

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(10)

O.A. No. 381/
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1986

DATE OF DECISION 5-6-91

SHRI RAGHUBIR SINGH

Petitioner

SHRI P.K. GUPTA WITH
SHRI B.K. AGGARWAL
Versus

Advocate for the Petitioner(s)

UNION OF INDIA

Respondent

SHRI K.C. MITTAL

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. J.P. Sharma, Hon'ble Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? K
2. To be referred to the Reporter or not?
3. ~~Whether their Lordships wish to see the fair copy of the Judgement?~~ K
4. ~~Whether it needs to be circulated to other Benches of the Tribunal?~~

J.P. Sharma

(J.P. SHARMA)
MEMBER (J)

D.K. Chakravorty 5/6/91

(D.K. CHAKRAVORTY)
MEMBER (A)

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 381/1986

DATE OF DECISION 5-6-91

SHRI RAGHUBIR SINGH

.....APPLICANT

VS.

UNION OF INDIA

.....RESPONDENT

CORAM

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

Shri J.P. Sharma, Hon'ble Member (J)

FOR THE APPLICANT

.....SHRI P.K. GUPTA WITH
SHRI B.K. AGGARWAL

FOR THE RESPONDENT

.....SHRI K.C. MITTAL

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Senior Accountant, Office of the Chief Controller of Accounts, Department of Supply, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order of compulsory retirement w.e.f. 1.4.1985 in a disciplinary proceeding by an order dated 30.3.1985 upheld in appeal by the order dated 29.11.1985. The applicant claimed the following reliefs :-

- (a) issue a Writ in the nature of certiorari quashing the order Nos. 14013 (83)/84/Admn I/C 283-91 dated 30.3.85 and C-14013 (81)/84/Admn I/3989-94 dated 29.11.85.

- (b) issue a Writ of Mandamus directing the respondents to treat the petitioner in service.
- (c) issue any writ/order/direction as your Lordships deem fit and proper.

2. The facts of the case are that the applicant has been President of the Staff Union of Chief Controller of Accounts Office and he was highlighting the grievances of the staff members to the authorities concerned. The applicant was served with a memo dated 4.8.1984 on 7.8.1984 having article of charges as follows :-

"Article-I

That the said Shri Raghbir Singh while functioning as Senior Accountant in the office of the Chief Controller of Accounts, Department of Supply New Delhi during the months of January-February 1984 took a leading part in and raised disrespectful and denigrating slogans against Senior Officers and the Head of the Department both during lunch and before close of office hours.

Article-II

That the said Shri Raghbir Singh, while functioning as Senior Accountant in the Office of the Chief Controller of Accounts, Department of Supply, New Delhi entered office Gate No.2 on 7.2.84 alongwith other suspended employees in the form of procession and while demonstrating and making a speech outside the room of C.C.A., he hurled abuses at the Head of Department.

Shri Raghbir Singh by his above acts of misconduct contravened Rules 3(1) (iii) of the CCS (Conduct) Rules, 1964 and thereby rendered himself liable to disciplinary proceedings under the CCS (CCA) Rules, 1965."

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The applicant made a representation to the authorities on 16.8.1984 and Shri R.M.S. Liberhan was appointed as an Enquiry Officer by an order dated 3.9.1984. Along with the applicant, two other officials, one Senior Accounts Officer Shri Madho Charan and one Junior Accounts Officer Shri Ranjit Singh, were also proceeded departmentally in the same enquiry under the same article of charges and there was a common enquiry against all of them.

3. It has been contended in the application that respondent No.3 was not the competent authority to initiate the departmental proceedings against the applicant as the appointing authority of the applicant was the Chief Pay and Accounts Officer. The enquiry was constituted by the Controller of Accounts and the Enquiry Officer was appointed by the Controller of Accounts by the order dated 3.9.1984. The enquiry proceeded ex-parte as the applicant did not join in the enquiry. The applicant raised the objection that as per alleged statement of certain witnesses, the petitioner was allegedly shouting slogans against the Senior Officers including the Enquiry Officer and hence the petitioner could not expect justice from the same person against whom the alleged slogans had been shouted. This objection was over-ruled

by the Enquiry Officer and so the petitioner decided not to participate in the proceedings any more. Ultimately, the Enquiry Officer submitted the report and the punishment order was passed as said above. It was upheld by the appellate authority and the petition to the President is still pending disposal because of the application having been filed under Section 19 of the Administrative Tribunals Act, 1985.

