

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 306 of 1987  
TRAXNEX

DATE OF DECISION March 18, 1987.

Shri R.C. Arora Petitioner Applicant.

Shri E.X. Joseph Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

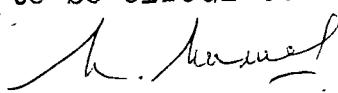
Advocate for the Respondent(s)

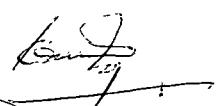
**CORAM :**

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

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

  
(KAUSHAL KUMAR)  
MEMBER (A)  
18.3.1987.

  
(K. MADHAVA REDDY)  
CHAIRMAN  
18.3.87.

3

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 306/1987.

DATE OF DECISION: March 18, 1987.

Shri R.C. Arora .... Applicant.

V/s.

Union of India  
and others .... Respondents.

For the applicant .... Shri E.X. Joseph,  
Advocate.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.  
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the bench delivered by Hon'ble  
Mr. Justice K. Madhava Reddy, Chairman.)

JUDGMENT

This is an application for quashing the Order  
No. E.2-17/75-AV, dated the 20th January, 1987, made by  
the Director General of Health Services, 2nd Respondent,  
the Order No. P(C-III)76-Vig., dated the 3rd February,  
1979 passed by the Medical Superintendent, Safdarjung  
Hospital, New Delhi, 3rd Respondent, the Notices  
No. 2.2/R.K. Puram Sector-8-384/86 Administration-IV,  
dated 9.7.1986 and No. 2302/TB/8587 Damage, dated 26.2.87  
issued by the Directorate of Estates, Government of India,  
New Delhi, 4th Respondent herein.

2. The few facts necessary to appreciate the contentions  
raised by the applicant may be briefly noticed. The  
applicant was employed as a Laboratory Technician in the  
Blood Bank of the Safdarjung Hospital on 31st July, 1965.  
Disciplinary proceedings were initiated against him on the  
basis of a complaint of one Shri Tej Narain Singh alias  
Bengali and subsequent trap by the CBI. The Article of  
Charge reads as follows: -

"Shri Ramesh Chandra Arora while function-  
ing as a Technician in the Blood Bank of  
Safdarjung Hospital, New Delhi during the

*Arora*

month of October, 1975 demanded and accepted on 28.10.75 illegal gratification of Rs.40/- from Shri Tej Narain Singh S/o Shri Syman Singh R/o WZ 431 Sudarshan Park, New Delhi in consideration of accepting the blood of two donors brought by Shri Tej Narain Singh.

Thus Shri Ramesh Chandra Arora by his above acts failed to maintain absolute integrity and thereby contravened Rule 3(1)(i) of the CCS (Conduct) Rules, 1964."

The applicant denied the charge and requested to be heard in person. In the Statement of Imputation of Misconduct on the basis of which Article of Charge was framed, appended to the Memo of Charges, it was stated that the complainant Shri Tej Narain Singh was arranging the blood donors for replacement of blood in the Blood Bank of Safdarjung Hospital. The applicant impressed upon the said Tej Narain Singh that he was empowered to accept or reject the blood donor and said that he would reject the blood donors brought by him unless he paid Rs.20/- per donor. On 28.10.1975, Shri Tej Narain Singh brought Shri Ram Singh and Shri Naval for replacement of the blood which was given to the patients Smt. Bhateri Devi and Shri Acharaj Lal. These two donors were accepted by Doctor Smt. R. Gupta and their blood was taken in the Blood Bank of Safdarjung Hospital and was grouped by N. B. Masih, Tech. on duty. The applicant demanded Rs.40/- at the rate of Rs.20/- per donor from Shri Tej Narain Singh threatening that if the amount is not paid, he would reject the aforesaid donors. Shri Tej Narain Singh not willing to give this bribe to the applicant, reported the matter and as a result a trap was laid by the CBI in the verandah of the ground floor near the Blood Bank at lunch time on 28.10.1975. The applicant came to accept Rs.40/- from Shri Tej Narain Singh and as per his original demand, Shri Tej Narain Singh



paid Rs.40/- in the presence of the witnesses. The applicant was immediately apprehended and the amount was recovered from his possession.

3. At the inquiry, the original complaint of Shri Tej Narain Singh dated 28.10.1975, the handing over memo of treated notes, the Recovery memo, the Donors blood grouping register, statement of two donors Ram Singh and Sri Naval, instructions of the Blood Bank, Duty roster and attendance register of Blood Bank, posting orders and two patient sheets of patients Acharaj Lal and Bhateri Devi and as many as 13 witnesses, including the complainant who witnessed the trap, the police officials who laid the trap and others were examined in support of the charge. Though initially the applicant merely denied the charge, in his defence statement (Annexure A-7) dated 4.9.1978 submitted before the Inquiry Officer, he pleaded that "Shri Bengali had, time and again, threatened the Technicians on holiday or evening or night duty saying that they generally fail his donors and demand money so one day they would see the consequences and he would get them arrested..... Shri Bengali was thus in search of an opportunity to cash his plan by implicating any of the Technicians of the Blood Bank in a false case. .... On 28.10.75, I was posted on set and solution duty with senior Technician Shri C. Washington and Shri G.S. Prashad was on donor taking section on that day. Shri N.B. Mashie was in laboratory section. I, with Shri Mashie and Mohinder Singh, was going for tea to the canteen as usual. While passing through the veranda, Shri Bengali, who was there in the Veranda, alongwith Shri Gomani, Sweeper, Blood Bank, put some money in the front pocket of my bushirt and I, immediately, took that money out of my pocket with my right hand, saying what Shri Bengali did and S/Shri N.B. Mashie and Mahender Singh tried to intervene



