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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.379/87

DATE OF DECISION: 28.10.87

SHRI S.N. ORAON

.....

APPLICANT

VERSUS

UNION OF INDIA & ORS.

.....

RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

FOR THE APPLICANT

:

S/SH. S.C. LUTHRA & R.R. RAI, COUNSEL

FOR THE RESPONDENTS

:

SHRI N.S. MEHTA, SR. STANDING
COUNSEL

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J)

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the following points require adjudication and decision:-

(i) Whether with a copy of the enquiry report having not been supplied to the applicant, before the order of punishment was passed by the Disciplinary Authority, so as to enable the applicant to make representation, if any, regarding the quantum of punishment, the order of the Disciplinary Authority, together with all subsequent proceedings, are sustainable in law? and

(ii) With the approval of the President, who is admittedly the appointing as well as the

disciplinary authority in this case, for initiating departmental inquiry having been conveyed, to the Chief Secretary, Delhi Administration, vide Govt. of India, Ministry of Home Affairs, New Delhi, letter No. U-14033/17/

81-UTS dated 24.3.82 (copy at page 101 of the paper-book), the proceedings initiated by the latter, in pursuance of the said letter, for appointing the enquiry officer etc. were valid?

2. Other necessary details relevant for the decision of the aforesaid points, briefly stated, are that the applicant, who was a selection grade officer in the Delhi and Andaman and Nicobar Islands, Civil Service, who had been subjected to disciplinary proceedings, for various charges, contained as Articles 1 to IV, in the order at page 12 to 17 of the paperbook, had prayed for quashing and setting aside of the order passed by the disciplinary authority, regarding his compulsory retirement from service, on various grounds urged in the O.A. After issue of the letter dt. 24.3.82, referred to at (ii) above, the Chief Secretary, Delhi Administration appointed the Enquiry Officer in the case, who proceeded with the enquiry against the applicant. The applicant, however, did not participate in the same, and the Enquiry Officer, after completion of the enquiry, submitted the report to the Disciplinary Authority, where upon, the President, vide order dt. 30.4.1986, came to the conclusion that all the charges against the applicant have been proved, and in result, penalty of compulsory

retirement, was imposed upon him. The applicant had submitted a representation (Page 18 & 19 of the paper-book), and having received no orders thereon, had filed the present O.A., in this Tribunal. It would be worthwhile to mention here that a miscellaneous application under Order 6 Rule 17 C.P.C., read with Section 22 of the Administrative Tribunals Act, 1985, seeking to introduce additional grounds, mentioned therein, was moved by the applicant, which, though opposed by the respondents, was allowed, vide order dt. 9.10.91.

3. Arguments with regard to the aforesaid two points, as addressed by both the sides, were heard.

4. As regards the point at (i) in paragraph 1 above is concerned, the learned Sr. Standing Counsel for the respondents fairly conceded that in view of a recent judgement passed by the Hon'ble Supreme Court in U.O.I. & Ors. Vs. Mohd. Ramzan Khan, decided on 20.11.90, and reported in Judgements Today, 1990 (4) S.C. 456, and the same being applicable, even in cases pending at any stage, as held in a Full Bench judgement dated 11.7.91, reported in Administrative Tribunals Judgements, 1991(2) Page 278 (Shri Balwant Singh Kumar Gohil Vs. U.O.I. & Anr.), the position is abundantly clear, and therefore, the proceedings held in the case, from that stage onward, are not sustainable in law. In view of the same, this point is decided accordingly.

5. As regards the second point mentioned in (ii) in paragraph 1 above, the learned Sr. Standing Counsel for the respondents, by referring to Rule 13(1&2) and Rule 14(2) of the CCS CCA Rules, 1965, pleaded that a harmonious reading of the two, in the light of the letter dated 24.3.1982 (P.101 of the paper-book), issued by the Ministry of Home Affairs, would make it clear that the Chief Secretary, Delhi Administration, in pursuance of the said letter, was within his competence to appoint the Enquiry Officer as well as the Presenting Officer and also to take all subsequent proceedings in the case, short of passing the order imposing penalty, on the applicant.

6. The learned counsel for the applicant, while referring to AIR 1966(M.P.) P.193-Shardul Singh Vs. State of Madhya Pradesh, pleaded that as held in this ruling, the powers to appoint the Enquiry Officer etc., as done by the Chief Secretary, Delhi Administration in this case, like the powers to make appointment, which are exclusive to the appointing authority, cannot be delegated, to any other person or authority, and in the manner, the Chief Secretary, Delhi Administration, had appointed the Enquiry Officer as well as the Presenting Officer in this case, amounts to working as the Disciplinary Authority, which is not envisaged in the law and the rules on the subject, and hence, all proceedings held by the Enquiry Officer, and thereafter, based on the enquiry report, are void, and hence not

sustainable in law. The learned counsel for the applicant also cited ATR 1986(2) CAT 175-U.O.I. & Ors. Vs. Pandhari Nath Kashinath, in support of his contention.

7. We have given our careful consideration to the rival contentions, as briefly discussed above. We have also perused the citations referred to by the learned counsel for the applicant, and also the relevant provisions contained in Rule 13 and Rule 14(2) of the CCS (CCA) Rules, 1965, referred to by the learned Sr. Standing Counsel for the respondents.

Rule 13 & 14(2), *ibid*, may be reproduced as under:-

13. (1) The President or any other authority empowered by him by general or special order may:

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified

in clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

14(2). Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

8. There is a letter from Ministry of Home Affairs, conveying approval of the President of India, for initiating enquiry proceedings in the case. In Black's Law Dictionary (Fifth Edition), at pages 94 and 705, the term "Approval" and "initiate" have been defined as under:-

Approval : The act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another.

"Approval" implies knowledge and exercise of discretion after knowledge.

Initiate: Commence; Start; originate; introduce; inchoate.

Viewed in the light of the above meanings of the words 'approval' and 'initiate', as used in the

aforesaid letter, we are of the opinion that there is sufficient authorisation, to meet the requirement, in terms of Rule 14(2) of the CCS (CCA) Rules, 1965. AIR 1966 MP 1997; cited by the learned counsel for the applicant, to our mind, does not help the applicant's case, as, in appeal against the said judgement, Hon'ble Supreme Court, in 1970 (1) Supreme Court Cases 108, ^{/vide head note and} paragraphs 6 & 10, inter-alia held;

"Article 311 (1) does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry proceeding of the dismissal or removal of the officer or even that that enquiry should be done at its instance. But for the incorporation of Article 311(1) in the Constitution even in respect of matters provided therein rules could have been framed under Article 309. The provisions of Article 311 confer additional rights on the Civil servants. It is not possible to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in the Article."

9. Further, in the presence of the aforesaid authorisation by the President of India, in favour of Chief Secretary, Delhi Administration, we are of the view that the other citation referred to by the learned counsel

for the applicant (ATR 1986(2) CAT), also does not help the applicant's case. As a result of the foregoing discussion, while accepting the contention with regard to the item mentioned at 1(i) above, we quash the impugned order No.140333/17/81-UTS dt. 30.4.1986. The respondents will, however, be not precluded to start the proceedings, if so advised, by supplying a copy of the report of the Enquiry Officer, to the applicant. Needless to say that since sufficient time has already elapsed in this case, in case the respondents choose to proceed further, in accordance with this order, they shall accomplish all action in this respect, within a period of six months from the receipt of a copy of this order. We make no orders as to costs.

Cicm
23/4/91
(P.C. JAIN)
MEMBER(A)

Obere
23.4.91
(T.S. OBEROI)
MEMBER(J)

/vv/