

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1227/87
T.A. No.

198

DATE OF DECISION 30.11.90

Udai Bir Singh, Petitioner

Union of India & Ors. Advocate for the Petitioner(s)

Versus

Dr. D.C. Vohra, Respondent

Shri M.L. Verma, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

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 it needs to be circulated to other Benches of the Tribunal? *Yes*

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (Judl.)

P.C. Jain
(P.C. Jain)
Member (Admn.)

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Central Administrative Tribunal
Principal Bench: New Delhi.
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Regn.No.OA-1227/87

Date of Decision: 30.11.90

Shri Udai Bir Singh

.... Applicant.

Vs.

Union of India & Ors.

.... Respondents

For the applicant

.... Dr. D.C.Vohra,
Advocate.

For the respondents

.... Shri N.S.Mehta,
Advocate

CORAM: Hon'ble Shri P.C.Jain, Member (Administrative)
Hon'ble Shri J.P. Sharma, Member (Judicial)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant, who was earlier posted as Binder Grade II, Government of India Press, Faridabad, Haryana, filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 30.7.1987 passed by the Manager, Government of India Faridabad Press, /respondent No.2.

2. The applicant claimed the following reliefs:

1) That the respondent No.2's order No.Vig./11/81-409 dated 30.7.1987 imposing penalty of compulsory retirement from service may be set aside and the applicant may be deemed to have continued in service and ^{be} given consequential benefits of pay and allowances as if this order was not issued.

2) That the order No.Vig/12/87/323 dated 2.7.1987 placing the applicant under suspension be declared void as no disciplinary proceedings were contemplated against him on the date of issue of this order.

3. The applicant has also claimed as relief No.1 for certain amount given in para 9(i) a, b and c ^{of the OA} but at the time of arguments this relief No.1 has not been pressed.

4. The facts of the case are that the applicant, who was Binder Grade II in Government of India Press, Faridabad, was

suspended on 4.9.1981 and was subsequently charge-sheeted and a penalty of compulsory retirement from service was imposed upon him vide order dated 16.2.1982. This penalty was ultimately quashed by the Central Administrative Tribunal, Principal Bench, New Delhi by order dated 30.9.1986. As a result of this, the contention of the applicant is that the respondents became vindictive and did not allow him to join duty immediately and was reinstated only after about four months of the Tribunal's order. On the reinstatement of the applicant in 1987, respondent No.2 issued an order of the applicant's compulsory retirement from service vide order dated 30.7.87 on the basis of an earlier enquiry report which was said to have been suspended in 1981 and now revived after his re-instatement. The said enquiry could not have been revived under CCS(CCA) Rules, 1965. It is further stated that the order of suspension issued on 2.7.1987 was both factually and legally wrong as no disciplinary proceedings have been contemplated or initiated against the applicant on the date of issue of the order. Further, it is also stated that on the Enquiry Report, on which the impugned order was passed, no action was taken for a period of over six years and as such, these proceedings have lapsed automatically. There is no statutory provision in law to suspend and then revive such proceedings and that too without a proper notice. It is further stated that while passing the impugned order of punishment the events which occurred after the conclusion of the disciplinary proceedings were also taken into account. The applicant has also attacked the manner in which the enquiry was conducted; ^{e.g.} non-supply of the statements of State witnesses; denial of the ^{opportunity to} inspect documents enlisted in the charge-sheet. It is further stated that the applicant was not allowed to produce the material defence witnesses, namely, Shri Shanti ^{Swaroop} and Kisnan Singh and the Enquiry Officer

closed the case with a pre-determined view not to allow any evidence which proved his innocence.

5. The respondents filed their reply denying various contentions raised in the application and took a preliminary objection that the applicant did not prefer any appeal under CCS(CCA) Rules, 1965 against the impugned order dated 30.7.1987 to the Appellate Authority before filing the present application in the Tribunal. The application is, therefore, barred by section 20 of the Administrative Tribunals Act, 1985. It is stated that the impugned order has been passed on the basis of Enquiry Report and that has no relevancy to the previous case in which the applicant was compulsorily retired and subsequently that order was quashed by the order of the Tribunal on 30.12.86. In fact, according to the respondents, there was another charge-sheet No. Vig. 11/81-409 / dated 19.2.81 on which the enquiry was conducted against the applicant under Rule 14 of the CCS(CCA) Rules, 1965 and the report of the Enquiry Officer was received but since the applicant was already punished by the order dated 16.2.1982 in Charge-sheet No. Vig. 59/81/671 dated 4.9.1981 so no orders were passed by the Disciplinary authority on the report of the Enquiry Officer on the charge-sheet No. Vig-11/81-409. After the reinstatement of the applicant on 2.7.1987, the applicant was again found in a drunken state and he was suspended under Rule 10(1) of CCS(CCA) Rules, 1965 and another enquiry Vig./12/87/323 dated 2.7.1987 was contemplated against him. However, subsequently, the disciplinary authority revived the enquiry already conducted and completed against the applicant on the charge-sheet No. Vig./11/81-409 and passed the impugned order. It is stated by the respondents that it was ^{not} necessary to intimate the applicant regarding suspension of the enquiry and issue show cause notice to the delinquent government servant as per provision contained in Rule 15(4) of the

