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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.796/88

Date of Decision: 15-12-93

Shri Vijay Shankar Kapoor

Applicant

Versus

Union of India and others

Respondents

Shri S.C. Gupta with

Shri Mukesh Gupta

Counsel for the applicant

Shri P.H. Ramchandani with

Shri J.C. Madhan

Counsel for the respondents

CORAM: Mr. C.J. ROY, Hon. Member (J)

Mr. B.K. Singh, Hon. Member(A)

J U D G E M E N T

(delivered by Hon. Member(J) Shri C.J. ROY)

This OA has been filed by Shri Vijay Shankar Kapoor under Section 19 of the Administrative Tribunal's Act, 1985 against the orders of the respondents - Charge sheet dated 15.11.1984; illegal order imposing penalty of withholding the applicant's next increment for three years without cumulative effect; orders dated 23.12.85 rejecting the appeal, 30.4.86 rejecting the Review Petition; and 1.5.1987 rejecting the Revision Petition.

The brief history of the case is the charge sheet at page 6 and 7 of this judgement.

2. According to the applicant, he is working in the Central Defence Accounts Establishment (CDS(ORS)(N)Meerut-in short) under Ministry of Defence. He was charge sheeted under rule 16 of the CCS(CCA) Rules 1965 on 15.11.1984 for the incident that occurred on 27.9.1984. On 20.11.1984, Smt. Kuldeep Kaur, wife of the late Shri Inderjeet Singh wrote a letter to the CDA stating that the applicant and some of his colleagues had been very helpful in trying to save her late husband and had gone with his body to the residence. She also stated that she had learnt that disciplinary action was being contemplated against the applicant and his colleagues and she appealed to the CDA not to do so. A copy of the letter written by Smt. Kuldeep Kaur dated 20.11.1984 is at

Annexure-C.

3. On 4.10.85 the respondents imposed penalty vide Annexure-D order withholding the increment for the next three years without cumulative interest and without conducting any inquiry and transferred him on the same day to the Office at Gorakhpur and again to the Main Office of CDA(ORS) Meerut vide order dated 6.11.1985. The authority competent to take action and impose penalty was the Controller of Defence Accounts and not respondent No.4, Joint Controller. He made an appeal to the CDA on 4.10.85 which was rejected vide order dated 23.12.1985(Annexure-I). On 30.1.1986, he submitted a Revision Petition against the rejection of his appeal which was rejected vide order dated 30.4.1986(Annexure-K). He again submitted a Review Petition to the President of India, which was also rejected on 1.5.1987 (Annexure-M).

4. The applicant has prayed for the following reliefs:

- (i) Quash the charge sheet dated 15.11.1984 upon which the impugned order of penalty was made.
- (ii) Quash the order imposing penalty upon the applicant dated 4.10.85 whereby the applicant's next increment was withheld for three years without cumulative effect.
- (iii) Quash the orders of transfer dated 4.10.85 and 6.11.85 these order being penal in nature and illegal, and to direct the respondents to take the applicant back on the same post on the same terms as was holding prior to the said impugned orders of transfer being made.
- (iv) Quash the order dated 23.12.85 rejecting the applicant's appeal.
- (v) Quash the order dated 30.4.86 rejecting the applicant's Review Petition.
- (vi) Quash the order dated 1.5.87 rejecting the applicant's Revision Petition.
- (vii) Order the respondents to grant the applicant his due increments as though the same had never been withheld and to give the applicant all arrears thereof within a fixed period of time.
- (viii) Order the respondents to give the applicant his correct fixation of pay and allowances and arrears thereof.



- (ix) Order the respondents to give the applicant all consequential benefits arising from the above claims with costs.

