

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(11)

O.A. No. 1205/
~~XXXX~~

1986

DATE OF DECISION 5.6.91

SHRI RANJIT SINGH RANA	Petitioner
SHRI G.D. GUPTA WITH SHRI B.K. AGGARWAL	Advocate for the Petitioner(s)
Versus	
UNION OF INDIA & OTHERS	Respondent
SHRI K.C. MITTAL	Advocate for the Respondent(s)

CORAM

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

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

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

J.P. Sharma

(J.P. SHARMA)
MEMBER (J)

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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OA NO. 1205/1986

DATE OF DECISION 5.6.91

SHRI RANJIT SINGH RANA

.....APPLICANT

VS.

UNION OF INDIA & OTHERS

.....RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

.....SHRI G.D. GUPTA WITH
SHRI B.K. AGGARWAL

FOR THE RESPONDENTS

.....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, Junior Accountant, Office of 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 his 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

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applicant claimed the following reliefs :-

- (a) issue a writ in the nature of certiorari quashing the order Nos. C-14013(83) 84/Admn I/ 6274-82 dated 30.3.1985 and C-14013(83)34/Admn I/ 6301-09 dated 30.3.1985 (correct order is No.C-14013(81)/84/Admn I/3989-94 dated 29.11.1985).
- (b) issue a writ of Mandamus directing the respondents to treat the petitioner in service.

2. The facts of the case are that the applicant is the Executive Member of the Union of C.C.A. Department of Supply and he used to take active part in highlighting the grievances of the members of the Union. The applicant is in service since 15.5.1966 in the Office of Chief Pay and Account Officer.

3. On 26.4.1984, the applicant was served with a memo of even date and another memo dated 4.8.1984 was received by him on 6.8.1984. The articles of charges in the memo dated 6.8.1984 are as follows :-

"Article-I

That the said Shri Ranjit Singh II while functioning as Junior Accountant in the Office of the Chief Controller of Accounts, Department of Supply, New Delhi was placed under suspension with effect from 28.1.1984 and directed not to enter the office building without prior permission of the Deputy Controller of Accounts. Shri Ranjit Singh flouted the orders repeatedly and openly on several occasions after 28.1.1984 and during February, '84, hereby demonstrating an open defiance of the specific office order placing a ban on his entry inside the office building.

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Article-II

That the said Shri Ranjit Singh II, while functioning as Junior Accountant, in a meeting organised by him on 24.1.1984 exhorted the staff members to hold demonstration inside the office premises, led them in procession inside the office in January, '84 and February, '84, made speeches outside the room of the Chief Controller of Accounts and raised the denegrating slogans against the senior officers.

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

The applicant made a representation against the above memos, dated 6.4.1984 and 6.8.1984. In the charge of 6.8.1984, the applicant was also charged with two other colleagues, S/Shri Madho Charan and Raghbir Singh and a common proceeding was directed to be held regarding chargesheet dated 4.8.1984 and, accordingly, R.M.S. Liberhan was appointed Enquiry Officer to conduct the enquiry under Rule 14 of the CCS (CCA) Rules, 1965. The enquiry on the chargesheet dated 4.8.1984 commenced on 12.11.1984, but the applicant absented and sent the medical certificate on this date as well as on the adjourned date, i.e. 24.11.1984. The Enquiry Officer recorded the statement of the witnesses in the absence of the applicant. The Enquiry Officer submitted the report on 30.1.1985 to the

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disciplinary authority on which the Controller of Accounts, Shri P.Bhatia passed the order of compulsory retirement on 30.3.1985. The appeal against the same was dismissed by the Chief Controller of Accounts on 29.11.1985. The applicant also preferred a representation against these orders dated 30.3.1985 and 21.11.1985 to the Additional Secretary, Department of Supplies which was not replied to. The respondents contested the application and stated in the reply filed that the applicants were given due opportunity in the enquiry on the chargesheet dated 4.8.1984, but as they did not join the enquiry, the evidence was recorded ex-parte against them and the report was submitted. Regarding the change of the Enquiry Officer, the disciplinary authority has rejected the representation of the applicant. It is said that the applicant could have preferred an appeal under Government of India's instructions No.16 below Rule 14 (8) (a) of the CCS (CCA) Rules, 1965. It is stated that the representation before the Additional Secretary is at an advanced stage, but since the applicant has moved the Tribunal, so the final order could not be passed. It is further stated that the Enquiry Officer has conducted himself lawfully according to rules and observed the principles of natural justice.

