

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 300 of 1990

The 18th day of November, 1993

Shri J.P. Sharma, Member (J)
Shri B.K. Singh, Member (A)

Gurcharan Singh Azad,
S/o Shri Darshan Singh,
Upper Division Clerk,
UPSC, Dholpur House,
New Delhi.

Residence:

A-87, Amrit Puri Garhi,
East of Kailash,
New Delhi.

.....

Applicant

By Advocate Shri G.D. Bhandari

Versus

1. Union of India, through
The Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.
2. The Joint Secretary (Admn.)
Union Public Service Commission,
Dholpur House, New Delhi
3. Shri B.D. Sharma,
Under Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.

.....

Respondents

By Advocate Mrs. B. Rana

O R D E R

Shri B.K. Singh, Member (A)

This O.A. No. 300/90, G.S. Azad as applicant
Vs. Union of India & Ors, as respondents has been filed
against the order No. C.14013/5/87-Admn.II dated 4.5.89
removing the applicant from the post of U.D.C., Union
Public Service Commission, and the rejection of his appeal

Contd....2/-



by the Secretary, UPSC vide his order dated 18th April 1990.

2. The applicant was appointed on 9.1.75 as an L.D.C. and was subsequently promoted as UDC. It is admitted by him that he is an active member of Central Government Clerks' Union, UPSC Branch and is also an office bearer of UPSC Employees Association. The applicant participated in demonstrations and shouting of slogans between 6.11.86 to 18.11.86 during lunch hours. The respondents issued an order dated 12.11.86 suspending the applicant under Rule 10(1) of the CCS(CCA) Rules 1965. This is annexure A-4 of the paper-book. A memo of charges was issued on 26.2.87. This is annexure-5 of the paper-book. The memo of charges contained 3 articles of charges i.e., participation in meetings etc. between 6.11.86 and 18.11.86; instigating and abetting a pen-down strike; and raising ^{of} derogatory and defamatory slogans etc. The Inquiry Officer issued orders dated 19.5.87 which is marked and annexed as annexure A-16 of the paper-book. A preliminary inquiry was held which was attended by the applicant on 8.6.87. Oral inquiry was held and attended by the applicant on 25.2.88. The applicant requested for supply of documents and the inquiry officer accepted the demand and ensured supply of all documents except one which contained payment to



Contd....3/-

persons engaged on daily wages . This document was not considered relevant. The I.O. submitted his report to the Disciplinary Authority on 23.8.88. This is annexure A-22 of the paper-book. The D.A. in exercise of the powers under Rule 15 of CCS(CCA) Rules 1965 removed the petitioner from service. This is annexure A-1 of the paper-book. The appeal was rejected vide order dated 18th April 1990. The reliefs sought contain prayer for quashing the order No. C.14013/5/87-Admn.II dated 4.5.89 (annexure A-1) whereby the D.A. ordered removal of the applicant from service under Rule 15 of the CCS(CCA) Rules 1965. A further prayer is regarding reinstatement of the applicant with all consequential benefits.

3. Heard the learned counsels, Shri G.D. Bhandari for the applicant and Mrs. B. Rana for the respondents at a great length spreading over a couple of days and perused the record of the case and the departmental files and other documents filed by the parties. The learned counsel for the applicant argued that the memo of charges contained charges which were vague and of a general nature. He said that the respondents bore animus against the applicant because he highlighted the



Contd....4/-

various irregularities in the functioning of the UPSC and also exposed the misdeeds of the respondents being an active member of the service unions. He further argued that the Constitution has guaranteed the right of freedom of speech and expression under Art. 19 of the Constitution and the applicant along with other staff members held peaceful meetings from 6.11.86 to 18.11.86 during lunch hours outside the premises of the UPSC in support of their charter of demands. Genuine trade union activities for furtherance of the welfare of employees are permitted by the Constitution and also by the Ministry of Labour. The learned counsel further argued that the O.M. of Home Ministry (annexure A-2) dated 6.3.64 lays down that a demonstration prejudicial to the security of the State cannot be held but it does not prohibit peaceful meetings and demonstrations. He stated that the applicant and his colleagues participated in peaceful demonstrations. The Association applied for permission to hold these meetings but the permission was refused and that the Association held peaceful meetings outside the security zone of the UPSC between 6.11.86 to 18.11.86 during lunch hours strictly observing the directions contained in M.H.A. circular of 6.3.64 placed at annexure A-2 annexed with the O.A. He argued that there was nothing

Contd.,....5/-

of the documents which were relevant for the defence of the applicant were not supplied to him and thus he was disadvantaged in his defence. He wanted some additional documents which were also not supplied to him. His request for submission of defence witnesses after PWs were examined/aroused^{only} the anger of the authorities who not ^{only} suspended the applicant but 11 more office bearers on 10.11.86 and 12.11.86 on account of pen down strike and holding of demonstrations. In spite of the fact that the disciplinary proceedings were badly delayed, there was no review of the suspension orders as envisaged in the O.M. of Ministry of Home Affairs.

