

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1375/88

198

T.A. No.

DATE OF DECISION 14.2.90

P. Chatterjee

Petitioner

Shri R.N. Gupta

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri N.S. Mehta, Sr. Standing
Counsel.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

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? /

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1. Whether Reporters of local papers may be allowed to see the Judgement ?
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JUDGEMENT

(Judgment of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice- Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri P. Chatterjee, Assistant Inspecting Officer (Retired) in the office of the Director of Inspection, Kanpur, under the Directorate General of Supplies & Disposals, against impugned orders No. C-13012/5/84-Vig. dated 12.4.1988 passed by the Director General of Supplies and Disposals, New Delhi, imposing the penalty of compulsory retirement from service.

2. Brief facts of the case, as stated in the application, are that while the applicant was functioning as Asstt. Inspecting Officer under the disciplinary authority, proceedings were initiated against him and after an inquiry by the Commissioner for Departmental Inquiries, Central Vigilance Commission, the disciplinary authority, namely, the Director General of Supplies & Disposals, on the basis of the findings imposed the penalty of compulsory retirement of the applicant on 12.2.86. The applicant had filed an appeal against this order and the same was referred to the UPSC for their advice who gave their opinion that the orders of compulsory retirement passed

against him should be set aside and the case remitted to the disciplinary authority with the direction that a copy of the brief of the Presenting Officer should be supplied to the applicant who should be given an opportunity to submit his further defence, if any, before final orders are passed on the disciplinary proceedings by the disciplinary authority. Earlier, the applicant had been placed under suspension on 12.4.85 pending institution of the disciplinary proceedings contemplated against him. Based on the advice of the UPSC, the order of compulsory retirement passed against the applicant was set aside on 16.9.87. The applicant was given a copy of the brief of the Presenting Officer for submitting his further defence to enable the disciplinary authority to pass final orders on the disciplinary proceedings. The disciplinary authority, namely, the Director General of Supplies and Disposals, passed a fresh order on 12.4.88 (Annexure A-1 to the application) imposing the penalty of compulsory retirement from service on the applicant. The order dated 12.4.88 brings out the facts that the applicant had been compulsorily retired earlier, but on an appeal to the President, an order was passed in consultation with the UPSC that a copy of the written brief of the Presenting Officer should have been given to him and this procedural deficiency was made up by supplying a copy of the brief to the applicant. The disciplinary authority came to the conclusion that no new facts or circumstances were brought forth in the representation of the applicant to warrant any modification of the conclusion reached by him earlier on the basis of the Inquiry Officer's report and other relevant facts and circumstances of the case and the disciplinary authority again came to the conclusion that the penalty of compulsory retirement of the applicant from service shall be imposed on the applicant with immediate effect.

3. The case of the applicant is that he being a gazetted officer, the advice of the UPSC was not sought before imposing the penalty of removal from service by the disciplinary authority and that the UPSC were consulted only after he made a representation against the order of penalty issued by the disciplinary authority on 12.4.88.

8/2/88

It has been further brought out by the applicant that the DGS&D in his order No. C-13012/11/84-Vig dated 30.6.89 examined the question of his suspension under FR 54-B and came to the conclusion that his suspension has been unjustified. The order of the DGS&D dated 30.6.89 is reproduced below:

"Whereas Shri P. Chatterjee, Assistant Inspecting Officer, DGS&D (since retired) was placed under suspension vide Order No. C-13012/11/84-Vig dated 12.4.85 pending institution of disciplinary proceeding contemplated against him;

And whereas the said disciplinary proceeding against Shri Chatterjee was instituted vide Memorandum of even number dated 10.5.1985;

And whereas, on conclusion of the inquiry, the said disciplinary proceeding against Shri Chatterjee has been dropped vide order of even number dated 25.5.1989;

And whereas Shri Chatterjee stands compulsorily retired from service with effect from 12.4.1988 as a result of penalty imposed on him in another disciplinary proceeding;

And whereas the undersigned has carefully considered the question of regularisation of the period of suspension of Shri Chatterjee (from 12.4.85 till his retirement) and, having regard to all relevant facts and circumstances of the subject case come to the conclusion that the suspension of Shri Chatterjee was wholly unjustified in terms of F.R. 54-B;

Now, therefore, the undersigned hereby orders that Shri Chatterjee shall be paid full pay and allowances for the period of suspension in terms of sub-rule (3) of FR 54-B and the period of suspension treated as a period spent on duty for all purposes in accordance with sub-rule (4) of FR 54-B.

