

(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 464/90
~~Ex. No.~~

198

DATE OF DECISION 17.9.91

SHRI O.P. SHARMA

~~Petitioner~~ APPLICANT

SHRI B.S. MAINEE

Advocate for the ~~Petitioner(s)~~
APPLICANT

Versus

UNION OF INDIA & OTHERS

Respondents

SHRI M.L. VERMA

Advocate for the Respondent(s)

CORAM :

● The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. R. VENKATESAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGEMENT

(Delivered by Hon'ble Mr. R.
Venkatesan, Administrative Member)

The applicant in this case has come before this Tribunal
with main prayer to declare an order dated 11.10.85, ^{issued} after the
conclusion of disciplinary proceedings against him, compulsorily

..2...

Plenhar



retiring him from service, ^{/illegal and invalid.} ~~The~~ The second prayer is to treat him as in continuous service w.e.f. 13.7.74, the date on which he was suspended, as if he was never suspended with retrospective effect and compulsorily retired, and consequently to pay him back wages and grant other benefits and reliefs.

2. The facts of the case are that applicant was a civilian employee of the Central Ordnance Depot, Agra. On 23.9.72, he was suspended and chargesheeted on the charge that upon the death of his younger ^{/brother} who was also an employee in the same department, he committed an act of abetment whereby one Shri R.C. Sharma impersonated as a brother of Smt. Kunta Rani, widow of deceased, and had secured employment on compassionate grounds fraudulently. After the disciplinary proceedings were completed, the applicant was compulsorily retired by the officer Incharge, Army Ordnance Corps on 1.7.74. An appeal against the order was also confirmed. The applicant challenged the order before the Court of Additional Munsif, Agra, on the ground that the Officer who passed the order was not the competent ~~and~~ authority, and some other grounds. The Munsif's Court held that the order of compulsory retirement was illegal. The main ground on which the Court struck down the order was that the order had not been passed by the Competent authority. The appeal by the Govt. against the order was dismissed by the Civil Court, Agra, but the Court modified the order of the Lower Court to the extent that it gave liberty to the employer deptt., if so advised, to proceed against the petitioner after enquiry, according to law. Thereafter, a deemed order of suspension was issued under Rule 10(4) of CCS (CCA) Rules, 1965, w.e.f. 13th July, 1974, and a fresh inquiry was ordered under Rule 14 of CCS (CCA) Rules. Thereafter, the enquiry was conducted and by an order dated 11.10.85, the Officer Incharge, Army Ordnance Corps (Records) imposed the

12

(X)

punishment of compulsory retirement w.e.f.31.10.1985, on the basis of the findings of the inquiry. The applicant filed an appeal to the Master General of the Ordnance Branch under the Dte. General of the Ordnance Service, which was rejected. The orders of the disciplinary authority and the appellate authority are the impugned orders.

3. A Writ Petition filed before the Allahabad High Court by the applicant challenging the suspension order was transferred to the Allahabad Bench of this Tribunal. The Tribunal upheld the order of suspension from 13.7.74. Therefore, the only prayer which remains to be considered by the Tribunal is the one for quashing the order of compulsory retirement.

4. The main grounds, urged by Shri S.S.Maine, learned counsel for the applicant are the following :-

(i) The order of the Civil Court, Agra quashing the order of compulsory retirement and giving liberty to the respondents to continue the proceedings against the applicant, did not call for de novo inquiry but only continuing the proceedings from the point of completion of inquiry already carried out. He contended that the de novo inquiry had been carried out with mala fide intention and in order to cover up the gaps, which had been pointed out by the applicant earlier.

(ii) The fresh order dated 11.10.85, compulsorily retiring the applicant had been passed by the same authority who had passed the earlier order, which had been struck down. The contention of the respondents in the reply affidavit that a delegation of powers in the matter of disciplinary proceedings had been subsequently made to the Officer Incharge, AOI (Records) making him competent to impose the punishment, by an order issued in 1979, was opposed by the Counsel on the ground that covering the present case by the said order of delegation would amount to retrospective effect to the delegation, which was contrary to law. Shri Mainee also drew our attention to

De

2

Swamy's Compilation of CCS (CCA) Rules in which the Director of Ordnance Services continued to be shown as the only authority competent to impose the punishment in this case.

