(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.191/88

NEW DELHI THIS THE 19th DAY OF JANUARY, 1995.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Mool Chand
S/o late Shri L.C.Gupta
R/o C-176 Vivek Vihar,
Delhi-110032. ... APPLICANT

BY ADVOCATE SHRI G.D.GUPTA.

vs.

(1) The Director of Education,
Delhi Administration,
Old Secretariat Building,
Delhi.

(2) The Lt.Governor through the
Chief Secretary,
Delhi Administration,
Old Secretatiat Building
Delhi.
... RESPONDENTS

BY ADVOCTE MRS.AVNISH AHLAWAT.

ORDER

JUSTICE S.K.DHAON:

The applicant, an ex-headmaster in the Government Boys Middle School, Shahdara, Delhi was subected to disciplinary proceedings under Rule 14 of the CCS(CC&A) Rules, 1965. On 20.9.1977, the Director of Education, Delhi passed an order of removal from service. On 21.8.1987, Chief Secretary, Delhi dismissed the appeal preferred by the applicant. The two orders are being impugned in the present OA.

2. The applicant had earlier preferred a writ petition in the High Court of Delhi challenging the orders dated 20.9.1977, 13.2.1978 and 20.4.1978 passed respectively by the Director of Education, Chief Secretary, Delhi Administration and the Lt.Governor. The Lt.Governor had passed his order in a review application preferred by the applicant. The writ petition was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and the same was registered as TA No.391/1985. On 21.4.1987, this Tribunal quashed the order dated 20.4.1978 passed by the Lt.Governor and directed the

Chief Secretary to dispose of the appeal on merits, in accordance with law and in the light of the observations made by the Hon'ble Supreme Court in Ramchandra's case. In accordance with the directions of this Tribunal, the Chief Secretary passed a fresh order which along with the original order is being impugned in the present OA.

3. No less than 12 charges were levelled against the applicant. Some of the charges related to the alleged unauthorised absence of the applicant and some related to the alleged unauthorised purchases made by him(the applicant). It will be sufficient for the purpose of this OA to refer to Articles IX &XI . These articles have been found proved by the inquiry officer,the disciplinary authority and the appellate authority. Article IX, inter-alia, provides that while functiong as the headmaster, Govt.Boys Middle School,Mehrauli, the applicant purchased sports material worth Rs.6,338.45 in the month of April, 1971 and for Rs.923.50 in May, 1971 out of the pupil's fund without following the requisite procedure.The statement of imputation with respect to the said article, inter-alia, states that the applicant committed the following irregularities in making the purchases:

(1) The expenditure was split up in various bills to avoid calling of quotations as per details(not necessary to give the details).It is noted that the purchases related to Foot balls,Volley balls Carrom Board, Badminton Pole Badminton Racket,Shuttle -Cocks, Chest Expanders.

(2) Non-consumable stores like foot balls, volley balls, etc. were shown as consumable stores. The details are mentioned. However, it is not necessary to give the details. It may be noted that 17 foot-balls,6 Volley-balls, 24 dozen shuttle cocks and 15 chest expanders were shown as consumable in the stores. The other item is that 24 dozen shuttle cocks and 15 chest expanders were purchased

during a short spell in a small school with less than 200 students.

The statement of imputation with respect to Article XII, inter-alia, states that the applicant while functioning as a headmaster purchased 4 durries for a Sum of Rs.581/- on 14.12.1971 thereby committing the following irregularities:

(a) no sanction of the competent authority was obtained.

(b) it was not a legitimate charge on the pupil's fund as these were used by students and should have been purchased out of contingencies.

(c) quotations were received personally from only 3 parties just to complete the minimum requirements.

(d) no certificate was recorded to the effect that the stores were received in good condition and according to specification.

(e) the articles were entered in the consumable stock register and were shown as issued to Shri Jagdish Prasad, Peon and reduced from the progressive balance which was shown as nil.

4. The inquiry officer while dealing with Article VII on which the applicant had been exonerated recorded a finding that a headmaster was empowered to incur an an expenditure upto Rs.250/- and the D.D.O was empowered upto Rs.1000/- but the applicant incurred an expenditure for which he was not authorised. We may indicate at this stage that neither in the reply to the show-cause-notice given by the applicant nor in this OA has this fact been refuted. We, therefore, proceed on the assumption that it is accepted to the applicant that he was authorised to incur an expenditure to the extent of Rs.250/- only.

5. The disciplinary authority passed a detailed order and stated therein that while agreeing with the findings of the inquiry officer, he served upon the applicant

a show-cause-notice dated 15.7.1971 against the proposed penalty of removal from service along wih a copy of the inquiry officer's report. He repelled the plea of the applicant that he had not been given a full opportunity to defend himself and also the plea that the doucments asked for by him during the enquiry were not supplied to him. He recorded a finding that the applicant was given sufficient opportunity to defend his case but he did not attend the proceedings on a number of occasions. He also recorded a finding that the inquiry officer asked the applicant to furnish a list of doucments of which he(the applicant) required inspection but the applicant did not reply.

6. The appellate authority passed a detailed and speaking order after giving a personal hearing to the applicant. He has noted the fact that at the hearing, the applicant did not raise any point having a bearing on the merit of the charge. However, the burden of his argument was that the inquiry had not been conducted properly and he had not been given an opportunity to defend himself. After referring in detail to the report of the inquiry officer, he(the appellate authority) concluded that due opportunity was given to the applicant and he had not been able to establish any prejudice or bias of the inquiry officer towards him(the applicant). He has recorded a finding that the report of the inquiry officer indicated that vouchers etc. and other records were shown to the applicant. He has also recorded a finding that an adequate opportunity was given to the applicant to defend himself.

