IN THE CENTRAI ADMINISTRATIVE TRIBUNAI
NEW DEIHI.

O.A. No. 410/86
~~T.A. No.~~

DATE OF DECISION 6-12-94

Sh.Ram Charan Singh Applicant(s)

Versus

U.O.I.& ors. Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes.

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(S.K. DHAON)
VICE CHAIRMAN

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.410/86

NEW DELHI THIS THE 6th DAY OF DECEMBER, 1994.

MR.JUSTICE S.K.DHAON,VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL,MEMBER(A)

Shri Ram Charan Singh
S/o late Shri Tej Pal Singh
C/o Sh.Balbir Singh
M-7(Market)
Greater Kailash Part-I
New Delhi-48. .... APPLICANT

BY ADVOCATE SHRI G.D.GUPTA.

vs.

1. Union of India through the Secretary,
MInistry of Finance
Department of Revenue
Govt.of India
North Block
Central Secretariat
New Delhi-110001.

2. Sh.A.K.Garde
Commissioner of Departmental Enquiries
Central Vigilance Commissioiner,
Jamnagar Hutments
Akbar Road
New Delhi.

3. The Chairman
Union Public Service Commission
New Delhi.

4. Director General,
Directorate of Inspection and Audit
(Customs and Excise)
I.P.Bhawan
I.P.Estate
New Delhi.

5. The Secretary
Ministry of Home Affairs
Deptt.of Personnel
Admn.Reforms, Public Grievances
New Delhi.
... RESPONDENTS

BY ADVOCATE SHRI K.C.SHARMA.

ORDER

JUSTICE S.K.DHAON:

The applicant, an erstwhile Deputy Collector,Customs & Central Excise, North Bengal,Siliguri, was subjected to disciplinary proceedings under Rule 14 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965(hereinafter referred to as the Rules). The disciplinary authority(the President) upon the receipt of the inquiry officer's report and after obtaining the opinion of the Union Public Service Commission(the Commission),passed an order dated

on 27.3.1986 removing him service. That order is being impugned in the present OA.

2. The material portion of the order of the President is as under:

> " And whereas the President,after careful consideration and having regard to all the facts and circumstances, has decided to accept the advice of U.P.S.C.".

3. In Ground No.IV to this OA, it is inter-alia, stated that the President of India mechanically and without application of mind formed his opinion for removing the applicant from service solely on the advice given by the Commission and the findings given by the inquiry officer and the defence of the applicant was not asked for or considered by the Commission or by the President of India.

4. A counter-affidavit has been filed by and on behalf of the respondents by Smt.Kanti Deb,Deputy Secretary to the Government of India. A perusal of the counter-affidavit shows that it has not been verified at all. It is,therefore, not in accordance with Rule 12(2) of the Central Administrative Tribunal(Procedure) Rules,1987. The said rule, in substance, states that the reply shall be signed and verified by the respondent or any other person duly authorised by him in writing in the manner as provided for in Order VI,Rule 15 of the Code of Civil Procedure,1908(5 of 1908). The counter-affidavit, therefore, cannot be taken into consideration. However, it is averred in reply to Ground No.IV to the OA that the President passed the order after taking into consideration the findings of the inquiry officer,the advice of the Commission and all other factors relevant to the case. Surely, the officer filing the counter-affidavit could not and cannot have personal knowledge

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of the aforementioned facts. Furthermore, as it will be presently seen, the officer filing the counter-affidavit has overstated the case of the respondents with regard to the limited controversy with which we are dealing.

5. The record has been placed for our perusal by Shri K.C.Sharma, learned counsel, appearing for the respondents and we have perused the same.

6. In the record, we find a note of Shri B.K.Jain, Under Secretary, dated 25.6.1985. The material portion of the note runs as under:

> " The Central Vigilance Commission while forwarding the report of the enquiry officer has advised its acceptance and imposition of major penalty of not less than compulsory retirement of Shri R.C.Singh. It is proposed to accept the findings of the enquiry officer and the recommendations of the Central Vigilance Commission and to impose a penalty of not less than compulsory retirement on Shri R.C. Singh. Shri R.C.Singh is, however, a Group 'A' officer and his case will have to be referred to the UPSC for advice as to the amount of the penalty to be imposed on. Before sending the case to the UPSC Minister may kindly see and agree to the provisional decision of imposing the above penalty."

