

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1286
T.A. No.

198 7.

DATE OF DECISION August 7, 1990.

Shri Siri Chand Verma _____ Applicant (s)

Shri P.L. Mimroth, _____ Advocate for the Applicant (s)

Union of India and Ors. _____ Respondent (s)

Shri N.S. Mehta _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. M.M. Mathur, Member (A)

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

(Amitav Banerji)
Chairman.
7.8.1990.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1286/1987.

Date of decision: August 7, 1990.

Shri Siri Chand Verma ...

Applicant.

vs.

Union of India & Ors ...

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. M.M.Mathur, Member (A).

For the applicant ...

Shri P.L.Mimroth,
Counsel.

For the respondents ...

Shri N.S. Mehta,
Sr. Standing Counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

Shri Siri Chand Verma, applicant has filed this
Original Application (OA) aggrieved by the order of removal
from service as Store Keeper, Central Ordnance Depot, Delhi
Cantt dated 13.9. 1985. He has prayed that not only the order
of removal but the suspension order, chargesheet, enquiry
proceedings, enquiry report be also quashed as being illegal,
void, mala fide, unconstitutional, discriminatory and
ineffective. He has sought for further relief of striking
down of the order of the appellate authority and has prayed that
he may be declared as continuing in service from the date of
his removal and be granted full back wages, salary and all
promotions including other benefits admissible to him from
time to time.

FACTS IN BRIEF:

The applicant was appointed as Storekeeper in COD Delhi

Cantt on 24.5.1958. He was suspended by the department on 11.11.1970. Nine months later he received a copy of the chargesheet dated 23.9.1971 from the department. Enquiry commenced and ultimately the Enquiry Officer gave his findings which were against the applicant. A dismissal order followed and was issued by the OIC/AOC Records, Secunderabad. An appeal was preferred by the applicant which was also dismissed. Thereafter the applicant filed a Civil Writ Petition No.911/73 in the High Court of Delhi. In the writ petition, the applicant raised a series of objections of which the main plea was that the orders in his case were all issued by persons who were not competent to issue them. The writ petition was allowed vide judgment dated 23.2.1982 quashing the order of dismissal and the order of the appellate authority and the chargesheet issued by the Admn. Officer. The impugned order of dismissal, rejection of appeal and the chargesheet were quashed by the High Court on a technical ground that the orders were not passed by competent officers and the Department was empowered and authorised to initiate disciplinary proceedings afresh if respondents so choose.

After the judgment of the High Court, the applicant received a fresh suspension order from the OIC/AOC Records dated 9.8.1982 and he was suspended by the OIC/AOC Records w.e.f. 30.7.1972 under Rule 10(4) of CCS(CC&A) Rules, 1965 (hereinafter referred to as 'the Rules') from the date of previous dismissal order (Annexure A-4 to the O.A.). A fresh enquiry commenced. A fresh chargesheet dated 15.12.1982 (Annexure A 5 to the OA) was served and the Enquiry Officer was appointed.

The Enquiry Officers were changed from time to time by the Records Officer and ultimately the last Enquiry Officer gave his findings, which were against the applicant. Thereafter the applicant received an order of removal from service dated 13.9.1985 from OIC /AOC Records, Secunderabad (Annexure A-1 to the OA). The order of removal was challenged in an appeal which was rejected on 9.9.1986 (Annexure A-2 to the OA). Thereafter the present O.A. was filed.

