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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1062 of 1988.

Decided on 22.5.1990.

Awadesh Kumar

....Applicant.

Vs.

1. Union of India through the Secretary,
Department of Official Languages,
Ministry of Home Affairs, Lok Nayak Bhavan,
New Delhi.

2. Jt. Director, Hindi Teaching Scheme,
Ministry of Home Affairs, Mayur Bhavan,
New Delhi.

.....Respondents.

For the Applicant - Mr. D.C. Vohra, Advocate.

For the Respondents - Mrs. Raj Kumari Chopra, Advocate.

B.S. SEKHON:

The factual matrix germane to the adjudication of the instant Application lies in^a short compass. The departmental enquiry on the following articles of charge was initiated against the Applicant under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short the "Rules"):-

"Charge of Article I

Shri Awadesh Kumar, Steno was accused on 3.12.1984 for submitting forged office order F/POL/PP/57-85, dated 18.6.58 wherein he was appointed Steno-typist on 18.6.58 signed by Shri Ram Lal, Under Secretary, Govt. of India, ^{Purses} and was posted in Political Privy / Section. This is a forged document it is certified.

Article II

Shri Awadesh Kumar has submitted another forged office order No. 5/4/85-H dated 21.6.1988 wherein he was directed to report at Hindi Teaching Centre Bamrauli which was signed by Shri P. Prabhakar Rao, Dy. Secretary to Govt. of India.

Article III

Shri Awadesh Kumar has been accused for presenting the false claim in CSCS/CSSS

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for more than two decades and considerable points in false claim are the followings:

1. Are both forged orders submitted by Shri Awadesh Kumar to officers of M.H.A.?
2. Does Awadesh Kumar accept both these forged orders?
3. Does Awadesh Kumar pressurise his claim for inclusion in CSSS on the grounds of these documents?
4. Is Awadesh Kumar habitual for telling lies and producing false documents?"

He was placed under suspension w.e.f. 3rd December, 1984 (AN).

Vide his report dated 17.4.85 (copy Annexure-J), the Enquiry Officer concluded on observing the papers represented by the Applicant and the Presenting Officer - Shri R.P. Sharma that the charges mentioned in Article I, II and III of the Charge Sheet are true and the Applicant could not produce any proof that charge could be untrue. The disciplinary authority imposed the penalty of dismissal from service on the Applicant vide his order dated 17th December, 1985 (copy Annexure-B) which was made effective from the said date. The operative portion (un-numbered para 2) of the aforesaid order reads thus:-

"Now, on the basis of the report submitted by the Enquiry Officer, the undersigned in exercise of the powers conferred by sub rule (ix) of Rule 11 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 hereby dismisses from service the said Shri Awadesh Kumar with immediate effect i.e. w.e.f. 17.12.1985 (F.N)."

Applicant's appeal against the aforesaid order was rejected vide order dated 17th December, 1986 (Annexure-C). The President acting as the Reviewing Authority, in exercise of the powers conferred by Rule 29(1)(a) and (d) of the Rules revoked the order of dismissal from service and imposed the penalty of compulsory retirement from the date of issue of the order. As per this order, it was also directed that the period from 17.12.1985 to the date

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of issue of the order will be treated as suspension period allowing the Applicant the benefit of subsistence allowance admissible under the Rules.

2. Applicant has impugned the aforesaid orders. The salient grounds on which the impugned orders have been assailed are that the charges are false, frivolous and mischievous, raked up after a lapse of 26½ years, the articles of charge framed ^{are} / vague, do not indicate the Conduct Rules alleged to have been violated, Inquiry Report too is vague, he has been denied the reasonable opportunity of defence thereby violating Article 311 of the Constitution, the proceedings were not conducted in accordance with the principles of natural justice, the impugned orders have not been made by the competent authorities and the same are non-speaking.