4. The respondents contested the application and raised a number of objections.

5. We have already decided today by the judgement in OA 1205/86-Ranjit Singh Rana Vs. Union of India & Others that the appointment of the Enquiry Officer by the order dated 3.9.1984 has not been proper and legal as the same Enquiry Officer was the subject of slogans raised by the applicant and others and as such that Enquiry Officer cannot be said to be impartial in the course of enquiry. In fact the applicant should have preferred the appeal against that order also, but the Enquiry Officer himself on the principles of natural justice, as he has also been a target of slogans and abusive language by the applicant, should have referred the matter to the disciplinary authority

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for appointing another Enquiry Officer and since that has not been done, we have held in the judgement of Ranjit Singh Rana's case, basing the same on an earlier judgement passed in the case of Madho Charan - O.A. No.391/86 decided on 23.11.1990 wherein also the impugned orders were quashed. So we agreeing with the above judgement also find that the present application is to be allowed and the impugned orders are to be set aside.

6. Both the learned counsel of the parties have agreed that the present case is covered by the judgement of Madho Charan's case (supra). In view of this fact, it is ^{considered necessary} not ~~to~~ now to repeat all these facts and counter facts in the present case and suffice to say that the present applicant was also proceeded in the same departmental proceedings alongwith the two others-Ranjit Singh and Madho Charan and since their cases have been allowed, and the Enquiry Officer's report having been quashed, so the same relief is to be given to the applicant.

7. The learned counsel for the applicant further argued that it is no use to remand the case to the disciplinary authority to start fresh disciplinary proceedings against the applicant on account of the fact that the appointment of

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the Enquiry Officer and the impugned order being passed by the Controller of Accounts who ^{was} not competent to do so, vitiated the whole proceedings. We do not find any justification in this argument. Even accepting the case of the applicant, for the sake of arguments, the competency of the authority having been challenged by the applicant and that the proceedings are not to be quashed on merits, so that will not give any inference that the charges which were levied against the applicant were not based on any evidence. It shall be for the respondents to see who was the appointing authority and who is the competent disciplinary authority in the case. Moreover, we find that the enquiry against Madho Charan, by virtue of the order passed in OA 391/86 on 23.11.1990, has also started ^{de novo} as has been pointed out by the learned counsel for the applicant himself, so it shall not be fair that the matter should be left unenquired against the applicant when the applicant has taken shelter of the judgement of Madho Charan's case (supra).

8. It has been further pointed out by the learned counsel for the applicant that the applicant has already reached the age of superannuation in the normal course on 30.4.1991, so the departmental proceedings be not ordered to be drawn against him and the matter be disposed of on merits. We have also heard the learned counsel and we find that this is

not a case of no evidence where the charges against the applicant could not be framed, in as much as, the applicant was one of those who is alleged to have shouted the slogans in the premises of the office itself against the respondent No.3 and other superior officers. In view of this and relying on the earlier judgement of Ranjit Singh and Madho Charan (supra), we allow the application to the extent that the impugned orders dated 30.3.1985 and 29.11.1985 are set aside. The applicant shall be deemed to be reinstated till 30.4.1991, but shall be governed by the provisions of Section 10 (4) of the CCS (CCA) Rules, 1965 as the matter is being remanded to the disciplinary authority for fresh enquiry on technical points. The disciplinary authority shall appoint an Enquiry Officer other than the authority referred to in the charge of Article-III of the first chargesheet who shall proceed with the enquiry afresh. The proceedings shall commence after notice to the applicant. The applicant shall be given due opportunity to produce the defence and shall also be furnished copies of all necessary documents which are to be relied in the enquiry proceedings against him. The applicant is directed to cooperate in the enquiry proceedings. The disciplinary authority shall, before passing any order, furnish the report of the Enquiry Officer to the applicant and then pass orders

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according to law. The final order under F.R. 54(b) for treating the period from the date of compulsory retirement to the date of the final order shall be passed after the conclusion of the enquiry and if by virtue of that order any consequential benefit arises to the applicant, that shall also be paid. The parties shall bear their own costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

5/6/91

D. K. Chakravorty

(D.K. CHAKRAVORTY)
MEMBER (A)

5/6/91