

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. Nos. (1) OA 2746/90
(2) CCP 90/90 in
OA 2120/89

Date of decision: 24.01.1992

(1) OA 2746/90

Shri Narayan Singh

...Applicant

Vs.

U.O.I. through the
Secretary, Ministry of
Defence & Others

...Respondents

(2) CCP 90/90 in
OA 2120/89

Shri Narayan Singh

...Applicant

Vs.

U.O.I. through Ministry of
Defence & Others

...Respondents

For the Applicant

...Shri S.K. Dubey,
Counsel

For the Respondents

...Shri P.P. Khurana
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporters or not? Yes

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Karth
Vice Chairman(J))

The applicant who retired from the post of Office Superintendent in 505 Army Base Workshop had filed OA 2120/89 which was disposed of by judgment dated 15.12.88 He had prayed that the impugned memorandum dated 14.8.1988 whereby the respondents had initiated departmental proceedings against him be quashed and for directing

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the respondents not to take proceedings pursuant to the said memorandum. He had also sought for releasing to him pensionary benefits by way of gratuity and commutation of pension along with penal interest.

2. The Article of Charge framed against him was the following:-

" That the said Shri Narain Singh, Offg. Office Supdt Gde II while functioning as Permt UDC in 505 Army Base Wksp Delhi Cantt-10 committed the following as established in the Court of Inquiry conducted by 505 Army Base Wksp during Oct 87 onwards, in which the circumstances under which Shri Narain Singh indulged himself in the activities reported by CBI vide their self contained note/report:

(a) Gross Misconduct

(b) Offences involving dishonesty

ie. he was running bogus travel agencies and were issuing false bus tickets/cash receipts for preferring LTC claims by employees of 505 Army Base Wksp, Delhi Cantt".

3. The statement of imputations of misconduct or misbehaviour in support of the Article of Charge is as follows:

" In that the said Shri Narain Singh, Offg Office Supdt Gde II while functioning as Permt UDC in 505 Army Base Wksp Delhi Cantt committed the following, as established in the Court of Inquiry conducted by 505 Army Base Wksp during Oct 87 onwards in which the circumstances under which Shri Narain Singh indulged himself in the activities reported by CBI vide their self contained note/report:-

was
(a) The said Shri Narain Singh, running bogus travel agency and issuing false bus tickets/cash receipts to the employees of 505 Army Base Wksp Delhi Cantt for preferring LTC claims by the employees of 505 Army Base Wksp.

(b) The following Govt. servants of 505 Army Base Wksp Delhi Cantt have taken tickets from the said Shri Narain Singh and preferred LTC claims based on the tickets given by the said Shri Narain Singh and give him commission:-

- (i) T/213 B VM AFV Shri Balram Dass
- (ii) T/988 B/Smith Shri Siri Ram
- (iii) T/2235 T/S Shri Navrang Ginh
- (iv) T/2599 Anr Shri Ramsaran
- (v) T/2745 Ftr Shri Nath Ram
- (vi) T/3533 B/Smith Shri Raghbir Chand"

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4. The applicant had raised the following contentions:-

(i) The impugned departmental proceedings are vitiated by bias and are arbitrary, illegal and contrary to the procedure of law and in violation of principles of natural justice.

(ii) There had been an inordinate delay for a period of 8 to 10 years for initiating the proceedings. The impugned memorandum has been issued to him on the verge of his retirement with mala fide intentions and to harass and humiliate him.

(iii) The Commandant who has issued the impugned memorandum in his capacity as the disciplinary authority is not empowered to do so. The said memorandum was also not drawn up by the competent authority.

(iv) The charges are not specific and precise but are vague.

(v) No reasonable opportunity has been given to him to put forward his defence.

(vi) Even after his retirement, the inquiry has been deliberately delayed.

(vii) Similar proceedings were initiated against two other officials for similar charges. The inquiries have been completed in those cases and only minor punishments have been awarded.