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The disciplinary authority has applied its mind on the report of the Enquiry Officer and passed the order of compulsory retirement taking a lenient view of the matter. It is further stated that in the case of Junior Accountants, as the applicant then was, the Controller of Accounts was the only appropriate competent authority who was empowered to order appointment to the post of Junior Accountant and also to act in these cases as the disciplinary authority in accordance with the instructions contained in Government of India, Ministry of Home Affairs' notification No.11012/12/77-ESTS(A) dated 1.11.1977 (Annexure-R 2) on the dates on which the charge sheets were issued to the applicant.

4. It is said that the application is devoid of merits and be dismissed.

5. We have heard the learned counsel of both the parties at length and considered the rival contention. We have also carefully gone through the records of the case.

6. The learned counsel for the applicant argued that one Madho Charan, who was also employed as Senior Accountant in the Office of Chief Controller of Accounts,

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filed an application under Section 19 against almost the same order of punishment of compulsory retirement and the said Madho Charan filed OA No.391/86 in the Principal Bench of Central Administrative Tribunal which was decided on 23.11.1990 and the application was allowed the the impugned order was set aside. The matter was 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 chargesheet who shall proceed with the enquiry afresh within a period of three months from the receipt of this order. It is contended that the present case is fully covered by the judgement passed in Madho Charan's case. The facts of the applicant's case and that of Madho Charan's case are similar. The charges framed against the present applicant as well as Madho Charan were also similar and the same Enquiry Officer conducted the enquiry against the applicant and submitted a single report covering the applicant as well as the said Madho Charan. The learned counsel for the respondents did not dispute this fact. The copy of the judgement of Madho Charan's case of OA 391/86 has been filed in which one of us (Shri J.P. Sharma) was also a Member of the Bench. It is not necessary to discuss

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all those matters in detail as both the learned counsel have more or less conceded that the facts of the present case are covered by the judgement of that case. On the face of it also from a perusal of the records, it appears that Shri R.M.S. Liberhan was appointed as Enquiry Officer. In the chargesheet dated 20.4.1984, which is the first chargesheet, Article-III of the said chargesheet was regarding a charge against the applicant that he threatened to burn C.A. II in the office. This C.S. II is Enquiry Officer, Mr. Liberhan. Considering all these facts in Madho Charan's case (supra), it was held that it was against the principles of natural justice to give enquiry to one of the officers who was himself a person aggrieved in the case. Thus on this account alone, the enquiry report of Mr. Liberhan, on which the penalty of punishment was passed by the disciplinary authority and upheld by the appellate authority, is liable to be set aside and as such the punishment orders, both of the disciplinary authority as well as the appellate authority are set aside.

7. The learned counsel for the applicant has raised another point that the case of the applicant should not be remanded back because it has been challenged that the

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applicant's appointing authority initially was Chief Pay and Accounts Officer whereas the order of compulsory retirement has been issued by Controller of Accounts. However, this will not effect the final finding given in this case because the impugned order is being set aside as a whole and the fresh enquiry as directed in Madho Charan's case may be held by the respondents in the circumstances of the case. It has also been made out during the course of the arguments that the disciplinary authority has already started against Shri Madho Charan by another Enquiry Officer, Shri Y.Yoge Sharat. Since an enquiry is being held against Madho Charan, it will be unjust if similar enquiry is not ordered to be held also against the present applicant, Shri Ranjit Singh Rana. Particularly in view of this fact, the learned counsel has himself argued that the case of Ranjit Singh is covered by the judgement of Madho Charan's case.

8. We, therefore, are of the view that the impugned orders dated 30.3.1985 and 29.11.1985 be set aside. The applicant shall be reinstated, but shall be governed by the provisions of Section 10(4) of CCS (CCA) Rules, 1965 as the matter is being rewarded to the D.O. for fresh enquiry on technical points. The disciplinary

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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 co-operate 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 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) 576/91

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 576/91