

Central Administrative Tribunal
Principal Bench, Delhi.



O.A. No. 614 of 1987

Date of decision: 1.6.90

Dr. Hari Dev Goyal

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri B.R. Sharma, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

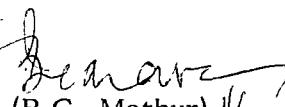
CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgement of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

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


(B.C. Mathur) 16
Vice-Chairman


(Amitav Banerji)
Chairman

15

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Dr. H.D. Goyal, Senior Research Officer, Planning Commission, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against impugned order No. 109/5/84-AVD-1/IES dated 28th May, 1986, passed by the Department of Economic Affairs imposing a penalty of censure on the applicant without sufficient and good reasons by the disciplinary authority and denial of justice by non-disposal of Review Petition dated 10.7.1986 and subsequent denial of promotion to the post of Joint Director/Director.

2. The applicant is an officer of the Indian Economic Service and was working on deputation with Chandigarh Administration as General Manager, District Industries Centre, from 29.9.79/13.11.79 to 2.3.1981. During the said period, the applicant was required to exercise authority of allocation of quota to various industrial units in respect of the controlled commodities on the basis of assessment of installed capacity of the industrial unit. Such assessment was made by the Small Industries Service Institute, Ludhiana. The applicant was served with a show cause notice on 9th April, 1984, containing two Articles of Charge (Annexure). The statement of Articles of Charge are as follows:

Article I

Shri Hari Dev Goyal, while functioning as General Manager, District Industries Centre, Industries Department, Chandigarh Administration during the period from 29.9.79 (FN)/13.11.79 (AN) to 2nd March, 1981, in utter disregard of the prescribed procedure and of his own, revised Assessment Certificate No. IS/Steel/Assessment/10-16781 dated 1.9.80 issued under his own letter No. 6781-82 dated 1.9.80 for 123.3 MTs of iron and steel, recommended 252.60 MTs of Iron/Steel including Pig Iron in favour of M/s Ess Pee Industries, Chandigarh and also recommended the release of 76 MTs of Hard Coke knowing well that the firm did not have the capacity to use/consume the said quantity of Iron/Steel and Hard Coke and thereby caused the misuse of the above said scarce raw material and consequent undue favour and pecuniary benefit to the firm.

2. Shri Hari Dev Goyal, by his above act, failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Government servant and this contravened Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article II

Shri Hari Dev Goyal, while functioning as above, during the above mentioned period, in utter disregard of Government of India's instructions and prescribed procedure ordered for the permanent registration of firm M/s Laxmi Industries, Chandigarh as Small Scale Unit for the manufacture of Wire drawing of Gauge below 18 SWG which was a banned item and also issued an Assessment Certificate under memo dated 8.5.1980 for the release of 121 MTs of Iron/Steel and thereby caused undue favour and pecuniary benefit to the above firm.

2. Shri Hari Dev Goyal, by his above act, failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Government servant and thus contravened Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

3. The applicant denied the allegations made against him and the same were inquired into by the Inquiry Officer of the Central Vigilance Commission, New Delhi. According to the applicant, the file in which deliberations leading to the recommendation of the quota by the applicant were recorded was not produced by the Presenting Officer as the same was alleged to be not traceable. On the basis of the material before the Commissioner for Departmental Inquiries, he submitted his report on 31st January, 1985, and recommending the following findings in respect of two articles of charge.

Findings

Article I The main part of this Article of charge is proved except that Shri Goyal did not recommend the issue of Pig Iron and Hard Coke to M/s ESSPEE INDUSTRIES.

Article II The charge is not proved but his carelessness, in examining the facts of the case before taking final action is discernible.