Among the pleas taken by the applicant was that the suspension order dated 15.7.1972 having been declared illegal could not be continued by the subsequent order dated 9.8.1982. He was also aggrieved that he was deprived of full wages from the date of dismissal till the date of fresh suspension. The applicant took another plea that Rule ^{of} 10/ the Rules was not applicable to him. Among other pleas he urged that fresh suspension order was also issued and signed by the OIC/AOC Records, Secunderabad who was not competent to sign the suspension order. Similar pleas were taken in respect of the chargesheet dated 15.12.1982 (Annexure A-5 to the O.A.). The findings of the Enquiry Officer were challenged on the ground that he had not discussed the defence and defence witnesses of the applicant. Certain records which were asked for by the applicant were not made available for the inspection of the applicant. The chargesheet was amended but the applicant was not given an opportunity to file objections. Similarly, the order of removal was challenged as illegal, unwarranted and against law. Similar grounds were taken in regard to the order of the appellate authority. He, therefore, prayed for the reliefs which have already been mentioned

earlier.

On behalf of the respondents it was pointed out that the applicant while functioning as CASK in Cell 'B' of Provision Branch, Central Ordnance Depot, Delhi Cantt on 9.11.1970 committed gross misconduct, inasmuch as he dishonestly and fraudulently misappropriated the Govt. stores, i.e., 7 Nos. carburetors motor cycle part with the help of a labourer Shri Francis. These were found in his illegal possession in PRF cabinet, which was locked and the key thereof was in his possession. He in connivance with the labourer Shri Francis, dishonestly misappropriated the Govt. stores in question and thus failed to maintain absolute integrity and devotion to the duty and contravened Rule 3 of CCS(Conduct)Rules, 1964.

The respondents stated that the order of suspension dated 11.11.1970 was passed by a competent authority. The applicant was present in the court of enquiry. He was served with the chargesheet. On receipt of defence statement, the case was examined by the competent authority and accordingly the applicant was served with Show Cause Notice dated 22.4.1972 under Rule 15(4) of the Rules. The applicant made a representation dated 20.5.1972. After examining the representation, the Enquiry Officer was satisfied that the applicant was guilty of the charge levelled against him and the applicant was dismissed from service w.e.f. 15.7.1972 under the orders of the appointing authority and authority empowered to impose major penalties. The representation against the punishment of dismissal was considered by the Director of Ordnance Services (now Director General of Ordnance Services) and the representation/appeal was

rejected vide Army Headquarters order dated 11.5.1973. The writ petition filed by the applicant in the Delhi High Court was admitted. The order of dismissal was set aside on technical ground. The High Court while pronouncing the judgment, however, remarked that disciplinary authorities are free to initiate fresh disciplinary proceedings on the same charge. It was then stated that since further enquiry under Rule 14 of the Rules was contemplated against the individual, his case was accordingly dealt with under Rule 10(4) of the Rules and action taken to keep him under suspension w.e.f. 30.7.1972. The applicant had preferred an appeal against the order of suspension w.e.f. 30.7.1972. The appellate authority rejected the appeal vide order dated 20.12.1983. There was some delay in the proceedings before the Enquiry Officer due to frequent temporary duty/posting and retirement of Enquiry Officers and delaying tactics by the applicant. According to Enquiry Officer, Major T.N. Roy, the charge was partly proved, inasmuch as 7 No. carburetors part were found on the table of Shri Siri Chand Verma and not in the PRF cabinet. Dishonest misappropriation of Govt. stores in connivance with labourer, Shri Francis was thus established. An amendment to the chargesheet by the disciplinary authority at a later stage was for a very minor typographical error. Full opportunity was given to the applicant during the course of oral inquiry. Some of the documents asked for could not be provided for inspection as the same were weeded out in normal course due to passage of time as the disciplinary case pertained to 1970. Other documents available in the Depot were, however, shown to the applicant. The Enquiry Officer had conducted the proceedings

in accordance with law and had considered the statements of various witnesses including that of the defence.

The applicant preferred an appeal against the order of the disciplinary authority imposing the penalty of removal from service. The latter found that the correct procedure had been followed and the findings of the disciplinary authority were warranted by evidence.