7. Below the said note, some officer has made the following note:

> "Notes from page 44/-may please be seen. Considering the seriousness of the charge held to be proved, I recommend that the penalty of removal from service may be accorded to Sh.R.P. Singh."

We further find that on 6.7.1985, the Minister of State (Finance) just put his initials under the forwarding note. We note that there is no reference to the evidence recorded by the inquiry officer on pages 44 to 48(on page 44 the note of the Under Secretary commences and it ends on page 48). On page 48, the note of some officer is found and on that very page, the signatures of the Minister of State for Finance are to be found.

8. Then, we come to page 57 of the file. On that page, the note of Shri G.V.Subramaniam, Under Secretary (Ad.II) dated 17.3.1986 begins. This note runs into 5 paragraphs. In the first paragraph, it is stated that the details of the charges are given in para 2 of notes at pages 52-53/N. In para 2, it is recited that after going through the inquiry officer's report and the case records, the Commission expressed the view that the applicant is not a fit person to be retained in Government service and recommended that the penalty of removal from service may be imposed on him. "The advice given by U.P.S.C is at pp.570-592/cor." The contents of paragraph 3 are relevant and they are being extracted:

> "It is proposed to accept the advice given by the U.P.S.C. and impose on Shri R.C.Singh the penalty of removal from service with immediate effect."

In para 5, it is recited:

> "F.M's approval is solicited to the proposal contained in para 3 above."

Then, we find that the Finance Minister on 20.3.1986 had appended his signatures.

9. We have looked into the pages 570/- to 592/-. In all these pages, the opinion of the Commission is recorded. Again, we find that the notings on page 57 indicate that the evidence recorded by the inquiry officer as against the applicant was not at all looked into by any officer.

10. We may turn back to page 48/-again. The crucial words therein are "the charge held to be proved." Obviously, a reference is being made to the inquiry officer 's report. Therefore, it is apparent that neither any officer of the department nor the Minister concerned ever recorded any finding that he either agreed with the findings of the inquiry officer or according to his reading of the findings,the charge stood proved. Thus, the

possibility of the scrutiny of the evidence either documentary or oral before the inquiry officer being examined by some officer in the Ministry or the Minister himself is ruled out in this case. It is apparent that the focus of the officer writing the aforequoted note was on the penalty to be awarded to the applicant.

11. Before we consider the amended sub-rule(4) of Rule 15 of the Rules on which the fate of this case turns, we may briefly examine the state of the law as existed prior to 16.8.1978 when the aforesaid sub-rule was enforced.

12. Article 311(2) of the Constitution before Forty-second amendment Act, 1976,inter-alia, provided:

> If the findings in the report are against the public officer and the dismissing authority agrees with the said findings, a stage is reached for giving another opportunity to the public officer to show why disciplinary action should not be taken against him.

13. The unamended sub-rule(4) of Rule 15, as material, ran as follows:

> "(4)(i) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses(v) to (ix) of rule 11 should be imposed on the Government servant, it shall-
>
> (a) furnish to the Government servant a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority.
>
> (b) give the Government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 14;

(ii)(a)In every case in which it is necessary to consult the Commission, the record of the inquiry,together with a copy of the notice given under clause(i) and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

(b)The disciplinary authority shall after considering the representation, if any, made by the Government servant,and the advice given by the Commission, determine what penalty, if any, should be imposed on the Government servant and make such order as it may deem fit.

(iii) Where it is not necessary to consult the Commission the disciplinary authority shall consider the representation, if any, made by the Government servant in pursuance of the notice given to him under clause(i) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit."

14. In Managing Director, ECIL vs.B.Karunakar (JT 1993(6) S.C.1), a Constitution Bench of the Supreme Court, in para 4 of its judgement,observed:

"....The courts held that while exercising his second opportunity of showing cause against the penalty, the employee was also entitled to represent against the charges as well....".

