

(B)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

454

1988

DATE OF DECISION 13.9.89.

Shri P.B.L. Saxena Applicant (s)

Shri S.C. Jain Advocate for the Applicant (s)

Versus
Union of India & Ors. Respondent (s)

Shri M.M. Sudan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.S. Sekhon, Vice Chairman

The Hon'ble Mr. D.K. Chakravorty, Member (A)

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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Judgement of the Bench delivered by
Shri D.K. Chakravorty, Member (A)).

In this application under Section 19 of the Administrative Tribunals Act, the applicant has challenged the order No. F.12(27)78-F&S/Admn/Vig/1533 dated 30.8.1983 passed by the Commissioner, Food and Supplies Department, Delhi Administration, Delhi, removing him from the President service which has been upheld by Respondents 3,2, and 1 under their orders dated 3.5.1984, 21.2.1985 and 5.1.1987 respectively.

2. The applicant, who joined Delhi Administration on 12.8.59 as Upper Division Clerk, was appointed as Inspector in Food and Supplies Department on 17.11.65. Consequent upon his selection for the post of Company Secretary in Himachal Pradesh Mineral and Industrial Development Corporation Ltd., Simla, he was relieved on 7.7.76 with the condition that his lien on quasi-permanent post of U.D.C. will be retained for two years. While working in the Corporation, he submitted an application through proper channel for the post of Company Secretary

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in M.P. Diary Development Corp. Ltd., Bhopal, but was advised by the Delhi Administration, under its letter dated 27.8.1976, to send the application through his then employer.. In August 1976, he was selected for the post of Board Assistant in the Housing & Urban Development Corp. Ltd., New Delhi. The applicant contends that during his personal visit to the Food and Supplies Department on 19.8.76 he was given to understand by the concerned dealing Assistant that during the period of his lien, no permission was required to be taken for taking up employment with HUDCO. Accordingly he intimated his proposal to join HUDCO under his letter dated 19.8.76 and also 16.9.76, the day on which he join HUDCO. He also requested to be informed about the amount to be deposited towards leave salary and pension contribution. The Department of Food & Supplies, under its letter dated 13.10.1976 informed him that the matter relating to rates of leave salary and pension contribution has already been referred to the A.G.C.R. On the belief that a mere intimation was sufficient for taking up employment during the period of retention of his lien outside the Food & Supplies Department, the applicant wrote to the Department on 18.4.1977 that he is likely to join the post of Company Secretary offered to him by M/s L.N. Gadodia & Son Ltd., However, in reply to the Department's letter of 19.12.1977 he requested on 15.2.78 for continuation of his lien till 7.7.78 and if this was not possible he would be willing to revert to his previous post immediately on hearing from the Department. He did not receive any reply nor was he allowed to join the post in the Department.

3. The respondent No. 4 issued a charge sheet dated 19.8.78 against the applicant. The Articles of charge are reproduced below:-

" Article No. 1

Shri P.B.L. Saxena a quasi-permanent U.D.C. while working as Inspector in the Food & Supplies Department applied for the post of Company Secretary in the Himachal Pradesh Mineral & Industrial Development Corporation, Simla which was transmitted to the aforesaid Corporation. Consequent upon his selection in the aforesaid Corporation on the said post, he was relieved of his duties from the post of Inspector, Food & Supplies w.e.f. 7.7.76. Subsequently however, while working in the Himachal Pradesh Mineral and Industrial Development Corporation, Simla, Shri Saxena joined as Board's Assistant in the Housing and Urban Development Corporation Ltd., 12-A Jam Nagar House, New Delhi on 16.9.76 without obtaining prior permission

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of the Government. Shri Saxena is therefore, guilty of contravention of the provisions of Rule 15 of CCS (Conduct) Rules, 1964.

ARTICLE NO. 11

Shri P.B.L. Saxena a quasi permanent UDC while working in the Housing and Urban Development Corporation, 12- A Jam Nagar House, New Delhi (without the prior permission of the Food & Supplies Department) further joined the services of a Private firm namely M/s L.N. Gadodia and Sons Ltd. Chandni Chowk, Delhi in April, 1977 without obtaining the prior permission of the Government. Shri Saxena is therefore, again guilty of violation of the provisions of Rule 15 of C.C.S (Conduct) Rules, 1964. "

The applicant denied the charges. An Enquiry Officer was appointed on 23.9.1978 who conducted the enquiry from 18th October, 1978 to 31st August, 1979 and submitted his report on 30.10.1979. The Enquiry Officer came to the conclusion that charges against the applicant are not proved. The Disciplinary Authority did not accept the enquiry report and imposed the penalty of removal from service on 29.6.1981, which was, however, quashed by the Chief Secretary as Appellate Authority, on the ground of legal infirmity. In pursuance of the decision of the Appellate Authority, orders for re-instatement of the applicant, without prejudice to the punishment which may be imposed later on merits of the case, was issued on 21.5.83. Despite this order, Respondent No. 4 did not allow the applicant to join and the impugned order NO. F.12(27)/78-F&S/Admn/Vig/1533 dated 30.8.83 removing the applicant from service was issued. The Respondent No. 4 passed another order No. F.12(27)78/F&S/Admn/Vig/1795 dated 1.10.1983 treating the periods from 8.7.1976 to 20.5.1983 and 21.5.1983 to 30.8.1983 as unauthorised absence according to rule 25 of the C.C.S (Leave) Rules.