6

I was immediately overpowered by some persons in plain clothes and was caught with my both wrists while the money was in my right hand. I was perplexed and mum to what had happened but within few seconds I was told that I have been entrapped and was taken away from the place immediately as the raiding party did not allow anybody to come near me even both these technicians were not allowed to intervene. I was taken to Committee Room where the raiding party carried out their formalities and I was in fix and perturbed so I acted as per dictates of the police officers." The applicant examined a few witnesses to prove his case in defence. The Inquiry Officer, on consideration of the entire evidence on record, held the charge proved. The Disciplinary Authority accepted the findings of the Inquiry Officer and issued a Notice dated 13th December, 1978 to the applicant to show cause why the Inquiry Officer's report should not be accepted and why the penalty of 'Dismissal' should not be imposed on him. The applicant submitted his representation and on consideration of the entire record, the Disciplinary Authority accepted the findings of the Inquiry Officer, held the applicant guilty of the charge and imposed the penalty of 'Dismissal from service' by his order dated 3.2.1979. Aggrieved by that order, the petitioner filed an appeal dated 27th June, 1979, but the same was dismissed as barred by time. The same was communicated to the applicant by letter No.2-17/75-AV, dated the 4th July, 1979.

4. Challenging the 'order of the Disciplinary Authority dismissing him from service as also the order dismissing the appeal as time-barred, the applicant filed a Writ Petition No.383 in the High Court of Delhi in 1979, which was transferred to this Tribunal under Section 29 of the

F. D. S.

Administrative Tribunals Act, 1985 and registered at No. T.A. 452/1985. In that petition, several contentions with regard to the irregularities in the conduct of the disciplinary proceedings were taken. That petition came up before our learned brothers Shri B. S. Sekhon and Shri Birbal Nath, who dismissed the petition as devoid of merits. Against that judgment, the applicant filed a Special Leave Petition before the Supreme Court. The learned judges of the Supreme Court, by their order dated 28th November, 1986 directed notice to respondents. Presumably in pursuance of the assurance given to the Supreme Court, the Appellate Authority agreed to entertain and dispose of applicant's appeal on merits which was earlier dismissed as time barred. By order dated 20.1.1987, the Appellate Authority dismissed that appeal under Rule 27 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. It is this order of the Appellate Authority that is now in question as also the original order of dismissal made by the third respondent.

5. It is unnecessary for us to go into the question of the dismissal of the appeal earlier as time-barred; but the respondents having entertained the same subsequently and having considered the appeal on merits, we proceed to consider if there is any defect either in the original or in the appellate order impugned in this petition.

6. Shri E. X. Joseph, learned counsel for the applicant vehemently contended that the appellate order is not a speaking order and, therefore, it should be quashed and the matter remitted to the Appellate Authority for fresh disposal on merits with reference to the entire evidence on record.

7. Rule 27 of the CCS (CC&A) Rules, 1965, in so far as it is relevant to the present case, reads as under: -



"27. Consideration of appeal.-

(1) .....

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

(a) .....

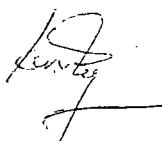
(b) .....

(c) .....

provided that -

- (i) the Commission shall be consulted in all cases where such consultation is necessary;
- (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (4) of rule 15, of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit; "

It may be noticed that the appellate order herein was a confirming order; the Appellate Authority was not considering enhancing the penalty. It is against this background that we have to see whether the order passed by the appellate authority suffers from any infirmity. Unlike most Appellate orders, so far as the appellate order in this case is concerned, it takes note of the charge, the circumstances in which it was re-entering the appeal for considering and disposing off the same on merits. It enumerates the grounds on



which the disciplinary proceedings and the order of dismissal are assailed; it takes note of the facts leading to the framing of the charge, the witnesses examined in support of the charge and the plea taken in defence. It also takes note of the briefs filed in support and against the charge by the Presenting Officer and the applicant herein. It also mentions that although the second show cause notice was not necessary, that was issued and representation against the show cause notice was also considered by the appellate authority. It holds that the rules governing the disciplinary proceedings for imposition of the major penalty were observed. It makes special mention of the fact that the applicant was caught red-handed accepting the bribe of Rs.40/- from Shri Tej Narain Singh in the presence of two independent witnesses from the CPWD by the raiding party of the CBI, and also of the further fact that the notes recovered from the pocket of the applicant tallied with the notes given to the decoy, Shri Tej Narain Singh by the CBI. His handwash and pocketwash confirmed that the applicant had accepted the money. In fact it was recovered from his pocket in the presence of the witnesses. The witnesses who were present at the time when the amount was recovered from the pocket of the applicant were examined and nothing is elicited in the cross-examination to disbelieve their testimony. In fact, in view of the plea taken in defence, it lay heavily upon the applicant to establish that this amount was forcibly put in his pocket by the complainant. He has examined some witnesses, among whom one is Shri K.K. Chugh, who is said to be an independent witness. Others are his own colleagues in the Department. Shri K.K. Chugh is an



