

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 3/90
Fax No.

199

DATE OF DECISION 26.7.1991.

<u>Gopal Joshi</u>	Petitioner
<u>Shri R.K. Kamal</u>	Advocate for the Petitioner(s)
<u>Versus</u> <u>Union of India & Anr.</u>	Respondent
<u>Mrs Raj Km. Chopra</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(AMITAV BANERJI)
CHAIRMAN

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 3/90

DATE OF DECISION: 26.7.1991

Gopal Joshi

.... Applicant.

Versus

Union of India & Anr.

.... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

... Shri R.K. Kamal,
Counsel.

For the Respondents.

... Mrs Raj Km. Chopra,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

The applicant, Shri Gopal Joshi, has filed the present O.A. challenging the order of the President dismissing him from service vide the order dated 17.4.1989 read with the order dated 17.5.1989. The applicant has also challenged the report of the Inquiry Officer dated 22.7.1988. It appears that the President ordered the inquiry against the applicant, who was working as Junior Entomologist in Central Plant Protection Training Institute, Hyderabad, by an order dated 8.6.1987. The inquiry was conducted by one Shri B.B. Mondal, Deputy Secretary to the Govt. of India, who by his report dated 22.7.1988 observed:

"Dr. Joshi obtained the passport from the Assistant Passport Officer, Hyderabad on 29.10.1983 although no objection certificate was not issued to him by the Government. He was not deputed by the Government to attend the Plant Protection Congress in England, but he went to England on production of the passport

and Visa permit which he might have obtained as a tourist. It is stated that he violated the Government rules requiring him to obtain a no objection certificate before proceeding abroad. As a Government servant, he could not defy the Government rules requiring him to obtain such a certificate and have his leave sanctioned prior to his leaving the Headquarters. On the basis of the material adduced and the deposition of the witnesses, the Inquiry Officer held that the charge of violation of Government rules by Dr. Gopal Joshi requiring him to obtain a no objection certificate before proceeding abroad and non-submission of his passport to the competent authority for verification has been approved".

After the Inquiry Officer's report, the matter went to the Union Public Service Commission (U.P.S.C.), who recommended that 'the ends of justice would be met in this case if the penalty of dismissal from service is imposed on Dr. Gopal Joshi'. Thereupon, the matter was placed before the President for consideration. The President came to the conclusion that the ends of justice would be met only if the penalty of dismissal from service is imposed on Dr. Joshi by an order dated 17.4.1989. By a corrigendum order dated 17.5.1989, the following words were added at the end of the order dated 17.4.1989:

"The President has accordingly ordered that the penalty of dismissal from service be imposed on Dr. Gopal Joshi with immediate effect".

The order of dismissal dated 17.5.1989 is challenged on the ground that it is non-speaking order, which gives no reason for imposing the penalty on the applicant. The

second ground taken is that if it was treated as a part of the earlier order dated 21.4.1989, then the whole order is illegal since the inquiry report was not furnished to the applicant before the order of imposition of penalty. This is contrary to the law laid down by the Tribunal and the Supreme Court. Thirdly, the above order dated 21.5.1989 being declared as part of the order dated 21.4.1989 made the dismissal order actually effective retrospectively, which again is bad in law. Another ground taken was that the impugned orders are illegal and void, as being in violation of statutory rules, principles of natural justice and vitiated by the biased approach of the Inquiry Officer. The applicant has also stated that in the order dated 21.4.89, copy of material furnished to the Inquiry Officer was not furnished to him; secondly, the Inquiry Officer relied on a large number of documents not mentioned at all in the memo of charge; thirdly, no opportunity was given to the applicant and no time was given to him to make his submissions.

The respondents have taken the stand that an inquiry under Rule 14 of CCS(CCA) Rules, 1965 was ordered by the Competent Authority to go into the charges framed against the applicant. The inquiry was to be made by Shri B.B. Mondal, Deputy Secretary in the Department of Agriculture and Cooperation. Four articles of charges were framed. These charges pertained to the work and duty assigned to him.

He did not submit any monthly, quarterly and yearly report as prescribed. He was frequently absent from Station without having the leave sanctioned in advance or getting the absence regularised. In 1983, he was absent for 39 days including his unauthorised absence from the Headquarters. He also left India without the previous knowledge and prior approval of the Competent Authority. He had also not obtained permission to leave his Headquarters. Further, the applicant obtained an unofficial passport in 1983 without obtaining a No Objection Certificate from the Directorate of Plant Protection, Quarantine and Storage. Although he had applied for a No Objection Certificate, he did not proceed over-seas waiting for without/permission of the Department. The applicant was, therefore, lack of devotion to duty, disobedience to the orders of the authorities and acted in a manner unbecoming of a Government servant thereby violating the CCS (Conduct) Rules, 1964. The Inquiry Officer's report showed that the applicant did not attend the preliminary hearing on 20.10.87 and in spite of opportunity being given for inspection of the records, documents, he did not participate while the witnesses were examined ex parte. However, he presented himself just before the appointed time before the Inquiry Officer and orally declined to take part in hearing on the plea that inquiry was a farce. The Inquiry Officer had also given another opportunity to the applicant to see the additional documents referred to by the witnesses and react on them if he so desired. The Inquiry Officer sent