5. It was further argued that the introduction of fresh witnesses and fresh documents to be relied upon by them were against the rules and procedures. This was also pointed out by the applicant in his representation made to the I.O. who turned down his request. This was done, according to the learned counsel for the applicant, to fill in the gaps in the evidence of the prosecution witness and documents relied upon by them. He further argued that the applicant's request for supply of statement of witnesses during the preliminary inquiry was not accepted. It was further pointed out that although a list of 47 PWs had given, only 7 were examined

Contd.....7/-

because others did not agree to toe the line of the respondents. It was further argued that the witnesses examined never stated that the applicant organised or abetted the strike and demonstration. What they stated is that the applicant only participated in the strike. He said that the I.O. did not find the charges substantiated against the applicant and in this regard he cited the operative part of the findings of the I.O. which is annexure A-22 annexed with the O.A.

6. The Disciplinary Authority while disagreeing with the findings of the I.O. did not record adequate reasons why he did not agree with the I.O. and on what grounds he found the charges proved entailing the removal of the applicant from service. While submitting his appeal he had wanted personal hearing which was denied to him. The learned counsel for the applicant argued that this denial meant not affording full opportunity to the applicant to explain his viewpoint to the appellate authority who mechanically disposed of the appeal. Further representation in this regard was not even acknowledged. He concluded by saying that the applicant's removal from service was arbitrary, mala fide, bad in law, illegal and vitiated on account of non-observance of the principles of natural justice. The introduction of



Contd....8/-

new witnesses and new set of documents was in grave violation of statutory provisions and as such the inquiry proceedings were badly vitiated and are fit to be quashed and set aside. He further said that the reasons for not believing the testimony of the DW 1 has also not been recorded. He relied on the following rulings of the Hon'ble Delhi High Court/Hon'ble Supreme Court. The Delhi High Court rulings are in the matter Brig. Bhupinder Singh Vs. Union of India & Ors. 1976 (1) SLR 772 (DV) Delhi where it has been held that it is not enough to allege the involvement of public interest for certain action. The same is to be justified on the basis of some specific material before the disciplinary authority. He further cited the rulings in the matter of T.P. Mahajan Vs. Union of India 1973 (1) SLR-436 by Hon'ble High Court of Delhi where it has been held that the right of speech and expression are fundamental rights and public interest is not sufficient guideline to put restriction on these fundamental rights guaranteed under Art. 19 of the Constitution. Regarding introduction of additional witnesses and placing reliance on additional documents, Mr. Bhandari relied on SC in the matter of S.N. Patil Vs. M.M. Gosavi 1986 (2) Seale 977 at 987 where it has been held that:-

B

Contd....9/-

"The basic principles on admission of additional evidence is that the person seeking admission of additional evidence 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 submission of additional evidence should have the opportunity to rebut such additional evidence."

The other rulings cited and relied on were: (i) ATC 1988 (7) p. 119 CAT, AVS Reddy Vs. State of Andhra Pradesh which relied on Sampat Kumar 1987 SC 386; (ii) Trade Fair Authority of India 1990 SC (1).

7. Mrs. B. Rana, counsel for the respondents very forcefully and ably demolished the various rulings cited by the learned counsel for the applicant by giving their detailed analysis, the ratio established in the rulings and she pointed out that these citations were neither pertinent nor relevant to the issue in question. She also refuted the charge of arbitrariness and malafide on the part of the respondents and contended that the order dated 4.5.89 is legal and valid and the Disciplinary Authority after a careful consideration of the evidence and record held that the charges were proved and removed the applicant from the service on grounds of gross indiscipline and misconduct and that the appellate authority while rejecting the appeal recorded a speaking order which is extremely

Contd....10/-

well discussed, well reasoned order. She also charged the applicant of indulgence in subversive activities and that the applicant was a threat to public order and decency as defined in O.M. of the Ministry of Home Affairs. The demonstrations were not peaceful and she emphatically said that the applicant along with other colleagues shouted derogatory and defamatory slogans against the authorities of UPS C. These demonstrations were organised within the premises of UPSC in spite of the fact that permission to hold such demonstrations had been refused by authorities especially keeping in view the Civil Services Examination which were going on in the adjacent examination hall. Their slogan-shouting caused inconvenience to the examinees and since they used the lawns and corridors of the UPSC the examinees could not find place to relax themselves during the break between morning and afternoon sessions. Disturbance got aggravated because of continued demonstrations and slogan shouting right from 6.11.86 to 18.11.86. The learned counsel for the respondents asserted that these demonstrations were neither peaceful nor orderly.

