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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1018 / 1986
T.A. No.

DATE OF DECISION 21.8.1987

Shri Nirpal Singh — ~~Petitioner~~ Applicant

Shri G.N. Oberoi, — Advocate for the Petitioner(s)

Versus

Union of India & Ors. — Respondent

Shri M.L. Verma, — Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter or not ? No.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.

21/8/87
(BIRBAL NATH)
Member (A)

J.D. Jain
(J.D. JAIN)
Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION:21.8.1987

REGN. NO. O.A. 1018/86.

Shri Nirpal Singh ... Applicant

Vs.

Union of India & Ors. ... Respondents

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant: Shri G.N. Oberoi, counsel.

For the respondents: Shri M.L. Verma, counsel.

JUDGMENT
(delivered by Hon'ble Mr. Birbal Nath, AM).

Per this application under Section 19 of the Administrative Tribunals Act, 1985 filed before the Tribunal in November, 1986, the applicant, Shri Nirpal Singh, who was working in the Military Engineering Service at Chandi Mandir, has challenged the penalty of compulsory retirement from service imposed upon him by the Chief Engineer, Chandigarh Zone, vide his order dt. 24th March, 1986.

2. Before noting the contentions of the parties, the facts leading to the disciplinary proceedings held against the applicant are noted below.

3. The applicant joined civilian post of Lower Division Clerk (L.D.C.) in the Military Engineering Service, Western Command, with effect from 12th October, 1964. He was made

permanent by the Chief Engineer, Western Command, with effect from 1st May, 1978 vide Special Routine Order issued on 23rd September, 1983. On 9th July, 1984, Garrison Engineer, Chandi Mandir, issued an order to the applicant attaching him with CWE(P), Chandi Mandir till further orders. This was based on the authority of CWE(P), Chandi Mandir vide letter No. 1503/Clk/5007/E1 dated 5th July, 1984. It is alleged that the applicant had refused to accept this order of attachment and as well had further refused to hand over his charge. He was proceeded against under the Central Civil Services (Classification, Control & Appeal) Rules, 1965, in which the applicant participated. The Enquiry Officer held him guilty of the charge and the Chief Engineer, Chandigarh Zone, imposed the said penalty of compulsory retirement.

4. Through the application and the contentions raised at the bar, the applicant has challenged this penalty on various grounds. In their counter, the respondents have rebutted the averments made in the application and on their behalf, it was argued that the Tribunal could not set itself as a court of appeal against the Disciplinary Authority, nor could it go into the sufficiency of evidence and embark upon an appreciation of evidence brought on file.

5. The first contention of the applicant was that his order of transfer was issued by an incompetent authority. According to him, he could not be transferred by the Chief Works Engineer, Chandi Mandir, on whose authority, his attachment order was issued. It was further argued on his behalf that as per paragraph 25 of the Policy regarding transfer of civilian subordinates in the MES issued by the Engineer-in-Chief, Army Headquarters on 30th December, 1983, he was entitled to make representations against his transfer and he could not be moved till his representation was decided. Paragraph 25 of the said policy reads as under:-

"25. Representations if any against the posting orders, will be made by the affected individual within 15 days of the receipt of posting orders in the concerned office. When the

representation received through proper channel is considered and rejected by the CE Command, the concerned individual will move without delay. Contingency may arise when the individual not being satisfied with the decision of the Chief Engineer, he may represent his case to the E-in-C. The move of the individual will not be held up on the account. In case the decision of the E-in-C is in his favour, the individual will be brought back at Government expense in the first available vacancy."

This contention of the applicant is without substance because the applicant was not to proceed on transfer but he was attached with another office under the same administrative head. The attachment is generally of a temporary nature and amounts to a change of seat or chair though it may also entail movement from one station to another. This contention, therefore, is not correct that the applicant was transferred by an incompetent authority or that he could be moved only when his representation was decided by the Chief Engineer. We, therefore, do not accept this contention raised by the learned counsel for the applicant.

6. The next contention of the applicant was that he was confirmed by the Chief Engineer, Western Command vide his order dated 23rd September, 1983 and, as such, he could not be retired by an officer subordinate to the Chief Engineer, Western Command. We are afraid this contention of the applicant is not tenable. The appointing authority under Article 311 ofthe Constitution is the one which issuss the initial order of appointment and not the one which confirms a civil servant subsequently. The respondents, alongwith their counter, have filed a copy of the Government of India, Ministry of Defence, Order No. 5(14)/79/D(Lab) dated 16th August, 1979. Clause (e) of column No. 3 of this order clearly stipulates that the Chief Engineer is empowered to impose all penalties including a major punishment. It cannot, therefore, be said that the penalty imposed by the Chief Engineer, ~~Western Command~~, Chandigarh Zone, vide his order

dated 24th March, 1986 was passed by an incompetent authority.

7. The next challenge of the applicant is that the finding of guilt is based on no evidence and is perverse. The learned counsel for the respondents vigorously resisted this argument on the ground that the Tribunal was not competent to re-appraise or re-appreciate the evidence. He also challenged that the sufficiency of the evidence cannot be measured by the number of witnesses examined or not examined. Learned counsel for the respondents invited our attention to various judgments of the Supreme Court on the point that the courts will not go into the sufficiency of the evidence. We are not referring to the various case laws cited on the subject because it is now well settled that a court or Tribunal will not appreciate the evidence but it is certainly duty-bound to check if the finding of guilt is returned without any evidence. It is, therefore, necessary to examine if the finding of guilt returned against the applicant was based on no evidence or otherwise.