unemployed graduate who states that he had gone to medical OPD to get one Smt. Prem Kumari patient examined in Safdarjung Hospital on 28.10.75. At about 1.30 or 1.40 p.m., when he was passing through the verandah to the cycle stand, he saw a dark man putting some money into somebody's pocket. The person in whose pocket money was put took it out from his pocket and immediately afterwards two or three persons emerged and caught hold of that person. When he came to know about the facts, he gave his address to one Sardarji and told him that he would be available for any "help". Even if his presence at the scene of the trap is accepted and his statement is taken as true, it does not in any way contradict the prosecution case against the charged officer. In fact, it corroborates their case. He does not say that the amount was forcibly put into the pocket of the applicant as pleaded, nor does he state that the applicant protested that he was being falsely implicated as one would expect an innocent man to do. Shri Nihal B. Masih, who is a colleague of the applicant, does not speak about that incident at all. According to him, Shri Bengali, who was hiding behind Shri Gumani Lal Sweeper immediately rushed towards him with the money in his hand and tried to put that money in his pocket. No resistance seems to have been offered by the applicant. The statements of all the witnesses examined in defence, far from contradicting the evidence of the prosecution witnesses, corroborate them. In any case, this is a matter of appreciation of evidence and not a case of no evidence at all. The Tribunal in dealing with the order of the disciplinary authority, which order was considered by the appellate authority does not act as an appellate or a reviewing authority.

8. Shri Joseph, learned counsel for the applicant however, strongly relied on the decision of the Kerala



11

(1)

High Court in P.B. Rocho Vs. Union of India and others wherein the learned single judge of that court held "The Wednesbury principle formulated with reference to the conditions imposed on the issue of the licence, and ideally suited to the generality of cases under Article 226, is unworkable where the life or liberty of a subject is at stake, or where he is in danger of being deprived of his sole livelihood. In these grave cases of exceptional importance to a citizen, it is the constitutional responsibility and power of the court to carefully examine the quality of the evidence relied on by the authority to determine for itself whether the requisite standard of proof has been satisfied and where the truth lies. Where the exercise of an executive power depends on the "precedent establishment of an objective fact", it is the power and duty of the court in proceedings by way of judicial review to decide whether the "precedent requirement" has been satisfied. The degree of proof in all these cases is as high as the subject matter is grave."

9. Whatever may be the position with regard to the jurisdiction of the High Court under Article 226, in such matters, this court does not certainly sit as a court of appeal. It is now well established that in disciplinary matters even the High Court under Article 226 would interfere only where the disciplinary authority has violated the statutory rules governing disciplinary proceedings or the principles of natural justice or acted unreasonably. The High Court would not sit in appeal. It is rather difficult to accept the proposition that where the charges are grave and the penalty imposed is one of 'Dismissal', the court should make an exception in this regard and reappreciate the evidence before dismissing the application. In exercise of the



jurisdiction hitherto exercised by the High Court in service matters now transferred to this Tribunal, this Tribunal would not interfere with findings of fact arrived at by the Disciplinary Authority by converting itself into a court of appeal. It would only see whether any illegality has been committed in the conduct of the proceedings and if <sup>any</sup> gross injustice has been done. It would not reappreciate the evidence and substitute its finding for that of the Disciplinary Authority and the Appellate Authority. So far as this case is concerned, the appellate authority has referred to all the salient features that stand out from the evidence and has confirmed the order of the disciplinary authority, and did not find any reason to interfere with the order of dismissal from service. Such an order cannot be termed as a non-speaking order. This petition, therefore, fails and is accordingly dismissed.

10. As we are dismissing this application only on a consideration of the question whether the order of the disciplinary authority should be interfered with under Section 19 of the Act, we do not wish to go into the further question whether the applicant is entitled to retain the Government accommodation and if so, what rent or damages for use and occupation of the quarter he is liable to pay. Since that order is also made the subject matter of this petition, we leave that question open to be agitated in appropriate proceedings. The dismissal of this petition is confined only to the disciplinary proceedings and the validity of the order of dismissal from service, and not to the relief claimed in respect of rent or damages for use and occupation of the quarter. Nothing said herein would affect the right of the applicant to agitate the validity of the other proceedings taken

L. S.  
K. M. S.

against him in the notices referred to above before an appropriate forum.

Ordered accordingly.

*K. Kaushal*

(KAUSHAL KUMAR)  
MEMBER (A)  
18.3.1987.

*K. Madhava Reddy*

(K. MADHAVA REDDY)  
CHAIRMAN  
18.3.87.