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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2328/90
T.A. No.

199

DATE OF DECISION 16.8.91.

Shri Maha Singh

Petitioner Applicant

Shri R. Doraiswami

Advocate for the Petitioner(s)

Versus

U.O.I. through Secy. Min. of

Respondent

Defence

None

Advocate for the Respondent(s)

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

The Hon'ble Mr B.N. Dhoundiyal, Member (A)

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? / No

(JUDGEMENT of the Bench delivered by
Hon'ble Mr. B.N. Dhoundiyal, Member)

This O.A. has been filed by Shri Maha Singh,
presently working as Ordnance Officer (Stores)
at the Central Vehicle Depot, Delhi Cantonment,
against the penalty of reduction of pay by
one stage from Rs.2240/- to Rs.2180/- (in the
scale of Rs.2000-3500) for a period of one
year with recurring effect, imposed by the
impugned order issued by the Master General
of Ordnance on 11.11.88 (Annexure A-4).

2. The applicant was working as incharge Packing Section (Senior Stores Superintendent) on 6.1.84 at the Sub Depot of the Ordnance Depot, Shakurbasti. He was contacted by Major R.S. Rana of 18 Inf. Div(Ord) for arranging manpower for leading stores being issued against 'Issue Vouchers J1-102034 to J1-102036. The issue vouchers had remarks 'Out-To-day' STORES NOT IN STOCK TO BE released out of "War Wastage Reserves" written by the "Executive Branch" of which Shri S.R. Kohli was incharge. As Major Rana had earlier worked as a Captain in the Ordnance Depot Shakurbasti, the applicant knew him and took him to Shri D.R. Madhar, Senior Stores Superintendent. The vouchers were issued by the Store Keeper and thereafter these were packed in the Packing Section and handed over to the representative Traffic Branch. After that he and Major Rana had signed the "Packing Completion Advice". The Traffic Officer issued the gate pass to the Army Trucks loaded with these stores after he had brought to the notice of his superior officers that unit commander's authority was not indicated in the Issue Vouchers. Later it was found that Major Rana had prepared these vouchers fraudelently. As a fall-out of this fraud, a "Staff Court of Inquiry" was constituted in February 1985 to look in to the circumstances leading to issue of stores against fraudulent vouchers. Departmental proceedings under Rule 14 of the CCS(CCA) Rules, 1965 were instituted against the applicant by Memo No. A/27610/05 SD dated 27.2.87 and the following charge was framed:-



"In that Senior Store Superintendent, now 00 Civ(S) Shri Maha Singh while functioning as Incharge Packing in Camp & BK Sub Depot in Ordnance Depot Shakurbasti in the first week of Jan 1984 did not follow the Ordnance procedure for issue of stores and has erred in discharge of his duties while issuing stores pertaining to Ivrs No.J1-102034 to J1-102036 dated 04 Jan 84 to 18 Inf DOU. In that Shri Maha Singh, Incharge packing in Camp & BK.Sub.Depot Ex OD Shakurbasti failed to notice that the auth column in the Issue Vouchers No.J1-102034 to J1-102036 dated 04 Jan 84 pertaining to 18 Inf DOU were blank and had the same been noticed the wrong issue would have been stopped. Thus Shri Maha Singh acted in negligent manner in discharging his official duty with dishonest motive which is unbecoming of a Government servant vide Rule 3(1) (iii) of CCS(Conduct) Rules, 1964."

The applicant has contended that he was not given adequate opportunity to defend himself, that he was not allowed to cross examine the witnesses and inspect the documents including the brief of the Presenting Officer or Inquiry report, that the documents necessary for his defence were not supplied, that the Inquiry Officer without ascertaining whether the applicant desired to present himself as a witness proceeded to interrogate him, that though the Presenting Officer gave a final written brief to the Inquiry Officer, the applicant did not receive a copy of the same and that a copy of the Inquiry Report was not given to him before the disciplinary authority passed the penalty order.

