

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

**O.A. No.222/88.**  
**T.A. No.**

198

DATE OF DECISION 21. 12. 90

Shri Ishwar Singh **Petitioner**

Shri. B.S. Charva. Advocate for the Petitioner(s)

## Versus

Delhi Administration & Ors. Respondent

**Advocate for the Respondent(s)**

COMAM.

**The Hon'ble Mr. P.C. Jain, Administrative Member.**

**The Hon'ble Mr. J.P. Sharma, Judicial Member.**

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? JK
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(J.P. Sharma )  
Member (Judl.)

( P. C. Jain )  
Member (Admn.)

Central Administrative Tribunal  
Principal Bench: New Delhi.

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Regn.No.OA-222/88

Date of Decision: 21.12.90

Shri Ishwar Singh

... Applicant.

Vs.

Delhi Administration & Ors.

... Respondents.

For the applicant

... Shri B.S.Charya,  
Advocate.

For the respondents

... Smt.Avinash Ahlawat,  
Advocate.

CORAM: Hon'ble Shri P.C. Jain, Member(Administrative)  
Hon'ble Shri J.P. Sharma, Member(Judicial)

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma)

The applicant, earstwhile, Ballif, in the office of Registrar, Cooperative Societies, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1985, assailing the order dated 29.10.1986 of the Disciplinary Authority(Registrar, Cooperative Societies) and the Appellate order dated 5.2.1987 passed by the Joint Registrar(Vigilance) upholding the penalty of removal from service passed by the Disciplinary Authority. The applicant prays for the quashing of the aforesaid order with consequential benefits of reinstatement in service with back wages etc.

2. The facts as stated by the applicant are that he was appointed as a Ballif on 12.5.1975. A memo dated 19.3.85 was issued to him that while working as Ballif he received a sum of Rs.1500/- from one Shri Ganeshi Lal Kapoor, Judgement Debtor(in recovery case No.462/83-84 but did not deposit that amount with the casher. He did not even issue the receipt in prescribed form TR-5 of Rs.1500/- received as aforesaid. The applicant did not reply to this memo. Another memo was issued to him on 5.6.1985 (Annexure A-1). The reply given by the applicant (Annexure P-2) is as follows:

"With reference to your letter No.7/16/84/Vig-Coop/4383 dated 5.6.85 I have to say that I did not

take Rs.1500/- from Shri Ganeshi Lal Kapoor in case No.462/83-84 for deposit. This is for your kind information."

3. The applicant was issued with a charge-sheet dated 22.8.1985 alleging that the applicant while working as Ballif in the Recovery Branch collected a sum of Rs.1500/- from one Shri G.L.Kapoor on 7.4.84 but did not deposit the recovered amount with the Cashier. The applicant was suspended with effect from 20.6.1985 under Rule 10(1) of the CCS(CCA) Rules, 1965. The charge against the applicant is as follows: -

"Statement of articles of charges framed against Shri Ishwar Singh, Ballif.

Article I

Shri Ishwar Singh, while functioning as Ballif in Recovery Branch collected a sum of Rs.1500/- from Shri G.L.Kapoor, Judgement debtor on 7.4.84. He issued a receipt on a plain paper and did not deposit the recovered amount with the Cashier. He also failed to respond to the memorandum asking for his explanation on this account on 19.3.85 and 5.6.85. He thus failed to maintain devotion to duty and acted in a manner un-becoming of a Government Servant and thereby violated provisions of Rule 3 of CCS(Conduct) Rules, 1964."

Shri D.S.Pandit was appointed as Enquiry Officer and submitted the Enquiry Report (Ex.P7) on 24th July, 1986. Disciplinary Authority passed the impugned order of punishment on 29.10.86 against which the applicant filed an appeal (Annexure-P9) which was rejected by the Appellate order dated 5.2.1987 by the Joint Registrar(Vig.). The applicant assailed the order on the ground that the report of the Enquiry Officer is not based on any legal evidence and the findings of the Enquiry Officer are based on conjectures and surmises. It is said by the applicant that he took a friendly loan from Shri G.L. Kapoor and never received any amount for deposit towards the dues of recovery in case No.462/83-84. However, Shri G.L. Kapoor gave an application withdrawing his complaint but the Enquiry Officer did not consider that request for withdrawal of the complaint. It is further stated that the Enquiry Office

has taken into account the misconduct of the applicant without framing a formal charge against the applicant under Rule 16(4) of the CCS(Conduct) Rules, 1964. The Disciplinary Authority as well as the Appellate Authority also did not give any reason in upholding the guilt of the applicant. The orders passed by both the authorities viz. Disciplinary Authority and Appellate Authority are non-speaking orders. The applicant also took a stand that the statement of the applicant was not taken ~~into consideration~~ by the Enquiry Officer under Rule 14(13) of the CCS(CCA) Rules, 1965.