4. The applicant filed appeal dated 3.10.1983 to the Chief Secretary, Delhi Administration, against the order of removal from service dated 30.8.1983. He also filed a separate appeal dated 16.11.1983 against the order dated 1.10.1983 treating him as absent from duty. In reply he received Memorandum No. F 12(27)/78-F&S/Vig/864 dated 3.5.1984 issued under the signature of Deputy Commissioner (Vigilance) which is reproduced below:-

" With reference to his appeal dated 16th November, 1983 Shri P.B.L. Saxena, Ex-Inspector is hereby informed that his appeal has been considered by the Appellate Authority i.e. Chief Secretary, Delhi and rejected on the following grounds:-

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" While Shri Saxena had all along been informing the Department by giving intimations about the various assignments he undertook from time to time, but at no stage explicit permission has been given to him to take up these assignments, more so in private companies. Every Govt. Servant is bound by the various service rules and the instructions thereon issued from time to time by the Govt. and it is obligatory on his part to abide by such rules/instructions. Rule 15 of the CCS (Conduct) Rules, 1964 is amply clear and states that no Government Servant shall, except with prior sanction of the Government engage directly or indirectly in any trade or business or negotiate for or undertake any other employment. Thus it was obligatory upon Shri Saxena to have taken prior permission of the Competent authority before taking up a private employment! "

Thereafter the applicant made a petition dated 20.6.1984 to the Lt. Governor, Delhi, which was rejected on 21.2.1985. Finally he sent an Memorial dated 8.4.85 to the President of India. The President of India rejected the memorial under Ministry of Home Affairs order No. 14033/21/85-UTS dated 5.1.1987. In para 6 of the above order it is stated as under:-

' The President, after going through the case records, has tentatively taken a decision to impose any one of the penalties other than dismissal or removal from service and sought the advice of the UPSC and other relevant records, has come to the conclusion that the charge that Shri Saxena joined the private firm without obtaining prior permission is a serious misconduct and as such, penalty of removal from service imposed on Shri Saxena is not excessive. The President accordingly directs that the memorial of Shri P.B.L. Saxena against the penalty of removal from service be rejected and orders accordingly. '

5. The Applicant prays for the quashing of the order of removal from service dated 30.8.83 as also the orders dated 3.5.84, 21.2.1985 and 5.1.1987 rejecting his appeal, petition and memorial respectively and for directing the respondents to allow the applicant to join the post of Inspector in Food & Supplies Department, Delhi Administration, mainly on the following grounds:-

- (i) The Respondent No. 4 failed to send any communication/ decision/objection in regard to his employment with organisations outside the Department;
- (ii) Rule 15(2) of C.C.S.(C.C.A) Rules 1965 was violated as the reasons for disagreeing with the findings of the Enquiry Officer were not mentioned in the order dated 30.8.83;

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- (iii) Rejection of the memorial by the President of India was based on the advice of the U.P.S.C. which suffers from many infirmities in facts and in law.

6. Respondents have contested the application both on merits and on points of law. It has been stated that the departmental enquiry was conducted strictly in accordance with the prescribed and procedure; full opportunity was given to the applicant for defence. Although the Enquiry Officer did not hold the applicant guilty of violating Rule 15 of the C.C.S (Conduct) Rules, 1964, the Disciplinary Authority did not agree with the findings of the Enquiry Officer for the reasons mentioned in his order dated 29.6.81 and imposed the penalty of removal from service. This was set aside on the ground of legal infirmity by the Appellate Authority. The Disciplinary Authority, after considering the matter and taking into account the over all circumstances of the case again imposed the major penalty of removal from service vide order dated 30.8.83. Appeal was rejected by Chief Secretary, Delhi Administration, Delhi, after careful consideration of the case and arguments raised by the applicant. Petition and the Memorial to the Lt. Governor and the President of India were also rejected after careful consideration of all aspects of the case.

7. We have heard the arguments of the learned counsel for the parties and have also given our utmost consideration to the pleadings and the documents on record.

8. At the very outset the learned counsel for the applicant pleaded that the applicant has been fighting a legal battle for justice for ten long years of suffering and misery. Besides merits and legal points in his favour, the applicant deserves pity and mercy. The main relief sought by him is re-instatement in service without any claim for arrears of pay. The learned counsel made the following legal and other submissions:-

- (a) The appellate order dated 3.5.1984 is defective inasmuch as it has been issued under the signature of Deputy Commissioner (Vigilance) and has not been signed by the Competent Authority, who is the Chief Secretary, Delhi. This is a requirement prescribed under

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Department of Personnel O.M. No. 134/1/81-ADV-I dated 13.7.81.
authority.