(viii) The CCS(CCA) Rules are arbitrary and ultra vires as the same does not prescribe any time limit to take action with regard to the offence as provided in the other acts, i.e., Criminal Procedure Code, Army Act and Rules etc.

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5. After going through the records of the case and hearing the learned counsel of both parties, the Tribunal came to the conclusion that there was no good ground or justification for entertaining the application at that stage. It was observed that the applicant would be entitled to urge before the Appellate Authority and Revisional Authority all his contentions which had been raised in the application. Accordingly, the application was held to be not maintainable and was dismissed at the admission stage itself with the following observations:-

* The applicant, will however, be at liberty to file a fresh application in accordance with law, after he has exhausted the remedies available to him under the relevant rules. We direct that the Disciplinary Authority should pass his orders on the inquiry, as expeditiously as possible, but in no event later than 2 months from the date of communication of a copy of this order. Thereafter, in case the applicant prefers an appeal/revision, the authority concerned should dispose of the same by passing a speaking order as expeditiously as possible, but in no event later than 3 months from the date of receipt of such appeal/revision*.

6. The applicant filed CCP 90/90 in OA 2120/90 on 22.5.90 alleging that the respondents did not comply with the aforesaid directions. He also filed the present OA 2746/90 praying for quashing the charges issued against him vide Memorandum dated 14.8.1988 and the resultant enquiry and for directing the respondents to release the pensionary benefits, i.e., gratuity and commutation of pension together with interest at 18% from 1.9.1988 till the date of payment.

7. We have gone through the records of the case carefully and have heard the learned counsel of both parties. The subject matter of the enquiry in question relates to the involvement of some employees working in the office of the

respondents in LTC scandal/issue of bogus receipts and bills and claiming/submitting fictitious bills in respect of their wards/self. Investigation by the CBI and preliminary enquiry on the basis of the CBI's report preceded the initiation of the enquiry. According to the respondents, it came to light that four agents, including the applicant, were running this type of business. Three of them attended the preliminary enquiry but the applicant did not do so. Disciplinary action was taken against the three employees who attended the preliminary enquiry and they were awarded the penalty of "Reduction of pay by one stage in the time scale of pay for a period of one year with immediate effect with future direction that they will not earn increment of pay during the period of such reduction and that on the expiry of this period the reduction will have the effect of postponing future increment of pay".

8. The alleged misconduct was committed while the applicant was functioning as permanent UDC in 505 Army Base Workshop, Delhi Cantonment. By the time the disciplinary proceedings came to be initiated, he had moved to 3 EME Centre, Bhopal, on promotion as Office Superintendent. Commandant, 3 EME Centre, Bhopal, issued the charge-sheet on him on 14.8.1988 in his capacity as the disciplinary authority. In the meantime, he retired from service on attaining the age of superannuation. It was during the pendency of the enquiry that he had filed the earlier OA No.2120/89.

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9. The various contentions urged in OA 2120/89 have been repeated in the present application. During the hearing, the learned counsel made his submissions under four broad heads, namely, (i) that the enquiry against the applicant was initiated out of ~~mala~~ fide intentions; (ii) that the charge-sheet was given by an incompetent authority; (iii) that the charges are vague; and (iv) that there had been inordinate delay which has vitiating the entire proceedings. He also argued that reasonable opportunity was not given to the applicant to defend himself in the enquiry. These contentions were refuted by the learned counsel for the respondents.

10. In our opinion, the allegation of ~~mala~~ fides has not been substantiated by the applicant. On 22.5.1984, the respondents received a note from the CBI that the ^{of his} applicant, along with three other colleagues working at 505 Army Base Workshop, Delhi Cantonment, was running a bogus travel agency and issuing false cash receipts to the employees who had submitted false LTC claims on the basis of such receipts. All these employees claimed to have travelled from Delhi to Kanyakumari and back. As many as 71 employees had made false claims and cheated the Government. The CBI had stated that a thorough investigation was likely to reveal a much bigger racket going on for the LTC claims

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in various departments of the Government (vide pages 224-225 of the paperbook). A Court of inquiry presided over by Lt. Col. P.V. Kumar was convened on 22.9.1987 by Lt. Col. S. Bhargava, who was the then officer in charge of Administration at 505 Army Base Workshop. This was done pursuant to the direction of the Army Headquarters in their letter dated 22.5.1984 that the matter be investigated and the result thereof be intimated to them.