8. She also argued that there was no harassment to the applicant because of non-review of his suspension order since his subsistence allowance had already been



Contd....11/-

raised to 75% of his pay. She rebutted the charge of non-supply of documents. She argued that the applicant was allowed to inspect all the documents listed in annexure 3 of Memo No. 14013/5/87-Admn.II dated 26.2.87 and photocopies of all the documents were also made available to him. The learned counsel for the respondents pointed that a certificate to this effect given by the applicant is marked as annexure R-1 with the counter. The applicant's active participation has been proved by the PWs.

9. As regards introduction of additional witnesses & the documents, she argued that this was not meant to fill in the gaps but this was in the interest of justice and fair play and place all relevant facts before the I.O. so that he could have all the evidence at his command. She further asserted that the contention of the learned counsel for the applicant is wrong that this was done when the inquiry was on. The list of additional witnesses and documents was introduced when the inquiry had not commenced and this is the reason why the I.O. rejected the representation of the applicant in this regard.

10. As regards disagreement of the Disciplinary Authority with the I.O., she argued that there was a

Contd.12/-

B

26

- 12 -

manifest error on the part of the I.O. in appreciating the evidence on record, and while disagreeing, adequate reasons have been recorded by the Disciplinary Authority in the order No. C.14013/5/87- Admn.II dated 4.5.89 (annexure A-1). According to the learned counsel for the respondents the acts of indiscipline and misconduct were duly proved against the applicant and these were so grave and serious that his further continuance in public service was considered detrimental to public interest and as such he was removed from service w.e.f. 5.5.1989. She further argued that the appellate authority considered the appeal on merits as envisaged in Rule 27 (2) of CCS(CCA) Rules 1965 and after recording a speaking order rejected the appeal against removal from service. She concluded by vehemently denying the charge of arbitrariness, malafide and illegality and contended that all the requirements of Art. 311 of the Constitution were observed in the disciplinary proceedings giving the applicant full opportunity to defend himself. All documents wanted by him were supplied, except the one which was neither relevant nor necessary to the issue in question.



Contd....13/-

11. In reply to the arguments of the learned counsel for the respondents, the learned counsel for the applicant filed some judgments of the Central Administrative Tribunal. The petitioners in these cases were also charged employees against whom similar departmental proceedings were conducted and they were dismissed. In most of the cases the Hon'ble Division Bench of CAT, Principal Bench, has remitted the cases replacing the inquiry officers in some-where biases were alleged. The judgments filed are:-

(i) O.A. No.1225/90, Bhopal Singh Vs. Union of India & Ors... The judgment in this case was delivered by Hon'ble Vice Chairman, Shri P.K. Kartha and Hon'ble Member (A) Shri B.N. Dhoundiyal on 29.10.92. It was held that in the conspectus^{of} facts and circumstances the proceedings are vitiated and as such they are quashed and set aside and these are remitted to the new I.O.

(ii) O.A. No.2504/89, Ved Prakash Vs. Union of India & Ors. The judgment was delivered on 26.8.93 by a Bench comprising Hon'ble Mr. I.K. Rasgotra, Member (A) and Hon'ble Mr. C.J. Roy, Member (J). The orders were for rehabilitation in service.

(iii) O.A. No.299/90, Om Prakash Vs. Union of India & Ors. The judgment in this case was delivered by a Bench comprising Hon'ble Mr. P.K. Kartha, VC and Hon'ble Mr. D.K. Chakravarty, Member(J) on 5.4.91. The proceedings were declared to have been vitiated and as such they were quashed and

Contd....14/-

civil servants. In this case it has been admitted by both the parties that the applicant was invited to participate, and he did participate, in the preliminary inquiry. There was oral inquiry also in which the applicant was asked to attend and he attended the same. There is no scope for supply of the report of preliminary inquiry since it is only a preparatory work to frame charge-sheet which is to be served on the employee and as such it has also been held by the Hon'ble Supreme Court that this does not disadvantage the petitioner in any way.