There is no powers to delegate this. He cited AIR-1988-SC-1733

(Union of India Vs. R. Narasimhan) in support of his contentions
that administration should follow the Government instructions.

In paragraph 6(xxiii) of the written statement submitted on behalf
of the respondents it has been stated that the applicant did not
raise this point in his appeal to the Lt. Governor and in the
Memorial to the President of India. The learned counsel for the
applicant vehemently rebutted this statement as factually incorrect
since the applicant had specifically raised this point in his petition
to the Lt. Governor as also in the Memorial to the President of India.

(b) The Appellate order dated 3.5.84 refers to "his appeal
dated 16th November 1983" whereas the applicant's appeal against the
order of removal from service was actually dated 3.10.1983. The
letter of 16.11.83 related to an entirely different matter regarding
treatment of the periods from 8.7.1976 to 20.5.1983 and 21.5.1983 to
30.8.1983. The learned counsel also cited letter No. F10(15)/82-S-
II dated 26.4.1984 from Deputy Secretary (Services) to the Deputy
Commissioner (Vigilance) (Annexure R-5 to the written statement of the
Respondents) which makes a reference to "the appeal dated 16.11.83
against the order dated 23.9.83 passed by the Commissioner, Food &
Supplies". The applicant never having received any order dated
23.9.1983, the question of his submitting any appeal against that
order does not arise. The learned counsel for the applicant strongly
contended that quoting of such wrong dates of appeals and orders
clearly indicates non-application of mind by the Appellate Authority.

(c) The Disciplinary Authority has not recorded its reasons
for disagreeing with the findings of the Inquiry authority. This is in
violation of the provisions of Rule 15(2) of the C.C.S.(C.C.A) Rules
and Government of India's Instruction No.(1) there under.

(d) The Appellate Authority has passed a non-speaking order and
in violation of the provision of Rule 27(2) of the C.C.S(C.C.A) Rules
and Government of India's instruction (2), (3) and (4) there under.

In support of the above contention the learned counsel

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relies upon the Supreme Court's Judgement reported in AIR-1970-SC-1302 (M/s Mahabir Prasad Santosh Kumar Vs. State of U.P. and other)

The learned counsel for the applicant also averred that the Respondents having allowed the applicant to join HUDCO, ^{and also} having made a reference to A.G.C.R. regarding rates of pension and leave salary contribution and by their inaction to stop him from joining M/s L.N. Gadodia & Sons Ltd., despite his " all along been informing the Department by giving intimation about the various assignments he undertook from time to time" (quotation from Appellate Order), the doctrine of promissory estoppel should come into play in favour of the applicant.

9. The learned counsel for the respondents argued that the facts in this case are clear and well established, the applicant is quite obviously guilty of violating Rule 15 of the C.C.S. (Conduct) Rules, 1964 and the Appellate Authority has passed a brief but in essence a speaking order. The various legal grounds raised by the learned counsel for the applicant are mainly technical and not substantial in nature. He strongly controverted the point regarding promissory estoppel. With these submissions the learned counsel for the respondents vehemently averred that there is no merit in the application which should be rejected.

10. A perusal of Annexure A-21 reveals that the appellate authority had rejected the appeal merely considering the same. The order made by the appellate authority clearly does not comply with the provisions of Rule 27(2) of the C.C.S.(C.C.A) Rules. The aforesaid sub-rule enjoins that the appellate authority shall consider:-

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- a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
 - b) whether the findings of the disciplinary authority are warranted by the evidence on the records; and
 - c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

In view of the aforesaid, Annexure A-21 is illegal and is liable

to be quashed. Another infirmity for which the appellate order is liable to be set aside is that the appellate authority did not grant personal hearing to the applicant. It has been laid down in "Ram Chander Vs. Union of India and Others" (1986)-3-SCC-103, that the appellate authority deciding an appeal under Rule 27(2) should not only give a hearing to the public servant concerned, but should also pass a reasoned order dealing with the contentions raised by the applicant. The following observations made in paragraph 25 of the judgement are instructive in this behalf:-

2..... Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in 'Tulsiram Pate case that the Appellate Authority must not only give a hearing to the Government Servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given. "

The appellate order Annexure A-21 is, therefore, hit by the dictum of the Supreme Court in 'Ram Chander(supra)' and is set aside.

11. In view of the order we propose to make, we are advisedly not expressing any opinion on the other contentions raised by the applicant, lest any expression of opinion on our part should prejudice either Party's case. The appropriate order to be made in the facts and circumstances of this case and which we hereby make is to remit the case to the appellate authority with the direction that the appellate authority shall pass a fresh order in accordance with law after granting an opportunity of hearing to the Applicant. The appellate authority is directed to pass a fresh order in accordance with law within three months from the date of receipt of a copy of this judgement.

12. Application is disposed of on the terms

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stated hereinabove. No order as to costs.

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(D.K. CHAKRAVORTY)
MEMBER

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B. S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

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