

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 433/87.

DATE OF DECISION: 1.8.1990

V.K. Bassi.

... Applicant.

Versus

Union of India

... Respondent.

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

The Hon'ble Mr. I.K. Rasgotra, Member(A).

For the Applicant.

... Shri Sant Singh, Counsel.

For the Respondents.

... Shri P.H. Ramchandani,
Sr. Counsel along with
Shri A.K. Behra, Counsel.

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

The applicant, Shri V.K. Bassi, was awarded the penalty of removal from service by an order dated 20.2.1986 passed by Controller of Defence Accounts at Chandigarh. The applicant's appeal was rejected by the Controller General of Defence Accounts at New Delhi. The applicant's plea is that the order of removal is bad in law, as he was not afforded full opportunity to defend himself, the procedure adopted by the Inquiry Officer was contrary to the CCS(CCA) Rules, there was no specific rule to impose the punishment of removal from service, the appellate order is not a speaking order and there was no "wilful absence from duty" on behalf of the applicant.

The respondents had taken the plea that the entire proceedings were in accordance with the rules. The applicant was afforded full opportunity to contest the matter. The applicant was absent from duty. He neither reported for duty nor submitted any information. He had absented himself

2

unauthorisedly from 1.4.83 to 11.8.83, 16.8.83 to 13.12.83 and further from 19.12.83 onwards. He had disobeyed the orders of the superiors. The applicant wished to appoint Shri A.K. Suri, Auditor of LAO, Jhansi, as his defence assistant. The applicant at that time was posted at Chandigarh and the inquiry was also conducted at the same station, he was advised to appoint defence assistant from any offices situated at Chandigarh. The applicant was given an ample opportunity to defend his case and when he did not attend the inquiry (except ^{on} two dates), the Inquiry Officer concluded the inquiry ex-parte. Both the penalty order and the appellate order were valid and did not suffer from any error of law. At the time of the arguments, learned counsel for the respondents took a plea that the O.A. was premature as the applicant had not exhausted all the remedies. He cited the provisions of Section 29 of the CCS(CCA) Rules, 1965. This plea has not been taken in the reply of the respondents, but has been raised in the arguments. The provision of Section 20 of the Administrative Tribunals Act refers to any appeal preferred or representation made by such person. Admittedly, the applicant had availed of the remedy of appeal and had come only after its disposal.

What is provided in sub-section(1) of Section 20 of the Act is that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. (See the Full Bench decision of the Tribunal in B. Parmeshwara Rao Vs. The Divisional Engineer,

8

Telecommunications, Eluru and another in O.A. No. 27 of 1990 (Hyderabad Bench) delivered at Hyderabad on 12.4.1990). The Full Bench held that the Tribunal has power to entertain the O.A. even before the exhaustion of the remedy, but normally will not do so.

In the present case, it may also be mentioned that Section 29 of the CCS(CCA) Rules has no application since the applicant had preferred an appeal from the order of the disciplinary authority. It only lies in a case where no appeal is preferred/^{when appeal is allowed} or no appeal is allowed under the Rules. (See. C. Ravindranathan Vs. Union of India, 1988(3) SLJ, 295).

The principal question in this Application is that the applicant was not allowed to have a particular Govt. servant of choice as his/defence assistant in the enquiry proceedings and this has deprived him of an opportunity to contest the disciplinary proceedings. Reference has been made to an O.M. contained in the G.I. Dept. of Per. & Training. No. 11012/3/86-Est.(A), dated the 29th April, 1986. This inter alia provides that the Government servant may take the assistance of any other Government servant posted at any other station on being permitted by the Inquiry Authority to do so. It does not totally prohibit having a Defence Assistant from any station other than the headquarters of the charged Government servant or the place of inquiry. It is open to the Inquiring Officer to permit the appointment of a Defence Assistant from any other station, having regard to the circumstances of the case. The O.M. also