(A) As regards non-supply of documents, the departmental files show that daily order sheets have also been prepared for preliminary hearing and the signatures of the charged officer i.e. Shri G.S. Azad, are very much there. In this it is also said that the Charged Officer (C.O.) can take help of any ~~staff~~ of the UPSC for his defence. He may not enter the premises of the UPSC but he can contact them at their residences. If he wants anybody as witness at any stage he may give a list and the witnesses will be summoned. All the three, i.e., presenting officer, I.O. and the C.O. have signed this on 18.6.87. The day-to-day ~~order~~ sheets of the departmental proceedings have also been prepared and the signatures of the C.O., presenting officer and the I.O. are there. These day-to-day ~~order~~ sheets dated 25.2.88, 26.2.88, 29.2.88, 1.3.88, 7.3.88, 14.3.88, 30.3.88, and 4.4.88 are available on record duly signed by all the three.


B

Contd....16/-

by the C.O. and that he did not record reasons for doing so. In this connection the learned counsel for the respondents stated that the defence witness was a friend of the C.O. and as such in the disciplinary proceedings no reliance can be placed on the testimony of the defence witnesses produced by the C.O.

(F) Folder 'F' contains the report of I.O. Of all the three charges levelled against the applicant, 2 charges that he committed acts of gross misconduct during the period 6.11.86 to 18.11.86 and that he indulged in abetting certain acts, which will tantamount to conduct unbecoming of government servant during the course of said demonstrations, were not proved against the C.O. Only charge No.1 indicates that Shri G.S. Azad, the applicant, indulged in acts of gross indiscipline during the period 6.11.86 to 18.11.86 and organised and participated in demonstrations, meetings, in the premises of the UPSC even though permission had been refused for holding the same and thus he violated Rule 7 of CCS(Conduct) Rules 1964 and that he failed to maintain devotion to duty in violation of Rule 3(1) (ii) of CCS(Conduct) Rules 1964 and exhibited conduct unbecoming of government servant in contravention of Rule 3(1) (ii) of the said Conduct Rules. The Disciplinary Authority did not accept the recommendation of the I.O. and according to him charges 2 and 3 logically can be deduced from first charge and he concluded by saying that all the three charges stand proved against the applicant.

Contd...18/-



(B) Disciplinary Proceedings Under Rule 14
CCS(CCA) Rules 1965:

The entire record of oral inquiry (correspondence) has also been maintained. This contains articles of charges. The list of documents wanted by the charged officer (C.O.) and orders of I.O. giving permission to inspect the documents are there. It has also been stated by the learned counsel for the respondents that he was not only permitted to inspect but was also given photocopies of the documents wanted by him.

(C) Folder containing prosecution witnesses:

A study of this will indicate that the presenting officer had examined the witnesses and the C.O. was also asked to cross-examine them. Mr. Chatterjee, Under Secretary, UPSC, stated that he did not see the C.O. anywhere. Others have only testified to the presence of the C.O., but nobody has stated that he had been raising slogans or ~~arresting~~ ^{arresting} people to participate in demonstration. Nobody has even said that he was shouting derogatory and defamatory slogans against the authorities of UPSC.

(D) Folder 'D' contains written briefs submitted by the presenting officer and the written statements submitted by the C.O.

(E) Folder 'E' contains written statements of defence witnesses. It was mentioned by the learned counsel that the I.O. did not place any reliance on the testimony of the defence witnesses produced

Contd....17/-

(G) Folder 'G' shows (a) list of exhibits produced in support of articles of charges; (b) exhibits of C.O. in his defence; (c) list of P.W.s. in support of articles of charges; and (d) list of defence witnesses.

(H) This folder contains the exhibits produced by the prosecution in the case of the applicant.

(I) Folder 'I' contains defence exhibits produced by the C.O. except for one i.e. payment register which was not considered relevant to the question of removal from service.

13. It was further alleged by the learned counsel for the applicant that the list of additional witnesses and documents when the inquiry was on will vitiate the proceedings and in this case he cited two rulings quoted in the foregoing paragraphs, of the Hon'ble Delhi High Court. This citation tells that if the prosecution is going to rely on these witnesses and the documents, then these will have to be supplied to the C.O. and he should be given full opportunity to inspect the documents and ~~rebut~~ ~~rebut~~ the charges. As a matter of fact, the departmental files will indicate that list of additional witnesses/ documents were produced when the departmental inquiry had not commenced and that the C.O. was allowed to inspect these documents and to have copies of these also and therefore it cannot be stated that he was disadvantaged in his defence.