R.P. SINGHAL
DIRECTOR GENERAL OF SUPPLIES & DISPOSALS"

4. According to the applicant, he had inspected 150 nos. of aluminium Parats at the premises of M/s. Vishwa Traders, Kanpur, on 6.6.83. The total value of the item was Rs. 9,000.00 only. He checked 30 samples out of the lot of 150 Parats and found them conforming to the specification, but the same was not sent to the consignee by the supplier. According to the applicant, the rubber stamp used for stamping the Parats is not a fool proof method and has to be examined by experts. During the inquiry, Mr. V.N. Agarwal, proprietor of M/s. Vishwa Traders, Kanpur, had stated before the Commission that the aluminium Parats shown to him at the Commission office were ^{not} the same which were shown and passed by the applicant and that his sub-contractor had sent the wrong

consignment and he had offered to take back the entire material. The Deputy Director (inspection) before whom this statement was also made was not examined by the Inquiry Officer.

5. The respondents in their reply have stated that consultation with UPSC is necessary only where orders are made by the President, but as the order of penalty dated 12.4.88 was made by the Director General of Supplies & Disposals, as the disciplinary authority, no consultation with the UPSC was required. The competent authority passed the orders after giving an opportunity to the applicant to give his further defence and by supplying him a copy of the Presenting Officer's report. It is stated that the penalty order clearly spells out the reason why the disciplinary authority could not modify the conclusion reached by him earlier on the basis of the Inquiry Officer's report and other facts/circumstances of the case and as such, the applicant's defence was properly considered. It was also stated by the Senior Standing Counsel that the DGS&D had held the suspension of the applicant unjustified because in a case like this, there was no need to place an officer under suspension and the inquiry should have been carried out without placing the officer under suspension, but this by itself does not lead to any conclusion that the order of compulsory retirement is not justified. It was also stated that the testimony of the defence witness, namely, the proprietor of Vishwa Traders was not convincing as he was trying to pass the blame of wrong supply to the sub-contractor the details of which he could not give at the time of the inquiry. The claim of the applicant that ^{supplier} he had informed the Deputy Director of Inspection about the mistake in despatch of commercial quality Parats instead of inspected Parats was not found correct as the rejected Parats had stamp mark of DGS&D Inspector.

6. The learned counsel for the applicant contended that no case had been made out against the applicant as the material inspected by him was not the same as was received by the consignee. The supplier had clearly told the Deputy Director of Inspection, Kanpur, that due to a mistake in their packing department, commercial quality Parats were sent instead of inspected stores. Besides, instead of


getting the seal inspected by an expert, the Inquiry Officer himself compared the seal and came to the conclusion that the same was genuine. This is against various rulings that a person cannot himself be a judge and also a witness in the sense that he has passed the judgement on the basis of his personal inspection about which he was not even competent. He also said that a number of charges were framed against the applicant and he was acquitted of all the charges and he could not be framed for sub-standard supply of 150 Parats of a small value. He remained under suspension for a long period and after the inquiry was concluded, the DGS&D came to the definite conclusion that the suspension of the applicant was wholly unjustified which goes to show that the charges against the applicant were frivolous otherwise the competent authority would not have come to such a conclusion that the suspension was "wholly unjustified". He was removed from service in 1987 but as this order was found illegal, this order was set aside. Again, his defence was not shown to the Inquiry Officer and without his comments the disciplinary authority came to the conclusion that the applicant was guilty of the charge and ordered his removal from service. But this order of removal merely states that no new facts have been brought forth to warrant any modification of the conclusion reached by the disciplinary authority on the basis of the Inquiry Officer's report and as such he was retired from service. This amounts to non-application of mind as no mention has been made about the points^{raised} by the applicant in his defence.

We have gone through the pleadings and have given careful consideration to the arguments by the^{learned} counsel for the applicant and the respondents.

It is not the function of the courts to appraise the evidence in any departmental proceeding nor to judge if punishment is severe or adequate. The Court/Tribunal have, however, to ensure that there are no serious procedural irregularities in the inquiry and that the principles of natural justice are not violated. The charge in this case is that the applicant passed some sub-standard material by fixing his seal on some parats which were under-weight. The case of the applicant is that the supplier did not send the Parats on which he had put his seals and sent some other commercial material which was not inspected by him. Instead of asking some expert to decide on the question of genuineness

of the seals, it appears that the Inquiry Officer himself inspected the seals and came to the conclusion that these seals were fixed by the applicant himself as he tallied the seal of the Inspector with the seal that was fixed on the Parats. We feel that this is a serious lacuna and if this is the only evidence on which the applicant has been found guilty, such an evidence cannot be relied upon and the case suffers from a serious procedural lapse. The applicant being a gazetted officer, the concurrence of the UPSC should also have been obtained before imposition of penalty by the competent authority, namely, the DGS&D who issued the order in the name of the President. Such an advice was obtained subsequently when the applicant represented against the penalty imposed upon him. We also notice that the period of suspension has been found to be wholly unjustified. All these do suggest that the penalty imposed on the applicant is not based on established facts, which would take away more than 20 years of the career of a gazetted officer.

7. We are of the opinion that it is a fit case where the order of the compulsory retirement from service of the applicant should be set aside and we order accordingly. There will be no orders as to cost.


(B.C. Mathur) 14.2.90

Vice-Chair man


(Amitav Banerji)

Chair man