5. According to the respondents, Shri Inderjeet Singh had fallen unconscious soon after reporting for duty in the morning of 27.9.84. On reporting this incident by the officer Incharge Pay Section of CDA CC Meerut to Dy.CDA(AN) the Administration Section of CDA CC Meerut made all efforts to give him medical aid as early as possible. Immediately a Doctor of CGHS Dispensary at Aby Lane, Meerut Cantt., was contacted on phone and was requested to come to the office urgently. One SO(A) was also detailed to bring the CGHS Doctor urgently. However, on an apprehension that CGHS Doctor may take time to come, it was decided to shift Shri Inderjeet Singh to Military Hospital. By the time a vehicle was arranged and Shri Inderjeet Singh was put in the vehicle and the vehicle was leaving for Military Hospital, the lady Doctor of CGHS arrived. The vehicle was stopped at the office gate and the lady Doctor examined Shri Inderjeet Singh. After administering two injections and also giving external cardiac massage, the lady Doctor also advised that the patient may be taken to Military Hospital. After medical check up there, he was declared dead by Military Hospital authorities. The applicant's claim that he along with his other colleagues requested the then CDA and JCDA to provide their cars for carrying Shri Inderjeet Singh to nearby hospital is totally incorrect. The contention of the applicant that Inderjeet Singh was taken to the Military Hospital in the hope that there might still be chance of his surviving is a total lie. His own version at para-1 of his defence statement dated 4.1.85 clearly shows that the condition of the deceased was serious and he was not dead. Had he been declared dead by the CGHS dispensary, there had been no sense in carrying the dead body to Military Hospital. It is also stated that the then

CDA, CC handed over the keys of his car to Jt.CDA for immediately taking Smt. Inderjeet Singh to the military Hospital. The applicant instigated the crowd to prevent the car carrying Smt. Inderjeet Singh from going to Military Hospital and also instigated a crowd to damage the government property and played an active role in breaking window panes, air-conditioner, water filter and furniture lying in ante-room of CDA's chamber. He also instigated a crowd to assault certain IDAS officers, Accounts Officers, Section Officers(A) and also to gain forcible entry into CDA's chamber. He organised a gherao of CDA CC and tried to instigate some persons not belonging to CDA CC to manhandle and physically assault the CDA CC. The applicant also took part in gherao of Shri C.Lal, Joint CDA, CC organised by Shri Lokesh Murti and blocked his way and prevented him from making necessary arrangement for the funeral of the deceased employee. Applicant's statement that he went to Military Hospital and he was not present in the office premises at the time of occurrence of untoward incidence is a blatant lie. A disciplinary action was initiated against the applicant for his misconduct and misbehaviour as mentioned in the charge sheet served on him. The denial of charges levelled against him does not mean that he was not involved in the incident that took place on 27.9.84. The letter dated 20.11.84 of Smt. Kuldeep Kaur wife of late Inderjeet Singh cannot be taken cognisance of as it seems that certain individuals against who disciplinary action was initiated for the untoward incidents of 27.9.84 jointly prevailed upon the lady to give it, as she has mentioned the names of all those individuals in the said letter. This is an apparent manipulation of the applicant who just tried to take a plea in his defence, as the charge sheet was issued on 15.11.84 and the letter is dated 20.11.84. It was not possible for a lady in grief to recognise in

particular as to who were present, and appeal the CDA not to take disciplinary action against the applicant and other colleagues. They have admitted that the applicant was awarded by the joint CDA CC the penalty of withholding of his next increment for three years without cumulative effect. While awarding, the Disciplinary Authority took into consideration all facts and circumstances of the case. The applicant was charge sheeted under rule 16 of CCS CC&A) Rules, 1965. Rule 16(i) of the CCS (CC&A) Rules, 1965 leaves it to the discretion of the Disciplinary Authority whether to hold an inquiry. The contention of the applicant that Controller of Defence Accounts and not the Joint Controller of Defence Accounts was the competent authority to impose penalty on him is vehemently denied. The applicant has misinterpreted Government of India Notification No.366/C/S/79 dated 20.4.79(Annexure II). The correct position in this regard is that prior to 25.3.67 Controller General of Defence Accounts, New Delhi was the Appointing Authority in respect of all Group 'C' staff but wef. 25.3.67 Controllers of Defence Accounts were delegated powers of Appointing Authority and further with the issue of the Government notification dated 20.4.79 disciplinary powers have been delegated to Joint Controller of Defence Accounts/Dy. Controller of Defence Accounts/Asstt. Controller of Defence Accounts/Accounts Officer Incharge of Administration/Independent sub-offices as specified in the said Notification with the exception that controller of Defence Accounts continued as Appointing Authority in respect of SOs(A) i.e Major Penalty could be imposed on SOs(A) by the CDA only. As such, the applicant was correctly awarded the penalty of withholding of his next increment for three years without cumulative effect and he was simultaneously transferred from this office as his presence was likely to severely subvert discipline. His appeal,

revision petition and review petition were correctly rejected. The application be therefore dismissed.