Contd....19/-

14. As regards denial of principles of natural justice, it may be stated that Article 311 envisages only reasonable opportunity to be given to a delinquent employee to defend himself. We are convinced that in this case the Inquiry Officer has afforded full opportunity to the charged officer and therefore there is no denial of the principles of natural justice. The proceedings under Art. 311 culminating ⁱⁿ dismissal are not flawed in any way, and as such it cannot be challenged on that ground.

15. In the present case after a very careful study of the departmental files we have come to the conclusion that though there have been demonstrations, rallies, pen-down strike, shouting of derogatory/defamatory slogans, but nothing is on record to show that there was any wrongful restraint or wrongful confinement in respect of any officer of the UPSC. There is also no evidence of ~~any~~ manhandling. In the present case all the prosecution witnesses have stated that they saw the applicant standing with others but nobody has stated that he organised and abetted the rallies or demonstrations. An Under Secretary, Mr. Chatterjee, has gone to the length of saying that he did not see him on any of the dates amongst the people participating in rallies/demonstrations. Mr. Chatterjee is the



Contd.... 2/-

most senior/officer who gave his evidence. All others are lower functionaries. The demonstrations cannot be called disorderly, since the crowd never indulged in rowdism or subversive activities or vandalism. Rallies, demonstrations and shouting of slogans were outside the security zone of the UPSC and there is no evidence on record to show that the examinees were disturbed as a result of slogan shouting. Shouting of slogans was during lunch hours and that is also the break between the first session and the second session of the C.S.E. In the case of the applicant, the Deputy Chief Security Officer in his report has categorically reported that the applicant never tried to trespass into the corridors/premises of the UPSC forcibly.

16. Demonstrations/rallies in an orderly and peaceful manner without indulging into any acts of sabotage or without indulging into any subversive activities have been permitted under Art.19(1) (c) of the Constitution and also in the O.M. issued by the Ministry of Home Affairs. The fundamental rights of freedom of speech and expression and also formation of associations/unions for furtherance of welfare of the employees has been fully guaranteed by the Indian Constitution and this cannot be allowed to be whittled down on the so-called



Contd....21/-

(21)

plea of breach of statutory rules or executive instructions when the reality is that some egos have been hurt in the process of slogan shouting, rallies and demonstrations which were neither disorderly nor subversive and as such the acts of the employees participating in such orderly rallies/demonstrations cannot be dubbed as acts of indiscipline and misconduct and the action of the respondents is tantamount to placing unreasonable restrictions not permitted by the Constitution on the freedom of speech and expression. There is a degradation in the morals and values and if the employees only tried to ventilate their grievances where such degradation in morals and values affects them, we cannot describe these as acts of indiscipline and misconduct.

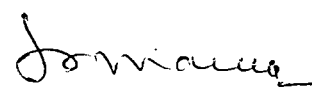
17. The imputations and the articles of charges are all offshoots of hurt egos resulting in imposition of unreasonable restrictions on freedom of speech and expression enshrined in the Constitution under Article 19(1)/C and as such cannot be sustained in the eyes of law. Once the charges are proved to be based on extraneous considerations ~~not~~ not borne out by facts and circumstances of the case, we are inclined to believe that these charges are imaginary, arbitrary and malefide and have to ^{be} struck down as violative of the fundamental rights of freedom of speech and expression and thus there is no breach of statutory rules and instructions and there is no case for disciplinary proceedings under CCS(CCA) Rules, 1965. Article 311(2) deals with procedures for conducting the proceedings. They provide safeguard to a civil

Contd...22

servant being proceeded on certain charges. The basic protection given is that of adequate opportunity for show cause observing the principles of natural justice and the opportunity to appeal against the orders of the disciplinary authority and also to file a Revision. As a matter of fact, Article 311 guarantees protection to civil servant against the malafide action. In this case we find that the charges are imaginary and malafide and as such the disciplinary proceedings under Article 311(2) will not lie. Thus the charges and the proceedings and the orders of the disciplinary/appellate authority are all quashed and set aside. The applicant will be reinstated in service within one month from the date of receipt of this order. He will be entitled to pay and allowances from the date he joins. Regarding back wages, the applicant shall make a representation to the respondents and the respondents will consider the same and pass necessary order keeping in view the facts and circumstances whether the applicant was gainfully employed elsewhere when he was out of service.

There will be no order as to costs.


(B. K. Singh)
Member(A)


(J. P. Sharma)
Member(J)

MP 3744/93 Listed