

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-171/86

Date: 3-8-1989

Shri B.B. Dubey Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri S.S. Tewari, Advocate

For the Respondents Shri P.H. Ramchandani,
Advocate

CORAM:- Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri P.C. Jain, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant filed this application on 12.3.1986 under Section 19 of the Administrative Tribunals Act, 1985 against the Comptroller and Auditor General, Deputy Comptroller & Auditor General, and the Director of Audit, Commerce, Works and Miscellaneous, New Delhi, praying that a direction be issued to them to promote him to the post of Deputy Comptroller and Auditor General of India or its equivalent. He is presently an Auditor in the scale of pay of Rs.330-560 while the post of Deputy Comptroller and Auditor General of India carries the pay-scale of Rs.3,250 fixed. He has sought the above mentioned relief as it is the only alternative left for him to protect himself from the alleged harassment of the officers of his department whom he has styled as "lawless aggressors", "conspirators", "fabricators" and the like.

On

in person.

2. The application has been couched in unsavoury language, the bias and prejudice of official superiors being its running theme. The applicant has not, however, chosen to implead any of them by name so that they could defend themselves by filing affidavits. At the time of final hearing, he appeared. We have, therefore, looked into the substance and not the form of the pleadings.

3. According to the respondents, he has been absenting from duty unauthorisedly from 1.10.1985. On 15.4.1986, when his request for grant of interim relief came up for consideration, he admitted before the Tribunal that he is not signing the attendance register since 1.10.1985 as he thinks that the said register will be tampered with. The counsel for the respondents indicated that unless the attendance register is signed and he discharges his legitimate duties, pay cannot be given under F.R. 17. Another Bench of the Tribunal observed that since he refuses to sign the attendance register, his attendance cannot be officially recognised for any purpose and that he will be entitled to his salary only when he complies with the basic principles and discipline in government service.

4. The applicant is residing at Sector V/112, R.K. Puram, which had been allotted to him by the Government. By interim order passed on 29.4.1988 and continued thereafter, the Tribunal has directed that status quo as regards his continuance in the Government accommodation would continue until further orders subject to his liability to pay the licence fee and other charges in accordance with the relevant rules.

2W

- 3 -

5. The facts of the case in brief are as follows. The applicant was initially appointed as Clerk (L.D.C.) on 1.9.1959. He was promoted as Auditor (U.D.C.) on 23.8.1971. He was placed under suspension on 1.6.1975 as a disciplinary proceeding against him was contemplated. On 4.6.1975, a Memorandum was served on him proposing to hold enquiry under Rule 14 of the C.C.S. (CCA) Rules, 1965 for the alleged misconduct of tampering with the attendance register, lack of devotion to duty, insubordination and indulgence in acts unbecoming of a Government servant. After holding an enquiry, the disciplinary authority passed an order on 26.12.1975 whereby the penalty of reduction to lower grade from Auditor to Clerk was imposed on him, until he was found by the competent authority to be fit for restoration to the higher grade. By order dated 6.4.1977, the appellate authority remitted the case back to the disciplinary authority. By order dated 15.1.1982, the disciplinary authority modified his earlier order and stated that he should be reduced in rank with effect from 15.1.1982, instead of 26.12.1975. On appeal, the appellate authority passed an order on 2.12.1982 converting the penalty of reduction in rank to that of reduction of pay by two stages of increments in the post of Auditor for a period of four years w.e.f. 15.1.1982. The Comptroller and Auditor General, in his capacity of the Revising Authority, passed an order on 11.1.1984 upholding the orders of the appellate authority. By another order dated 23.11.1984, the Revising Authority directed that it was not proper to treat the period from 1.6.1975 to

.....4....

26.12.1975 (the period of suspension) as leave due and admissible without his request and if he does not want this period as leave due and admissible, the period and quantum of payment should be regulated under F.R. 54B. By order dated 25.2.1985, the competent authority decided that his pay and allowances for the suspension period were restricted to the subsistence allowance already paid to him and the period of suspension was to be treated as duty except for the purpose of pension. He has also challenged the validity of the aforesaid orders though the relief claimed by him is promotion to the post of Deputy Comptroller & Auditor General of India.