3. The defence set out in the counter is that the Applicant was appointed as Steno-typist by the then Officer-in-Overall Charge, Hindi Teaching Scheme, Banrauli who was not competent authority to make such appointment and pursuant to a request made by him, the Ministry of Home Affairs issued ^{the} / original offer of appointment ^{and} and formal appointment order in favour of the Applicant was issued / on 11.6.1958. Applicant had been, however, persisting for his appointment in the Ministry as Steno-typist and claiming promotions on par with Stenographers of the Secretariat and he referred to following documents in support of his claim:-

- (i) Office order No. F/Pol(PP)/57-58, dated 18.6.1958 under which he was appointed in the Ministry as a Steno-typist w.e.f. 16.6.1958 and posted in Political Privy Purses Section.
- (ii) Office order No. 5/4/58-H, dated 21.6.1958 under which he was directed to report to the Hindi Teaching Centre, Banrauli.

Respondents have stated that no file referred to in the order at (1) above appears to exist. A copy of the office order dated 18.6.58 is available in file No.A.22020/4/71-Ad.I(A). The genuineness of this file is questionable as a cursory check reveals that no diary numbers as indicated in the margin on the noting side are available in the diaries. The style and mode of notings in the file reveals that the whole thing is concoction.. The copy of the order dated 18.6.58 which contains the signature of Shri Ram Lal, Under Secretary was referred to the Central Forensic Science Laboratory, New Delhi (here-in-after called the 'Laboratory') for their report about the genuineness of the document, and according to the report furnished by the Laboratory, the signature is not genuine. No such order as is referred to at Sr. No. (11) above is available in the file. On reference being made to the Laboratory, the Laboratory reported that the signature of Shri Prabhakar Rao appearing in this order is also forged. It has been further stated that the Applicant was found guilty on the basis of the findings of the Enquiry Officer and was dismissed from service by the competent authority. Respondents have added that Applicant's appeal was rejected by the appellate authority and the reviewing authority converted the penalty of dismissal from service into that of compulsory retirement. Respondents have refuted the allegations about the charges being false, frivolous and malicious and about the violation of principles of natural justice and of Article 311 of the Constitution adding that Applicant was given full opportunity to defend himself. The whole proceedings instituted against him were lawful, constitutional and valid.

4. Applicant ^{has}/more or less reiterated his

case in the rejoinder and also filed a Petition for condonation of delay. M.P. No. 2571 of 1989 was also moved by the Applicant for taking on record additional documents enclosed thereto. The same was allowed vide order dated 21.11.1989.

5. During the course of arguments, the learned counsel for the Respondents, however, submitted that the Respondents had not received notice of the aforesaid M.P. So saying the learned counsel also filed reply to the aforesaid M.P.

6. We have considered the arguments addressed by the learned counsel for the parties at the Bar, have given our earnest consideration to the pleadings of the parties and the documents on record and have also examined the relevant records produced by the respondents.

7. During the course of arguments, the learned counsel for the Applicant strenuously urged that no show cause notice was given before the enquiry was ordered. The list of documents did not accompany the charge sheet which was also vague. It did not specify the Conduct Rules alleged to have been violated. It was further submitted by the learned counsel that the whole proceedings are bad as the enquiry was initiated after inordinate delay of 26½ years. The Applicant was not supplied with a copy of the Enquiry Report. The impugned orders are non speaking and that no evidence had been adduced to establish forgery. Another point made by the learned counsel for the Applicant was that the Enquiry Officer violated the doctrine of self incrimination embodied in Article 20(3) of the Constitution. The learned counsel also assailed the Report of the Enquiry Officer on the ground that the same is not supported by the

evidence and is perfunctory.

8. Keeping in view the ground urged in the petition seeking condonation of delay and the fact that such a request should be considered by adopting a liberal yardstick in the light of the guidelines laid down by the Supreme Court in Collector, Land Acquisition, Anantnag & Another V. Met. Katiji & others¹, we hereby condone the minor delay in filing the Application. The ground of delay would have been quite a formidable ground but for the fact that we have not been furnished proper material on the point as to when the Applicant had furnished photostat copy of the order dated 18.6.1958 and photostat copy of order dated 21.6.1958. Annexure A/1 would go to show that Private Secretary to the Additional Secretary (Admn.) Shri B.G. Dashmukh, as he then was, had given a receipt about furnishing of the aforesaid documents on 12.9.1978.

