

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 391/86  
T.A. No.

198

DATE OF DECISION 23.11.90

Madho Charan, Petitioner

Shri D. R. Gupta, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri K.C. Mittal, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (Administrative)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-12-86-15,000

*J.P. Sharma*  
( J.P. Sharma )  
Member (Judl.)

*P.C. Jain*  
(P.C. Jain)  
Member (Admn.)

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.391/86

DATE OF DECISION: 23.11.90.

MADHO CHARAN

..APPLICANT

VERSUS

UNION OF INDIA & OTHERS

..RESPONDENTS

SHRI D.R. GUPTA

COUNSEL FOR THE APPLICANT

SHRI K.C. MITTAL

COUNSEL FOR THE RESPONDENTS

**CORAM:**

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

**J U D G E M E N T**

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

The applicant was employed as Senior Accountant in the office of Chief Controller of Accounts, Department of Supply, New Delhi, filed the application under Section 19 of the Administrative Tribunal Act, 1985 assailing the order dated 30.3.1985 passed by Controller of Accounts, Department of Supply and the Appellate order dated 29.11.1985 passed by Chief Controller of Accounts by which the applicant was punished in departmental enquiry and was retired compulsorily w.e.f. 1.11.1985. The applicant claimed the following relief. To quash the order dated 30.3.1985 and also direct the respondents to treat the applicant in service.

L

2. The facts of the case are that the petitioner joined in the Department of Chief Pay & Accounts as UDC on 8.6.1955 and he was appointed by Chief Pay and Accounts Officer. At the relevant time, the applicant was posted as senior accountant in the Office of Controller of Accounts. It is stated by the applicant that he was General Secretary of the Staff Union of Chief Controller of Accounts (CCA), Department of Supply, and had been taking active part in highlighting the grievances of the members of Union. The applicant was suspended on 28.1.1984 and was paid subsistence allowance under Rule 53(1) F.R. vide order dated 31.1.1984. A departmental proceeding was instituted against the applicant for major punishment under Rule 14 of the CCS(CCA) Rules 1965. The applicant made a representation on the charge-sheet dated 26.4.1984 (Annexure C), which contained two Article of charges. A second charge-sheet dated 4.8.1984 (Annexure E) was also served on the applicant. In this charge-sheet along with the applicant, two other colleagues who were also active members of the Staff Union has also been charged and a common proceeding was directed to be held regarding the second charge-sheet. In both the charge-sheets Shri R.M.S. Liberhan (Controller of Accounts II) was appointed as enquiry officer. The enquiry officer fixed 26.9.1984 for preliminary hearing on second charge-sheet and 27.9.1984 was fixed on the first charge-sheet. On 26.4.1984, the

the date fixed for preliminary hearing of the second charge-sheet, a preliminary objection was taken by Shri Ranjit Singh II who was also joined <sup>in</sup> the charge-sheet with the applicant. On the date of the preliminary hearing of the first charge-sheet on 27.9.1984, the petitioner raised the objections that in relation to Article III of the chargesheet C.A.II, Shri Liberhan, is also the enquiry officer in the same and he has been referred to in the said charge.

3. Article 3 of the first charge dated 26.4.1984 is as follows:

Article 3

That the said Madho Charan while functioning as Senior Accountant in the aforesaid office. in one of the said meetings held during lunch hour on December 14, 1983 cast aspersions against C.A. I and also made an open and unwarranted threat to burn C.A.II in the Office. He forced the staff member to attend meeting and marched in procession into office upto gate I.

4. In the statement of imputations of misconduct or mis-behaviour in support of the Article of charge regarding Charge No.III is as follows:

That the said Madho Charan in the meeting held by the erstwhile SASA on 14.12.1983 stated that CA II who was making adverse entries in CRs would not be allowed to go back like <sup>here</sup> this and threatened to burn the C.A.II/ (meaning in the office). He also cast aspersions against the C.A.I. Thereafter, he stopped the staff members from entering office after lunch hours from Gate No.II and forced them to attend the

meeting which continued past lunch hours and then marched in procession upon Gate No.1.

Thus Shri Madho Charan by his above act committed misconduct which was unbecoming of a Government servant, thereby, violated Rules 3(1)(iii) and 7(ii) of the CCS (Conduct) Rules 1964.