4. The respondents have contested the application and filed a written statement stating that one Shri G.L.Kapoor, a defaulter in recovery case No.462/83-84 made a complaint against the applicant that a Ballif(Applicant) has taken Rs.1500/- from the complainant and issued a hand-written receipt on a plain paper, but had not deposited the amount on his behalf to the Cashier. On receiving this complaint, Deputy Registrar(Recovery) issued a memo dated 19th March, 1985 calling upon the applicant to explain his conduct but he failed to submit any explanation. The applicant was issued another memo dated 5.6.1985. The applicant was issued a chargesheet and Shri D.S.Pandit was appointed as Enquiry Officer. The applicant was supplied with the documents to be used against him in evidence and was also allowed the inspection of documents. After the completion of the Enquiry, the Enquiry Officer submitted his report dated 24.9.1986 on which the impugned orders were passed, first by the Disciplinary Authority and subsequently rejecting the applicant's appeal against this order, by the Appellate Authority upholding the penalty imposed by the Disciplinary Authority. In fact, the applicant became disinterested in the enquiry proceedings from 13.6.86 on which date the Defence Assistant was absent. The Enquiry was adjourned to 24.6.1986 on which date the witness was examined but the applicant failed to cross-examine him and again the enquiry was adjourned to 1.7.1986. On

1.7.1986, the statement of Shri G.L.Kapoor was recorded and he was cross-examined by the Defence Assistant. The next date of hearing was fixed as 15.7.1986 for submission of written arguments. Neither the applicant nor his Defence Assistant was present and so the Enquiry was adjourned to 6.8.1986. The applicant or his Defence Assistant did not appear thereafter, though the Enquiry Officer informed the Defence Assistant on telephone also on 12.8.1986. The report, therefore, was submitted by the Enquiry Officer on 24.9.1986. In view of the above, the respondents have stated that the applicant has been rightly held guilty of committing criminal misappropriation of Rs.1500/- and so has been legally punished by removal from service.

5. We have heard the learned counsel for the parties at length and perused the record. The learned counsel for the applicant argued that the finding given by the Enquiry Officer is perverse and is not based on any legal evidence. The contention of the learned counsel is that the finding of the Enquiry Officer (Annexure P-7) is based on surmises and conjectures and <sup>he</sup> considered that part of evidence which cannot be legally considered. The learned counsel particularly referred to the statement <sup>of</sup> Shri G.L.Kapoor (Annexure P-11), who made the complaint against the applicant earlier of taking Rs.1500/- for adjustment towards the recovery dues of the Cooperative Bank Loan. The Enquiry Officer observed in the Enquiry Report that the evidence of Shri G.L.Kapoor is not reliable. It is because of the fact that the witness after three months of making the complaint wrote to the department that his complaint against Ishwar Singh (applicant) be withdrawn. The statement of this witness has to be viewed in the light of the defence taken by the applicant in the cross-examination of this witness. The witness has stated that he has personal relationship with Shri Ishwar Singh and that he gave an amount of Rs.1500/- on 7th April, 1984 to meet the personal expenses of Shri Ishwar Singh with the

condition that the amount will be deposited /repaid by him against the recovery demand due from him. In the application itself, the applicant has stated that Shri G.L.Kapoor happened to be his personal friend and known to him since long and he had received an amount of Rs.1500/- as friendly <sup>loan</sup> because of emergent need arising with the applicant. The witness, Shri G.L. Kapoor, however, made a complaint <sup>in</sup> March, 1985 that the applicant had taken Rs.1500/- towards the loan but the same was not deposited towards the recovery dues of the cooperative bank. On this, a show cause notice was given and the applicant in reply to it submitted, as quoted above, wherein he denied having taken Rs.1500/- from Shri G.L.Kapoor in connection with case No.462/83-84 for deposit. Thus, the applicant as well as the witness's subsequent conduct made it clear that Shri G.L.Kapoor wanted to save his position vis-a-vis the complaint made by him against a public servant at the same time helping the applicant to be relieved from the impending enquiry. Criminal misappropriation by a Government servant amount to a criminal breach of trust if the entrusted property is not disposed of in the manner enjoined in the trust. Shri G.L. Kapoor has clearly stated that the amount was given to the applicant and that amount was to be adjusted or deposited in the recovery demand due from him. The applicant did not do that. This is a legal evidence against the applicant and the Enquiry Officer has given three reasons in accepting this as evidence against the applicant. Firstly, the defence of the applicant <sup>is</sup> that he had borrowed a sum of Rs.1500/- from Shri G.L. Kapoor in his capacity as a personal friend of Mr. Kapoor. However, this was not at all referred to in the reply given to the show cause notice dated 19.6.85 before his suspension. Secondly, the statement of Shri G.L.Kapoor in supporting the applicant that a sum of Rs.1500/- was advanced to him and on 4th March, 1985, Shri G.L.Kapoor filed a written complaint in the office of the Registrar, Cooperative Societies stating that Shri Ishwar Singh had recovered an amount of