4. The proceedings of the inquiry were referred to the UPSC for opinion. The UPSC held that the first Act of charge against the applicant was established to the extent that he recommended 252.60 MT of Iron/Steel to M/s Esspee Industries when the assessment certificate was for 123.3 MTs. The Commission observed that there was no evidence to show that the applicant failed to maintain absolute integrity, but it held that the second aspect of charge under Art.-I viz. that hard coke was issued to M/s Esspee Industries has not been established. On the charge under Article II, the Commission summed the facts as follows:

- (1) M/s Luxmi Industries were registered provisionally not by Shri Goyal but his predecessor.
- (2) M/s Luxmi Industries were asked to produce records to verify the particulars given in their application by DIC, Chandigarh regarding the assessment of iron and steel at 121 MTs, but the firm did not submit the records. Instead they requested for permanent registration.
- (3) Shri Goyal himself later went through the ledgers and bills to satisfy himself that the firm purchased the machinery which was remaining idle.
- (4) It is only then that Shri Goyal issued orders for the issue of permanent registration certificate.
- (5) Had Shri Goyal been more vigilant, he could have discovered that M/s. Luxmi Industries was wrongly registered by his predecessor.
- (6) The Inquiry Officer has drawn attention to the fact that seven industrial units were registered by the Industries Department after the ban for drawing wire thinner than 18 SWG was passed. The industrial units were wrongly assessed as the circular could not be clearly understood regarding the gauge of the wire to be manufactured. In fact the Inquiry Officer felt that the word 'thinner' seemed to have been used whereas the word should have been 'thicker'. No body was clear regarding the gauge of the wire and the result was that the industrial units came to be registered for thicker gauges. Issue of large quantity of iron/steel was a natural consequence of the fact that the wire to be drawn was thicker.
- (7) Ultimately it was the Home Secretary who allowed the supply of iron/steel material on the basis of the earlier assessed capacity.

5. The U.P.S.C. observed taking into account the various factors, the benefit of doubt should be given to the applicant, but recommended the imposition of penalty of censure. The case of the applicant is that the penalty of censure imposed on him is not justified as the first charge was held not established and no motive stands attributed to the applicant for his decision taken in his official capacity. He said that the charge of lack of integrity was not established at all and the disciplinary authority while issuing the order of punishment failed to state whether it agreed with the findings of the Inquiry Officer and did not give reasons for imposing the penalty of censure. It has been argued on behalf of the applicant that he had asked for the concerned file in which he had recommended quota of steel to be given to the firm and it was a vital document inasmuch as he could ^{not} remember the circumstances under which the orders were passed as the charges related to a period 4 years earlier and he had already left the Chandigarh Administration by then. It is also argued that the disciplinary authority did not follow Rule 15(1) of the C.C.S. (CCA) Rules indicating what charges were actually proved against him and the reasons for the same.

6. The respondents in their reply have stated that SISI, Ludhiana, had issued a letter dated 18.8.1980 wherein it was specifically stated that the previous assessment of the industry at 252.60 MTs was to be cancelled and the applicant had knowledge of the above communication and he had conveyed it to the firm and thereafter suo moto recommended revised allocation of more than double the quantity to Shri S.P. Sharma, the then Director, Industry and MD, CSIDC. It is stated that the non-availability of the file concerning provisional recommendation of the quota was not found to be material both by the Inquiry Officer and the UPSC and this aspect was duly considered before confirmation of the penalty by the disciplinary authority also. The respondents have refuted that the first charge was held as not established by the Enquiry Officer and the UPSC. The Inquiry Officer in his findings relating to the

first charge has held that the hasty action on the part of the applicant without waiting to know the outcome of firm's representation shows that he has gone out of the way to some extent and as such the findings of the Inquiry officer on the main part of Article 1 is proved except that it was established that the applicant did not recommend the issue of pig iron and hard coke to M/s Esspee Industries although attempts on the part of the applicant to get the releases of hard coke in favour of the firm are clear from the notings marked Ex. S-19 of the report. The respondents have stated that the UPSC have also held that the first charge against the applicant is established to the extent that he had recommended 252.60 MTs of iron steel to M/s Esspee Industries of the S.I.S.I when the recommendation was for 123.3 MTs. The Commission's observations regarding there being no evidence to show that the applicant failed to maintain absolute integrity appears to stem from the observations of the Enquiry Officer in his report that the actual release generally was in a phased manner, and the Department did not produce any evidence to show that the entire quota of 252.60 MTs was actually released nor was any evidence produced to show the difference between the controlled price and the market price to show accrual of likely pecuniary benefit to the firm.