15. The learned counsel for the respondents contended that the fact that the Finance Minister had accepted the recommendation of the Commission was enough to indicate due application of mind on his part and it was not necessary for him to record a finding that he(the Minister) agreed with the findings of the inquiry officer. It is also contended that it was not obligatory on the Minister or any other officer in the department to record the finding that each of the charges levelled against the applicant stood proved.

16. State of Assam Vs.Bimal Kumar Pandit(AIR 1963 SC 1612) arose before the Forty-second Constitution Amendment Act,1976. The question was whether a reasonable opportunity to show cause stood denied because the second notice did not explicitly state that the findings of the

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inquiry officer had been accepted. In paragraph 6 of the judgement, their Lordships emphasised that when the enquiry is over and the enquiring officer submits his report, the dismissing authority has to consider the report and decide whether he agrees with the conclusions of the report or not. In paragraph 7, their Lordships have held that the issue of the second notice implies that the requirement of consideration of the report and a decision thereon has been met. The observations made in paragraph 6 are apposite. The observations made in paragraph 7 would be in applicable to the facts and circumstances of the present case as the case has arisen after the 42nd Amendment Act, 1976 and the provision for a second notice stands deleted. This case instead of helping the respondents really goes against them.

18. The Union of India & others Vs.K.Rajappa Menon (AIR 1970 SC 748) is a case where the relevant service Rule 1713 of the Railway Servants(Conduct and Disciplinary) Rules, inter alia, provided that if the disciplinary authority is not the enquiring authority, it shall consider the record of the inquiry and record its findings on each charge.The order passed by the competent authority was, in substance, to the effect that he had seen the inquiry proceedings and had found that the procedure had been followed correctly and he agreed with the findings of the inquiry officer that all the charges mentioned in the charge-sheet had been established. Since there were serious charges, it was tentatively decided to impose the penalty of dismissal from service. The delinquent servant should, therefore, be asked to show cause why he should not be dismissed from service forthwith. Their Lordships observed:

> "Rule 1713 does not lay down any particular form or manner in which the disciplinary authority should record its findings on each charge. All that

> the Rule requires is that the record of the enquiry should be considered and the disciplinary authority should proceed to give its finding on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order or a judgement of a judicial Tribunal. The rule certainly requires the disciplinary authority to give consideration to the record of the proceedings, which as expressly stated in Exhibit R-8, was done by the Chief Commercial Superintendent. When he agreed with the findings of the Enquiry Officer that all the charges mentioned in the charge-sheet had been established, it meant that he was affirming the findings on each charge and what would certainly fulfil the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way and so read it is difficult to escape from the conclusion that the Chief Commercial Superintendent had substantially complied with the requirements of the Rule."

This was a case where a second opportunity to show cause against the proposed punishment was available. In this opportunity, it was implicit, that the delinquent railway servant could even contend that the findings recorded by the inquiry officer on merits were not correct. Moreover, their Lordships clearly held that the Rule under their consideration required the disciplinary authority to give consideration to the record of the proceedings. This case is,therefore,distinguishable.

19. In Tara Chand Khatri Vs.Municipal Corporation of Delhi(AIR 1977 SC 567),Regulation 8(9) was under consideration. The said Regulation provided that the disciplinary authority shall, if it is not the enquiring authority, consider the record of the enquiry and record its findings on each charge. There were other sub-regulations which were in conformity with Article 311(2) of the Constitution before its amendment by the 42nd Amendment Act, 1976. It was emphasised that the regulations provided for a second opportunity against the proposed punishment and, therefore, it was implicit in that opportunity that the delinquent servant could demonstrate that even the findings recorded by the enquiry

officer on merits were incorrect. The order passed by the authority concerned ran as follows:-

> "I have gone through the report of the Inquiry Officer and agree with his findings. The Inquiry Officer has held the charge of committing an immoral act with a student of Class V,levelled against Shri Tara Chand Khatri A/T(respondent) as proved. Such an act on the part of a teacher is most unbecoming, serious and reprehensible. I propose to impose the penalty of 'dismissal' from service which shall be a disqualification for future employment on the respondents."