9. Adverting to merits, we find that copy of the impugned order was received by the Applicant on 3rd January, 1986. This fact is evident from the note recorded by the Applicant on the office copy of the impugned order which was sent under Registered Post. We have also seen the endorsement made by the Postal authorities on the registered envelope on 21.12.1985, 23.12.1985 and 28.12.1985 and another note by the Applicant on the aforesaid office copy about having received a copy of the Enquiry Report on 4.2.1986. Annexures A/10 and A/11 also support the Applicant's assertion that a copy of the Enquiry Report had not been furnished to him prior to or alongwith order of his dismissal (Annexure-B). The assertion of the Applicant that copy of the Enquiry Report was not supplied to him prior to or alongwith the impugned

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order (Annexure-¹A) is thus, well founded. That being so, the impugned orders are unsustainable in view of the dictum of ¹the Supreme Court in Union of India Versus E. Bashyan and ²others

and the decision of the Full Bench in Prem Nath K. Sharma Versus Union of India and ³others.

There is also considerable merit in the submission of the learned counsel for the Applicant that the enquiry proceedings stand vitiated for the reason that the competent authority had not furnished the Applicant with a copy of list of documents ^{and witnesses} which were to be relied upon by the disciplinary authority and to be used against the Applicant. The learned counsel for the Respondents tried to meet the aforesaid ground on the reasoning that the Enquiry Officer had not recorded the evidence of the witnesses and had merely relied on the statement of the Applicant and the report of the Laboratory. In case any reliance is placed on the report of the Laboratory a copy thereof ought to have been furnished to the Applicant. The learned counsel for the Applicant is also on firm ground in submitting that the impugned order made by the disciplinary authority is ^{vitiated by} unreasonable and is / non application of mind by the disciplinary authority. The learned counsel for the Respondents made a faint attempt to meet this challenge on the reasoning that it is an order of affirmance. A bare perusal of order Annexure-B would show that his order suffers from vice of total non application of mind. The order made by the disciplinary authority is, thus, liable to be struck down on this ground also. The order made by the appellate authority Annexure-C cannot also be sustained for the reasons. Firstly, ^{that} no opportunity of hearing had

2. ATC 1988 (7) SC 285,
3. 1988(3) SLJ 449(CAT).

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been afforded to the Applicant. Secondly, this order is hit by the dictum of the Supreme Court in Ram Chandra V. Union of India and Others AIR 1986 Supreme Court 1173.

The arguments about the Enquiry Officer having infringed Article 20(3) of the Constitution is being noticed only to be rejected. The submission of the learned counsel in this behalf is bereft of substance for the simple reason that doctrine of self incrimination embodied in the aforesaid provision is attracted only in a case where a person accused of an offence is compelled to be a witness against himself. The learned counsel for the Respondents strenuously urged that the Applicant has not approached the Tribunal with clean hands. Particular emphasis was laid by the learned counsel on the point that the Applicant has tried to support his case by producing copies of forged documents vide M.P. No. 2571/89. We would not like to express our opinion on this aspect lest it should prejudice either party's case. All the same we would say that after perusal of the records produced by the Applicant, the submission of the learned counsel for the Respondents cannot be taken lightly. We would, however, like to clarify that this should not be taken to be an expression of opinion on the articles of charge in respect of which enquiry had been conducted against the Applicant.

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10. For all what has been stated and discussed here-in-above, we hereby quash the impugned orders with the direction that the Respondents shall reinstate the Applicant within a period of three months from today. This order, will not however, preclude the Respondents from conducting a fresh enquiry against the Applicant in accordance with law. In case the Respondents decide to initiate a fresh enquiry against the Applicant, the same

shall be completed within six months from the date of service of the charge sheet on the Applicant. The competent authority is also directed to regulate the period from the date of compulsory retirement i.e. from 20.5.1987 till the date of reinstatement ~~and also determine the~~ emoluments payable to the Applicant in accordance with law. The competent authority is further directed to determine the subsistence allowance payable to the Applicant during the period of suspension preceding the order of compulsory retirement within the aforesaid period if the needful has not already been done. The Application is disposed of on the terms stated here-in-above. In the circumstances, we make no order as to costs.

(P.C. Jain)
24/5/1990
(P.C. Jain)
Administrative Member

(B.S. Sekhon)
(B.S. Sekhon)
Vice Chairman

'MSR'

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