7. The learned counsel for the applicant laid great emphasis on the fact that none of the charges against the applicant have actually been proved. The U.P.S.C. in their recommendation on Article 1 have observed that there has been no evidence to show that the applicant had caused undue favour and pecuniary benefit to the firm. Thus in the view of the Commission, the charge that the applicant failed to maintain absolute integrity cannot be proved with reference to the first article of charge. The Commission only held that the charge was proved inasmuch as the applicant recommended 252.6 MTs of iron and steel when this assessment had been earlier cancelled under his own letter.

8. Regarding the Article II, the Commission had noted that the temporary registration of Industrial Unit for the manufacture of a banned item had already taken place before the applicant took over as General Manager of District Industries Centre, Chandigarh. In the view of the Commission, the applicant only continued to register a firm which was wrongly registered in the first place, though he could have rectified the mistake if he had been more vigilant. The Commission have themselves given the benefit of doubt to the applicant on Article II of the charges but felt that the ends of justice would be met if the penalty of censure is imposed on the applicant.

9. The learned counsel for the applicant also pointed out that the disciplinary authority has not recorded that it accepted the findings of the Enquiry Officer and no mention has been made as to what the applicant is guilty of. It was the duty of the disciplinary authority to record whether the charges were proved and should have passed a self-contained speaking and reasoned orders. The review application is also disposed of without giving any reasons. Censure is a punishment and a person has a right to know what he is guilty of. It was also mentioned by the counsel that because of censure the applicant could not go abroad. He said that no pecuniary loss to Government has been established nor any pecuniary benefit has been established in favour of the firm, M/s Ess Pee Industries. Nothing has been established that the applicant failed to maintain absolute integrity or devotion to duty and exhibited conduct unbecoming of a Government servant, the question of establishment of such a charge cannot be sustained. The applicant was seriously handicapped by non-availability of the concerned file as he would like to go into the circumstances under which he recommended allotment of 252.60 MTs to the firm, but the same was not made available to him.

10. The learned counsel for the respondents said that the non-production of the file has not been pleaded in the application and it is only in the rejoinder. During the enquiry also, the applicant did not ask for the file although the applicant mentioned that

during enquiry he was charged that he had himself taken away the file to Mussoorie which he denied.

11. We have gone through the pleadings and given careful consideration to the arguments on both sides. We note that the charge of lack of integrity or devotion to duty has not been established against the applicant. We also note that there is no evidence to show whether the quota of 252.60 MTs was released in favour of the firm or not, or whether any pecuniary advantage accrued to the industry concerned. At best the charge is that the applicant did not give enough time to SISI, Ludhiana, to consider the representation of M/s Ess Pee Industries so as to finalise the new assessment report but a month later he recommended the issue of the higher quantity in favour of the firm. Here also, it is not the case of the respondents that the releasing authority was misguided by the applicant. The applicant who was the General Manager of the District Industries Centre had recommended a higher capacity to the S.I.S.I. and in such circumstances it would be natural that he would recommend that capacity to his superior authority. It has not been brought out whether he had concealed the fact that the earlier capacity had been reduced or that he had not recommended the restoration of the capacity of the firm to 252.60 MTs. We feel that the disciplinary authority has not fully applied its mind to various aspects and has just accepted the advice of the U.P.S.C. It has not been stated by the disciplinary authority that it accepts the findings of the Enquiring Officer and has not given any reasons in support of his findings as required under Rule 15(1) of the CCS (CCA) Rules which requires that a self-contained speaking and reasoned order should be passed by the disciplinary/appellate/reviewing authorities. We also feel that the applicant has been handicapped by the non-production of the concerned file and it would be normal for him to ask for such papers to refresh his memory specially as he had left that office 4 years earlier. When the integrity and devotion to duty of the applicant has not been questioned, which is the basic charge in this case, any punishment without a proper speaking order, in our opinion, cannot be sustained.

In the circumstances, we allow the application and order that the impugned order of punishment of censure against the applicant be quashed. There will be no orders as to costs.

B.C. Mathur
1.6.90

(B.C. Mathur)
Vice-Chairman

AB
1.6.90

(Amitav Banerji)
Chairman