6. We have heard the learned counsel for both parties and perused the documents on record.

7. It is a matter of fact that the applicant was served with a Charge Sheet dated 15.11.1984 (Annexure-A). The action of imputations of misconduct or misbehaviour on which action is proposed to be taken is reproduced below:-

"That the said Shri V.S. Kapoor while functioning as Auditor during the period 28.1.84 onwards in Record Section, C.D.A., C.C., Meerut committed the following delinquencies on 27.9.84:-

1. He instigated a crowd to prevent the car carrying smt Inderjeet Singh wife of an office employee from going to Military Hospital on 27.9.84.

Thus the said Shri V.S. Kapoor acted in a manner unbecoming of a Govt. servant thereby infringing the provisions of Sub Rule (iii) of rule 3(1) of CCS(Conduct) Rules, 1964.

2. He on 27.9.84 not only instigated a crowd to damage Govt. property but also joined hands with them and played an active role in breaking window panes, air conditioner, water filter and furniture lying in ante room of C.D.A.'s chamber.

Thus the said Shri V.S. Kapoor acted in a manner unbecoming of a Govt. servant thereby infringing the provisions of Sub Rule (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964.

3. He on 27.9.84 instigated a crowd to assault certain IDAS officers, Accounts Officers, Section Officers (A/Cs) and to gain forcible entry into the CDA's chamber.

Thus the said Shri V.S. Kapoor acted in a manner unbecoming of a Govt. servant thereby infringing the provisions of Sub Rule (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964.

4. He on 27.9.84 organised a Gherao of CDA, CC. He tried to instigate some persons not belonging to CDA(CC) to manhandle and to physically assault the CDA, CC.

Thus the same Shri V.S. Kapoor not only acted in a manner higher unbecoming of a Govt. servant thereby infringing the provisions of Sub Rule (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964 but also infringed the provisions of Rule (ii) ibid.

5. On 27.9.84 he took part in a Gherao of Shri C. Lal, Jt.C.D.A., organised by Shri Lokesh Murti and some other persons. He blocked his way and prevented him from making necessary arrangement for the funeral of the deceased employee.

Thus the said Shri V.S. Kapoor acted in a manner unbecoming of a Govt. servant thereby infringing the provisions of Sub Rule (iii) of Rule 3(1) of CCS (Conduct) Rules, 1964 but also infringed the provisions of Rule 7(ii) ibid."

8. The applicant replied to the Show Cause notice denying all the charges levelled against him vide Annexure 'B' reply dated 4.1.1985. The representation of Mrs. Kuldeep Kaur w/o late Shri Inderjeet Singh also strengthens his argument. But the respondents vide Annexure-D order dated 4.10.85 converted the major penalty into a minor penalty of with-holding the next increment for three years without cumulative effect and subsequently transferred him vide order dated 6.9.85, to the Main Office of CDA(ORS) North, Meerut instead of UA GE (AF) Gorakhpur. The applicant again represented on 15.11.85 bringing out the background of the entire event and situation and denying the allegations made, prayed for setting aside and quashing the order dated 4.10.85 and the charges levelled against him. The Appellate Authority rejected the above appeal and confirmed the penalty vide Annexure-I order dated 23.12.85. The applicant again submitted a representation cum Revision appeal against the order of penalty and confirmation of Disciplinary Authority praying for restoring the service increment from the due date and for transferring back to CDA Central Command, Meerut on 31.1.86 which was also rejected vide order dated 30.4.86(Annexure-K). His review petition dated 12.8.86 stating that the Jt CDA CC Meerut passed the punishment order and not a speaking order, and neither was he given reasoned arguments nor discussed the defence representation was also rejected vide Annexure-M order dated 1.5.87. The learned counsel for the applicant states that he was not afforded any opportunity of personal hearing before initiating departmental proceedings nor was there any evidence to prove that the applicant was involved in the incident. Without going into the merit of the case, we are of the firm

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view that if the authorities had considered that the nature of the act committed by the applicant invites major punishment, how could they convert it now into a minor one against the rules. We feel that the respondents cannot change or modify the imposition of charge without clearcut evidence for an offence alleged to be of grave nature without any reasoning. The Enquiry Officer has not given any clear reasons nor discussed the charges in any of the subsequent orders passed after 15.11.84. The mere saying that he is satisfied that good and sufficient reason exist for imposing penalty on the applicant, is not sufficient. He has not explained as to what good and sufficient reasons exist in the order issued.