CCS(CCA) Rules, 1965. As per decision No.8 of the Government of India under Rule 15 of the CCS(CCA) Rules, 1965, a closed enquiry against a delinquent Government Servant can be revived if the applicant is reinstated in appeal in another case in which the punishment of dismissal or removal from service was passed. The application has no force and is liable to be dismissed.

6. It is stated by the respondents that the applicant was given full opportunity to examine the listed documents and a Defence Assistant was also provided and the statement of witnesses were also given to the applicant. The applicant was given full opportunity to defend his case. His request for examining the defence witnesses was accepted by the Enquiry Officer but the applicant himself did not produce any defence witness, as thereafter the applicant did not attend the enquiry proceedings despite issue of repeated notices by the Enquiry Officer.

7. We have heard the learned counsel for the parties at length and have gone through the record of the case. The contention of the learned counsel for the applicant is that there were three enquiries against the applicant, one was initiated on 5.2.1981 when the applicant was suspended and a charge-sheet was issued on 19.2.1981, Vig.11/81 with the charge that he appeared in the state of intoxication on 4.2.1981 in the Canteen. The Enquiry Officer submitted the report to the disciplinary authority on 18.9.1981. Before any order could be passed on this by the disciplinary authority the applicant was charge-sheeted in another incident having appeared on 4.9.1981 in a state of intoxication in Binding Section. Since, in this charge-sheet, Vig./59/81, the applicant was compulsorily retired by the order dated 16.2.82 and the enquiry was dispensed with by the disciplinary authority because applicant's submission were taken to be admission of

charges. The applicant assailed the order in Writ Petition 435 of 1984 before the Delhi High Court which stood transferred to the Central Administrative Tribunal and registered as TA-27 of 1985. This Transferred Application was allowed by the judgement dated 16.2.1987 and the order of punishment of compulsory retirement passed on 30.9.1986 against the applicant was quashed. The applicant was reinstated in service on 2nd January, 1987. However, the applicant was again suspended on 2.7.1987 under Section 10(1) of the CCS(CCA) Rules, 1965 because of another disciplinary proceedings proposed against him. Instead of proceeding in another enquiry, the disciplinary authority, reviving the enquiry proceedings, submitted by the Enquiry Officer on 18.9.1981 of the charge-sheet Vig./11/81, passed the impugned order. The learned counsel for the applicant has referred to a number of authorities that the enquiry could not have been revived after a lapse of six years and also pointed out that the mention of Government of India's decision No.5 in the impugned order is wrong, probably, it relates to decision No.8. The decision No.5 of the Government of India under Rule 15 of the CCS(CCA) Rules, 1965 refers to cessation of disciplinary proceedings on death and decision No.8 refers to the disciplinary proceedings/against an employee who has been dismissed or removed from service in another disciplinary case, will stand suspended. These proceedings can be revived, if and when the official is reinstated in service on appeal. The learned counsel pointed out that in the present case the applicant was ordered to be reinstated by the order of the Tribunal in TA-27/85 dated 30.9.1986 and not by way of an appeal against the order passed by the disciplinary authority and further the order passed by the disciplinary authority was neither dismissal nor removal but was compulsory retirement from service and so the decision No.8 cannot be applied in the present case. However, compulsory retirement is a punishment analogous to removal from service