7. In the fore-front, the contention advanced on behalf of the applicant is that the applicant was not given the copies of the relevant documents nor he was alowed the inspection of the documents. We have already

referred to the finding recorded by the appellate authority that the relevant doucments were shown to the applicant. However, the fact that the applicant had made purchases, referred to in Articles IX & XI and the fact that his authority to make purchases was confined to a sum of Rs.250/- only coupled with the fact that the articles purchased by him were shown as consumable articles and, therefore, the entry of those articles in the stores was shown as nil are enough to invoke the usual rule of evidence applicable in departmental proceedings i.e. preponderance of probabilities. We are unable to comprehend that articles like durries, Foot balls, Volley balls and shuttle cocks can by any stretch of imagination be described as cosumable articles. Non-entry of these articles in the stores goes a long way to tell their own story. The circumstantial evidence in this case, also , supports the allegations made against the applicant in Articles IX & XI. We are not sitting as a court of appeal in these proceedings. We can interfere only when it is demonstrated that 'no evidence rule' is applicable which is clearly not in the present case. We can also interfere if we are satified that a reasonable opportunity was not given to the applicant within the meaning of Article 311(2) of the Constitution. Futher, we can interfere only if we are satisifed that the findings have been vitiated because of the taking into account of irrelevant and extraneous considerations to the extent that if those considerations are excluded, no reasonable person could have arrived at the findings as arrived in this case. Another ground of interference can be when it is shown that some relevant material has not been taken into consideration thereby resulting in a mis-carriage of justice. None of these factors is present in the present case. So far as the giving of a reasonable opportunity is concerned, we shall deal with that aspect immediately hereafter.

6. On 25.4.1977, the last witness of the department to bring home the charges against the applicant was examined and 2.5.1977 was fixed as the next date of hearing and on that day, the applicant was supposed to have led evidence in his defence. On 2.5.1977, the applicant did not attend the proceedings. On that day, however, he sent a postcard stating therein that he was not well on 2.5.1977. This postcard reached the inquiry officer on 7.5.1977 whereas on 2.5.1977, the next date of hearing was fixed as 5.5.1977. It is stated that for the hearing of 5.5.1977, the applicant was sent information by a letter through a messenger. However, the applicant did not attend the proceedings on that day. On 11.5.1977, a written order was passed by the inquiry officer to the effect that the applicant was not cooperating in the inquiry and, therefore, 18.5.1977 was then fixed as the next date of hearing. On 11.5.1977, a registered letter was sent to the applicant. On 18.5.1977, the applicant did not appear and the proceedings were closed. It appears that the letter dated 18.5.1977 was posted by the applicant on 18.5.1977 itself which was received on 19.5.1977. In that letter, he had indicated that he was unwell and, therefore, he was not in a position to attend the proceedings. Propriety apart, we feel that the inquiry officer gave sufficient and reasonable opportunity to the applicant to produce his defence and to state his version.

7. The learned counsel for the applicant has brought to our notice a Memorandum dated 12.6.1977 written by the Joint Director of Education to the applicant. It is recited in the said memorandum that the inquiry officer has reported that the applicant is adopting dialatory tactics and is not fully co-operating in the conduct of the inquiry. A warning was given to the applicant to the effect that if he did not cooperate in the speedy disposal of the inquiry, it will result in taking recourse to action under Fundamental Rule 53 against him.

On 16.6.1977, the applicant sent a reply to the Joint Director. The burden of this letter is that the inquiry officer(Sh.Arora) held a bias towards the applicant. It is to be noted that even in this letter, the applicant has not made any request that the proceedings closed on 18.5.1977 may be reopened and he may be allowed to produce evidence and state his version.

8. The learned counsel has urged that the applicant could not be expected to know that the proceedings before the inquiry officer had closed on 18.5.1977. In our opinion, any reasonable person would have cared to know as to what happened on 18.5.1977. If the applicant did not take any steps in this regard, he has to blame himself for this fault. In our opinion, it is implicit in the memorandum dated 12.6.1977, of the Joint Director that in spite of the closure of the proceedings by the inquiry officer on 18.5.1977, the department was prepared to give another opportunity to the applicant but he(the applicant) did not avail of that opportunity. We may note that on 16.6.1977, the inquiry officer submitted his report to the disciplinary authority.

9. Another argument advanced is that, the applicant having categorically stated in his reply to the show-cause-notice that he was confining his reply only to the limited question that he was not given a reasonable opportunity of hearing, it was incumbent upon the disciplinary authority to give him another opportunity to put forth his case on merits. Such a procedure, in our opinion, was not envisaged either in Article 311(2) of the Constitution before the 42nd amendment nor thereafter nor is such a requirement compulsory for the observance of the principles of natural justice. The applicant was expected to give a comprehensive reply to the show-cause-notice. He having failed to do so, he cannot now make any grievance of it.

10. It is next contended that the punishment awarded to the applicant is not commensurate to the guilt attributed to him. However, it has not been shown to us that the disciplinary authority and the appellate authority have acted perversely in awarding the punishment of removal from service. It cannot be said that in the facts and circumstances of this case, particularly having regard to the allegations made in Articles IX & XI, no rational person could have imposed the punishment of removal from service. We, therefore, repel this contention.

11. This OA fails and is dismissed. There shall be no order as to costs.

(B.N.DHOUNDIYAL)
MEMBER(A)

(S.K.DHAON)
VICE-CHAIRMAN(J)

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