



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1817/2020

Thursday, this the 28th day of January, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A K Bishnoi, Member (A)**

Smt. Indra Rani Sagar, aged 59 years
w/o Sh. Suresh Chaudhary
retired Administrative Officer
GNCT of Delhi
r/o F-37, 1st Floor, Dilshad Garden
New Delhi

(Mr. Yogesh Sharma Advocate)

..Applicant

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary
Delhi Sachivalaya, IP Estate,
New Delhi
2. The Chief Secretary
Govt. of NCT of Delhi
Delhi Sachivalaya, IP Estate
New Delhi

..Respondents

(Ms. Esha Mazumdar, Advocate)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant joined the service of the Govt. of NCT of Delhi as Junior Steno on 13.09.1983. She was promoted to the post of Head Clerk and thereafter as *ad hoc* DANICS/Administrative



Officer. She was issued a charge memo dated 22.02.2017. The allegation was that during the year 2012, she passed large number of refund orders in favour of M/s Satnam Impex, resulting in huge financial loss to the State exchequer. The applicant submitted an explanation on 16.05.2017 to the charge memo, denying the charges. The Disciplinary Authority (DA) appointed the Inquiry Officer (IO). In his report dated 01.09.2017, the IO mentioned that the applicant admitted the charges and accordingly, he held the charges proved; a copy of the same was furnished to the applicant. On 25.09.2017, the applicant filed her representation, denying the version of the IO, that she admitted the charges. The DA passed an order dated 16.11.2017, imposing the penalty of compulsory retirement and directing recovery of entire loss from the applicant. The appeal preferred against the order of compulsory retirement was rejected by the Appellate Authority (AA) on 26.02.2019. This O.A. is filed challenging the order of compulsory retirement as well as the order passed in appeal.

2. The applicant contends that she filed a representation, denying the charges and obviously for that reason, the DA appointed the IO. According to the applicant, the notice for first hearing in the inquiry was received by her after the due date and when she appeared on the next date of hearing, she was granted time to avail services of a defence assistant. It is stated that on 20.07.2017 when she appeared together with a defence assistant,



the IO declined the permission of defence assistant on the ground that he is a legal practitioner and he virtually threatened her without giving any opportunity to engage another assistant and forced her to sign on a note, which was typed to his dictation. The applicant contends that she broke down in the office of IO, and that by observing that the proceedings would come to an end, in case she signed the statement, the IO forced her to sign it.

3. The applicant contends that once the report of the IO was made available to her, she submitted a detailed explanation, narrating the developments, that have taken place on 20.07.2017, and she also made a request to change the IO. She contends that without taking the same into account, the DA passed the order of compulsory retirement.

4. The respondents filed a detailed counter affidavit opposing the O.A. According to them, the initiation of disciplinary proceedings and conducting of the inquiry has taken place strictly in accordance with the prescribed procedure. The various allegations made by the applicant are denied. It is also stated that the DA has taken into account, all the points urged by the applicant and that the punishment, commensurate with the gravity of the charge, was imposed. It is mentioned that the appellate authority considered the matter objectively.



5. Mr. Yogesh Sharma, learned counsel for applicant submits that no departmental inquiry was conducted against the applicant, and the report was submitted, just by obtaining a statement forcefully. He contends that once the applicant has submitted a representation, denying the charges, any admission could have been only by withdrawing the representation through a separate written document, and that the so-called oral submission cannot constitute the basis to impose the punishment of compulsory retirement. He further submits that the DA ought to have ordered further inquiry and that the impugned order suffers from serious defects and irregularities.

6. Ms. Esha Mazumdar, learned counsel for respondents, on the other hand, submitted that the IO was appointed taking into account, the charge memo as well as the representation of the applicant. She contends that the applicant volunteered to make a statement admitting the charges and that, in turn, was recorded by the IO. She further states that one cannot believe that an officer of the standing and status of the applicant would sign the statement without reading it.

7. The applicant was issued a charge memo with reference to her functioning as *ad hoc* DANICS/Administrative Officer. The allegation was that she passed series of refund orders in favour of M/s Satnam Impex. The resultant amount of refund is said to be



Rs.56 lacs. 14 documents and 9 witnesses were mentioned in the charge memo. The applicant submitted the explanation on 16.05.2017, denying the charges. The denial is very brief, but all the same, she referred to certain documents and flatly denied the charges. As provided for under the relevant Rules, the DA appointed one Mr. R L Srivastava, as IO.