11. It is thus borne out from the records that the Army Headquarters had taken a decision to conduct an investigation in regard to the L.T.C. racket in 1984. In view of this, ~~that~~ the allegation made by the father of the applicant of mala fides on the part of Lt. Col. S. Bhargava in his letter dated 7.7.1987 addressed to the then Defence Minister is not very convincing.

12. The contention of the applicant that the Commandant was not competent to function as the disciplinary authority is also devoid of any substance. The learned counsel for the applicant argued that in respect of Class III employees ^{the} in/office of Master General, Ordnance Branch, the Director, Electrical and Mechanical Engineering is the disciplinary authority as per Rule 12(2)(b) of the CCS(CCA) Rules, 1965 read with the schedule to the said Rules. In this context, the learned counsel for the applicant relied upon the order dated 19.3.1985 in R.S.A. 118/84 passed by Shri S.B. Wad, J. of the Delhi High Court. The facts and circumstances of the case before him are not clear. Apart from this, Rule 12(2)(a) of the CCS(CCA) Rules, 1965 clearly

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stipulates that any of the penalties specified in Rule 11 of the said Rules may be imposed by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President. The respondents have produced before us an order issued by order and in the name of the President on 1.7.1979 empowering the Commandant, Army Base Workshop to impose all penalties specified in Rule 11 of the CCS(CCA) Rules, 1965. In view of the specific order of delegation made by the President, we see no infirmity in the Commandant functioning as the disciplinary authority in the instant case.

13. The allegation that the charges are vague has been made on the ground that the Article of Charge does not give the names and other particulars of the alleged bogus travel agencies or of the employees to whom false bus tickets/cash receipts were issued. The names of the employees to whom tickets were issued and their particulars have been given in the statement of imputations of misconduct or misbehaviour in support of the article of charge. In our opinion, non-mention of the names of the bogus travel agencies in the Article of Charge will not vitiate the same on the ground of vagueness.

14. With regard to the contention that there has been inordinate delay, the learned counsel for the applicant stated that the alleged misconduct pertained to the period 1981-82 whereas the charge-sheet was issued only on

14.8.1988 and the enquiry has not yet been concluded.

As against this, the learned counsel for the respondents argued that the LTC racket involved as many as 71 persons.

After the CBI went into the matter in 1984, a Court of Inquiry was constituted in 1987 and on the basis of the report of such enquiry, disciplinary action was taken against 3 agents and they were awarded the penalty of

"Reduction of pay by one stage in the time scale of pay for a period of one year with immediate effect with further direction that they will not earn increment of pay during the period of such reduction and that on the expiry of this period the reduction will have the effect of postponing future increments of pay". In the meanwhile, the applicant moved to 3 EME Centre, Bhopal, on promotion.

The charge-sheet was issued to him on 14.8.1988. The applicant retired from service on attaining the age of superannuation on 31.8.1989. According to the respondents, he did not cooperate with the Inquiry Officer and the delay is attributable to him.

15. The number of persons involved in the LTC was considerable. According to the findings of the CBI, a thorough probe was called for and this was done by constituting a Court of Inquiry followed by initiation of disciplinary proceedings. The fact that such proceedings were concluded in the case of three persons, other than the applicant indicates that there was no slackness on the part

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of the respondents. In the case of the applicant, the proceedings have dragged on partly due to pendency of the earlier proceedings in OA 2120/89 and partly due to the stay of the inquiry proceedings in the present application by order dated 12.4.1991. It is noticed that the Disciplinary Authority had also to change the Inquiry Officer as the applicant had alleged bias on his part. On considering his representation, the Disciplinary Authority was asked to hold further enquiry. In a case of this kind, we do not consider it appropriate to quash the proceedings on the ground of delay, as alleged by the applicant.