Regulation 8(9) was accompanied by other Regulations which required giving of a second show cause notice on the question of punishment.They also required the furnishing of the report of the enquiry officer to the delinquent servant. The delinquent servant could even, at that stage, contend and demonstrate that the findings recorded by the enquiry officer were incorrect. The disciplinary authority by necessary implication recorded a finding and gave his opinion that he agreed with the findings of the inquiry officer on all the charges, otherwise the question of his saying that the misconduct attributed to the delinquent servant was of a serious nature could not have arisen. This case, therefore, is also distinguishable.

20. After the 42nd Amendment Act, 1976,Article 311(2) completely did away with the requirement of a second opportunity of showing cause against the proposed punishment. Therefore, the right of a delinquent servant to challenge the correctness of the findings of the inquiry officer before the imposition of the punishments enumerated in Article 311 was done away with.

21. In the said background, we may now consider sub-rule(4) of Rule 15 as it stood on the relevant date and as it stands even now. A comparison of the old sub-rule (4) and the present sub-rule(4) exhibits two features. The first is that the words"and on the basis of the

evidence adduced during the enquiry" have been added in the new sub-rule(4). The second feature is that the requirement of furnishing to a Government servant a copy of the report of the enquiry officer and thereafter, a notice to show cause against the proposed punishment as contained in the old sub-rule(4) is missing in the new sub-rule(4). This change has obviously been introduced to bring the rules in line with Article 311(2) of the Constitution, as modified by the 42nd Amendment Act, 1976. Thus, the position under the amended sub-rule(4) is that the delinquent Government servant is not entitled to be furnished with a copy of the report of the enquiry officer and is also not entitled to a notice to show cause against the proposed punishment. Therefore, duty is cast upon the disciplinary authority to consider the report of the enquiry officer and give his decision thereon before passing an order of punishment. The emphasis of the newly added words in the new sub-rule(4) is that the evidence produced either by the prosecution or the delinquent Government servant should be considered while coming to the conclusion as to whether the charge as framed against the Government servant has been brought home to him or not. The amendment in the sub-rule also clarifies that the findings on all articles of charge should be on the basis of the evidence on record. It is implicit in sub-rule(4) that the disciplinary authority must apply its independent mind and record its finding on the charges after examining the evidence produced during the enquiry. It is emphasised by the Supreme Court in Bimal Kumar's case(supra) that the disciplinary authority has to consider the report and decide whether it agrees with the conclusion of the enquiry officer or not.

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22. Consideration and decision are important obligations to be discharged by the disciplinary authority. Both imply conscious application of mind and a quasi-judicial approach.

23. The Rule Making Authority was aware of the modification of Article 311(2) by the Constitution 42nd Amendment Act, 1976. It must also be presumed to be aware of the aforementioned decisions of the Supreme Court when on 16.8.1978, the present sub-rule(4) replaced the old sub-rule(4). On that day, Ramzan Khan's case had not seen the light of the day. Therefore, then it was not mandatory upon the punishing authority to furnish to thedelinquent servant a copy of the enquiry officer's report before passing an order of punishment.

24. In Managing Director,ECIL,Hyderabad(supra) in paragraph 26, the Constitution Bench observed:

> "....Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the enquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record...."

25. The substance of the aforequoted observations is to be found in the new sub-rule(4) of Rule 15. Therefore, in a case where an inquiry officer's report is in existence, the disciplinary authority is enjoined to consider the findings of the inquiry officer along with the evidence on record. The consideration of the mere findings de hors the consideration of the evidence on record is not permissible. To put it differently, the disciplinary authority has to find out whether the findings recorded by the inquiry officer are supported by the evidence on record. It is, therefore, implicit that the disciplinary authority must read and consider the evidence produced before the inquiry officer.

26. When the legislature inserts new words in a statute, the presumption is that such an act is purposive. The rule of construction is that a meaning should , if ~~not~~ impossible, be given to every word in a statute. Therefore, any attempt to ignore the newly added words in the new rule should be eschewed.