3. The respondents have raised the preliminary objection that the applicant is a civilian in Defence Services on account of which he is not entitled to the protection of Articles 309 to 311 of the constitution, that the Ordnance Depot is

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an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and that the applicant has not exhausted remedies available under the said Act. On the merits, they have contended that the enquiry was held in accordance with the provisions of the CCS(CC&A) Rules, 1965.

4. The contention that the Ordnance Depot is an Industry within the meaning of the provisions of the Industrial Disputes Act, 1947, is not relevant to the facts and circumstances of the instant case. The applicant is not seeking any relief under the Industrial Disputes Act, 1947.

5. With regard to the contention that the applicant is not entitled to the protection of Articles 309 to 311 of the Constitution, the respondents have relied upon the decision of the Supreme Court in Union of India Vs. K.S. Subramanian, 1989 SCC(L&S)404. In that case, the respondent who had worked as a Welder at the Naval Base, Cochin, had challenged the termination of his services under Article 310 of the Constitution. The Supreme Court observed that there is no fetter in the exercise of the pleasure of the President. With regard to the contention that Rule 3(1) of the CCS(CCA) Rules, 1965 provides that it would be applicable to civilians in defence services, the Supreme Court observed as follows:

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"This contention, in our opinion, is basically faulty. The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out in Article 311(2). When Article 311(2) itself stands excluded and the protection thereunder is withdrawn, there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion."

6. In our opinion, the decision in K.S.Subramanian's case will apply to a case where a ~~civilian~~ Defence services is dismissed, removed or reduced in rank and not in other cases. The Supreme Court has not also struck down the CCS(CCA) Rules, 1965. The procedure contained in these Rules would apply with all force in regard to the imposition of punishments other than those mentioned in Article-311 of the Constitution.

7. We, therefore, overrule the above preliminary objection by the respondents.

8. Annexure III to the Memorandum dated 27.2.87 whereby it was proposed to initiate disciplinary proceedings against the applicant, gives the list of documents by which the Article of charge framed against him were proposed to be sustained. This consists of (a) Statement of Shri Maha Singh

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(b) Finding of the court and (c) ^{Opinion} of the Court.

The learned counsel of the applicant stated during the hearing that the above documents were not given to the applicant. No names of witnesses were indicated in Annexure IV to the Memorandum and none was examined during the enquiry. The applicant has stated that the Inquiry Officer did not provide any opportunity to see or inspect the original documents taken on record as exhibits (a), (b) and (c) mentioned above nor did the Inquiry Officer provide the applicant with the copies of the exhibits produced by the prosecution. The respondents have denied this in the counter affidavit filed by them.

According to them, these documents were enclosures to the Memorandum dated 27.2.87 and "probably" he did not make any request to inspect them. The applicant has denied this contention in his rejoinder affidavit.

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9. We are not impressed by the contention of the respondents. At the stage of service of the charge sheet, Rule 14(3) of the CCS(CCA) Rules, 1965 provides for giving only a list of documents by which the articles of charge are proposed to be sustained and not copies of such documents. The version of the applicant in his rejoinder affidavit that the Memorandum of charge is a three page document, the third page of which contains a list of the documents by which the charge would be proved, appears to be correct.

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10. Rule 14(ii) of the CCS(CCA) Rules, 1965 envisages giving of inspection of the documents specified in the list referred to in sub-rule(3) of Rule 14 and supply copies of the statements of witnesses mentioned in the list referred to in sub-rule(3), if the Government servant orally or in writing applies for the same. The applicant has stated in his rejoinder that no such opportunity was given to him and that the Daily order sheet proves this statement.

11. There is force and merit in the above contention of the applicant.

12. In State of Madhya Pradesh Vs. Chintaman, AIR 1961 S.C. 1623, the Supreme Court observed that rules of natural justice require that a party should have opportunity of adducing "all relevant evidence on which he relies".

13. In Trilek Nath Vs. Union of India & Others, 1967 S.L.R. (SC) 759 at 763 and 764, the Supreme Court has observed that "if the public servant so required for his defence, he has to be furnished with copies of all the relevant documents, i.e. documents sought to be relied upon by the Inquiry Officer or required by the public servant for his defence".

