copy of the reply filed by the applicant is marked as annexure A-3 of the paper-book. The competent authority nominated Shri R.N.Babu, Manager (Coordination) as I.O. to conduct the departmental proceedings (annexure A-4). The applicant expressed his doubts about the impartiality of the said I.O. and requested for a change of I.O. and he gave a list of 5 persons to the Disciplinary Authority to pick up any one of those for nomination as I.O.. He had also filed a similar representation to the I.O. on 10.11.81 (annexure A-6). Subsequently, Shri S.K. Dutta was nominated as I.O. who commenced the inquiry and recorded the evidence of witnesses produced by the Disciplinary Authority in support of charges. On his transfer to Ordnance

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Factory, Muradnagar, Shri Dutta ceased to be I.O. and subsequently Shri S.C. Majumdar, Works Manager, was appointed as I.O. in his place. Shri Majumdar recorded the evidence of DWs cited by the applicant and also of the PWs. He completed the inquiry and submitted his findings to the D.A.

4. Several letters have been placed on file to show that Shris.c. Majumdar was biased against the applicant and that he twisted the depositions of the DWs to suit the prosecution. The various representations addressed to I.O., D.A. and D.G. are all available on the file. The I.O. who was appointed vide letter dated 3.12.86 inquired into the charges against the applicant and submitted his report to the D.A. on 18.9.87. The Disciplinary Authority vide the impugned order considered the findings of the I.O. and imposed the penalty of reduction of pay of the applicant by two stages for two years without cumulative effect.

5. As regards reliefs, the applicant has made a prayer to quash the impugned order and to direct the respondents to restore him to his original pay and to give him all the benefits as if the penalty had not been imposed. He has also prayed that the respondents should also be directed to give him benefit of further promotion as Assistant Works Manager which was withheld only on account of pendency of the disciplinary proceedings in 1985. He has also prayed for award of cost of the litigation.

6. A notice was issued to the respondents who filed their reply and contested the reliefs prayed for.

7. We heard the learned counsels, Shri B.S. Mainee for the applicant and Mrs. Raj Kumari Chopra for the respondents and perused the record of this case. The learned counsel for the applicant vehemently argued that Shri Majumdar, I.O., was not changed in spite of repeated requests made by the applicant. He also stated that the I.O. was biased against him. This assertion of the learned counsel is not supported by any concrete instance and reasons to show that the I.O. harboured

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illwill towards the applicant. There are averments in the record that Shri Majumdar belonged to Bengali group officers who were all hostile to Punjabis and the applicant happened to be one of the latter group against whom the Bengali officers were not favourably disposed. Beyond this, nothing else is on record to show that the I.O. had any malice or prejudice against the applicant. Parochial and sectarian feelings have no role to play in the smooth functioning of government organisations whether they deal with production or with service. Hon'ble Mr. Chief Justice Chandrachud has rightly said in a case, Nagaraj Vs. State of A.P. (1985) 1 SCC (523 para 36) that:

"The burden to establish malafides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof."

In the absence of concrete instances or proof to show that Shri S.C. Majumdar, I.O., was hostile towards the applicant, the I.O. cannot be blamed as biased against the applicant. On the contrary, a perusal of the inquiry report does show that the applicant adopted defiant attitude of non-cooperation with the I.O. and did not cooperate ^{with} him whole-heartedly in assisting him in coming to grips with the serious allegations involving the integrity of the applicant. The prosecution had supplied all the documents and list of witnesses to be examined. The applicant was also given the right to produce his DWs who were also examined by the I.O. A mere allegation that the I.O. tried to twist the statements of the DWs cannot be accepted on its face value. The applicant had got the I.O. changed and ^{on} Mr. Dutta's transfer the Disciplinary Authority appointed Shri Majumdar as I.O. in his place. There is no proof on record to show that the applicant wrote any letter to the D.A. or the appellate authority regarding change of Mr. Majumdar before he participated in the inquiry. If the applicant ~~new~~ knew all the facts

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bearing on the question of bias he should have adduced those facts and sought personal interview with the DA/appellate authority but he in the beginning participated in the inquiry without any protest and it was subsequently that he adopted dilatory tactics. ^{Once} ~~he~~ took a chance of a favourable decision, ~~he~~ cannot subsequently make a grievance on the score of bias before the Tribunal.

8. There is only one general allegation that Bengali officers were not favourably disposed towards Punjabi officers and this also does not speak good of the applicant because it shows the parochial and sectarian feelings from which he has been suffering.

9. The charge of bias against the I.O. and D.A. ^{without} ~~any~~ ^{not} ~~proof is acceptable~~. The Tribunal cannot sit ⁱⁿ judgment over suitability or unsuitability or selection of ^{an} ~~Inquiry~~ Officer. It is not open to the Courts. The court will only strike down an order if a decision is perverse or arbitrary.

10. We have carefully gone through the proceedings at both the stages, first when the applicant participated and later when he boycotted the proceedings. The procedures laid down for departmental proceedings under the CCS(CCA) Rules have been fully observed and the safeguards which should have been available to the applicant under Article 311(2) of the Constitution were also provided to him. The requirement of principles of natural justice is that the allegations on the basis of which departmental proceedings are launched should be clear and not vague. In the present case misconduct alleged is of charging false TA/DA for a journey by taxi for himself, his wife and a son aged 5 years and 3 months ~~in~~ one transaction and in other transaction for a journey purportedly performed by his 17 years and 15 years old sons. These allegations impinge


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directly on the integrity of the applicant. The inquiry was held as per procedure laid down under CCS(CCA) Rules and the requirements of Article 311(2) have also been followed scrupulously. The applicant was afforded all the opportunity to state his case. Besides supplying him with all the documents to be relied upon in the proceedings and list of witnesses, he was also permitted to cross-examine the prosecution witnesses. After concluding the inquiry report the I.O. submitted his findings to the Disciplinary Authority who agreeing with the findings passed the impugned order which cannot be faulted with. Even though the charges were of such a grave nature involving the integrity of the applicant, the Disciplinary Authority has been more than fair and just in passing the order imposing only a penalty of reduction of pay by two stages for two years without cumulative effect. Although the Courts have no authority to interfere with the quantum of punishment as held by the Hon'ble Supreme Court in a large number of cases, we feel that by all counts the punishment imposed on the applicant is a lenient one.

11. We do not find any flaw in the proceedings and we also do not find any denial of the principles of natural justice and as such no interference is called for from this Court. The O.A. is devoid of any merit or substance and is accordingly dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)