27. The agrument of Shri K.C.Sharma, counsel that the officials in the Ministry, while accepting the recommendation of the Commission, by necessary implication completed the exercise of the consideration of the report of the inquiry officer and the evidence adduced in the inquiry is untenable. It has to be borne in mind that the primary responsibility of passing an order of punishment is of the disciplinary authority (the President). A distinction between acting automatically on an advice and exercising one's own discretion has to be maintained. Whenever, it is found in a given case that the power though vested in a particular authority has, in substance, been exercised by another authority, the exercise of such a power cannot and should not be upheld.

28. Having given a thoughtful consideration to the matter, we are of the opinion that this is a typical case where neither the Minister of Finance nor any official in his Ministry considered the report of the inquiry officer and took his decision thereon after looking into the evidence produced before the inquiry officer.

29. We may now refer to G.I.,M.H.A., D.P.& A.R. O.M.No.134/1/81AVDI, dated the 13th July, 1981. The said OM runs into three paragraphs. Paragraph 1 is relevant and the contents thereof are being extracted:

> "Self-contained,speaking and reasoned order to be passed and to issue over signature

> of prescribed disciplinary authority/appellate authority/reviewing authority- As is well known and settled by courts, disciplinary proceedings, against employees conducted under the provisions of CCS(CCA) Rules, 1965, or under any other corresponding rules, or quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/ appellate/reviewing authorites under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad Vs.State of UP(AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal."

30. We may also refer to G.I.,Department of P&T, O.M.No.134/12/85-AVDI dated the 5th November, 1985. We may also quote the contens of the O.M.:-

> " In spite of the above instructions it has come to the notice that speaking orders are not issued while passing final orders in disciplinary cases. It has been essential legal requirement that, in the case of decisions by quasi-judicial authorities, the reasons should be recorded in support thereof. As orders passed by disciplinary authorities are in exercise of quasi-judicial powers it is necessary that self-contained, speaking and reasoned orders should be issued while passing final orders in disciplinary cases."

31. The contents of the aforequoted two Office Memoranda merely make explicit what is implicit in the contents of the new sub-rule(4) of Rule 15. The respondents are surely bound by the directions contained in the two Office Memoranda.

32. We have already extracted the material portion of the impugned order. No doubt, it is recited therein that the President, after careful consideration and having regard to all the facts and circumstances, had decided to accept the advice of the Commission. These recitals, in our opinion, do not depict the correct picture which has emerged after the perusal of the record. No doubt, the order conforms to the requirement of Article

77(1) of the Constitution. However, it is trite proposition that if and when an order is passed in accordance with Article 77(1), there is a presumption that the order has been legally and validly passed. There is a further presumption that the recitals contained in the order are correct. These presumptions,however, are not conclusive and are rebuttable. In the instant case, the record shown to us rebuts the presumption that the recitals aforementioned in the order are really correct.

33. The order removing the applicant from service having not been passed in accordance with new sub-rule (4) of Ruls 15 is not sustainable. We, however, leave it in the discretion of the disciplinary authority(the President) to pass an appropriate order keeping in view the facts and circumstances of this case. The question still remains whether this is a fit case where we should direct the reinstatement of the applicant and also issue a direction that he should be given his back-wages. We note that the applicant had been placed under suspension before the commencement of the disciplinary proceedings and his services remained suspended during the pendency of the disciplinary proceedings. Again, in these circumstances, we do not consider it proper to issue any direction on this score. It will be open to the disciplinary authority to take such decision, as it deems just and proper. If it decides to reinstate the applicant, it will be open to it to consider the question as to whether the applicant should be given back-wages. Since the matter is pretty old, the disciplinary authority shall take an expeditious decision but not beyond a period of 4 months from the date of receipt of a certified copy of this order by the appropriate competent authority.

34. This application succeeds in part and is allowed. The impugned order dated 27.3.1986 removing the applicant from service is quashed.

35. There shall be no order as to costs.

B. N. Dhoundiyal.

(B.N.DHOUNDIYAL)
MEMBER(A)

SKD

(S.K.DHAON)
VICE-CHAIRMAN(J)

SNS