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because the official is asked not to do work and is given pensionary benefits and same is the case of removal where a person can seek reemployment and may also be compensated with certain retirement benefits. The respondents, therefore, have not committed any illegality and irregularity in reviving the proceedings of Vig./11/81 after the punishment ^{in case} of Vig./59/81 was quashed by the Tribunal by its order dated 30.9.1986 in TA-27/1985. Another aspect of the matter is that under Rule 15, no time limit is prescribed for the disciplinary authority to pass an order of punishment but, ~~xx xxx xxxxx xxxxx xxxxx~~ ~~xx xxxxx~~ such an order by the disciplinary authority should be passed within a reasonable time. The facts will reveal that when the Enquiry report was submitted in Vig./11/81 by the Enquiry Officer on 18.9.1981, the applicant already stood charge-sheeted in another act of intoxication on 4.9.1981. Before any punishment order could be passed by the disciplinary authority on the enquiry report submitted in Vig./59/81, the order of compulsory retirement was passed on 16.2.1982 and so it was not at all necessary to pass another order in Vig./11/81 and the enquiry report remained pending with the respondents. When an official has been ordered to retire pre-maturely as a punishment then no other order could be passed as the said official ceased to be in the service of the respondents.

8. The learned counsel for the applicant has referred to the case of Shri B.K.Mishra Vs. Union of India, ATR 1988(1)CAT page 454. The Principal Bench in this very case held that delay per se is not fatal in starting disciplinary proceedings against the delinquent official but the delay so caused in initiating the proceedings should be explained in a reasonable manner. The learned counsel

further referred to the case of N.N.Reddy Vs. Government of Andhra Pradesh, ATR 1987(2) CAT Hyderabad 429. In this reported case, the Enquiry Officer was appointed 17 months after the applicant had already retired and there was an inordinate/unexplained delay in initiation of departmental proceeding. Further reliance has been placed on ATR 1989(1) CAT page 402, P.L.Khandelwal Vs. Union of India. In this case also there was no material placed on record to justify delay in initiating the proceedings against the delinquent official, so, on account of delay, the order was quashed. The learned counsel further relied on ATR 1989(2) CAT Hyderabad 225, M.L. Sharma Vs. Chief Mining Adviser. In this case also the delinquent official was proceeded against a charge of the year 1963 and the enquiry was commenced after 36 years which was wholly unjustified. The other authorities cited by the learned counsel for the applicant are, ATC 1989(9) CAT Ahmedabad page 500, M.N.Qureshi Vs. Union of India and ATC 1989(9) CAT Madras 883, Dina Karan Vs. Union of India. In both these cases, there was unexplained delay in initiating the proceedings against the delinquent official. Thus, the authorities cited by the learned counsel for the applicant, do not at all apply to the facts and circumstances of the present case. In the present case, there was already an Enquiry Officers's report which was submitted on 18.9.81, but the disciplinary authority was already seized with a subsequent enquiry report against the applicant in which the order of compulsory retirement was passed in February, 1982 and against that the applicant had gone, after exhausting the regular procedure, to the Hon'ble High Court from where the case ^{stood} transferred to the Tribunal and was disposed of in September, 1985 and the order of compulsory retirement was quashed. It was only after this, that the applicant committed another ^{alleged} third act of intoxication and he was suspended again in July, 1987 under Section 10(1) of the

CCS(CCA) Rules, 1965 because of a proposed disciplinary proceedings against him in Vig.12/87. However, at this stage, the disciplinary authority took out the suspended enquiry report against the official under decision No.8 under rule 15 of the CCS(CCA) Rules, 1965 and passed the impugned order. Thus, there is no delay in this respect.

9. The learned counsel for the applicant has further pointed out that while passing the impugned order, the subsequent conduct of the applicant was also taken into account. In this connection, the reliance has been placed on Satish Kumar Sharma Vs. Punjab State Electricity Board, SLJ 1990(1) P & H 33 and State of Punjab Vs. Manphul Singh, SLR 1986(1) P&H 484. However, the facts of both these cases are totally different. In the case of Satish Kumar Sharma, the petitioner was charged with major penalty and the Enquiry Officer did not find him guilty. The disciplinary authority disagreed and took into consideration the event/^{sub}sequent to the charge sheet without putting the petitioner on notice and stopped his two increments. In the case of State of Punjab Vs. Manphul Singh (Supra), under Punjab Civil Services (punishment and appeal) Rules, 1976, departmental proceedings were initiated for inflicting major penalty but the minor ^{the procedure prescribed} penalty was imposed without following/_{for} major penalty. Thus, both these cases do not apply at all, on their own facts, to the present case. In the present case, the impugned order in para 5 clearly shows: "As per findings of the Enquiry Officer the charges framed against Udaibir Singh stand proved. I agree with the findings of the Enquiry Officer's report and come to the conclusion that Shri Udaibir Singh is not a fit person to be retained in Government service.". However, to give emphasis to the above decision, one more sentence has been added by the disciplinary authority ^{that} "even after his reinstatement in service, he has not shown any improvement in his habits etc. so deserve a severe punishment like

removal/dismissal from service but taking a lenient view keeping in view the number of years of service rendered by him the undersigned is enclined to order that Shri Udaibir Singh, Binder Grade II, under suspension, be compulsorily retired from service forthwith." Thus, the subsequent conduct was not at all considered in effecting punishment on the applicant, otherwise according to the meaning of the above para of the impugned order, the applicant would have been given a more severe punishment rather than compulsory retirement from service.