6. We have gone through the records of the case, including the written submissions filed by the applicant and have heard him in person and the learned counsel for the respondents. The main contentions raised by the applicant are that reasonable opportunity was not given to him to defend himself, that the second enquiry was not permitted in law, that the appellate authority and the Revising authority did not pass speaking orders, and that the authorities themselves tampered with the attendance registers and falsely implicated him. According to him, all these were due to a conspiracy hatched by his superior officers to force him into starvation and to ease him out from Government service. The respondents have denied these contentions and allegations.

7. The statement of articles of charge framed against the applicant accompanying the Memorandum dated 4.6.75 reads as follows:-

"Article I

That the said Shri B.B. Dubey while functioning as Auditor in the OAD (Works)

[Signature]

Party under the charge of Shri H.K. Chugh, Accounts Officer during the period from 17.1.75 to 7.5.75 did not attend the party on three days in January, 2 days in February, 8 days in March, 4 days in April and 4 days in May, 1975, but marked the attendance "forcibly" over the words 'C/L' 'A' marked against his name in the attendance register by his superiors. He is alleged to have tampered with the official record and thus did not maintain absolute integrity and acted in violation of Rules 3(i) and 3(iii) of CCS (Conduct) Rules, 1964.

Article II

That during the aforesaid period and while functioning in the aforesaid party the said Shri Dubey was habitual late comer and is reported to have attended the party for not more than half an hour or on some days for not more than couple of hours and he did not perform any official duty. He thus did not maintain devotion to duty and acted in violation of Rule 3(ii) of CCS (Conduct) Rules, 1964.

Article III

That during the aforesaid period and while functioning in the aforesaid party, the said Shri Dubey marked absent on 18, 19 and 29.3.75 and again in April, 1975 in the attendance register against the names of his Section Officer and Inspecting Officer when they used to be away to other divisions on official work. Shri Dubey thus showed utter insubordination to his superiors and acted in a manner unbecoming of a Government servant in violation of Rule 3(iii) of CCS (Conduct) Rules, 1964.

Article IV

That during the aforesaid period and while functioning in the aforesaid party, the said Shri Dubey was served with two memos dated 24.2.75 and 14.3.75 by the Accounts Officer Incharge of the Inspecting Party to which he did not reply. He is thus charged again with an act unbecoming of a Government servant which is in violation of Rule 3(iii) of CCS (Conduct) Rules, 1964."

8. We may consider the allegation made by the applicant that he was denied reasonable opportunity to defend himself. In this context, he has put forward his theory of alleged conspiracy in the Indian Audit

and Accounts Department by those who had handled his case to tamper with the attendance register and the records, to harass him and to ruin his career. He has alleged that he has not been supplied the copies of the documents required for his defence. These were the absentee statements for the month of April, 1975, acquittance rolls for the months of January, 1975 and T.A. bills in respect of Shri H.K. Chugh, Shri I.R. Paul and Shri S.K. Bhasin. He was also not given the opportunity to produce the defence evidence and to examine defence evidence, oral or documentary. No oral statement was taken by the Enquiry Officer from the defence. The Enquiry Officer has not included the written statement submitted by the defence and it has not been considered by him but he included the written brief submitted by the Presenting Officer in his report. The enquiry was ex parte.

✓
/Enquiry Officer,

9. The order passed by the Disciplinary authority on 26.12.1975 on the basis of the report submitted by the Shri R.K. Dewan, Senior D.A.G., was considered by the appellate authority in its order dated 6.4.1977. The appellate authority remitted the case to the disciplinary authority in terms of Rule 27(2) of the C.C.S. (CCA) Rules with the following directions:-

- "(a) To allow Shri Dubey to have access to all the documents mentioned in the charge-sheet and to take copies or extracts therefrom;
- (b) To allow examination, cross-examination, re-examination of Shri S.K. Bhasin afresh;
- (c) To decide, on the basis of the evidence so recorded and pass appropriate orders."

10. Thereafter, A. Ganguly was appointed as Enquiry Officer to conduct the enquiry. It is clear from the

Enquiry report submitted by him on 17.5.1980 that the enquiry was conducted by him in accordance with the above directions. The applicant was given the copies of the T.A. bills for the period from 20.3.1975 to 1.4.1975. As regards his request to see the Acquittance Roll from 1/75 to 5/75, he was told that he would be given access to them subject to availability as well as copies of other documents. The applicant did not produce before the Enquiry Officer any documentary evidence to refute the charges (vide pages 54 to 64 of the paper-book).