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Rs.1500/- from him in a recovery case in which he(G.L.Kapoor) was Judgement Debtor and that the amount had not been deposited with the cashier of the office. Thus, the recovery was due against Shri G.L.Kapoor and he was to pay Rs.1500/- as Judgement Debtor in a recovery case in which the applicant was a Ballif of the Cooperative Society. The complaint by Shri G.L.Kapoor on which the action was initiated is also good piece of evidence against the applicant which is not denied. Thirdly, the application for withdrawal of the complaint is an after thought as it has been moved after a period of three months when the applicant was already suspended on 20.6.85. The withdrawal application of the complaint(Annexure P3) is dated 21.6.1985 in which Shri G.L.Kapoor has stated that he has received the full amount from the applicant and nothing is due from him. However, this is after the recovery had already been effected from Shri G.L.Kapoor. Curiously enough in the reply filed by the applicant(Annexure P-2) the applicant does not state that he has repaid the loan of Rs.1500/- taken from Shri G.L.Kapoor. Thus, it cannot be said that the case is of no evidence; the finding of the Enquiry Officer<sup>is</sup> not in any way such as cannot be arrived at by a reasonable person.

6. The learned counsel for the applicant has referred to AIR 1969 SC 983, Central Bank of India Vs. Prakash Chand Jain, wherein the test of perversity has been laid down that if the domestic Tribunal gave a finding at which no reasonable person could have arrived on the material before the Tribunal then such a finding cannot be said to be a good finding for upholding the persons guilt. The learned counsel for the applicant has also placed reliance on the authority reported in 1986 L & I Cases page 1126, Delhi Transport Corporation Vs. Dal Chand. Here the case was where there was no legal evidence and as such it was held that the finding given by the Enquiry Officer was perverse. Thus, both the above authorities have no application to the present case. In view of this

the arguments of the learned counsel for the applicant that the finding is perverse and is not based on any legal evidence has no merit.

7. The learned counsel further argued that the Enquiry Officer's report was not given to the applicant but it has not been alleged as a fact in the application itself and on the other hand a copy of the Enquiry Officer's report has also been filed by the applicant himself (Annexure P-7). This argument also, therefore, has no force.

8. The learned counsel for the applicant further argued that in a case where defence has not been given by the charged official, the statement under Rule 14(18) should have been taken by the Enquiry Officer. However, in the present case was given out in the counter the applicant became disinterested in the last stage of the enquiry since 1.7.1986, on which date the witness Shri G.L. Kapoor was cross-examined. Afterwards, in spite of the repeated calls by the Enquiry Officer, neither the Defence Assistant nor the applicant himself appeared before the Enquiry Officer. So, it cannot be said to be on account of lapses on the part of the Enquiry Officer. The applicant has been afforded sufficient opportunity and he was allowed to cross-examine the witnesses.

9. The learned counsel further argued that the Cashier was an important witness and was cited in the charge-sheet as a witness but he was not produced. The witness cited in the charge-sheet may be produced by the prosecution, not necessarily that all of them should be produced. The applicant was free to ask for the examination of the Cashier. However, in para 6(d) of the Counter in the last line it has been stated that the statement of Cashier was recorded but the applicant failed to cross-examine him. Thus, this point raised by the learned counsel for the applicant also has no force.

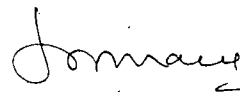


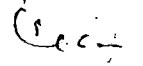
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10. The learned counsel for the applicant further argued that Enquiry Officer in his report has also considered the fact that the applicant took a loan of Rs.1500/- without informing the authorities which is in violation of Rule 16(4) of the CCS(Conduct) Rules, 1964. However, the Enquiry Officer only mentioned it to believe or disbelieve the defence of taking loan by the applicant and did not base any finding on it. The authority cited by the applicant in this connection, AIR 1964 SC page 334, Rameshwar Shah Vs. District Magistrate, in fact has no application because the Enquiry Officer did not give any finding against the applicant that why he did not inform the authorities of taking loan. In fact, the enquiry office had discarded the defence version that loan was taken by the applicant from Shri G.L.Kapoor.

11. It is argued by the learned counsel that the Disciplinary Authority as well as the Appellate Authority did not give any speaking order. However, it is not so. The Disciplinary Authority has passed a detailed order (Annexure P-8) in which the report of the Enquiry Officer have been fully discussed and considered and so also <sup>is</sup> in the Appellate order (Annexure P-10)

12. In view of the above discussion, the application is devoid of merit and the same is dismissed with no order as to costs.

  
(J.P. Sharma )  
Member(Judl.)

  
(P.C. Jain )  
Member(Admn.)