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14. In the State of Gujarat Vs. Ramesh Chandra Mashruwala, 1977 SLJ 178 at 201, the Supreme Court expressed the same view.

15. The rationale for making available the documents required by the delinquent officer is that it is indispensable for putting forward effectively his defence. In Kashi Nath Dikshita Vs. Union of India A.I.R. 1986 S.C. 2118 at 2122, the Supreme Court observed as follows:

".....if only the disciplinary authority had asked itself a question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand, there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand, by making available the copies of the documents and statements, the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

16. In view of the above, the refusal by the respondents to give to the applicant the documents required by him, amounts to denial of reasonable opportunity and vitiates the entire proceedings.

17. Another contention raised by the applicant is that the Inquiry Officer without ascertaining whether the applicant desired to present himself as a witness, proceeded to interrogate him. The questioning was inquisitional and no copy of the questions and answers were given to him for his record. The respondents have stated in their counter-affidavit that the objections could have been raised at the time the inquiry was conducted. He was at liberty to do so.

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Had he asked for a copy of the day to day proceedings, he would have been provided the same, but he did not make any request. The applicant has stated in his rejoinder affidavit that the Inquiry Officer cannot assume the role of interrogating officer or prosecuting officer. During the inquiry proceedings if the Inquiry Officer records any statement, *suo motu* the Inquiry Officer has to give a copy of such statement to the charged officer. There is no need for the charged officer to request that he be given a copy.

18. We see force in the aforesaid contention of the applicant. In our opinion, to examine and cross-examine the delinquent in the first instance without the prosecution itself leading the evidence against him amount to denial of reasonable opportunity as well as non-compliance with the safeguards contained in Rule 14 of the CCS(CCA) Rules, 1965, (v/s Associated Cement Company Vs. Workmen 1964(3)SCR 652)

19. The applicant has stated that a copy of the Inquiry report was not given to the applicant before the disciplinary authority passed the penalty order and the applicant was not asked to give his representation, if any, against the Inquiry Officer's report, the said Report was not even given with the order. He made a specific request by his letter dated 9.12.66 to the disciplinary authority to make available to him a copy of the Inquiry Report, a copy of the Staff Court of Inquiry Report on the basis of which he was charged and the applicant also entreated the disciplinary authority not to impose the penalty till the appeal to be filed by the applicant is decided.

20. The respondents have not denied the above averments.

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21. In our opinion, the non-supply of a copy of the Inquiry Officer's Report along with impugned order dated 11.11.88 vitiates the proceedings. Another infirmity in the disciplinary proceedings is that a copy of the Inquiry Officer's report was made available to the applicant only along with the impugned order of dismissal dated 23.5.88. In *Prem Nath K. Sharma Vs. Union of India & Others, 1988 (3) SLJ 449 (CAT)*, a Full Bench of this Tribunal has held that a copy of the inquiry report must be made available to the Government servant concerned before imposing penalty and that he must be given an opportunity to make a representation to the disciplinary authority against the report in writing.

22. In *Union of India Vs. E. Bashyan, AIR 1988 S.C. 1000*, the Supreme Court has held that non-supply of the report of the Inquiry Officer would constitute violation of principles of natural justice and would be tantamount to denial of reasonable opportunity within the meaning of Article 311(2) of the Constitution.

23. In the conspectus of the facts and circumstances of the case, we allow the application and dispose it of with the following directions:

(a) The impugned order dated 11.11.88, awarding the penalty of reducing the pay of the applicant by one stage from Rs.2240/- p.m. to Rs.2180/- p.m. in the time-scale of Rs.2000-3500 for a period of one year from the date of issue of this order with recurring effect is hereby quashed(Annexure.A4)

(b) The applicant would be entitled to all consequential benefits.

24. There will be no order as to costs.

B.N. Dholiyal
(B.N. DHOUDIYAL)
MEMBER(A)

Partha
16/8/91
(P.K. KARTHA)
V.C.(J)