2

9

provides that the Government servant should be allowed to make a representation to the Disciplinary Authority if the Inquiring Authority rejects a request for permission to take a defence assistant from a place other than the headquarters of the charged Government servant or the place of inquiry. Accordingly, in all cases where the Inquiring Authority rejects the request of the charged Government servant for engaging a defence assistant, from any station other than the headquarters of such Government servant or the place where the inquiry is conducted, it should record its reasons in writing and communicate the same to the charged Government servant to enable him to make a representation against the order, if he so desires, to the disciplinary authority. On receipt of the representation from the charged Government servant, the disciplinary authority, after applying its mind to all the relevant facts and circumstances of the case, shall pass a well-reasoned order either upholding the orders passed by the Inquiring Authority or acceding to the request made by the charged employee. Since such an order of the disciplinary authority will be in the nature of a step-in-aid of the inquiry no appeal shall lie against that order.

It may be stated here that the O.M. was issued by the Department of Personnel & Training after the inquiry proceedings were over. The O.M. cannot have any retrospective effect

2

d.

10

and as such it cannot be said that the Inquiry Officer erred in not following the guidelines contained in O.M. dated 29.4.1986.

Shri V.K. Bassi insisted to produce documents/evidences in his defence only through his defence assistant and desired any date for next appearance in the month of January, 1985.

Accordingly, he was advised to have any other Govt. servant for his defence assistant from any of the offices located at Chandigarh. The Inquiry Officer fixed 4th January, 1985 and thereafter on 6.2.85, 11.3.85, 25.3.85, 8.4.85, 18.4.85, 30.4.85, 27.5.85 and 12.6.85. Shri Bassi, however, did not attend inquiry after 17.12.84 in spite of numerous opportunities. The Inquiry Officer concluded his inquiry on 12.6.85. The Disciplinary Authority passed the order of removal from service on 20.2.1986.

Learned counsel for the applicant cited the decision of the Madras Bench in C. Ravindranathan (Supra). It was held in the above case that when a Government servant asks for defence assistance of an officer, who is posted at stations other than where he is posted "held to provide a defence assistant is a very valuable right of delinquent and not to allow the same is denial of reasonable opportunity". The Division Bench observed that in the absence of a defence assistant, the applicant was not in a position to cross examine the several witnesses in the course of the inquiry. It is needless to highlight that as a result thereof, prejudice has been caused to the applicant. The Division Bench, however, concluded that in the circumstances the penalty cannot be sustained.

2. We may now refer to the proviso to Rule 14(8)(a), which speaks differently. The proviso reads as follows :-

11

"the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits".

It is well settled that the Statutory Rules would prevail ^{neither} and ~~the~~ Government instructions nor the D.M. will over-ride ~~xxxx~~ the Statutory Rules. Rule 14(8)(a) proviso makes it clear that whenever the Government servant requires the assistance of another Government servant, who is not posted at the place of an inquiry, he may apply to the Inquiry Officer for obtaining permission to appoint defence assistant. Inquiry Officer, having regard to the circumstances of the case, and for reasons to be recorded in writing, may so permit. This means that reasons have to be recorded only when he has to be permitted to have a defence assistant, who is not posted at headquarters or at a place where the inquiry has been held. The proviso does not require the reasons to be given when the application is rejected. We, therefore, do not find anything in the rules to warrant that the reasons have to be recorded whenever he is not permitted. It is also not necessary for the Inquiry Officer to state the reasons or give opportunity to the applicant to approach the higher authorities. The normal rule, therefore, was that a Government servant who was from a station apart from the headquarters or the place where the inquiry was being held, may not ~~be~~^{as} be permitted to assist the charged Government servant. In other words, the permission is required to be sought whenever such a defence assistance is from the stations other than the headquarters or the place

h

where the inquiry is held. In such a case, it is incumbent on the Inquiry Officer to state the reasons.