8. The first date of inquiry was fixed as 15.06.2017. The applicant is said to have received the notice of hearing long after that date. Thereafter, the inquiry was fixed on 04.07.2017. On that date, the applicant appeared before the IO. She submitted an application, denying the charges, and the same was taken on record as C-13. The copies of the relied on documents were furnished to the applicant. The next date of inquiry was fixed as 20.07.2017. The applicant was also permitted to avail the services of a defence assistant.

9. What happened on 20.07.2017 is somewhat curious. In the departmental inquiry, the presenting officer was required to place the relevant records, and to examine the witnesses to prove the charges. Nothing of that sort has taken place on that date. In his report, the IO stated that the applicant made a representation stating that she frankly admits the articles of charge contained in the charge memo and that her earlier application dated 04.07.2017 may be treated as null and void, and withdrawn. By



referring to this statement, the IO submitted a report on 03.08.2017. The discussion and findings of the IO read as under:-

“Discussion

I have carefully gone through the Charge-sheet and papers filed during the course of hearing.

Considering the Charged Officer Ms. Indra Rani Sagar vide her application 20.7.17 has unconditionally and without any kind of pressure admitted the two Articles of Charges and has withdrawn her earlier application dt 4.7.17. I am of the view that there is no need of any further proceedings in this case. PO has also stated in his brief that charges against CO stands proved.

Findings

I hold that two Articles of Charges as per annexure-I of the Charge-sheet are proved.”

10. Rarely, we come across a case of this nature. In case the employee intends to admit the charges framed against him or her, that would take place at the threshold. Instead of submitting a representation denying the charges, they may file a letter or representation to the DA, admitting the charges and mentioning the relevant facts, if any. In the instant case, the applicant denied the charges at two stages. The first was in reply to the charge memo submitted to the DA, and the second was when she appeared before the IO on 04.07.2017. Assuming that there was any change of mind in her and she intended to admit the charges, that could have been only through a written application submitted by her to the DA. Even if it was to the IO, he was required to



ensure that the statement of that nature is made with free mind and without any coercion or threat. The IO acts like a neutral arbitrator and he is required not to associate himself, either with the Department or with the employee.

11. On noticing that the IO made a mention in his report that the applicant filed an application dated 20.07.2017 admitting the charges, we wanted the learned counsel for respondents to verify whether there was any such written representation. It emerged that such a representation did not exist at all. What was referred to by the IO, is a statement dictated by him, on which he obtained the signature of the applicant.

12. Soon after the applicant received the report of the IO, she made a representation on 25.09.2017, furnishing the details of the developments, that took place on 20.07.2017. She made it part of the pleadings in paragraph 4.8 of the O.A. The relevant portion reads as under:-

“7. That I made my efforts to avail services of an efficient person to act as Defence Assistant in these proceedings and lastly one Mr. Narender, Advocate had agreed to assist me. Thus on 20.7.2017 at the appointed time I appeared before my respected Inquiry Authority along with Mr. Narender, who had agreed to assist me in these proceedings as Defence Assistant. While both of us were standing before my respected Inquiring Authority, looking at Mr. Narender, my respected Inquiring Authority had objected to the appearance of Mr. Narender, as he was practicing lawyer. So my respected Inquiring Authority directed to Mr. Narender to leave that Chamber immediately and despite my repeated request he was not allowed to even sit in the chamber and



straight away he was asked to go out of that chamber. Thereafter, I was asked to take seat before him. As I was not aware of the law on this subject IO tendered my unconditional apology and requested my respected Inquiring Authority to afford me another opportunity to appear with another Defence Assistant. At this my respected Inquiring Authority fired upon me like anything and stated that first you did not appear on previous date, now you could not produce a Defence Assistant, thus he alleged that I was deliberately prolonging these proceedings. He shouted at me that first you people commit misconduct and then instead of facing dire consequences thereof, you people try to linger on the proceedings. He with a heavy voice stated that he was not going to adjourn the proceedings and will decide the fate of allegations leveled against on that very day. Your honour, even before him I had talked to one person on my mobile and requested him to help me as Defence Assistant in this case, that gentleman was kind enough and asked me to seek adjournment for two days only and in the meanwhile he will prepare my request in his favour, his consent etc. and will attend the proceedings on the next date of hearing. With folded hands I prayed my respected Inquiring Authority but he declined to listen to me any more on that count. At this I started weeping then and there and became very much depressed. My respected Inquiring Authority declared that he was not ready to hear anything from me in respect of any adjournment and will decide the case on that day. He asked me as to why I do not take the positive steps to wind up these proceedings. He advised me to admit the charge and assured me that after that he will get the matter settled in my favour within a week or so. Lastly, seeking no other remedy, I bowed my head before him and requested him to take the proceedings further as he may like. Then he explained to me that in case still I deny the charges, he will call the prosecution witnesses which will take month together and thus till then I shall be in the fry pan. So to avoid all these things it is better to admit the charges and secure a lenient view of the authorities. He declared that after I would admit the charge, no harm having a far reaching effect would be faced by you. Weeping before him, I prayed him to safeguard me. As this he started dictating a letter and after the letter was prepared at the computer installed in that chamber, my respected Inquiring Authority asked me to append my signature on that letter. When I pointed out that since the inception of these proceedings I have been denying the charge framed against me, and more so there is no fault on my part, why I should now admit that it was my mistake, at this he said,