10. The learned counsel for the respondents has argued that the application is not entertainable as the applicant has not exhausted the remedies of appeal etc. prescribed under CCS(CCA) Rules, 1965. He has referred to Section 20 of the Administrative Tribunals Act, 1985 which is as follows:

"20. Application not to be admitted unless other remedies exhausted: -

(1) A 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 grievance."

There is also a Full Bench Judgement of the Central Administrative Tribunal, Hyderabad Bench in OA-27/1990 Shri Parameshwara Rao Vs. Divisional Engineer Telecommunications, Eluru and Anr. decided on 12.4.1990, where it has been held that the applicant should come after exhausting the remedies or after the expiry of six months of having taken steps of statutory representation and in any other case any application so filed without exhausting remedies shall be premature. However, in the present case the application has already been admitted by the Tribunal ... so it is not necessary to enter into that controversy at this stage. The learned counsel for the applicant, however, referred to an authority in the case

of Charan Singh Vs. Union of India, ATR 1986(2)CAT 643 but as said above, it is not necessary to go deep into the matter and the application, in the interest of justice, has to be disposed of on merits.

11. The learned counsel for the applicant argued that non-supply of certain documents during the course of enquiry as well as not affording adequate opportunity for producing the defence witnesses vitiates the principles of natural justice. It has been further argued that the copy of the Enquiry Officer's report was not given even when enquiry proceedings were taken up by the disciplinary authority to pass a final order under Rule 15(4) of the CCS(CCA) Rules, 1965. Taking all these facts into consideration and in view of the case of Shri P.K.Sharma Vs. Union of India, reported in 1988(6)ATC page 904 wherein the Full Bench of this Tribunal held that non-supply of the Enquiry Officer's report vitiates the principles of natural justice, in the present case also as it has been conceded by the learned counsel for the respondents Shri N.S.Mehta, the Enquiry Officer's report was not furnished to the applicant before passing of the impugned order, the impugned order cannot stand and is liable to be quashed. The contention of the learned counsel for the respondents that till the SLP against the judgement in that case of Shri P.K.Sharma (supra) is decided by the Hon'ble Supreme Court, the matter be kept pending, shall not be in the interest of justice. So till Shri P.K.Sharma's judgement is not set aside that shall be binding on this Bench.

12. The applicant had been charged in the Vig./12/87 by virtue of another alleged act of intoxication done by the applicant on 2.7.1987 and he was also put under suspension under Section 10(1) of the CCS(CCA) Rules, 1965 and that order too has been challenged but no representation has been made against that by the applicant and since the punishment order passed on the applicant by the impugned order dated 30.7.87

is being set aside, so it shall be open to the respondents to proceed with Vig./12/87 if they so desire. It shall not, therefore, be now in the fitness of things to give any finding on the order of suspension passed on 2.7.1987 on the institution of a disciplinary proceedings by Vig./12/87. The applicant can assail those proceedings of enquiry or its result at the proper time.

12. We are, therefore, of the view that the impugned order dated 30.7.1987 is set aside not on merits but only on the ground that a copy of the Enquiry Officer's report dated 18.9.1987[✓] was not furnished to the applicant before passing the impugned order. The respondents shall re-start the proceedings within three months from the date of receipt of a copy of this order on Vig./11/81 by furnishing a copy of the Enquiry Officer's report dated 18.9.1981 to the applicant who shall have a right to represent against that, and thereafter, the Disciplinary Authority will pass the order according to law. The applicant shall be restored to the same status in service as he was on 2.7.1987, that is, shall be placed under suspension. He shall be paid subsistence allowance as per rules which shall be adjustable in the retirement benefits i.e. pension if at all paid to him subsequent to the order dated 30.7.1987. The final order for treating the period from 30.7.1987 till the conclusion of the enquiry shall be passed under ^{PR}Section 54B after the conclusion of the enquiry proceedings against him.

13. The application is disposed of accordingly with no order as to costs.

J.P. Sharma
(J.P. Sharma)
Member (Judl.)

P.C. Jain
(P.C. Jain)
Member (Admn.)