In the case of C. Ravindranathan (Supra), the Division Bench has referred to the Rule 14(8)(a) proviso and also the O.M. issued by the Department of Personnel. The O.M., as noticed above, is not in consonance with the proviso of sub-rule(8) of Rule 14 of the CCS(CCA) Rules. It was urged that this is a valuable right which accrues to the applicant to get himself defended by a person of his choice. In our opinion, the charged Government servant has been allowed to bring a person either from the headquarters or the place where the inquiry is pending. But he has no such right to have a person of his choice from another station apart from the above mentioned two places. It was upon the discretion of the Inquiry Officer to permit him to appoint defence assistant other than the headquarters or the place where the inquiry is pending. He may or may not have a person of his choice from any out station, but he is not precluded to have a person of his choice from the headquarters or from the place where the inquiry is pending. His right to have a person of his choice from the place where the inquiry was pending, was not denied. He need not seek permission to appoint a defence assistant from the same station or from the headquarters. He was only required to give the name of a defence assistant. But if he seeks assistance of a Government servant from anywhere else he has to apply and take the permission of the Inquiry Officer. The Inquiry Officer considering the circumstances may or may not allow the prayer. In case he allows, he will have to write an

22

13

order giving reasons. He is under no such obligation when he refuses. The instructions of the Government in C.M. run counter to this. It is well settled that the instructions cannot override the Rules. The Supreme Court in the case of Shri Bindeshwari Ram Vs. The State of Bihar and Others, 1990(1)A.I.S.L.J., page 82, laid down:

"It is settled law that the provisions of statutory rules cannot be modified or altered by executive instructions and it is only in the absence of statutory rules that executive instructions have relevance".

Consequently, the executive instructions viz., the C.M. dated 29.4.1986 cannot prevail over the statutory rules contained in Rule 14(8).

We have considered the matter in depth. We are of the view that the facts of this case are different from the facts of the case of C. Ravindranathan (Supra). In Ravindranathan's case there was no suitable person available as defence assistant at Chelari, his headquarter and at Tirur, the place where the enquiry was to be held. The applicant had, therefore, given a panel of five names with the request that one of the five may be approved to present his case. All the five government servants so nominated were posted at nearby stations, one of them being at Cannanore, where one of the sittings of the enquiry was held for inspection of documents. Thus Cannanore the station where the first preference of the applicant for appointment as defence assistant was posted was also the place of enquiry, besides Chelari and Tirur. These circumstances do not obtain in the case before us. As such the decision in C. Ravindranathan's case will not be applicable here.

In the first place, the applicant was given enough opportunity

14

to
to participate in the disciplinary proceedings. He chose to abstain. He asked for defence assistant from a place which was neither the place of inquiry nor his headquarters. It was within the discretion of the Inquiry Officer to allow it or not. He had a right to take a defence assistance from where he was posted or from his headquarters. This right was not denied to him. He had asked for a date in the month of January, 1985 and the 4th January, 1985 was fixed. Ultimately, the Inquiry Officer had to proceed ex-parte and gave his opinion. The writing of a reasoned order declining to grant permission to have a defence assistant from a station other than the headquarters and the place where the inquiry was held, is not required under Rule 14(8) of the CCS(CC&A) Rules. Further, the O.M. was not even issued till after the disciplinary order was passed. Consequently, the Inquiry Officer made no mistake. As a matter of fact, the Inquiry Officer had not disallowed a defence assistant to him. The applicant could still choose someone from Chandigarh. He did not choose anyone and he kept away from the Inquiry. He did not make any representation to the disciplinary authority in this regard. When the disciplinary authority passed an order on 20.2.1986, the O.M. had not been issued. Consequently, the disciplinary authority also did not make any mistake.

The Appellate Authority has given a reasoned order. It cannot be termed to be a non-speaking order.

We are satisfied that there is no denial of justice in this case. The applicant on his own volition did not appear before the Inquiry Officer and abstained for reasons best known

15

to him. In such a case, it is not possible to set aside the order of removal from service.

In the result, therefore, the O.A. fails and is accordingly dismissed. There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 1/8/90

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN

SRD

Pronounced by me in open Court.

I.K. Rasgotra
1/8/1990