(iii) The learned counsel next referred to deficiencies in the conduct of the inquiry and disciplinary proceedings which amounted to ^{//denial of opportunity to the applicant} deny himself and ^{//a violation of the} principles of natural justice. In particular, he contended that

/thereby

(a) Certain key documents relied upon by the Inquiry Officer and requested ~~xxxxxxxxxxxxxx~~ for inspection by the applicant had not been made available to him. Similarly, certain additional documents requested by him were also not produced for inspection by the applicant;

(b) Certain key witnesses whose evidence was relied upon by the disciplinary authority had not been produced to be cross-examined by the applicant. Similarly, certain defence witnesses who were requested to be summoned for the enquiry, were not summoned;

(c) The applicant had represented to the disciplinary authority that the Inquiry Officer was biased and had requested for a change of Inquiry Officer, but this request had been rejected;

(d) The most glaring violation of the principles of natural justice was the non-supply of a copy of the Inquiry Officer's Report to the applicant before the disciplinary authority arrived at his findings and proceeded to impose penalty. The Enquiry Report was supplied to him only with the order imposing punishment, thus denying him an opportunity to represent against the findings of the Inquiry Report.

^{//in this connection}
He relied upon the judgement of the Supreme Court in the case of Mohammed Ramzan Khan (~~supra~~) Vs. Union of India

Dr

and Others - 1991(1) ATJ 276, 1(1991) CSJ (SC) Page 1, according to which it was held that though the second stage of the inquiry in Article 311(2) has been abolished by the ^{of the Constitution} 42nd Amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charge are established and holding the delinquent guilty of such charges. As the inquiry report was not supplied to the applicant before imposing of the penalty, this requirement had not been complied with in the present case.

5. The learned counsel for the respondents argued that under Rule 12(2)(a) of the CCS (CCA) Rules, the Officer-Incharge AOC (R) had been empowered to impose penalties on the Gp C&D employees of the Army Ordnance Corps under his control. The charge memo had been issued afresh, inquiry held and punishment imposed on the applicant after issue of this order and, therefore, the authority was competent to do so. He further referred to the contention that the applicant was not allowed to cross-examine various key witnesses including defence witnesses and drew our attention to para 7 of the Inquiry Officer's report according to which, main prosecution witness PW I, Smt. Kunta Rani, the widow of the deceased brother of the applicant, appeared before the Inquiry Officer and the applicant had the opportunity to cross-examine her but the applicant avoided appearing before the Inquiry Officer on one pretext or the other, when the said witness was examined. He also drew our attention to subsequent paragraphs of the Inquiry Report in which it has been stated that opportunities were given to the applicant to cross examine other key witnesses, and that it had been ^{so} stated in the Report. In the case of one of the witnesses who died before the enquiry was held, and who had also been referred to by the counsel for the applicant, the

DN

A
2

Counsel drew our attention to para 11 of the Assessment of Evidence by the Inquiry Officer in which it has been stated that the statement of this witness was relevant only for a limited purpose of establishing delivery of a letter and that this fact had been otherwise proved on the basis of documentary evidence. As regards the non-production of certain other witnesses including the defence witnesses cited by the applicant, the counsel drew our attention to statements in the Inquiry Report to this effect that all possible efforts were made to summon the witnesses but they did not come.

The counsel for the respondents, therefore, contended that the applicant had been given adequate opportunities to defend himself and to cross-examine the principal witnesses and it was he who had not availed of the opportunities fully.

The counsel for the respondents dealt with the objection of bias raised against the Inquiry Officer and stated that this objection was raised only on 30.8.84 after several sessions of the Inquiry had been held. He contended that it was not open to the applicant at that stage to raise such an objection. Moreover, he drew our attention to para 8 of the Assessment of the evidence by the Inquiry Officer in which it had been stated that the objection of the applicant had been referred to the appropriate authority and was found by him to be baseless. This decision of the competent authority had been endorsed to the accused and also had been read out to him, and the applicant had not raised any objection, and ^{had} participated in the Inquiry. The learned counsel for the respondents also contended that the decision of the Supreme Court in Mohd. Ramzan Khan (supra) cited by the counsel for the applicant would apply only to future cases and would not apply to ^{the} present case, which was an old one. Hence, non-supply of a copy of the Inquiry Report

...7....

De

28

before imposition of punishment did not render the order of the disciplinary authority bad in law.

7. From the facts and averments in this case, we consider that the two main issues which have to be considered are :

- (i) Whether de novo disciplinary proceedings launched in this case were in order and whether the orders therein were passed by a competent authority;
- (ii) Whether there was any violation of the principles of natural justice in the conduct of the disciplinary proceedings.

As regards the first issue, we find that in terms of the order dated 20.8.1979 of the Govt. of India, Ministry of Defence, ^{the} Officer-Incharge AOC(Records) was, for the first time, declared to be the competent authority to impose all the penalties under the CCS(CCA) Rules in regard to Gp C & D employees of the Army Ordnance Corps (Records). This order has been annexed as Annexure-7 of the Affidavit filed by the respondents and we have no reason to doubt the authenticity of the said document which forms part of the sworn affidavit-in-reply.