5. It is not disputed that Shri R.S. Liberhan was enquiry officer in both the charge-sheets. On the hearing on 11.9.1984, on the second-charge sheet, before the Enquiry officer, the applicant stated that in relation to Article III of the first charge-sheet C.A.II referred to therein (R.M.S. Liberhan) is also enquiry officer in this case. The applicant stated that since this constituted an involvement of the enquiry officer in the charge-sheet, he therefore does not expect justice and fairplay. He prayed time for making a representation for the change of enquiry officer. On his representation, however, the Controller of Accounts on 6.12.1984 (Annexure O) passed an order that the charges including aspersions by him on enquiry officer/Disciplinary/Appellate Authority do not vitiate position of these officers so long as they themselves are not complainants or the witnesses. It was further stated in the order that the objection to the appointment of enquiry officer was not made on the first hearing and as such, it cannot be considered now. The enquiry officer proceeded with the proceedings of the enquiry ex-parte as the applicant has withdrawn from the enquiry and gave the finding of guilt against the applicant in the enquiry report (Annexure P) holding that

L

the Articles of charges framed against Shri Madho Charan and other delinquent official are fully proved and they have contravened by their acts Rule 3(1)(iii) of the CCS(Conduct) Rules 1964. On the basis of this Enquiry Report, the Disciplinary Authority, Controller of Accounts, passed the impugned order dated 30.3.1985. The applicant preferred an appeal against this order which was dismissed by the Appellate Authority by the impugned order dated 29.11.1985.

6. The learned counsel for the applicant <sup>has</sup> taken objection firstly that the charge-sheet is vague.

secondly, that the Enquiry officer himself was interested in the enquiry proceedings, in as much as, he was referred to in the charge Article III of the second charge-sheet of August, 1984 and inspite of the objection taken by the applicant, the enquiry officer was not changed. As a result of which, the applicant apprehending injustice and bias did not join the enquiry proceedings which proceeded ex-parte. Further, the order of compulsory retirement as a penalty (Annexure Q) has been passed by the Authority who was not competent, as such an authority should not be lower than the Appointing Authority.

According to the applicant, he was appointed on 8th June, 1985 and his Appointing Authority was the Chief Pay & Accounts Officer.

7. The respondents contested the application and said in the reply that the Appointing Authority for the post of senior accountant which was held by the petitioner is the Controller of Accounts and in support of it Notification dated 1st November, 1977 has been filed which are the Recruitment Rules. It is further stated

that the petitioner indulged in misconduct and misbehaviour in the Office and violated the conduct rules during the period 1.12.1983 to 23.1.1984 and so he was placed under suspension on 28.1.1984; that no statement of witnesses were recorded during preliminary enquiry so there was no occasion to furnish the same to the applicant. As regards the objection about enquiry officer, it is stated that the petitioner was intimated about the appointment of Enquiry officer on 3.9.1984 but no objection was raised and instead the applicant participated in the enquiry proceedings. However, the petitioner subsequently raised objections in order to delay the enquiry proceedings. The matter was considered in detail about the change of the enquiry officer but it was not deemed necessary and the decision was communicated to the applicant dated 6.12.1984 (Annexure R-4). It is denied by the respondents that the enquiry officer was biased and had vindictive attitude against the applicant. The applicant himself walked out of the proceedings and did not take part in the same. Regarding issue of the second charge-sheet, it is said that the earlier charge-sheet contained vague facts, so the second charge-sheet was issued. The applicant is not entitled to any relief and the application is liable to be rejected.

8. We have heard the learned counsel for the parties at length and have gone through the records of the case.

9. The learned counsel for the applicant firstly pointed out that the Government servant cannot be dismissed by an Authority subordinate to <sup>the</sup> one who appointed him. The applicant was appointed as Lower Division Clerk

on 8.6.1955 and the appointment letter was filed during the course of the arguments. The appointment letter shows that the Chief Pay & Accounts Officer issued an appointment order under his signature. However, in the present case, the impugned order dated 30th March, 1985 ( Annexure Q ) has been passed by the Controller of Accounts and the Recruitment Rules 1977 (Annexure R-1) go to show that for all Group 'C' posts other than LDC, Controller of Accounts is the Appointing Authority. The learned counsel for the applicant did not file any document to show that Controller of Accounts is subordinate or an Authority lower in rank to the Appointing Authority, that is, Chief Pay & Accounts Officer. The learned counsel for the applicant placed reliance on Satish Chandra Das Gupta Vs. State of West Bengal reported in AIR 1960 CAL p.278 wherein it has been held that the last appointment has to be taken into consideration for purposes of ascertaining whether a person was given the constitutional protection afforded by Article 311(1). The authority specifically lays down that the Appointing Authority, as defined in Article 311(1), can only dismiss the Government servants or any other authority who is superior to the Appointing Authority. The applicant could not show that the impugned order was passed by an Authority subordinate to the Appointing Authority. As such this contention has no force.

