

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.254/88

Date of decision:27.5.93

Sh.Vijay Kumar ... Applicant
versus

Delhi Administration
through Chief Secretary,
New Delhi & anr. ... Respondents

CORAM:THE HON'BLE SH.I.K.RASGOTRA, MEMBER(A)
THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

For the Applicant ... Sh.J.P.Verghese, Counsel.

For the Respondents ... None.

JUDGEMENT(ORAL)

(BY HON'BLE SH.I.K.RASGOTRA, MEMBER(A))

We have heard Sh.J.P.Verghese, counsel
for the applicant in this case. None /present
for the respondents.

2. The short point involved in this case is that the petitioner was appointed as Peon on 11.4.75 in the office of the respondents on the basis of a certificate produced by him that he belonged to Nunia caste which is the variant caste of Kharia Scheduled Tribe. Later when the petitioner's chance came for further promotion, a complaint was received that he had forged the documents certifying that he belonged to the Scheduled Tribe Kharia. The case was handed over to the C.B.I for investigation. A chargesheet was filed against the petitioner in the court of Metropolitan Magistrate and a trial conducted. The Trial court convicted the petitioner under Section 420 and 471 I.P.C. in its judgement dated 6.3.82. Consequent upon investigation and the filing of the chargesheet in the Trial court, the petitioner was placed under suspension. On 25.3.82 after the petitioner was convicted by the Trial court, his services were terminated. He preferred an appeal against the conviction

order of the Trial court before the Session's Court which was decided by the Additional District and Sessions Judge on 25.5.83. The petitioner was acquitted. In the judgement, it was however, observed by the learned Judge that " there is a cloud of doubt in this case which will certainly go.... doubt to the Appellant and in view of my observations, the Appellant stands (dots not legible) acquitted."/ It appears from the above observation that the petitioner was not fully exonerated. Nevertheless consequent to the acquittal the petitioner was reinstated in service on 4.8.83. Further, he was placed under suspension retrospectively with effect from 25.3.82 to 4.8.83. He was proceeded against under the Central Civil Services(Classification,Control & Appeal) Rules,1965 and was served with a chargesheet in May,1984. The statement of articles of charge stated that the petitioner had secured employment as Peon in the office of the Commissioner of Excise,Delhi Administration on the basis of a forged Scheduled Tribe certificate and also forged certificate of educational qualification. By this he had committed gross misconduct rendering him liable to be proceeded against in accordance with the provisions of Rule 3(1)(i)&(ii) of the CCS (Conduct) Rules,1964. An enquiry was held against the petitioner and he was found to be guilty. The Disciplinary Authority removed the petitioner from service vide order dated 2.9.85. He filed an appeal on 17.9.85. The said appeal was not disposed of but the petitioner was advised that the same is pending for administrative reasons. The said reason has also been given

(2)

in para 6 at page 7 of the counter-affidavit filed on behalf of the respondents. The learned counsel for the petitioner has taken the following grounds for assailing the impugned order of removal from service:-

- (1) that the petitioner should not have been placed under suspension retrospectively with effect from 25.3.82.
- (2) that the suspension order should have taken effect from 4.8.83 when the said order was issued. In support of this, the learned counsel cited the case of JEEVRATNAM VS. STATE(1966(2) SCR 204 at page 207)
- (3) the principal point argued by the learned counsel is that no enquiry was conducted by the respondents in accordance with CCS(CC&A) Rules, 1965. The Inquiry Officer on the other hand, adopted the evidence of the prosecution witnesses and the cross examination etc. as was recorded in the Trial court. By adoption of this method, the petitioner was deprived of the reasonable opportunity to cross examine the prosecution witnesses to defend himself properly. This procedure was further in violation of Rule 14(14)(16) of the CCS(CC&A) Rules.

3. While we are not persuaded to accept and second the first /grounds that the petitioner should not have been placed under retrospective suspension keeping in view the provisions of Rule 10(4) & 10(5) of the CCS(CC&A) Rules, we see considerable force in the argument of the learned counsel for the petitioner that the Inquiry Officer in fact adopted the evidence and cross examination recorded in the criminal case at the Trial court stage. This is in violation of Rule 14 of the CCS(CC&A) Rules and fatal to the case.

4. In view of the above facts and circumstances of the case we are of the opinion

that it is in the interest of justice if the case is remanded back to the disciplinary authority to conduct the enquiry in accordance with the provisions of CCS(CC&A) Rules, 1965, denovo from the stage, the chargesheet was served on the applicant. We are, however, aware that considerable time has already elapsed in the proceedings which have been going on in the criminal court and before the disciplinary authority. The charges against the petitioner ^{it} are not very complex and/should not take longer time than 6 months for the respondents to complete the enquiry from the stage of the chargesheet subject to the cooperation of the petitioner. Accordingly, we remand the case to the disciplinary authority for conducting denovo enquiry from the stage of the chargesheet with utmost expedition. The enquiry proceedings however, shall not be allowed to exceed six months from the date of the receipt of this order. The impugned orders passed by the disciplinary authority and confirmed by the appellate authority removing the petitioner from service are hereby quashed. The petitioner shall be reinstated in service but the respondents shall be within their powers to place him under suspension if required in the exigencies of service in accordance with law. If he is placed under suspension, he shall be paid subsistence allowance in accordance with the instructions issued by the Government of India. The disciplinary authority shall also pass an order of completion of the enquiry in regard to the treatment of the period from the initial date of removal till the petitioner is reinstated.

The petitioner shall also be at liberty to agitate the matter before the Tribunal in case he is aggrieved by the orders passed on the grounds which we have not deal with in this case. He shall, however, cooperate with the authorities to ensure that the proceedings are not delayed on his account.

5. The OA is disposed of on the above lines with no order as to costs.

J.P.Sharma
(J.P.SHARMA)
MEMBER(J) 27.5.93

I.K.Rasgotra
(I.K.RASGOTRA)
MEMBER(A)

SNS