On the subject of legal pleas, the respondents took the stand that OIC /AOC Records was competent to take disciplinary action against centrally controlled Group 'C' and 'D' employees in exercise of the powers conferred by the Govt. of India, Ministry of Defence order dated 13.8.1979 (Exhibit R-I). The High Court judgment specifically empowered the respondents to initiate disciplinary proceedings against the applicant again if they so chose. Since further action was contemplated under Rule 14 of the Rules, the case has been dealt with according to the Rules. The findings of the Enquiry Officer were based on records. There was a clear finding that 7 No. carburetors part were found in illegal possession of the applicant on his table and thus charge of dishonest misappropriation of Govt. stores in connivance with labourer, Shri Francis stood established. Consequently, the order passed for removal of his services was in order.

We have heard learned counsel for the applicant Shri P.L. Mimroth and the respondents counsel Shri N.S. Mehta. Learned counsel for the applicant urged that he challenged the findings of the Enquiry Officer on the ground that this was a case of no evidence against the applicant. There was not a single

eye witness in respect of the theft. All others spoke on the basis of conjecture. Not a single witness has stated that the applicant had stolen those carburetors. Secondly, the applicant was on ^{half day} leave on 9.11.1970 and this has not been denied by the Enquiry Officer. Thirdly, non-supply of the documents to the applicant has prejudiced and there was a denial of an opportunity to contest the matter. In support of his contentions he cited the following cases:

1. P.MOOSA Vs. UNION OF INDIA AND OTHERS
(1989 (11) ATC 344).
2. RAMKISHORE Vs. UNION OF INDIA & OTHERS
(1989 (11) ATC 630).
3. P.DASARATHAN Vs. SUB-DIVISIONAL INSPECTOR (POSTAL)
KARIKAL AND OTHERS.
(1989 (11) ATC 676).

He also relied on a decision of a Single Judge decision of the Delhi High Court in GIRWAR Vs. UNION OF INDIA AND OTHERS (1982 (2) AISLJ 56), and also on a single Judge decision of the Calcutta High Court in SANJOY SEN Vs. UNION OF INDIA & OTHERS (1984 (2) AISLJ 600). Lastly, he cited the case of STATE OF MADHYA PRADESH Vs. CHINTAMAN SADASHIVA WAISHAMPAYAN (AIR 1961 SC 1623) where their Lordships laid down that reasonable opportunity to the public servant at the stage of the departmental enquiry was necessary and denial of copies of documents to which the public servant was entitled violated the principles of natural justice and Art. 311 (2) of the Constitution.

Shri N.S. Mehta, learned counsel for the respondents urged that the matter may be examined by this Tribunal only with respect to the matters which commenced after the decision

of the High Court. He urged that it was not necessary to go into the proceedings which were quashed by the order of the High Court of Delhi. He pointed out that that order was quashed on technical ground and the High Court had empowered the disciplinary authority that it could proceed again with the enquiry if it so chooses. Consequently, the second enquiry was started. It was ordered by the OIC/AOC Records, Secunderabad who was competent. In this context, he referred to Exhibit R-1 filed with the reply of the respondents. This was an order passed in exercise of the powers conferred by clause (a) of Sub Rule (2) of Rule 11 and clause (1) of Rule 24 of the Rules vide order dated 13.8.1979. The President nominated the authorities who were to impose penalties specified in sub rule (i) to (ix) of Rule 11 of the aforesaid Rules and to act as appellate authorities shown against the respective disciplinary authorities in respect of Group 'C' & 'D' Defence Civil employees of the Army Ordnance Corps under the control and within the jurisdiction of the Director of Ordnance Services, MGO's Branch, Army Headquarters. The relevant part of the order (R-1) is as under:

Sl. No.	Description of service/posts.	Authority competent to impose penalties (with reference to item numbers in Rule 11).	Appellate Authority.
1.	Group 'C' & 'D' employees centrally controlled by AOC Records, including those posted at Army Hq. Comd HQ/AOC School and AOC Centre.	(a) OIC AOC (R) All	DOS (Now DGO)

