

Central Administrative Tribunal
Principal Bench: New Delhi.

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Regn.No.OA-1834/87

Date of Decision: 27.8.1990

Shri Raj Kumar

...Applicant.

Vs.

Union of India

...Respondents.

For the applicant

... Shri P.P.Khurana,
Advocate.

For the respondents

... Mrs.Raj Kumari Chopra,
advocate.

CORAM: Hon'ble Shri B.C.Mathur, Vice-Chairman.
Hon'ble Shri J.P.Sharma, Member(Judl.).

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant, Raj Kumar erstwhile Supervisor 'A' Ordnance Equipment Factory (OEF), Hazratpur, Agra, filed an application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of his termination dated 27.12.1985 passed by the Additional Director General of Ordnance Factory and the appellate order dated 7.9.1987 passed by the General Manager, OEF, Agra.

2. The facts of the case are that while posted as Supervisor 'A', the applicant had harboured enmity with certain employees who made certain false complaints against the applicant with the respondents and as a result of which the applicant was issued a charge-sheet dated 6.5.1985 for a major penalty under Section 14 of the CCS (CCA) Rules, 1965. By the said charge-sheet, the applicant was charged for gross misconduct, indulgence in corrupt practices and it was alleged that illegally and fraudulently he took Rs.400/- to Rs.500/- from one Shri Om Parkash, Tailor on his selection to the post of Tailor in OEF on the understanding that he had arranged his employment in the factory. Further, it is stated that he took Rs.2000/- to Rs.3000/- from the said Shri Om Parkash for recruitment of one Mahesh Chandra in the Factory on the understanding

that he had arranged his employment, and lastly that the applicant illegally and fraudulently took Rs.2500/- and Rs.500/- through Ramesh Chandra for recruitment of one Shri Prem Kumar Singh and Om Parkash as tailor in the factory respective. He was, therefore, charged for violation of Rule 3(l)(i) and (iii) of C.C.S(Conduct) Rules,1964. He was also charged for giving Rs.1000/- to one Shri Ramesh Chandra, Labourer B, OEF, Hazratpur for celebrating the Holi festival despite reluctance expressed by said Shri Ramesh Chandra in accepting the above amount. This feast was hosted by him through Ramesh Chandra for the purpose of establishing contact with the above mentioned individual for taking money from them on the promise of getting them recruited in the factory. The applicant denied the charge and the disciplinary authority on 7.7.1985 appointed an Inquiry Officer and the Representing Officer and stipulated that the inquiry be completed by 5.8.1985. The applicant requested for supply of certain papers on 16.5.1985 but that request was rejected. The applicant was also put under suspension with effect from 1.4.1985. On the basis of the report of the Inquiry Officer, the disciplinary authority passed the impugned order of removal from service on 27.12.1985 and the appeal against the same was dismissed by order dated 7.9.1987. The applicant has claimed the following reliefs:

- (i) quashing the order dated 27.12.1985 and 7.9.87 and to direct the respondents to reinstate the applicant in service from the date of removal with all consequential monetary benefits like arrears of pay and allowances etc as well as restoration of the official accommodation.
- (ii) directing the recovery of amount from the respondents which are payable to him after quashing of the order of removal from service.

3. The respondents contested the application and contended that the applicant has no case at all and he has been dismissed and removed from service with effect from 27.12.1985 for the charge of acceptance of illegal gratification. After holding an inquiry under Rule 14 of the CCS(CCA) Rules, 1965 wherein three charges out of four against the applicant were established. The applicant was functioning as Supervisor 'A' (NT)/ST in OEF, Hazratpur, Agra. There were written complaints against the applicant made by Shri Mahesh Chandra, Shri Om Parkash and Shri Prem Kumar Singh all three were casual tailor in the factory and by Shri Ramesh Chander, Labourer that money had illegally changed hands in connection with the appointments of Shri Mahesh Chandra, Shri Om Prakash and Shri Prem Kumar Singh in the factory. It emerged from the complaints that Shri Om Prakash Shri Ramesh Chandra and Shri Raj Kumar were all involved in the alleged racket and that Shri Raj Kumar was central figure. The charge-sheet was submitted on the applicant and was placed under suspension with effect from 1.4.1985. A full inquiry was held and Shri Shree Krishan, A.W.M. was inquiry officer. The inquiry officer submitted the report on 30.11.85 and found that three of the four charges have been established against the applicant. On consideration of the Inquiry Officer's report and the evidence both oral and documentary on record, the General Manager imposed the penalty of removal from service of Shri Raj Kumari, Supervisor 'A' with effect from 27.12.1985. The appellate authority also dismissed the appeal by order dated 7.9.1987.