JY

another set in a sealed cover, which was delivered to him in the presence of two Gazetted Officers on 14.3.1988. Consequently, the Inquiry Officer was left with no alternative but to proceed ex-parte. He was given every opportunity to present himself before the Inquiry Officer and place his case before the Inquiry Officer. It was also stated that the principle of natural justice was observed at every stage in this case. He filed the Review Application to the President of India on 9.6.1989, which is still pending final disposal, and without waiting for the result of the same, he has filed the present O.A. The letter dated 21.4.1989 was an order and not a show cause notice. There was no violation of statutory rules, principle of natural justice in this case. The inquiry report was prepared by the Inquiry Officer to the best of his judgement. All opportunities were given to the applicant and all aspects have been considered by the Inquiry Officer. The order passed by the President is in accordance with the rules, and as such the O.A. deserves to be dismissed with costs.

The short point on which this O.A. can be disposed of is in respect of the law laid down by the Full Bench of the Tribunal in the case of PREMNATH K. SHARMA VS. UNION OF INDIA & ORS. (1988(6)ATC 904), and as approved by the Supreme Court in the case of UNION OF INDIA VS. MOHD. RAMZAN KHAN (JT 1990(4) SC 456) viz., that it is necessary for the Inquiry Officer to

supply a copy of the Inquiry Report to the delinquent official so that he may have a say before imposition of the penalty. The Hon'ble Supreme Court in the case of MOHD. RAMZAN KHAN has said:

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter"

In the present case, there is a clear allegation in paragraph 5.3(b) that a copy of the Inquiry Report was not given to him to enable him to make the representation against it. The respondents have not denied this, but they said that everything was done in accordance with the rules. They have also said that the principle of natural justice was observed at every stage. It was also stated that the applicant did not participate in the proceedings. He had been given every opportunity to look into the records, documents, papers and even additional documents, but he had not reacted to them at all. The copy of the Inquiry Officer's report was not sent to him along with the punishment order. We are of the view that the law laid down in the case of MOHD. RAMZAN KHAN is clear and is applicable to the cases which are pending before the Tribunal or the Supreme Court. Their Lordships

(Jb)

have said that it would not be applicable to those cases which have already been decided. Any case which has reached finality is not to be reopened. This is, however, not one of such cases. The declaration of Supreme Court will be fully applicable to the present case. In view of this, it is apparent that the order of the President dated 17.4.1989 read with the order dated 17.5.1989 have to be set aside.

Learned counsel further argued that the order of the Inquiry Officer should also be set aside. We find no merits in this plea. The Inquiry Officer's report all by itself cannot be the cause of any grievance by the applicant unless it is acted upon and a punishment imposed. It is only when the applicant gets an order imposing penalty by the Disciplinary Authority or the Appellate Authority that he can be said to be aggrieved. The provision of Section 19 of the A.T. Act only entitles a person to approach the Tribunal, who is aggrieved by an order passed in writing. The report of the Inquiry Officer is not such an order. The disciplinary authority's order, imposing penalty, is the one which may give rise to a grievance to the applicant.

Another argument raised by the learned counsel was that certain provisions of Rule 14(15) of the CCS(CCA) Rules have not been complied with. When the applicant makes the representation against the report of the Inquiry Officer, he can raise this question before the Disciplinary Authority, and thereafter to the Appellate Authority, if he is still aggrieved. The law provides for all forums where he can seek remedy even before coming to the Tribunal. If, however, the Disciplinary

(B)

Authority or the Appellate Authority do not advert to the matter, it may be raised before the Tribunal. We do not find anything on the record to show that the applicant had made any representation in this case. We are, therefore, not inclined to go into this question at all at this stage.

Having taken into consideration all aspects of the case, we are of the opinion that the order of the President dated 17.4.1989 read with the order dated 17.5.1989 have to be set aside and the case sent back to the Disciplinary Authority to consider the representation, if any, made by the applicant, within a reasonable period of time fixed by the Disciplinary Authority. The applicant may file a representation before the Disciplinary Authority touching all those aspects by which he is aggrieved. The Disciplinary Authority will thereafter consider the same and proceed in accordance with law. We order accordingly. We further direct that the applicant will be deemed to be in service and entitled to such payments as are entitled under the rules applicable to him. The Disciplinary Authority and the Appellate Authority, if any, shall dispose of the matter within a period of six months from the date of receipt of a copy of this order.

In the circumstances, we direct the parties to bear their own costs.

S. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

26.7.91

A. Banerji
(AMITAV BANERJEE)
CHAIRMAN

26.7.91