8. The learned counsel for the applicant, no doubt, referred to Swamy's Compilation of CCS(CCA) Rules, in which, the Directorate of Ordnance Services continued to be shown as the only authority competent to impose all the penalties under the said Rules, but we rely on the affidavit in reply, ^{as already stated.} The reason for commencing a de novo inquiry has been explained in the circular dated 19.11.1981 which has been annexed as Annexure VIII of the counter-affidavit. According to this, the disciplinary proceedings initiated prior to issue of the order dated 20.8.79, (referred to earlier), by delegatee appointing authority, who were not specifically designated as disciplinary authorities under Rule 12(2) of the CCS(CCA) Rules, became null and void.

...8....

Dr

29

This was the main ground on which the Munsif's Court of Agra had struck down the earlier order of compulsory retirement. On the same ground, the Civil Court, Agra had given liberty to the respondents to commence inquiry proceedings according to law, if they were so advised. We, therefore, hold that the respondents were in order in issuing a fresh charge memo and commencing a fresh inquiry, ^{that the} and ^{were issued,} orders in this regard issued in December, 1982 ~~whereby~~ by the competent authority duly empowered under the CCS (CCA) Rules. As regards the objection over the competence of the officer, viz., AOC(Records) to impose the impugned order of punishment, on the ground that he ^{in this applicant's case} was not the actual appointing authority, ^{on this aspect of the matter} we do not find it necessary to give a ruling ^{as the said order is being set} aside by us on another ground.

Coming to the second issue, namely, that there was denial of natural justice in the course of disciplinary proceedings, we find that the main infirmity in the proceedings has been the non-supply of a copy of Inquiry Report, before the disciplinary authority imposed the penalty. The law in this matter has been laid down by the decision of the Supreme Court in Union of India Vs. Mohd. Ramzan Khan (supra). The question whether this judgement is retrospective has been raised by the counsel for the respondents, who contended that this would apply only prospectively. The relevant portions of the judgement read as follows :

"Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceedings

Dr

30

completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We therefore come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

"There have been several decisions in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion now judgments in the different High Court taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of co-ordinate or a large Bench of contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground." (emphasis supplied).

9. The issue of retrospective effect has been settled in a Full Bench judgement of this Tribunal in Balkrishan Singh Kumar ^{/Singh} Vs. Union of India (ATJ 1991(2) 278), in the following terms :

"The use of the words, "but this shall have prospective application and no punishment imposed shall be open to challenge on this ground" refers to cases which have been heard and decided by the Division Benches of the Supreme Court earlier. Those cases will not be reopened. This principle would also extend to all such cases which have become final, or appeal or SLP dismissed or where no appeal has been filed within the prescribed time limit, all these matters have become final and it is no longer open to be adjudicated upon. In other words, in all those cases which are pending before any Court of law or Administrative Tribunal in which punishment has been inflicted, a plea of not having been provided with a copy of the inquiry report can be raised as infringing the rules of natural justice."

10. The above rulings would apply to cases like the present one, where an enquiry was held following the procedure for imposition of major penalties laid down in Rule 14 of the

Dr

CCS(CCA) Rules and further, where the Inquiry Officer returned a finding of the charges having been proved.

11. In view of the above ~~the~~ clear position of the law, we hold the disciplinary proceedings in this case have been vitiated by the non-supply of a copy of the Inquiry Report to the applicant immediately after the conclusion of the inquiry and before the disciplinary authority arrived at his findings and proceeded to impose penalty. If the applicant had been given a copy of the inquiry report at that stage, it would have enabled him to cover the whole ground of the enquiry proceedings and to point out the various infirmities in the proceedings which have been alleged, including the non-supply of documents, the non-production of witnesses and other alleged irregularities and violations of the principle of natural justice. The disciplinary authority would have been bound to consider the representation, and if he found adequate grounds in any of them, he would have remitted the case to the Inquiry authorities for further inquiry and report, for reasons to be recorded in writing as per Rule 15(1) of the CCS(CCA) Rules. If on the other hand, he found that none of the grounds warranted such action, the representation would have been rejected by a reasoned order.

12. We, therefore, quash the order of the Officer-Incharge, Army Ordnance Corps (Records) of 11.10.85. We, however, give liberty to the respondents to proceed with the Inquiry if so advised, from the stage of the submission of the Inquiry Report, by furnishing a copy of the same to the applicant and giving him an opportunity to submit his representation thereon. Thereafter, they shall proceed according to law in concluding disciplinary proceedings. Consequent upon the quashing of the order dated 11.10.85, the compulsory retirement becomes null and void. However, we give liberty to the respondents to pass fresh order according to law. In the event of the respondents deciding

...11...

B

to continue the disciplinary ^{/proceedings,} we also direct that the same shall be concluded and order of the disciplinary authority shall be passed within a period of four months from the date of receipt of this Order.

Application is disposed of accordingly, with no order as to costs.

R Venkatesan
(R. VENKATESAN)
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN

/prk/