In this regard, the main contention of the learned counsel for the applicant was that though it was the case ofthe respondents that the order of attachment dated 9th July, 1984 was given in the presence of four officers, namely, Shri P.N. Kumaria, AGE'T', Cap. H.R. Arora, AGE B/R, Shri J.R. Goyal, AGE E/M and Shri D.K. Khullar, yet none of them was examined in the enquiry and only the evidence of two persons, i.e. Shri Sat Paul, Office Supdt., G.E. Chandimandir and Shri Dev Chand Singh, UDC was recorded. According to the counsel forthe applicant, Shri Sat Pal had stated that he was not working when the letter of attachment was despatched and Shri Dev Chand Singh had deposed that there was no exchange of abuses in his presence. It is the case of the respondents that the attachment

order was not only served upon the applicant in person which he refused but had also been sent by registered post which he had refused to accept. They have averred in paragraph 6.5 of the counter that the finding of guilt is based on documentary evidence and the listed witnesses were required to be produced only in the case of petitioner challenging the genuineness of the documents. It was further argued by the respondents that the applicant was free to call the witnesses, whom the prosecution had not produced, as his defence witnesses. We also find that in reply to questions put by the Enquiry Officer to the applicant on 4th September, 1985, the applicant had admitted that he was asked to accept the letter of 9th July, 1984 but he had asked them to send his request for interview and that there was prejudice against him. The learned counsel for the applicant on the other hand, argued that the admission of guilt should be unequivocal and clear as held by the Principal Bench of the Tribunal in Udaivir Singh Vs. Union of India & Ors.[1] Every case has to be examined according to its own facts and circumstances. In the given circumstances of this case, it cannot be stated that there was no admission whatsoever by the applicant when he was examined on 4th September, 1985 when the letter of attachment was sought to be given to him.

We do not find it is a case of finding based on no evidence and, as such, cannot accept this contention.

8. The next contention of the learned counsel for the applicant was that the applicant had been subjected to cross-

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1. A.T.R. 1987 (1) C.A.T. 49

examination and the Enquiry Officer had acted as a Judge as well as prosecutor. He further argued that after each witness was examined, the applicant was examined not only by the Enquiry Officer but also by the Presenting Officer. Learned counsel for the applicant relied in this connection on the judgment of the Tribunal in Balu Singh vs. Union of India & Ors.[1]

We do not find that the applicant was subjected to cross-examination by the Enquiry Officer. It may be stated that whereas cross-examination of the delinquent civil servant to cause self-incrimination is illegal and vitiates the proceedings, examining him in a general manner to seek information cannot be challenged on this ground. We do find that the applicant has been examined both by the Enquiry Officer as well as by the Presenting Officer on more than one occasion but this cannot be called cross-examination and nor can this be called an illegality. At worst, it can be called irregularity which cannot be held to have vitiated the proceedings. This contention of the applicant cannot, therefore, be accepted.

9. The next contention of the applicant was that the applicant was given seven charges but finding has been returned only on one. We are afraid this is not correct reading of the charge. There is only one article of charge though it is described in seven paragraphs. As such, we do not find this contention to be tenable.

10. The next contention of the applicant was that he was not allowed to cross examine the witnesses. A perusal of the file does not bear out this contention. The applicant had put questions of his own, were recorded in his presence

1. A.T.R. 1986 C.A.T. 195

11. The next contention of the applicant was that legal assistance was not provided to him as laid down in sub-rule 8(a) of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Learned counsel for the applicant vehemently argued that as held by the Cuttack Bench of the Tribunal in Padmanav Arukh vs. Union of India & Ors.[1], the denial of legal assistance vitiates the proceedings beyond redemption. We are afraid we cannot accept this contention because there is no evidence to show that the applicant had asked for legal assistance and the same was denied to him.

12. The next contention of the applicant was that the applicant had filed an appeal against the penalty which had not been decided by the appellate authority. Learned counsel for the respondents argued that the appellate authority had refrained from passing any orders because the applicant had approached this Tribunal. We find that this contention ofthe respondents is erroneous. The appellate authority cannot refuse to discharge its duty on the ground that the applicant had approached the Tribunal for a legal remedy.

13. The last contention of the applicant was that the penalty imposed upon him is disproportionate in regard to the misconduct alleged to have been proved against him. His argument was that having put in nearly 22 years of service, he ought not to have been compulsorily retired for a misconduct which had no element of moral turpitude. However, on behalf of the respondents, it was argued that the applicant was serving in a military establishment and non-compliance of orders was a matter of serious concern. We find that

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1. A.T.R. 1987 (1) C.A.T. 129.

the applicant was not engaged in any operational duties and he had represented against his transfer/attachment which was still under consideration and imposition of the penalty of compulsory retirement from service for refusal to proceed on attachment duty or hand-over charge of a clerical seat is not of such grave nature as to warrant the condign penalty of compulsory retirement particularly when he had put in 22 years of service. In the given facts and circumstances of the case, we are of the view that although the applicant has been guilty of non-compliance of valid orders, his misconduct does not merit visitation by the severe penalty of compulsory retirement. Keeping in view the merits of the case, we reduce the penalty of compulsory retirement to that of reduction by three stages in his time-scale pay for a period of five years and he would not earn increments of pay during the period of such reduction, but the reduction will not have the effect of postponing future increments of his pay. This penalty is ~~imposed~~ under clause (v) of Rule 11 of the C.C.S. (C.C.A.) Rules, 1965.

The application is allowed to this extent, with no order as to costs.

21/8/87

(BIRBAL NATH)
Member (A)

21.8.87

(J.P. JAIN)
Vice-Chairman