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

5. The learned counsel for the applicant assailed the findings of the Inquiry Officer on the basis that there is

no evidence against the applicant and the learned counsel has read out verbatim the statement of witnesses examined by the Inquiry Officer. Firstly, the charges framed against the applicant are vague and in this connection the article of charge I states that the applicant Raj Kumar, illegally and fraudulently took Rs.400 to Rs.500/- i.e. the amount is not specific, again in Article of Charge No.II, there is general observation of Rs.2000/- to Rs.3000/-, so there is no specific amount mentioned in the charge itself. The departmental witnesses which have been cited to prove the charges Shri Mahesh Chand and Ramesh Chandra, none of the above witnesses have deposed categorically against the applicant regarding the passing of money in procuring the appointments as tailor in the factory. Mahesh Chand PW 1 and Prem Kumar Singh, PW3 did not confirm any payment of money directly or indirectly in their statements before the Inquiry Officer. The findings of the Inquiry Officer are dealt with in Annexure-8. The Inquiry Officer after stating in Articles of Charge, referred to the statement of Om Parkash who confirmed that he sold the Jewellery of his wife but it was sold for buying cycle for coming and going to his duty place. PW Om Prakash, in the report dated 16.3.1985, it is stated that he gave Rs.900/- to Shri Raj Kumar but in the statement on 1.4.1985 in preliminary enquiry he stated that he gave Rs.500/- to Shri Ramesh Chander and Rs.400/- to Shri Raj Kumar before the Inquiry Officer. However, this witness had categorically denied knowing Raj Kumar before the interview. Thus, to rely on the statement of such a witness only on the basis of drawing inference prejudicial to the delinquent official is not warranted and the Inquiry Officer has erred in that regard. Prem Kumar Singh who was also examined as a witness also did not disclose any fact involving Raj Kumar and almost resiled from the report made earlier and the statement then given on 1.4.1985.

He states that he gave that statement under duress.) Prem Kumar Singh subsequently stated that he did not give any money to anybody. Thus, the Inquiry Officer himself disbelieved this witness but drawn a favourable impression against the delinquent official. Similar is the statement of Shri Ramesh Chandra. The witnesses before the Inquiry Officer denied giving any money to Raj Kumar. In fact, Shri Ramesh Chandra has denied knowing Mahesh Chandra and Prem Kumar Singh, before his recruitment in the factory. In short, these are the above glaring infirmities in the ^{of} statement/witnesses examined by the Inquiry Officer but the Inquiry Officer has drawn an inference which should not be reached at all on the basis of the evidence before him. In fact, the findings given by the Inquiry Officer ~~but~~ at the same time ~~in~~ the finding is totally perverse and not based on reliable evidence then such a finding has to go away.

5. The learned counsel for the respondents could not support the findings of the Inquiry Officer and only pointed out that the contention of the learned counsel for the applicant that the inquiry officer also acted as a presenting officer is incorrect. Be whatever may, the oral evidence and the witnesses examined is not at all sufficient in the eye of law to prove guilt against the charged official. Curiously enough, the Appellate authority also did not apply its mind. In fact, the appellate authority should have scrutinised the evidence relied upon by the Inquiry officer and considered by the Disciplinary authority. The appellate order dated 7th September, 1987 is reproduced below:

"Appeal dated 25.1.1986 of Shri Raj Kumari, Ex. Supr. 'A' Ordnance Equipment Factory, Hazratpur, Agra against the penalty of removal from service imposed on him under the GM/OEFH Order No. OEFH/2301/Vig.RK dated 27.12.85 has been examined by the undersigned with reference to all relevant documents and papers and it is held that

the charge of acceptance of illegal gratification levelled against him has been established after an enquiry as per rules. Since there are no basic points in the appeal affecting the offence committed by the individual it is not warranting any modification of penalty already imposed on him by the Disciplinary Authority.

The penalty imposed on Shri Raj Kumar may, therefore, stand."

6. The above order shows that the learned Additional Director General, Ordnance Factories did not go to the evidence of the various witnesses examined by the Inquiry Officer and only put the stamp of rejection on the appeal filed by the delinquent official. The memo of the appeal has been filed by the applicant which shows that every point has been raised to assail the findings of the Inquiry Officer (Annexure 6 and 7), but the same has not been either considered or mentioned in the appellate order as quoted above.

7. The delinquent official can be proceeded with for a major penalty but the Inquiry Officer has to conduct it in a judicious manner as to comply with the principles of natural justice. In the present case it appears that the Inquiry Officer himself has sometimes acted as a Presenting Officer and that spirit is against the principles of natural justice. In any case, the overall assessment made by the Inquiry Officer of the evidence adduced before him of PW 1 to PW4 is only in a unilateral biased manner. In fact none of the witnesses had deposed that the delinquent official Raj Kumar has taken money from them for securing employment in the factory and in fact all of them have recanted from their earlier complaints and statements given at the preliminary stage. Thus, enquiry report has to contain all facts and deductions of those facts on the basis of the standard to be applied but reasoned inference i.e. the Inquiry Officer has to act as a reasonable person and cannot act of his own in adding at places surmises or conjectures to arrive at a particular preconceived

conclusion. The Inquiry Officer has done that.

8. Normally, the court would not go into the adequacy or otherwise of the evidence and if the order of the disciplinary authority is based on some evidence, we will not go into the details of such an evidence nor on the question of adequacy of the punishment. But where there is no evidence establishing the charge against a delinquent officials or where the rules have not been followed properly, we have to intervene. We notice that a copy of the Enquiry Report was also not supplied to the applicant before imposing the major penalty. This is a serious lacuna.

9. In view of the various considerations, discussed above, the order of the disciplinary authority and the Appellate Authority are liable to be set aside as these are not warranted on the basis of the evidence adduced before the Enquiry Officer and also due to procedural lapses. The application is, therefore, allowed and the impugned orders are set aside. The termination orders of the applicant passed by the disciplinary authority on 27.12.1985 as well as the appellate order rejecting the appeal dated 7.9.87 are quashed and the applicant shall be deemed to be in continuous service and will be entitled to reinstatement forthwith with all consequential monetary benefits.

10. The respondents are directed to comply with the orders within three months from the date of receipt of these orders. Parties are left to bear their own costs.

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

B.C. Mathur
(B.C. Mathur)
27.8.90
Vice-Chairman

pronounced by us in open court
today.

B.C. Mathur
27.8.90