1	2	3	4	5
1.	Group 'C' & 'D' employees centrally controlled by AOC Records, including those posted at Army Hq. Comd HQ/AOC School and AOC Centre.	(a) OIC AOC (R) All		DOS (Now DGO)

The applicant admittedly belong to Group 'C' & 'D' employees centrally controlled by AOC Records, Secunderabad and for him, the authority competent to impose penalties on and from 13.8.1979 was the OIC AOC Records, Secunderabad who was empowered to impose all types of penalties. The appellate authority was the DGOS. Since OIC AOC (R) was competent authority to impose penalties, it goes without saying that he could also initiate disciplinary proceedings. This has been done in the present case. The relevant point in this context is that fresh proceedings were initiated vide order dated 9.8.1982 which was subsequent to order dated 15.7.1972. Consequently, Shri Mehta contended that on the day when fresh proceedings were initiated, OIC AOC (R) was a competent person to initiate proceedings. Consequently, he urged that the initiation of the proceedings and the appointment of the Enquiry Officer were all in accordance with law as well as an appeal to the DGOS. Shri Mehta pointed out that Annexure R-I to the reply was not challenged in this O.A. and consequently, it cannot be the subject matter of any challenge now.

Shri Mehta stated that the papers which have been weeded out, their copies could not be obtained or produced. Such papers have to be ignored. If it was not physically possible to produce such papers, there was no denial of opportunity to the applicant. Shri Mehta next argued that the proceedings before the Enquiry Officer were conducted in accordance with law and this Tribunal cannot reappraise the evidence laid before the Enquiry Officer to come to its conclusions, the findings, if they are not vitiated by any error of law

apparent on the face of the record or by the principles of natural justice cannot be interfered with.

Lastly, he urged that this was not a case of no evidence. He asserted that there was an evidence of theft in this case.

Having heard learned counsel for the parties, we are of the view that the initiation of fresh proceedings by the respondents cannot be challenged. Firstly, the High Court itself in its order have empowered the respondents to initiate fresh proceedings if they so choose. The original disciplinary proceedings failed because of a technical flaw viz., the authority initiating the disciplinary enquiry was not competent. But subsequently on 13.8.1979, the Govt. of India had passed an order whereby certain officers were empowered to initiate proceedings. The fresh proceedings commenced in 1982 after the judgment of the High Court. This was commenced after the issue of order dated 13.8.1979. The DIC AOC (R) was empowered as the authority competent to impose the penalties. The penalty of removal was within the competence of the DIC AOC (R). Further, the Exhibit R-I has not been challenged, it is now no longer open to the applicant to contend that the DIC AOC (R), Secunderabad was not competent to initiate proceedings or impose penalties. This point is accordingly decided.

The second point was that the order passed by the Enquiry Officer was manifestly erroneous inasmuch as there was no evidence against the applicant in respect of the theft. According to the learned counsel for the applicant, the 7 No.

carburettors which were said to have been stolen from the stores were found on the table of the applicant and an inference had been drawn that these had been stolen by the applicant in connivance with labourer, Shri Francis. It is true that it is not open to the Tribunal to reappraise the evidence at this stage and arrive at its own conclusion. The appreciation of evidence is the work of the Enquiry Officer and it is open to check by the disciplinary authority and on an appeal, by the appellate authority. The power of the Tribunal is analogous to the exercise of the power under Art.226 of the Constitution of India and it is well settled that the authorities exercising power under Art.226 of the Constitution cannot reappraise the evidence on question of facts to arrive at their own conclusion. However, it is also well settled that in a case of no evidence at all, the High Court or the Tribunal can go into the question and if it is satisfied that it is so, then it may quash the order of punishment.

We have perused the material on the record and the order of the Enquiry Officer dated 13.7.1985. We have also perused the oral evidence recorded by the Enquiry Officer which consists of the evidence of Shri Amar Singh, PW-1, Shri K.G.Kapoor, PW-2, Shri Dev Raj, PW-3, Shri D.R.Gupta, PW-4 and Maj. S.S.Puri on behalf of the defendants and Shri B.S. Dhika, DW-1, Lab Gani, DW-2, Lab Sultan Singh, DW-3 and Shri Ram Saran Dass, DW-4 on behalf of the defence.