“this is the only reason you have been suffering mental agony till date.” He further said, “Do not waste his time and put your signature on this letter”. Being most obedient by nature, as I had faith in him, signed that letter. After taking the said letter on record, he asked me that the Inquiry proceedings have been finished now and I had obeyed to him having good faith in him; I must wait for a positive order which will be delivered to me within a week or so. Then I asked my respected Inquiring Authority about the next date when I should appear before him to receive his obligation, he said, “you need not to come there and the positive order will reach me in my office.”

13. This was not denied by the respondents in their counter affidavit. The minimum expected of the DA was to verify from the IO or from the records, whether the applicant submitted any written representation, admitting the charges, at all. No such effort was made and the DA proceeded to impose the punishment of compulsory retirement.

14. The AA also proceeded on the assumption that there is unconditional acceptance of articles of charge by the applicant herein. There is no denial of the fact that it is the IO, who dictated the so-called letter, which was signed by the applicant and it reads as under:-

“(i) I have been served charge-sheet vide memo no.F302/2014/DOV dt 22-2-17.

(ii) I appeared before Enquiry officer 4-7-17. I could not be present earlier because of late receipt of charge-sheet.

(iii) That on 4-7-17, I submitted the application denying the charges to Enquiry Officer.

(iv) That on the same date I was given copies of listed documents by presenting officer before the Enquiry Officer.



(v) That I sought time to check the documents and also to arrange some one to act as my defence asstt. The case was adjourned for 20-7-17 at 2.30 PM.

(vi) Today I appeared before the Enquiry Officer at the fixed time. Presenting Officer Sh. Mankotia was also present.

(vii) During the course of hearing, I stated that I could not arrange any officer to act as my defence asstt. Further even documents could not be checked.

(viii) That during this period I have carefully considered the whole matter and without any pressure, I frankly admit the two articles of charges contained in the charge sheet unconditionally.

(ix) That my earlier application dated 4-7-17 denying the charges may be treated as null and void and withdrawn.”

15. The applicant was not an illiterate or a lower category employee, so that the IO has taken upon himself to draft the letter on behalf of the employee. Even where an employee, who is issued a minor penalty charge memo, intends to admit the charge, the language would not be of this nature. An allegation about illegal refund does not require “frank admission”. The IO has completely misdirected himself, as well as the proceedings. Either it was a case of lack of experience or of exhibition of high handedness, on his part.

16. Once the applicant denied the charges before him, through a written communication on 04.07.2017, the next step for the IO was to require the presenting officer to adduce his evidence, be it oral or documentary. The applicant would have been entitled to cross examine the witnesses. The occasion for her to speak



independently would have arisen only when the presenting officer has closed his evidence. The inevitable conclusion is that the IO completely misdirected the proceedings and acted with more vengeance, than the DA. We are of the clear view that the IO did not befit the office assigned to him.

17. The DA ought to have ignored the report and directed the inquiry by appointing another IO. It is a clear case of miscarriage of justice and violation of prescribed procedure. We are not making observations about the charges framed against the applicant. The truth or otherwise thereof would come out, if only an independent and impartial inquiry is conducted, and a report is submitted by the IO.

18. Reliance is placed upon certain judgments by learned counsel for respondents. It is found that wherever the Lordships held that the punishment can be imposed if an officer admits the charges, a clear note of caution was added that the admission must be voluntary and in the natural course of things. In the instant case, the so-called admission is completely tainted and cannot be accepted at all.

19. The O.A. is, therefore, allowed and the impugned order is set aside. The disciplinary proceedings shall be commenced from the stage of inquiry, duly changing the IO. In case the applicant



was under suspension by the time the impugned order was passed, she shall remain under suspension. If, on the other hand, she was not under suspension, she shall be forthwith reinstated and it shall be open to the respondents to post her at any place/post of their choice. The manner in which the period between the order of compulsory retirement and the date of reinstatement must be treated, shall depend upon the outcome of the disciplinary proceedings, which in turn, shall be concluded within six months from the date of receipt of copy of this order.

There shall be no order as to costs.

(A K Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

January 28, 2021
/sunil/