16. There is, however, another aspect of the matter. The respondents did not give to the applicant a copy of the self contained note/report of the CBI by which the Article of Charge framed against him were proposed to be signed. The applicant was legally entitled to the same for the purpose of his defence. He was once not allowed to enter the office premises which was required for attending the enquiry. Copies of the documents mentioned in his letter dated 25.6.87 were not given to him. In our opinion, the applicant is not legally entitled to the copies of the reports of the Court of Inquiry which are in the nature of preliminary enquiries. Barring the same, the applicant is entitled to copies of the other documents mentioned in his letter dated 25.6.87 and the respondents are bound to give the same to him, if they are available

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in their records, even though the prosecution does not intend to rely upon them in the inquiry against the applicant. Refusal to give the same to the applicant would amount to denial of reasonable opportunity to him.

17. In the conspectus of the facts and circumstances of the case, we remit the case to the disciplinary authority to complete the enquiry, keeping in view the aforesaid observations and the provisions of the CCS(CCA) Rules, 1965, from the stage it was discontinued earlier. The enquiry shall be completed as expeditiously as possible and the final orders passed in any event before 1.8.92. The applicant should also fully cooperate in the conduct of the enquiry. OA 2746/90 is disposed of on the above lines.

CCP 90/90

18. This CCP has been filed by the applicant alleging that the respondents wilfully disregarded and disobeyed the order dated 15.12.1989 in OA 2120/89. In OA 2120/89, the applicant had prayed for quashing the impugned memorandum dated 14.8.88 whereby the respondents initiated disciplinary proceedings against him and for directing the respondents not to take proceedings pursuant to the said memorandum. He had also sought for releasing to him the pensionary benefits. By judgment dated 15.12.1989, OA 2120/89 was held to be not maintainable at that stage and the same was dismissed at the admission stage itself. The respondents were however directed to pass final orders on the enquiry

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as expeditiously as possible but in no event later than 2 months from the date of communication of a copy of the order.

19. The respondents have stated in their reply filed on 23.11.1990 that they have already filed a Miscellaneous Petition dated 11.5.1990 seeking for extension of time by at least six months for implementing the order of the Tribunal which is still pending for orders. It has been ascertained that the respondents had filed an MP on 11.5.90 under filing No.4524 dated 14.5.90 but it was not listed for directions as only one copy of the application had been filed. In the MP, they had stated that the applicant had since retired on attaining the age of superannuation and that the proceedings thereafter had become presidential proceedings as per Rule 9 of the CCS(Pension) Rules, 1972, that the enquiry proceedings report were forwarded to higher authorities for onward submission to the Ministry of Defence for necessary orders vide letter dated 12.1.90, that as per directions from Army Headquarters letter dated 18.1.90, a copy of the inquiry report was forwarded to the applicant on 19.1.1990 for making representation, if any, direct to Ministry of Defence within 15 days from the date of inquiry report, that the case was forwarded to Ministry of Defence by DG, EME, Army Headquarters vide letter dated 21.2.90 but the same had been returned by the Ministry of Defence for remitting the case to the inquiry officer for 2

further inquiry so that full opportunity be given to the applicant to defend himself and that it was likely to take at least six months for completing the inquiry and submitting the inquiry report again to the disciplinary authority for passing final orders on the enquiry.

20. The inquiry officer thereafter fixed hearing for 15.3.1990 when the applicant appeared and alleged that the Inquiry Officer and Presenting Officer were biased and *a* made be changed. This was followed by numerous representations *made* by him pursuant to which the Army Headquarters decided to accede to his request and change the Inquiry Officer and Presenting Officer.

21. The sequence of events mentioned above do not indicate that the respondents wilfully and deliberately disobeyed the orders passed by the Tribunal. In view of this, the CCP is dismissed and the notice of contempt is discharged.

There will be no order as to costs. Let a copy of this order be placed in both the files.

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(B.N. DHOUDIYAL) 24/1/92
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN (J)