

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1225/90

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Date of decision: 29.10.92

Sh. Bhopal Singh

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Applicant

Versus

Union of India

..

Respondents

For the applicant

..

Sh. G.D. Bhandari, Counsel

For the Respondents

..

Dr. GOPAL SUBRAMANIAN, with
Mrs. B. Rana, Counsel

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Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhaundiyal, Member (A)

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

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh. B.N.
Dhaundiyal, Member (A))

This OA has been filed by Shri Bhopal Singh, a Daftry working in UPSC, against the order dated January, 1990, issued by the Under Secretary (Administration), UPSC, whereby the departmental enquiry initiated against him has been remitted to the enquiring authority.

2. The applicant is holding the post of Daftry in the office of the UPSC. According to him, he is an active member of the Central Government Employees Class IV Association. He has to take up the demands of the employees with the respondents. On 6.11.86 and 7.11.86, lunch hour meetings were held to discuss the demands

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of the employees. The holding of these meetings was not permitted by the respondents as it is alleged that threats were made to dissuade him from organising these meetings. The respondents later issued an order on 10.11.86, suspending the applicant under Rule 10(1) of the CCS(CCA) Rules, 1965, without giving any reasons and restraining him from leaving his head-quarter without permission. He submitted his representation on 27.11.86 expressing his regrets for any possible violation of rules and requesting for revocation of the suspension order. The respondents issued a memorandum of chargesheet on 5.3.87, alleging his participation in meetings held without permission between 6.11.86 to 18.11.86, instigating a pendown strike, raising objectionable slogans and misbehaving with one OSD on 7.11.86. In his representations dated 10.6.87 and 8.7.87, he requested for inspection of relevant documents and a copy of the statements of witnesses. Only some documents were made available for inspection and on 27.10.87, a letter was issued adding more witnesses and additional documents to cover up the contradictory evidence of the prosecution witnesses. He had submitted a list of 36 defence witnesses which were arbitrarily slashed down by the enquiry officer to ten. Later on, even these 10 witnesses were not allowed to be produced. A copy of the enquiry report was
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given to him vide memorandum dated 28.11.89 to which he submitted his representation on 14.12.89. The applicant alleges prejudice on the part of the enquiry officer on the following grounds :

- (a) The Inquiry has been conducted in violation of the Statutory Rules.
- (b) Statement of Witnesses and additional documents were not supplied.
- (c) Disciplinary Authority filled up the gaps by adding more Documents and Witnesses after initiating the proceedings.
- (d) Some of the Original Documents were neither produced in the proceedings nor shown to the applicant.
- (e) No Defence Witness was allowed and all the 37 were rejected by the Inquiring Authority (IA).
- (f) Request for change of Inquiring Authority, who was acting malafidely and was inimical and prejudiced, was rejected illegally.
- (g) Cross Examination was not allowed in an effective manner as IA would interject and put suggestive words in between.
- (h) No deposition has been recorded as stated and leading questions and suggestive phrases were interpolated.
- (i) Even the Hindi and English Versions of Annexures to Memorandum of Charges were contradictory and Hindi Version contained more items than the English.
- (j) Substitution of Documents was permitted by the IA and that too by the Presenting Officer and not by the Competent Disciplinary Authority.
- (k) Relevancy of Additional Documents was communicated by the IA to Disciplinary Authority which is in utter and grave violation of not only Principles of Natural Justice but also of Rule 14 Sub Rule(12) and (16) of the CCS(CCA) Rules. ^eh)

(1) Statements recorded in Preliminary Enquiry not supplied.

3. On 24.4.90, orders were issued appointing a new Inquiring Authority as well as a new Presenting Officer. The applicant had contended that the impugned order dated 20.12.89 subjecting him to the second inquiry on the same facts is violative of Articles 311(2) of the Constitution and has prayed for setting aside and quashing the impugned order along with the charge sheet dated 5.3.87 and the show cause notice dated 28.11.89.

4. On 8.6.90, an interim order was passed by this Tribunal restraining the respondents from further proceedings with the Departmental enquiry by the newly appointed authority.