9. In the case of C. Ramakutty Warriar versus State of Kerala and another(AISLJ 1983 Volume-1 in OP No.3630 of 1979 M decided on 1.11.1982, it was discussed that:

"9. I am of the view that the findings entered in the impugned orders in violation of the principles of natural justice cannot be allowed to stand merely for the reason that the punishment imposed is a minor penalty under Rule 11 of the D.C.S. (C.C & A) Rules which does not prescribe an elaborate enquiry for the imposition of a minor penalty. The offence found against the petitioner is one for which a major penalty can be imposed, after a detailed enquiry as contemplated by Rule 15 of the Rules. The imposition of a minor penalty cannot be expedient to dispense with a detailed enquiry under Rule 15 before a Government servant is found guilty of a grave offence involving in moral turpitude....."

10. The case of Mansa Ram versus General Manager Tele-Communication, J & K Circle before the Jammu and Kashmir High Court in CWP No.26 of 1974 decided on 23.11.1979 in was stated that:

"There can be no manner of doubt that where a minor punishment is sought to be imposed, the procedure of holding an enquiry need not be followed, unless otherwise desired by the disciplinary authority. But surely it does not mean that the enquiry is barred or that it is entirely subject to the pleasure of the disciplinary authority. The clause speaks of the opinion that such enquiry is necessary implying that the disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and other available material and give a reasoned

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finding whether an enquiry is or is not necessary. In the absence of such finding an order imposing the penalty would be invalid and of no legal consequence unless of course, it can show that the omission has not resulted in any material prejudice to the employee. For, cases are conceivable where without the requisite opinion being there, clause (b) has been substantially complied with....."

11. The CCS(CCA) Rules in regard to the rule-14

14/ "Procedure for imposing major penalties" defines that:

"(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850, where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquiry into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquiry into the truth thereof.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are produced to be sustained....."

12. The CCS(CCA) Rule-16 in regard to the procedure for imposing minor penalties defines that:

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule(1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

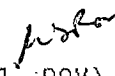
- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor."

13. In the instant case the respondents have not given any findings on each imputation of misconduct or misbehaviour as referred to under rule 16 of the CCS(CCA) Rules cited (supra), except concluding with the observation that the undersigned after taking into account the facts and all the circumstances of the case holds that the charges levelled against Shri V.S. Kapoor, Auditor are proved and is satisfied that good and sufficient reason exist for imposing the penalty on withholding the next increment for three years without

cumulative effect, which is not correct. We feel that the respondents have not applied their mind and passed a non-speaking order, which go to strike the roots of natural justice. We are not satisfied with the arguments advanced by the learned counsel for the respondents. The applicant in this case has clearly been deprived of an opportunity of personal hearing to prove that he is not involved in such kind of acts alleged against him. An enquiry should have been held under Rule 14 of CCS (CCA) Rules, when it is concluded that the act of the applicant demands imposition of major penalty and proceeded with, for he is involved in a greivous offence and proved with evidence. But instead of doing so, the action of the respondents in converting the major penalty into a minor one by adopting a short cut method of invoking of Rule-16 of the CCS(CCA) Rules without giving reasoning on each imputation of misconduct or misbehaviour and stating vaguely that they are satisfied with the imposition of the penalty is against the principles of natural justice. In the circumstances, we allow this application in line with the decision taken in OA 1612/1987 (Lokesh Murti versus Union of India and others) decided on 18.3.93 cited supra and dispose of this OA setting aside and quashing the order of the respondents dated 4.10.85 with liberty to the respondents to hold an enquiry in this matter in accordance with law or to take any other action in the matter. No costs.


(B.K. SINGH)

MEMBER(A)


(C.J. ROY) 15/10/93

MEMBER(J)