Having perused their statements and the cross-examination, we are satisfied that it is not a case of no

evidence at all. There is evidence on the record to show that 7 Nos. carburettors of Motor Cycle were found in the possession of the applicant. They were recovered from his table. Obviously, these items were not being dealt with by the applicant as a Storekeeper and these items were housed in another part of the store. These items could not have come to the table of the applicant unless the same had been brought there. The initial report dated 12.11.1970 to the Admn. Officer by the Security Officer indicates that 7 carburettors were found concealed in a wooden box kept on the table of CASK Shri Siri Chand of Cell 'B' Provision Branch. The enquiry report also shows that the above items were stocked in No.2 Sub Depot, COO Delhi Cantt and these items had been taken out of the sub depot. The question is not whether the witnesses are to be believed or disbelieved but the question is whether there is any evidence or none at all. As indicated above, it is not open to this Tribunal to reappraise the evidence to come to its own conclusion.

The Enquiry Officer has held that the items were not found in the PRF cabinet but on the table of the applicant. The fact remains that these items were found on the table of the applicant. This, therefore, disproves that there is no evidence at all.

The fact remains that the applicant was not dealing with these items and these items had come from the Sub Depot No.2 and were found on the table of the applicant. How these items could come in his possession or on his table, it is for him to explain. Neither the cross examination of

prosecution witnesses nor the defence witnesses throw any light on this aspect of the matter. We are satisfied that this is not a case of total lack of evidence against the applicant. There is evidence on the record.

In this view of the matter, it is not open for this Tribunal to reappraise the evidence to come to its own conclusion. As far as the report of the Enquiry Officer is concerned, he entered a clear finding that 7 Nos of carburettors part No. LV 6 MT 12 AM 276 BIJ of No.2 Sub Depot stocking responsibility were found in illegal possession of the applicant on his table on 9th November, 1970, and Shri Siri Chand Verma was found guilty for mis-appropriation of Govt. stores.

A plea was raised that the Enquiry Officer's report does not make a reference to the evidence of defence witnesses. They have not been named. But nevertheless paragraph (d) of the report refers to the defence arguments. A perusal of the recording of the evidence of witnesses questions and answers forms indicates that the Enquiry Officer had allowed the defence all opportunity to cross examine the prosecution witnesses as well as to examine the defence witnesses. We do not think that this has affected the decision of the Enquiry Officer.

The plea that certain records were not made available which had been asked for by the applicant is answered by the fact that every material which was available have been placed for the perusal of the applicant except those which

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had been weeded out. It was not possible to produce papers which had been weeded out. We do not think any prejudice has been caused to the applicant in this regard, for it is apparent that the Enquiry Officer proceeded to give his report on the basis of the oral evidence.

The amendment to the chargesheet by the disciplinary authority at a later stage did not prejudice the applicant for these pertain to certain corrections of typographical errors.

The applicant had filed an appeal. The appellate authority, the Director General, Ordnance Services had categorised the factual position and had also concluded that the findings of the Enquiry Officer were based on record. The appeal was consequently dismissed. It was an order confirming the order of the Enquiry Officer. Consequently, it was not necessary for the appellate authority to give a detailed order and discuss the evidence of the witnesses. A perusal of the appellate authority order shows that he had applied his mind.

In view of the above, we do not find any such illegality in the procedure which vitiates the order of removal of the applicant from service. We are, however, of the view that substantial justice has been done in the case and it is not a fit case for interference by the Tribunal. In the result, therefore, the O.A. fails and is dismissed. However, we leave the parties to bear their own costs.

(M.M.MATHUR)
MEMBER (A)

(AMITAV BANERJI)
CHAIRMAN