11. There is nothing on record to indicate that the Enquiry Officer hustled through the Enquiry. The plea that the enquiry was held ex parte, is disproved by the report of the Enquiry Officer. The applicant has not stated in his application as to when he presented his written brief to the Enquiry Officer. He has also not produced a copy of the same. On a perusal of the Enquiry Report, we are of the opinion that it cannot be faulted on the ground that the Enquiry Officer did not give him reasonable opportunity to defend himself.

12. Likewise, the plea that the orders passed by the appellate authority and Revising authority are not speaking orders, is also not convincing. The appellate orders dated 6.4.1977 (pages 52-53 of the paper-book), and dated 17.1.1983 (pages 67-68 of the paper-book) and the orders passed by the Revising Authority on 11.1.1984 and 23.11.1984 (pages 70-72, 74-76 of the paper-book) give reasons for arriving at the decision.

13. The contention raised by the applicant that the holding of the second or fresh enquiry is bad in law,

Q

is based on a misconception. The Appellate Authority remitted the case back to the disciplinary authority under Rule 27 of the C.C.S. (CCA) Rules, 1965. This cannot be treated to be a fresh enquiry or second enquiry, as alleged by him.

14. The Tribunal cannot sit in appeal over the decision of the authorities holding a departmental enquiry against a public servant. Where there is some evidence in support of the charges - as in this case - the Tribunal is not expected to review or reappraise the evidence. We do not see any infirmity in the enquiry held against the applicant in the instant case so as to warrant interference.

15. We do not, therefore, see any merit in the present application. Even assuming that the impugned orders challenged by the applicant were non-existent, the applicant will not thereby become entitled to the relief claimed by him, i.e., promotion to the post of Deputy Comptroller and Auditor General of India, or equivalent post. The applicant has not mentioned the rules under which promotion from the post of Auditor (in the scale of pay of Rs.330-600) to that of Deputy Comptroller & Auditor General of India (in the pay of Rs.3250 fixed) can be claimed by him. Prima facie, this claim appears to be too far-fetched to merit any further discussion. Incidentally, it appears to us that he has sought this relief on the ground that once he attains the status of a Gazetted Officer, he will not be required to sign any attendance register, unlike the staff belonging to the non-Gazetted category to which he presently belongs. There is nothing unreasonable in the instructions regarding the procedure of

On

signing in the attendance register by the non-Gazetted staff, which is a means of ensuring discipline and efficiency in Government offices.

16. In the result, we hold that the applicant is not entitled to the relief sought in the application.

17. Before parting with this case, it may be stated that the applicant has filed an amended application on 22.8.1988 so as to implead the Directorate of Estates as the fourth respondent. In the amended application, he has sought the same relief as in the original application. However, he has also referred to another case in which disciplinary proceedings were initiated against him in September, 1985 and has challenged its validity. He has also introduced new annexures. The respondents have stated in their reply dated 4.11.1988 that he has thereby changed the complexion/substance of the original application. We agree with this contention and hold that in case he is aggrieved by the proceedings initiated against him in September, 1985, he will have to seek his remedy by filing a separate application in accordance with law, after exhausting the remedies available to him under the relevant service rules. Similarly, we refrain from expressing any opinion on the allegation made by the applicant in the original application, also repeated in his amended application, that the Director, i.e., the disciplinary authority who was requested to fix the pay of the applicant according to the Appellate Authority's order and to pay him the arrears, demanded Rs.10,000 as a bribe. Apart from the allegation made by him, he has not produced any

Q

evidence to substantiate the same. The allegation appears to have been made to prejudice the mind of the Tribunal. This is also not a 'service matter' within the meaning of Section 3 (q) of the Administrative Tribunals Act, 1985 that can be adjudicated upon by the Tribunal.

18. In view of the foregoing, the application is dismissed, with no order as to costs. The interim order passed on 29.4.1988 regarding the maintenance of status quo as regards the continuance of the applicant in the Government accommodation at Sector V/112, R.K. Puram, New Delhi, which was continued thereafter till further orders, is also vacated.

P.C. Jain
3/8/89
(P.C. Jain)
Administrative Member

P.K. Kartha
3/8/89
(P.K. Kartha)
Vice-Chairman (Judl.)