10. Secondly, the learned counsel for the applicant pointed out that the impugned charge-sheet of August, 1984 ( Annexure E ) does not by itself make out any mis-conduct. The learned counsel has referred to the law laid down in AVS Reddy Vs. State of Andhra Pradesh 1988 Vol. 7 ATC p.119 where it is said that demonstration by itself



does not form any sort of misconduct within Rule 3(1)(iii) of CCS (Conduct) Rules 1964. However, the present is not a case of demonstration but it is a case where there is a charge against the applicant of using abusive language and also criminally intimidating the Controller of Accounts with consequences of death by burning so the Authority cited by the learned counsel does not apply. The argument too has no force.

11. It has been further argued, by the learned counsel, that the applicant, has not been furnished the preliminary enquiry report. However, it has not come on record whether any preliminary enquiry Report has not been relied by the Enquiry Officer.

12. It is stressed by the learned counsel that the Report of the Enquiry Officer was not given before the punishment order was passed by the Disciplinary Authority and in this connection he has referred to the case of Prem Nath Vs. U.O.I. reported in 1988 (3) CAT SLJ 449. The respondents in their Reply have not specifically stated that the copy of the Enquiry Officer's Report was furnished to the applicant before Disciplinary Authority has passed the impugned order but it is stated that the applicant himself withdrew from the enquiry proceedings so the enquiry proceeded ex-parte against the applicant. In any case, the argument of the learned counsel has some force that principles of Natural justice has not been followed.

13. The main thrust of the learned counsel for the applicant is that, in spite of, objection and representation by the applicant, the Enquiry Officer has not been changed.

J

If the Enquiry Officer is biased then the applicant could expect no justice and fairplay from the side of the Enquiry Officer. The contention of the learned counsel is that, in Article III of the second charge-sheet, there is an allegation that the applicant used abusive language and criminally intimidated Controller of Accounts, Mr. Liberhan, who is in both the Enquiry officer, and in such a case as per the Judge made law, the Enquiry Officer should have been changed as there was sufficient <sup>show</sup> Material to that the Enquiry officer was biased. The learned counsel for the applicant has placed reliance on 1986(2) ATR p.549 G.S. Manral Vs. U.O.I. where it has been held that holding of a departmental enquiry <sup>of</sup> by an authority, when the charge is an abusive language against that authority, is contrary to the principles of natural justice. The learned counsel has further referred to the fact that nobody can be judged in his own case as held by the Hon'ble Supreme Court in Arjun Chopra Vs. U.O.I. AIR 1984 SC p.1356 and by Madras Bench of CAT Thomas Pathan Vs. Senior Superintendent of Post offices 1987 (3) ATC p.867. The learned counsel has further laid stress on the fact that when the applicant has made allegations of bias against the enquiry officer then if the enquiry officer is not changed, it is violation of the principles of natural justice if the officer selected for enquiry is a person against whom the person charged has made allegations, who is accordingly interested to bring the guilt home to the accused at any cost. There is some substance in this contention. When the applicant raised objection before the Enquiry officer then that objection was turned down and when he made representation then the Appellate Authority rejected the same holding that

the Enquiry Officer Mr. Liberhan is not a witness and further the applicant should have taken the objection on the first hearing (Annexure O). The Controller of Accounts in this letter dated 6.5.1984 did not arrive at a conclusion that the contentions raised by the applicant are false. The Controller of Accounts only discussed the nature of evidence to be produced in the enquiry and that the enquiry officer himself is not involved in any capacity in the proof of the guilt against the applicant and rejected the Representation. The charged-official should not get an apprehension in his mind that the authority proceeding either administratively or judicially will not be guided by extraneous consideration. When there is charge of using abusive language in a hostile manner involving person then that such person, on account of the human nature, cannot be said to be free from prejudices. In the present case Mr. Liberhan was Controller of Accounts against whom the applicant and others in the Union raised slogans and naturally that was sufficient to tease him and if the same person is made the Enquiry Officer than that will be against the principles of natural justice.

14. In view of the above discussion, we are of the opinion that the impugned orders dated 30.3.85/29.11.85 are to be quashed and the applicant shall be restored to the same position as he was on 29.11.1985. The matter is remanded to the Disciplinary Authority to appoint an Enquiry Officer other than the Authority referred to in the charge of Article III of the first charge-sheet who shall proceed with the Enquiry afresh. *with in a period of three months from receipt of this order.* The proceedings shall be commenced after notice to the applicant. The applicant shall be given due opportunity to produce the defence and shall also be furnished

all necessary documents which are to be relied in the enquiry proceedings against him. The Disciplinary Authority before passing any order shall furnish the report of the enquiry officer if necessary to the applicant and then pass order according to law. The final order under F.R. 54 B for treating the period of suspension shall be passed after the conclusion of the enquiry. In the circumstances, parties are left to bear their own costs.

*J. P. Sharma*  
( J.P. SHARMA )  
MEMBER (J)

23.11.70

*P. C. Jain*  
( P.C. JAIN )  
MEMBER (A)