

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

CAT/J/12

O.A. No. 34 of 1987 1987
T.A. No.

DATE OF DECISION 22.2.1990

Gautam Deva Tyagi

Petitioner

Mr. R.K. Kamal

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mrs. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. G.Sreedharan Nair, V.C.

The Hon'ble Mr. P.C.Jain, M(A)

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

(G.Sreedharan Nair) 242

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Registration No.C.A. 34 of 1987

Date of decision 22.2.1990

Gautam Deva Tyagi

•••

Applicant

- versus -

The Union of India and others ..

Respondents

CORAM:

Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri P.C. Jain, Member (Administrative)

Counsel for the applicant : Mr. R.K. Kamal.

Counsel for the respondents : Mrs. Raj Kumari Chopra.

ORDER

(Passed by Hon'ble Shri G.Sreedharan Nair, Vice-Chairman):-

The applicant, a Superintendent in the Military Engineering Service, while working in the office of the Chief Engineer, Itarsi, was proceeded against by the issue of a memorandum of charges dated 16.5.1978 informing him that action is proposed to be taken under rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for short 'the Rules'. The charge was lack of integrity and conduct unbecoming of a Government servant, on the imputation of gross neglect of duty in the supervision of the work connected with the construction of the Married Officers Quarters. In January, 1980, a Presenting Officer was appointed, and by another order an Enquiry Officer was also appointed. Both the orders proceeded on the premise that the enquiry proposed to be held is under rule 14 of the Rules. But it was only on 8.1.1982 that another memorandum of charges was issued against the applicant in respect of the same charge.

informing him that an enquiry is proposed to be held under rule 14 of the Rules. In the annexures relating to the list of witnesses and the list of documents it was entered "Nil". An Enquiry Officer and a Presenting Officer were again appointed in May, 1982. By the order dated 26.10.1985 the entire proceedings from the issue of memorandum of charges on 8.1.1982 were cancelled. Besides, the earlier memorandum of charges issued on 16.5.1978 was also cancelled by the same order. On the same day, a fresh memorandum of charges was issued against the applicant on the same charge informing him that action is proposed to be taken under rule 16 of the Rules. The applicant submitted his statement of defence. By the order dated 24.2.1986 the disciplinary authority after coming to the conclusion that the applicant failed to exercise 'due care in the supervision of the concerned work "warned him (non-recordable) and to be more careful in future". An appeal was preferred by the applicant against the aforesaid order but the appellate authority rejected the same on the ground that warning is not a statutory punishment. The applicant prays for quashing the said order.

2. It is urged that in the guise of non-recordable warning the applicant has actually been punished, as by the order stigma has been cast by recording that there has been failure on the part of the applicant to exercise due care on the supervision of the work. It is contended that the disciplinary authority has deliberately misused and abused the quasi-judicial powers conferred on him under the Rules with a view to harass the applicant and that the impugned order cannot be maintained in law.

3. In the reply filed on behalf of the respondents, it is stated that the applicant and two other officials were proceeded against in the year 1978, and as the other two

submitted their written statements of defence, their cases were finalised without delay by imposing the penalty of censure. The case of the applicant could not be completed since he wanted inspection of documents and there was also a transfer of the applicant from one Command to another as a result of which there was a change of disciplinary authority. It is stated that there was no mala fide on the part of the respondents and that the disciplinary authority taking a lenient view of the matter did not impose the penalty of censure on the applicant, as was done in the case of the other two officers. There is also the averment that administration of such a warning is warranted by the O.M. dated 16.2.1979 issued by the Ministry of Home Affairs, Government of India.

4. Rule 11 of the Rules lays down that the penalties prescribed therein may, for good and sufficient reasons and as provided under the Rules, be imposed on a Government servant. The procedure for imposing the major penalties prescribed under rule 11 is laid down in rule 14 and that for imposing the minor penalties is contained in rule 16. The question that arises is whether after the institution of departmental proceedings against a civil servant and without finalising the proceedings either under rule 14 or under rule 16, closing the same by the administration of a warning, stating it to be non-recordable is in accordance with the Rules and can be sustained. On a conspectus of the scheme under the Rules for the institution of departmental proceedings against a civil servant we have the least hesitation to state that the proceedings were conducted in violation of the Rules.

5. The imputation against the applicant was failure to maintain devotion to duty by committing gross neglect of duty in having been lax regarding the supervision of the construction of the Married Officers Quarters. As has been pointed out, while stating the facts, the proceedings commenced with the issue of the memorandum of charges in May, 1978 but culminated only in February, 1986. In the meanwhile, the first memorandum of charges was cancelled and a second memorandum of charge was issued for holding enquiry under rule 14 so as to impose a major penalty, but without mentioning the name of any witness by whom, or any document by which the charge was proposed to be sustained. Again, after more than three years the memorandum of charges was cancelled and yet another memorandum ^{was} issued in October, 1985 reverting to the proposal for conduct of an enquiry under rule 16 for the imposition of a minor penalty. After all these, no penalty, either major or minor as contemplated under the Rules was imposed on the applicant. As if the mountain has given birth to a mouse, the disciplinary authority issued the order dated 24.2.1986 warning the applicant to be more careful in future.

6. When proceedings are instituted against a civil servant under rule 14 or rule 16, as the case may be, if he is found guilty of the charge, one of the penalties prescribed under the Rules has to be imposed. On the other hand, if the truth of the imputations is not established, the civil servant has to be absolved of the charge. Evidently, the disciplinary authority has not acted as ordained under the Rules. At the same time, he has held that the applicant has failed to exercise due care in

✓

supervision of the concerned work and that the defects in the constructions occurred due to the laxity on the part of the staff including the applicant. The order does not indicate as to the material on which the disciplinary authority arrived at that conclusion. Actually the finding amounts to holding the truth of the imputations against the applicant. Such finding, to be supported, should be based on sufficient material and on cogent reasons. In the absence of the same, the order though it is a warning that has been issued is opposed to law and cannot be sustained. There is considerable force in the submission of counsel of the applicant that the administration of the warning is only a camouflage since the stigma stands attached to the order in so far as it is found that there has been laxity and failure to exercise due care in supervision, on the part of the applicant. There is also the circumstance that when the order was assailed by the applicant by submitting an appeal, on the ground that no penalty as contemplated under the Rules, has been imposed, the appeal was rejected. As such the applicant has even been denied the opportunity of preferring an appeal before the appellate authority to ~~@@@~~ point out that the finding arrived at by the disciplinary authority is not sustainable.

7. Counsel of the respondents invited our attention to the O.M. dated 16.2.1979 issued by the Ministry of Home Affairs, wherein it is stated that there is no restriction on the right of the disciplinary authority to administer oral warning or even warnings in writing

(Q)

which do not form part of the Character Roll. The same O.M. lays down that where departmental proceeding is completed and it is considered that the officer concerned deserves to be penalised, he should be awarded one of the recognised statutory penalties, and in such a situation recordable warning should not be issued. The distinction between recordable and non-recordable warnings appears to us to be of no real consequence so far as a civil servant is concerned, for if a non-recordable warning is issued after holding the civil servant guilty of the charge attributed to him by the issue of memorandum of charges, the stigma attached will definitely mar his career.

8. In the result, we quash the order dated 24.2.1986 and direct the respondents that in case the said order had been relied upon for making entries relating to the Annual Confidential Reports of the applicant, such entries shall not be used against the applicant.

9. The application is disposed of as above.

(P.C. Jain)
Member (A)
22/2/1990

G. Sreedharan Nair
Vice-Chairman