5. The respondents have contended that it was after consideration of all the points raised by the applicant in his representation dated 14.12.89, that the Disciplinary Authority reached the conclusion that he had not been given adequate opportunity to examine his defence witnesses. Hence, the case was remitted to the Inquiring Officer for further examination of defence witnesses. The applicant had himself alleged bias against the previous enquiry officer Shri B.D. Sharma, and Sh. Sharma had expressed his inability to handle the enquiry any further. Under these circumstances Shri C.S. Prasad, Deputy Secretary was appointed as the new Inquiry Authority. Similarly, Shri S.K. Misra

13

who acted as a Presenting Officer, retired from service on 31.10.89 and in his place Shri S. Das Gupta had to be appointed. The proper machinery for redressing the grievance of the employee is provided under the scheme of Joint Consultative Machinery and Compulsory arbitration. The official side and the members of the staff side recognised the employees Association and his eligibility for representation in the office council. An unauthorised agitation was made from 6.1.86 to 18.11.86 even though it was brought to the notice of the employee that permission to hold lunch meetings in the lawns could not be given as the Civil Services (Main) Examination were commencing from 7.11.86. These demonstrations were not peaceful and some of the employees indulged in shouting objectionable slogans, sticking defamatory posters and burning effigies of senior officers. Complaints were received that the demonstrations caused great disturbance and distraction not only to the supervisory staff but also to the candidates appearing in the Civil Services Examination. There was an attempt to organise a gherao at the residence of the then Secretary, UPSC. The enquiry conducted against the applicant was in accordance with the due procedure and his suspension was also reviewed in November, 1986. The

14
applicant was in receipt of 75% of average pay. The additional list of witnesses and documents were furnished at the initial stage, when the regular enquiry in respect of the applicant had not yet begun. As such there was no question of filing any copies in evidence against the applicant. They have denied that the Inquiring Officer acted in a partial manner. No preliminary enquiry was conducted and hence, the question of making available the statement of prosecution witnesses in such an enquiry did not arise.

6. We have heard the arguments addressed at the Bar and have perused the pleadings put forth by the learned counsel for both parties and the documents placed on record. The main issue that has emerged is whether the Disciplinary Authority can appoint a new Inquiring Officer when remitting the case for further enquiry. This point has been examined by the Benches of this Tribunal in OA 176/90 decided on 15.5.90 (Swapan Chakravorty Vs. Union of India & Others) and OA 299/90 decided on 5.4.91 (Om Prakash Vs. Union of India). It was held that in accordance with the rules, the Inquiring Authority can be changed in a case remitted for further enquiry only in unavoidable circumstances (ref. ATC 1989(9) 141-CAT (Madras Bench) Romeo Charley Vs. D.G. CSIR and 1982(3) SLR 145. Syed Saifullah Vs. Superintendent

of Police (Karnataka High Court). The only reason given by the respondents was that the original Inquiring Authority was reluctant to deal with the case. In such a case, it was open to the Disciplinary Authority to record the evidence of reasonable number of defence witnesses himself and to concisely and satisfactorily deal with the records including the additional evidence recorded and after taking into account in totality, the proceedings of the enquiry and pass an order as warranted.

7. The next question is that^{of} the introduction of additional witnesses. It has been held by the Supreme Court in S.N. Patel Vs. M.M. Gasari 1986(2) SCALE 977 of 1987 that the basic principle of admission of additional evidence is that the party should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance. Secondly, the party affected by the admission of additional evidence should have an opportunity to rebut such additional evidence. Thirdly, that additional evidence was relevant for the determination of the issue. The respondents had not given

* AIR 1971 SC 1447; ATC 1989 (IX) 141 C.A.T.
ATLT 1990(1) 149; AIR 1984 (SC) 273
AIR 1986 (SC) 995; AIR 1971(SC) 752.

76

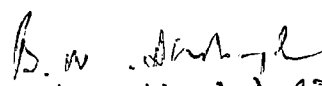
any reason as to why additional evidence was proposed to be adduced long after the date of issue of the charge sheet to the applicant.

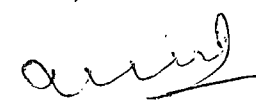
8. In the conspectus of the facts and circumstances of the case, we hold that the proceedings initiated against the applicant are vitiated and not legally sustainable. We, therefore, set aside and quash the proceedings initiated against him culminating with the remission of his case to a new Inquiring Officer vide the impugned order dated January, 1990.

9. In view of the ^{fact} ~~of~~ the foregoing, we do not consider it necessary to deal with other contentions raised in this application.

10. The interim order passed by the Tribunal on 8.6.90 directing the respondents not to proceed with the disciplinary enquiry initiated against the applicant, is hereby made absolute.

The parties will bear their own costs.


(B.N. Dhoundiyal) 27/8/92.
Member (A)


(P.K. Kartha)
Vice Chairman (J)